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This report is a preliminary draft prepared for review purposes.

Review Draft

PRELIMINARY ANALYSIS OF THE POTENTIAL LEGAL ISSUES ASSOCIATED WITH CAR AND VAN POOLING IN MICHIGAN

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16. Abstract

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CONTENTS

CONTENTS (Continued)

CONTENTS (Continued)

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PREFACE

This report was prepared at the request of and under the sponsorship of the Michigan Transportation Research Program (MTRP), which is supported under contract from the Michigan State Highway Commission.

Another project underway by the MTRP Staff and MTRP Energy Efficiency Ad Hoc Committee is the proposed development of a Michigan transportation energy contingency plan that could be put into operation in case of sudden and significant reductions in petroleum supplies. The plan will recommend changes in the operations of public transit systems and initiatives that can be taken by state government for the rapid formation of car and van pools, with possible integration of such pools with the public transportation systems. Thus, it is important that the present state of affairs in Michigan with respect to the liability, insurance requirements, and legal implications of car and van pooling in Michigan be understood. Public reaction to sudden petroleum energy shortages will inevitably spawn informal, shared-ride travel behavior, and possible planning in both the public and private sectors for car pools is likely to make them even more widespread.

The purpose of this report is to provide a preliminary assessment of the implications and the relationships of the legal factors that can affect car and van pooling and provide a frame of reference for the development of alternative state government initiatives that can encourage the proliferation of ridesharing activities that may be required in the event of energy emergencies. However, although the analysis was undertaken in conjunction with the MTRP activities on the Michigan Transportation Energy Contingency Plan, the material is applicable to car and van pools currently in operation.

1.0 INTRODUCTION

1.1 Background

Current concerns about future energy supplies both nationally and within the state of Michigan have precipitated a variety of activities designed to deal with energy emergencies and to identify energy conservation measures. One conservation measure that has received wide attention is the use of car and van pools in areas in which public transportation is unavailable or inadequate for the transportation of individuals from their residences to their places of employment (1).

As part of its on-going activities in transportation research, the staff of the Michigan Transportation Research Program (MTRP) proposed to develop a short-term energy contingency plan for the state of Michigan. The proposal was approved by the MTRP Advisory Committee in February 1978, and work was initiated on the plan. A significant emphasis in that plan has been placed on the use of car and van pooling as an energy conservation measure.

As the examination of pooling has progressed, it has become increasingly clear that a variety of legal issues might be encountered with the different types of pooling arrangements that are under consideration. Accordingly, the MTRP Staff Director requested that the legal staff of the Policy Analysis Division, of the Highway Safety Research Institute (HSRI), of The University of Michigan to conduct preliminary analyses of the potential legal issues that might be encountered in Michigan with various types of pooling arrangements. The purpose of the analyses was to identify the more significant legal considerations that might be involved in car and van pooling in Michigan and to determine those areas in which fuller and more comprehensive legal analyses would be required.

1.2 Car and Van Pooling Arrangements

Four general types of car and van pooling arrangments were selected by the MTRP for the preliminary analyses: 1) a group of private individuals organize and operate a car pool using their own vehicles; 2) a group of individuals purchase and operate a pool vehicle; 3) an employer-owned vehicle is made available to a group of employees for pool purposes; and 4) a state-owned vehicle is made available for pool purposes. Some of the specific pooling schemes that could derive from these generalized types of arrangements are:

1. Private vehicle owners participate in a pool.
   a. One vehicle is used for pool purposes all of the time and is driven by the vehicle owner. The other participants share the costs of the operation.
   b. Each of the participants uses his or her own vehicle and driving assignments are rotated.
2. A group of private individuals purchases and operates a pool vehicle. The costs of the operation are shared by the group.
   a. A driver is hired to operate the vehicle.
   b. One of the participants is permanently assigned as the driver of the vehicle.
   c. Driving responsibilities are rotated among the participants.
3. An employer-owned vehicle is made available for pool purposes.
   a. A vehicle is loaned to the group and one participant is permanently assigned as the driver. In return for his services he is allowed to use the vehicle for his personal purposes. The other participants share the costs of the operation.
   b. A driver is hired by the employer to operate the pool vehicle and the participants pay a fee to the employer to cover the costs of the operation.
   c. The vehicle is rented from the employer and the participants share the costs of the operation and rotate the driving assignments.
   d. Variations of a or b, with the employer paying all pool operating expenses.

4. A state-owned vehicle is made available for pool purposes to state employees.

   a. A driver is hired by the state to operate the vehicle and the participants pay a fee to the state or cover the cost of the operation.

   b. The vehicle is loaned to the group by the state and the participants share the cost of the operation. One driver is assigned permanently and in return for his services he is allowed to use the vehicle for personal purposes (2).

Other specific pooling arrangements could be configured under the major headings listed above. For the purposes of these preliminary analyses, however, the arrangements listed above provide a spectrum broad enough to permit insights to be developed into some of the problem areas that might be encountered in Michigan.

1.3 Scope of Analysis

The analysis was restricted to the legal issues and problem areas that might be encountered in the state of Michigan. Specifically, the analyses were limited to the potential classification of pooling arrangements under Michigan law as common and/or contract carriers of passengers and the implications of such classifications; the effects of Michigan no-fault insurance laws on the potential remedies for damages incurred in vehicle pool operations; the potential liabilities for damages resulting from ownership of a vehicle by an individual, group, employer, or the state of Michigan; and the effects of Michigan workmen's compensation laws on damage remedies available to an employee who participates in a vehicle pool. Other issues--such as the treatment of ride pool benefits provided by an employer by federal and state tax officials, the financing of vehicle pools and other institutional factors having an effect on vehicle pooling arrangements (3), the methods and procedures used to establish accident and liability insurance premium rates, and the effects of such rates on various types of pooling operations (4)--have been well treated elsewhere. Thus, no attempt to deal with these areas was made in these preliminary analyses.

1.4 Purpose and Content of Report

The purpose of this report is to summarize the results of the preliminary legal analyses. It is designed to acquaint the reader with the legal context within which car and van pooling schemes will be required to operate in Michigan. Thus, it only touches on and briefly discusses the most significant aspects of each of the legal issues that appear to be generated by the pooling arrangements listed. It also attempts to identify those areas that will require further and more comprehensive analyses.

The remainder of the document is organized into six sections. Section 2.0 briefly discusses the potential for classification of car and van pools as common or contract carriers of passengers. Section 3.0 describes the major aspects of the Michigan no-fault insurance law and its effects on legal liabilities of vehicle owners and operators. Section 4.0 discusses pooling arrangements in which pooling schemes are arranged for and operated by private vehicle owners. Section 5.0 discusses pooling situations in which the vehicles employed are owned by private or corporate employers. Section 6.0 discusses the situations in which the vehicles are owned or operated by the state of Michigan. The report is concluded in Section 7.0 with a brief summary of the major findings of the analyses and a listing of the areas in which the authors believe more detailed legal analyses are required.

2.0 COMMON AND CONTRACT CARRIERS

Under Michigan law anyone who directly or through some device or arrangement holds himself out to the public as willing to be hired to transport people by motor vehicle from place to place over the public roads of Michigan is classified as a common motor vehicle carrier of passengers (5). Similarly, any person engaged for hire through any device or arrangement in transporting people from place to place over the public roads of Michigan by motor vehicle, other than a common carrier of passengers, is classified as a contract motor vehicle carrier of passengers (6). Either classification carries with it a set of legal requirements that must be met before the person may operate as a carrier of passengers.

2.1 Common Motor Vehicle Carrier of Passengers

As a general rule, a common carrier is one which undertakes indifferently to carry all persons or the personal property of all persons who choose to employ him (7). For the most part, none of the arrangements that have been specified appear to meet this description. In no case does the vehicle owner or operator hold himself out to the general public for hire, and in every case only a specific group of people would be carried by the pool vehicle. Thus, it is unlikely that any of the pooling arrangements being considered here would be classified as a common motor vehicle carrier of passengers. However, should the nature of any of the pooling arrangements change with respect to who may use the vehicles and how the vehicle services are advertised, such a pooling arrangement might be classified as a common vehicle carrier of passengers. Under such conditions, the vehicle pool would have to meet the requirements of Chapter 476 of the Compiled Laws of Michigan (8).

2.2 Contract Motor Vehicle Carrier of Passengers

A number of pooling arrangements appear to be encompassed by the definitions of a contract motor vehicle carrier of passengers. In order for pooling arrangements so classified to operate in the state of Michigan, a permit would have to be obtained from the Michigan Public Service Commission (10). Before issuing such a permit, the Commission would have to determine that the operation of the pool would not impair the operation and the efficient public service of other authorized common or contract carriers, the physical condition of vehicles employed are such they they would not damage the public highways, and the operation of the pool would not interfere with the use of the public highways by the rest of the general public (11). If a permit is issued, the Public Service Commission would then have the authority to prescribe rules and regulations pertaining to the rates that could be charged for pool participation, the method of operation of the pool vehicles, and rules and regulations pertaining to vehicle safety and reporting schemes (12). Thus, if classified as a contract carrier, a vehicle pooling arrangement would come under the jurisdiction of the Public Service Commission.

In order to eliminate any real or apparent barriers to the formation and use of car and van pools, to encourage their use, the Michigan legislature has under consideration a bill to exempt car and van pools from the requirements of Chapter 477 of the Michigan Compiled Laws (13). As of July 1978, that bill has been reported out of committee and is awaiting consideration by the House of Representatives.

3.0 MICHIGAN'S NO-FAULT INSURANCE LAW

In recent years, a number of states have enacted no-fault insurance laws, which attempt to reduce or eliminate the time delays and litigation costs normally associated with the recovery of personal injury and property damage costs by individuals involved in motor vehicle accidents. The provisions of no-fault insurance laws vary from state to state. Generally, however, all states having no-fault laws require that any person owning a vehicle registered in the state must carry insurance that will reimburse that person for damages suffered in a vehicle accident. Under such laws, although common-law tort liabilities for negligent vehicle operations may not be abolished, the right to sue for damages arising out of a vehicle accident is either partially or completely barred, and individuals suffering damages must normally look to their own no-fault insurers for reimbursement of damage costs, without regard to who was at fault in the accident. In most states, personal injury damages are treated differently from property damages.

Michigan's no-fault insurance law is covered in Chapter 31 of the Michigan Compiled Laws (14). Since it affects the right to sue, it could have significant effects on the liabilities of the owners and operators of and the participants in vehicle pools. Accordingly, a full understanding of the potential liabilities that might be encountered with the types of pooling schemes listed requires some familiarity with the Michigan no-fault automobile insurance law. It is the purpose of this section of the report to describe some of the more important aspects of that law in connection with car and van pools.

3.1 Insurance Coverage Required

The owner or registrant of a motor vehicle that is registered in the state of Michigan must maintain security for the payment of benefits under personal injury protection, property protection, and residual liability insurance (15). Residual liability protection is designed to protect the insured individual against actions instituted by parties injured and/or damaged in accidents outside the state of Michigan, and against actions instituted for non-economic damages (pain and suffering) suffered in accidents occurring in the state of Michigan. A motor vehicle is defined by the statute to include a powered vehicle designed to operate on the public roads of the state and having more than two wheels (16). Thus, all vehicles other than motorcycles and mopeds must be covered. Security for the payment of the listed benefits may be provided by methods other than insurance, provided such methods are approved by the secretary of state (17). Thus, certain organizations and groups, with the approval of the secretary of state, can maintain a program of self-insurance.

3.2 Personal Protection Benefits

Under the personal injury protection benefit requirement, an insurer is liable for the costs of accidental bodily injury arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle without regard to fault (18). Included in the definition of bodily injury are death and damages to or loss of prosthetic devices (19). Accidental bodily injury is all injury suffered by a person in a motor vehicle accident, unless it is intentionally caused (20). Where bodily injury is incurred, allowable expenses for which the injured party will be reimbursed by the insurer include all reasonable charges that are incurred for supplies, services, and accommodations during the injured party's

treatment, recovery, and rehabilitation, and funeral expenses (21). An accidentally injured party is also entitled to work-loss benefits (22).

Prior to 1976, workmen's compensation and social security benefits and other benefits required to be provided to an individual under any state or federal law could be deducted from the benefits that were required to be provided by the insurer under the personal injury protections. This provision of the no-fault law (23) was declared unconstitutional in 1976 by a panel of the Michigan Court of Appeals (24). However, two recent decisions of another panel of the Court of Appeals have held the provision to be constitutional (25). Thus, the current status of this benefit set-off provision is unclear.

3.3 Persons Entitled to Personal Protection Benefits

Personal protection benefits cover accidental injury to the person named in an insurance policy, his spouse, and any relative of either domiciled in the same household (26) and any person suffering bodily injury while operating or present as a passenger in a vehicle operated in the business of transporting passengers is entitled to receive personal injury protection benefits from the insurer of the vehicle (27). However, passengers in school buses, common carrier buses, buses operated under a government sponsored transportation program, and buses operated by or for nonprofit organizations are excluded from personal protection benefits under the no-fault insurance coverage of the vehicle operator--unless they are not entitled to personal protection benefits under any other insurance policies (28). Thus, for example, a passenger injured on a city-run bus system would have to look to his own no-fault personal protection insurance for personal injury benefits. Only if he carries no insurance that will provide such benefits can he look to the city for reimbursement.

Somewhat different rules apply to individuals injured while driving or being transported in a vehicle owned by an employer. An employee, his spouse, and a relative of either domiciled in the same household who is injured while occupying a vehicle owned or registered by an employer is entitled to receive benefits from the insurer of the employer's vehicle (29).

When a person is entitled to benefits from more than one insurer, the no-fault statute establishes priorities that require claims first be made against the injured party's insurer. Where the injured party does not carry no-fault and was the occupant of a motor vehicle out of which the injury arose, he must first claim against the insurer of the owner or registrant of the vehicle involved, and second against the insurer of the operator of the vehicle involved (30).

It should be noted that the law is not clear with respect to personal injury benefits to nonresidents of Michigan injured in a vehicle registered in another state. The current no-fault law specifically excludes such persons from coverage, but the full meaning of the provision has not been clarified by the courts.

3.4 Property Damage

An insurer of a vehicle is liable for accidental damage to tangible property up to a maximum of $1 million arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle (31). Excluded from such property damage benefits are any motor vehicles involved in the accident and their contents, and property owned by the person, spouse, or relative named in the policy of the owner, registrant, or operator of the vehicle involved in the accident out of which the damage arose (32). Most insurance companies that issue no-fault policies in Michigan will also issue a collision rider to compensate an individual for damage to his vehicle for an additional premium. However, this rider is not required by law.

3.5 Right to Sue for Tort Liabilities

The tort liabilities of negligent vehicle operators for property damage is completely abolished by the no-fault law (33). Such negligent operators still remain subject to suit for the noneconomic losses (pain and suffering) suffered by an injured party caused by the negligent party's ownership, maintenance, or use of a motor vehicle, if the injured party has suffered death, serious impairment of body function, or permanent disfigurement (34). This provision applies to both residents and nonresidents. A negligent person also remains subject to suit for expenses, work and survivor losses in excess of those allowed in the statute (35) and for any personal injuries or property damage caused by that person's negligent operation of a vehicle outside the state of Michigan.

3.6 Summary of Significant No-Fault Factors

The following factors derived from the Michigan no-fault insurance law can affect the liabilities of car and van pool participants and pool-vehicle owners:

1. All vehicles registered in the state of Michigan must carry security to cover personal injury, property damage, and residual liability benefits. The security must be in the form of an automobile insurance policy or, with the approval of the Secretary of State, some form of self insurance.
2. In cases of personal injury, the insurer of the injured individual is liable for the medical costs and economic losses (work losses) incurred in the vehicle accident.
3. The right to sue negligent vehicle operators for tort liabilities for property damage incurred in Michigan is completely abolished by the no-fault statute. The right to sue negligent vehicle operators for personal injuries is also abolished, except in cases in which the injured party has suffered death, serious impairment of body function, or permanent disfigurement. In such cases, suit can be instituted for non-economic (pain and suffering) damages. Suit can also be instituted against negligent operators for expenses, work and survivor losses in excess of those allowed by the statute.

4. The right of damaged parties to sue negligent vehicle operators for injuries and property damage suffered in accidents outside of the state of Michigan is maintained.

5. Where an individual is a passenger in a vehicle that is in the business of transporting passengers, the insurer of the vehicle is liable for the personal injury damages incurred in the operation of the vehicle. Excepted from this requirement are passengers in school buses, common carrier buses, buses operated under a government-sponsored transportation program, or buses operated by or for non-profit organizations, unless the injured party is not entitled to personal protection benefits from any other insurance program.

6. Excluded from benefits under the property protection provisions of the no-fault insurance law are any motor vehicles involved in the accident and their contents, and any property damaged that is owned by the named insured, his spouse, a relative living in the same house, or the operator of the vehicle.

7. The law is unclear and the courts have not clarified the exclusion of non-residents injured in Michigan in an out-of-state registered vehicle from personal injury benefit.

8. Where injured individuals are entitled to no-fault insurance benefits from more than one insurer, they must make claims first against their own insurers. Where an injured party does not carry no-fault insurance, he or she must make claims first against the insurer of the owner of the vehicle in which the injury arose, and second against the insurer of the operator of the vehicle.

9. There is currently conflict in the courts about whether or not an insured party who is injured in a vehicle accident can receive both no-fault benefits and the benefits from a government-required benefits program, such as workmen's compensation or social security.

4.0 PRIVATELY-OWNED POOL VEHICLES

Car and van pooling arrangements using privately-owned vehicles are generally of two types. In the first type, the group uses individually-owned vehicles as pool vehicles. In the second type, the pool group purchases and jointly owns a specific vehicle. In each arrangement, the potential liabilities of interest would be those that arise among individual members of the group and among the members of the group and third parties. Because of the presence of no-fault insurance in Michigan, the actual liabilities created would depend on the extent of injuries suffered by persons involved in accidents and the exact nature of the pooling arrangement. It is the purpose of this section of the report to identify and discuss those liabilities in pools that use privately-owned vehicles.

4.1 Individually-Owned Vehicles

4.1.1 One Vehicle Only Used for Pool Purposes. In the first possible pooling arrangement, one privately-owned vehicle in the group would always be used as the pool vehicle. It always would be driven by the owner and the remainder of the pool participants would share and pay the costs of the operation to the owner.

4.1.1.1 Liabilities of the Vehicle Owner. Under the Michigan no-fault insurance law, injured members of the car or van pool and injured third parties who carried no-fault insurance would have to look to their own insurers for personal injury, permanent disfigurement, or serious impairment of body function. Members of the pool and third parties not covered by no-fault insurance would have claims against the insurer of the vehicle owner. Should the injury result in death, impairment of body function, or disfigurement, of should the accident occur outside of the state of Michigan, conventional common law and statutory tort liabilities would apply. Under such conditions, the

the potential liabilities of the vehicle owner would be as follows:

- Liabilities to Pool Participants. Under Michigan law, the owner of a vehicle would be liable for any damage or injury occasioned by the negligent operation of the vehicle (36). Thus, when a vehicle is driven by its owner or by another person with the express or implied consent of the owner, the owner is liable for all injuries suffered by another person because of the negligent operation of the vehicle.

Unitl 1975, the driver of a vehicle was immune to suit for injuries suffered by a non-paying passenger in the automobile, unless the driver was guilty of gross negligence, or willful and wanton conduct (37). In 1975, the Michigan Supreme Court held this provision of the Michigan Vehicle Code Civil Liability Act unconstitutional on equal protection grounds (38). Thus, current Michigan law holds that every driver owes a reasonable duty of care to his passengers, as well as to others, and all distinctions between paying and non-paying passengers have been abolished. Accordingly, a negligent driver (owner) of a pool vehicle involved in an accident could be held liable for injuries suffered by a passenger where death, serious impariment of body function, or permanent disfigurement occurs.

One defense that could be interposed by the owner of a vehicle to defeat completely an injured party's claim for damages would be that the injured party, through his own negligence, had contributed in some fashion to his own injuries. In 1977, the Michigan Supreme Court discussed the concept of contributory negligence and the possible substitution in its place of the concept of comparative negligence (39). Under a comparative negligence concept, the driver of a vehicle would be held liable for injuries suffered by passengers to the extent that he contributed to the accident. A quantitative relative degree of

fault would be attributed to each party for the accident and the damage award to the injured party would be adjusted using this fault factor. Although the court upheld the concept of contributory negligence, the decision appeared to be based on the fact that the particular case on appeal was not the appropriate vehicle for a decision about comparative negligence. Moreover, three of the seven justices agreed that comparative negligence should be adopted in Michigan. Thus, although contributory negligence is the concept currently in force in Michigan today, an appropriate appellate case could result in the establishment of a comparative negligence concept within the state. Since that time, another case has been accepted for review by the Supreme Court to specifically address the issue of comparative negligence.

- Liabilities to Third Parties. The owner of a vehicle used by a car pool would be liable for any injuries above the threshold level suffered by third parties because of negligent operation of a vehicle. As in the case of the pool participants, a contributory negligence concept would be applied in all situations in which the owner is subject to suit and is held liable for damages.

With respect to property damage to property owned by third parties, the vehicle owner would be immune from suit. The no-fault insurer of the owner would be liable for damages to the property up to the extent of the required policy limits, which under the no-fault law are $1 million.

4.1.1.2 Liabilities of Pool Participants. If the owner of the pool vehicle should be sued for non-economic damages for injuries above the threshold level in this type of arrangement, the negligence of the driver could be imputed to the members of the car or van pool. If imputation occurred, the members of the pool could be liable, either individually or jointly, for the negligence of the driver. Such imputed liabilities could arise either under a theory based on an employer-employee relationship, or one based on a joint-venture relationship.

• Employer-Employee Relationships. Generally, the decision about employer-employee relationships would be dependent on the specific circumstances of the situation. If the driver of the vehicle is the owner of the vehicle, it is unlikely that the court will look on the arrangement as that of an employer and employee. Rather, the driver would more likely be considered to be an independent contractor to the pool group, in which case the pool members would be held liable for the action of the driver only if they excerised some degree of control over the actions of the driver in carrying out his driving tasks, or were responsible for providing a defective instrumentality that was the cause of the injury. Since, in the situation described none of the car or van pool members would normally control the owner's driving actions, nor be responsible for providing the vehicle, it would be unlikely that liability would be imputed to the pool members.

Should the court determine that the driver of a vehicle is the employee of a pool, the negligence of the driver would be imputed to the members of the pool under the legal doctrine of respondeat superior, i.e., an employer is responsible for the acts of his employees in the course of their employment. Thus, the negligent actions of a hired driver would be imputed to his employer. In the situation in which one driver provides all of the reansportation for the group and is compensated for such transportation by the group, a court might look upon such an arrangement as that of an employer and employee. In addition to the imputation of liabilities, an employer-employee relationship would require that the pool group provide workmen's compensation benefits for a driver injured in the course of his employment. (The subject of workmen's compensation will be discussed more fully in Section 4.2.1.3, below.)

• Joint Venture Relationship. A joint venture is one in which a group bands together for a common purpose with a common responsibility for the enterprise. In Michigan, the determination of whether a pooling arrangement comprises a joint venture would be determined by

three factors: 1) the existence of a community of interest of a common objective or purpose; 2) the existence of a common responsibility for the negligent operation of the vehicle; and 3) whether or not the driver was acting as an agent for pool purposes, i.e., whether the driver or the group controlled the driving activities (40). If a joint venture is found to exist, the negligence of one member of the venture would be imputed to the other members of the venture (41), except in cases where individual members of the joint-venture group are suing each other (42).

Whether or not a pooling arrangement of the type described would constitute a joint venture in Michigan is not clear, since no case on point is available. However, at least one out-of-state court has held that a pooling arrangement of the type indicated is not a joint venture (43)--a decision that appears to reflect the general view that a car pool is not a joint venture (44). Although it is unlikely that a car pool of the type described would be considered to be a joint venture in Michigan, since the group would not normally control the actions of the driver, the question is not settled.

4.1.2 Group Participants Rotate Vehicles and Driving Assignments. In the second general type of pooling arrangement using privately owned vehicles, pool participants would use their own vehicles and the driving assignments would be rotated among the members.

4.1.2.1. Liabilities of Vehicle Owners. As in the case of a pool using a single vehicle, no liability of the vehicle owner would arise until an accident resulted in a death, serious impairment of body function, or permanent disfigurement. Until such injury thresholds are reached, injured members of the pool would be required to look to their own individual no-fault insurers for injury benefits. Since all pool members would be vehicle owners, all would be covered by no-fault insurance. Should a member of the pooling arrangement not be a vehicle owner and not covered by insurance, the insurer of the vehicle in which the injury occured would be liable for personal protection benefits. If the thres-

holds of no-fault insurance are exceeded, however, the owners could be held liable for non-economic damages (pain and suffering) suffered by other pool members. Above the injury thresholds, the owners could also be subject to suit by injured third parties. In both situations, a contributory negligence doctrine would be applied. With respect to property damage, the vehicle owner would be immune from suit and the no-fault insurer of the owner would be liable for claims up to the limits of the no-fault policy.

4.1.2.2 Liabilities of Pool Participants. In this situation, it is unlikely that either an employer-employee or joint-venture relationship among the pool participants would be construed by the courts. Thus, it is improbable that any negligence of the driver (owner) would be imputed to the members of the pool.

4.2 Group-Owned Pool Vehicles

In the second general type of using a privately-owned vehicle, a group of private individuals purchase and operate a pool vehicle. The cost of the operation would be shared by the group.

4.2.1 A Driver is Hired to Operate the Vehicle

4.2.1.1 Liabilities of the Driver to Pool Participants. If a pooling group uses a group-owned vehicle and hires a driver, the liabilities of the hired driver to the pool participants would be identical to those of any employee to an employer. Thus, if it is assumed that the agreed on duties of the hired driver would be to exercise reasonable care in the operation of the vehicle, which would comprise a contractually created duty of the driver to the pool members, any injury to a pool member above the no-fault threshold injuries could constitute a cause of action by a pool member against the driver. Of course, the driver's ability to pay such damage claims would pose a significant factor in whether of not a suit for damages would be instituted by an injured pool member.

4.2.1.2 Liabilities of Driver to Third Parties. Since the driver would be an employee of the pool group, any liabilities incurred by the driver within the scope of his employment as driver would be inputed to the vehicle owners under the doctrine of respondeat superior. Thus, the pool group, individually and jointly, could be vaicriously liable for non-economic personal injury damages above the thresholds specified in the no-fault law. Injuries below the thresholds and property damages would normally be compensated for by the no-fault insurer of the vehicle.

4.2.1.3 Liabilities of Pool Participants to Driver. Under Michigan law, an employee injured in the course of his employment has a right to workmen's compensation benefits, irrespective of fault (45). Thus, the hired driver of a group-owned vehicle would be entitled to compensation benefits if he were to be injured, whether the injury was caused by the negligence of the employee, a co-employee, the employer, or a third party (46). The statutes also provide that the compensation benefits are the only remedy available to an employee against the employer. The collection of such benefits, however, would not preclude an independent tort action against negligent third parties who are responsible for the injury to the driver (47).

Here, again, the Michigan no-fault statute would come into play. If the drivers injuries were below the threshold injuries specified in the no-fault law, the driver would be precluded from suing a third party and would have to look to the no-fault insurer of the pool vehicle for benefits for injuries. However, the no-fault statute requires that workmen's compensation benefits be deducted from any no-fault benefits provided to an injured employee. As was indicated in Section 3.0, it is currently not clear whether this provision of the no-fault statute is constitutional. Thus, it is not clear that the benefit set-offs would not be made by the no-fault insurer. Additionally, since the workmen's compensation benefits are the only remedies an employee has against an employer, no suit would be possible by the driver against

the pool members, even though his injuries might exceed the thresholds set in the no-fault statute.

4.2.1.4 Liabilities of Pool Participants to Third Parties. Each of the pool participants could be individually and jointly liable for non-economic damages to third parties for injuries above the no-fault injury threshold. The no-fault insurer of the third party would be liable for economic damages below that threshold. Should the injured third party not be covered by no-fault insurance, the no-fault insurer of the owner or registrants of the pool vehicle would be liable for ecomomic damages. Property damages incurred by third parties would be reimbursed to the extent of the insurance policy limits by the no-fault insurer of the pool vehicle.

4.2.1.5 Liabilities of Pool Participants to Each Other. Most insurance policies issued in Michigan name all co-owners of a vehicle as parties covered by the no-fault policy. Since the pool members would jointly own the vehicle, they would probably be named individually in the no-fault insurance policy. Thus, the no-fault insurer of the vehicle would be liable for benefits for any injuries suffered by pool members. Above the threshold injury limits, none of the pool members would have any cause of action against any other pool member since they are joint owners of the vehicle.

4.2.2 One Pool Member is Permanently Assigned as Driver

4.2.2.1 Liabilities of Driver to Pool Participants. In contrast, should the group owning the pool vehicle assign one of its members to be the driver permanently, then, above the no-fault threshold levels, the driver would be liable for noneconomic damages arising out of his negligent operation of the vehicle. Under the thresholds set by the no-fault law, injuries suffered by pool members would be reimbursed by the no-fault insurer of the owners of the vehicle, since as co-owners, each would be a named insured in the no-fault policy.

It should be noted that in situations in which a vehicle is

co-owned some insurance benefit problems might arise if the insurance company attempts to exclude named insureds from the residual liability provisions of a policy. In such a situation, negligent driver co-owners could be made personally liable for non-economic damages suffered by other pool participants. Where such exclusions have been attempted against family members, the courts have voided the exclusion as against public policy. Whether or not, as a matter of public policy, the no-fault insurer can exclude co-owners and non-related named insured parties from coverage under the residual liability provisions of the vehicle no-fault policy is not clear. Should such exclusion be permitted, the no-fault insurer would not be required to defend the driver in an action for non-economic damages for personal injuries above the threshold level. Thus, unless the driver carried a separate no-fault or personal liability policy, he might have to defend the suit personally.

4.2.2.2 Liabilities of Driver to Third Parties. Since the pool participants would be co-owners of the vehicle, the negligence of the driver would be imputed to all pool members. Thus, for injuries to third parties above the threshold level, the pool participants would be subject to suit, individually and jointly. For injuries below the threshold level, the no-fault insurer of the vehicle would be liable. The no-fault insurer would also be liable for property damage up to the extent of the policy limits.

4.2.2.3 Liabilities of Pool Participants to Driver. Other than no-fault coverages for personal injuries and property damages, the pool participants would have no liabilities to the driver who is one the group owning the vehicle, unless they contributed in some fashion to the accident out of which the driver's injuries arose. In such a case, the injuries would have to exceed the threshold levels before the driver would have the right to sue.

4.2.2.4 Liabilities of Pool Participants to Third Parties. The liabilities of the pool participants to third parties would be the same as those in the case of the hired driver (paragraph 4.2.1.4).

4.2.2.5 Liabilities of Pool Participants to Each Other. The liabilities of the pool participants to each other would be the same as those in the case of the hired driver (paragraph 4.2.1.5).

4.2.3 Driving Assignments are Rotated Among Pool Participants. The liabilities of the drivers on the day they drive and the liabilities of the pool participants would be the same as in the case of the single pool member permanently assigned as the driver of the pool vehicle (Section 4.2.2).

4.3 Conclusions

The potential liabilities of pool participants in pooling arrangements involving privately-owned pool vehicles seem relatively clear. Three areas that require further investigation are concerned with the potential for classifying pool arrangements as joint ventures, the set-off of workmen's compensation and other government-required benefits against no-fault personal injury benefits, and the right of a no-fault insurer to exclude co-owners and named insured parties from coverage under the residual liability provision of a no-fault policy covering group-owned vehicles. In the case of the workmen's compensation benefit set-offs, the resolution of the question would have little effect on the operation of any car or van pooling arrangement. However, the possibilities of being classified as a joint venture and the problem of exclusion of co-owners and/or named insured parties from residual liability protection could affect some types of pool arrangements. Accordingly, more detailed examinations should be performed in these areas.

One form of group ownership that has not been dealt with in this preliminary analysis is a corporate form in which the pool vehicle is owned by a corporation specifically set up as a vehicle pool and in which the individual pool members are stockholders in the corporation. Such a pooling arrangement might shield individual pool members from personal liabilities for above-threshold injuries suffered by others. Thus, it is recommended that further, detailed examinations of this area also be performed.

5.0 EMPLOYER-OWNED POOL VEHICLES

In this class of pooling arrangements, an employer-owned vehicle would be provided as a pool vehicle. Since under Michigan law, the owner is liable for any damage or injury occasioned by the negligent operation of the vehicle, all liabilities that arise outside of the no-fault coverages would be the responsibility of the vehicle owner, regardless of the form of the car or van pool. The purpose of this section of the report is to discuss the issues that might arise in connection with such employer-owned pool vehicles.

5.1 No-Fault Benefits

Under the Michigan no-fault law, an employee, his spouse, or a relative of either domiciled in the same household who is injured while occupying a vehicle owned or registered to an employer would be entitled to personal injury benefits from the insurer of the employer's vehicle (48). Liabilities for personal injuries to third parties would depend, as in the privately-owned vehicle cases, on whether or not the injured party is covered by his own no-fault insurance. As in the arrangements discussed earlier, the employer's insurer would be liable for property damage up to the limits of the policy. The form of the car or van pool arrangement would not affect these liabilities.

5.2 Injuries Above Threshold Limits

If the personal injuries of the ride pool members or third parties exceed the threshold injury limits, under no-fault the employer would be subject to suit damages on a contributory negligence basis (49)., irrespective of whether the vehicle was loaned or rented to the group, and irrespective of whether the driver was a regular company employee, a driver specifically hired to drive the pool vehicle, or one of the ride pool members (50). Court decisions in Michigan have stated

the general rule that when someone other than the owner drives a vehicle, it is presumed that the person was doing so with the owner's consent. They have also stated that the word "consent" is to be interpreted in the light of the public policy for which the owner-liability statute was enacted, which was to place the risk of damage or injury upon the person who has ultimate control of the vehicle. Thus, even though the use of the vehicle goes beyond the specific consent given by the owner, ultimate control rests with the owner and, therefore, he would incur liability for the negligent operation of the vehicle. Thus, an owner could not shift liability to an individual who uses the vehicle with the owner's consent.

5.3 Workmen's Compensation Benefits

Although the liabilities of the employer for injuries above the thresholds are clearly defined by statute and case law, the issues with respect to the effects that workmen's compensation benefits have on no-fault awards and the right to sue by an employee are somewhat confused. Generally, as has been stated previously, an employee injured in the scopy of his employment is entitled to workmen's compensation benefits from his employer, without regard to fault. Where such benefits are forthcoming, they are the only remedies available to the employee against his employer. Moreover, no-fault provisions might still require that the benefits received under workmen's compensation be deducted from any no-fault benefits due the employee.

Employees injured while they are passengers in an employer-owned vehicle would be clearly entitled to benefits from the employer's no-fault insurer. Whether or not these employees would also be entitled to workmen's compensation benefits would depend on how ride pool activities are construed by the courts. If they should be construed as activity within the scope of employment, all injured employees would be entitled to workmen's compensation benefits in addition to no-fault benefits. In such a situation, an employer would effectively be required to double

insure his employees--a requirement that could add unwanted costs to his operation.

What constitutes activities within the scope of employment has not been clearly defined. In 1975, the Michigan Court of Appeals found that an employee injured in a company vehicle on his way to work had been injured in the course of his employment and was entitled to workmen's compensation benefits (51). In that particular situation, the company had permitted the employee to use the company vehicle for both personal and business reasons. It seems that in situations in which a company-owned vehicle is used solely to and from the place of employment the arguments would be stronger that injuries suffered in the pool vehicle were incurred in the scope of employment.

Although workmen's compensation benefits provide the only remedy available to an eligible employee against an employer, they do not preclude the employee from suing a negligent third party for injuries above the threshold level. Where such a third party's negligence is responsible for injuries to the employee to whom workmen's compensation benefits must be paid, an employer might have a cause of action for indemnification from the third party for the benefits paid (52).

5.4 Set-Off of Workmen's Compensation Benefits Against No-Fault Benefits

As has been stated, the current status of the provision of the no-fault law requires the set-off of workmen's compensation benefits against no-fault benefits is unclear. This provision, which was declared to be unconstitutional by the Michigan Court of Appeals, has recently again come into question. Resolution of this question will require action by the Michigan Supreme Court.

5.5 Conclusions

With the exception of the set-off provisions of the no-fault law and the definition of scope of employment in regard to car and van pools, the potential liabilities associated with car and van pools appear to be clear. However, the one case decision cited suggests that an employer-provided pool vehicle used to transport employees to and from work would not be construed differently from situations in which an employer-owned vehicle is used to transport employees during the work day to and from work assignments. If so construed, an injured employee-participant in such a ride pool would be entitled to both no-fault and workmen's compensation benefits.

Neither question would significantly affect the operation of car and van pools. However, the answers to them could affect the attractiveness of employer-provided vehicles for pool purposes. Thus, a more comprehensive legal analysis of these areas should be performed.

6.0 STATE-OWNED POOL VEHICLES

In this class of pooling arrangements, a state-owned vehicle would be provided as a pool vehicle to a group of state employees. (Other forms of pooling arrangements using a state-owned car but including passengers who would not be state employees have not been treated in this report.)

As in the case of the employer-owned pool vehicle, the state of Michigan as the owner of the vehicles would be liable and subject to suit for all damages that were outside of the no-fault coverages, regardless of the form of the vehicle pool. It is the purpose of this section of the report to describe the issued that might arise in connection with state-owned pool vehicles.

6.1 No-Fault Benefits

In both pooling arrangements involving state-owned vehicles that have been described in Section 1.0, the state would be considered to be the sponsor of a transportation program. Under the Michigan no-fault law, any passengers injured in buses operated under a government-sponsored transportation program would not be entitled to personal protection benefits, unless they would they would not be entitled to personal protection benefits under any other insurance policies (53). Thus, whether the driver would be specifically hired by the state to operate the vehicle or would be selected from the group of pool participants, the pool participants as passengers would have to look first to their own no-fault or other personal-protection insurers for personal-injury protection. Whether the fact that the vehicle owner is also the employer of the pool participants would bring the pool participants under the provision that entitles an employee injured in an employer's vehicle to personal protection of the employer's insurance is not clear, since both the exclusion

and the inclusion provisions are in the same sections of the No-Fault Act (54). A view that would make both provisions compatible would be that the exclusion is concerned only with non-employee passengers of vehicles in government-sponsored transportation programs. In both the driver situations, however, the drivers would be covered under the state's insurance plan. Here again, as in the company-owned pool vehicle, it is not clear whether benefits from other government-required benefit plans, such as workmen's compensation, would be set off against the no-fault benefits received.

It appears also that injured third parties would have to look first to their own no-fault insurers for personal injury benefits before they could make claims against the state or the state's insurer. However, nothing in the no-fault law exempts the state's insurer, or the state if it is self insured, from liability for property damage. Thus, it can be assumed that state or the state's insurer would be liable for such damages up to the limits of the insurance policy.

6.2 Injuries Above Threshold Limits

Michigan law states that governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation of a government-owned vehicle by an officer, agent, or employee of the government agency (55). By thus waiving its sovereign immunity, the state would appear to have made itself subject to suit for injuries to third parties above the no-fault thresholds.

Whether or not the state would be subject to suit for such damages by drivers and other members of the car or van pool would dpend, as in the case of a company-owned vehicle, on whether or not such state employees are entitled to workmen's compensation benefits while involved in pool activities. Eligibility for such benefits would preclude the employees from suing the state, since workmen's compensation benefits are the only remedy available to an employee from an employer.

6.3 Workmen's Compensation Benefits

Employees are defined under the Michigan Workmen's Compensation Act to include employees of the state and other public bodies (56). Thus, state employees specifically hired to operate pool vehicles would be eligible for workmen's compensation benefits and, thus, would be precluded from suing the state for damages above the no-fault thresholds. Whether or not drivers selected from the pool participants or the pool participants would be eligible for such benefits would depend on how the term "scope of employment" is defined. Here again, in view of the existing case law, it appears that pooling activities would be construed as within the scope of employment. Such a construction would deny the employees the right to sue the state for any personal injury damages.

6.4 Conclusions

As with the employer-owned vehicles, the statutes and case law appear to define in a relatively clear fashion the liabilities of the state and the state employee-participants in car and van pools that employ state-owned vehicles. Here again, as in the cases of the private employer-owned vehicle, the constitutionality of the provision requiring the set off of other benefits received against the no-fault benefits, and the questions concerning whether employees injured in employer-provided pool vehicles to or from their place of employment would be injured in the scope of employment leave unanswered questions about the total benefits to which an injured employee would be entitled. However, neither issue seems to raise significant legal barriers to the establishment of vehicle pools using state-owned vehicles.

7.0 FINDINGS AND RECOMMENDATIONS

The preliminary analysis of the potential legal issues that might be associated with the types of car and van pools specified by the MTRP have uncovered no significant legal barriers to the organization and operation of such pooling arrangements. It was not possible, however, within the effort allocated for this study to answer a number of legal questions that arose. The answers to those questions would be of great interest to potential pool organizers and operators. Accordingly, a more comprehensive analyses should be performed to learn the following:

1. The legal requirements that would have to be satisfied under both current law and under bills currently being considered by the Michigan legislature by a car or van pool that is classified as a common or contract motor vehicle carrier of passengers.

2. To the extent possible under existing case law, the probabilities of a pooling arrangement involving individual, privately owned vehicles being construed as a joint venture.

3. The extent to which a vehicle pool employing a corporate form of organization could protect individual shareholder-pool participants from personal liability for injuries arising out of negligent pool-vehicle operations.

4. To the extent possible under existing case-law decisions, the conditions under which a court would determine the car pooling to and from work in a vehicle owned by the state or an employer falls within the scope of employment of an employee.

5. The extent to which public policy will not permit that the named insureds be excluded from residual liability protection under the no-fault law when such individuals undertake litigation against one another.

6. The case-law developments concerned with the determination of the constitutionality of the set-off provisions of the no-fault insurance law.

FOOTNOTES/REFERENCES

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18. Michigan Compiled Laws Annotated § 500.3105 (1)(2).

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