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FACULTAD DE DERECHO

Kicking the compulsory liability insurance can down the road: Automobile Insurance Problems and Policies in Chile

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***Automobile Insurance Problems and Policies:
A Transnational Comparison***

March 10, 2022

Some context

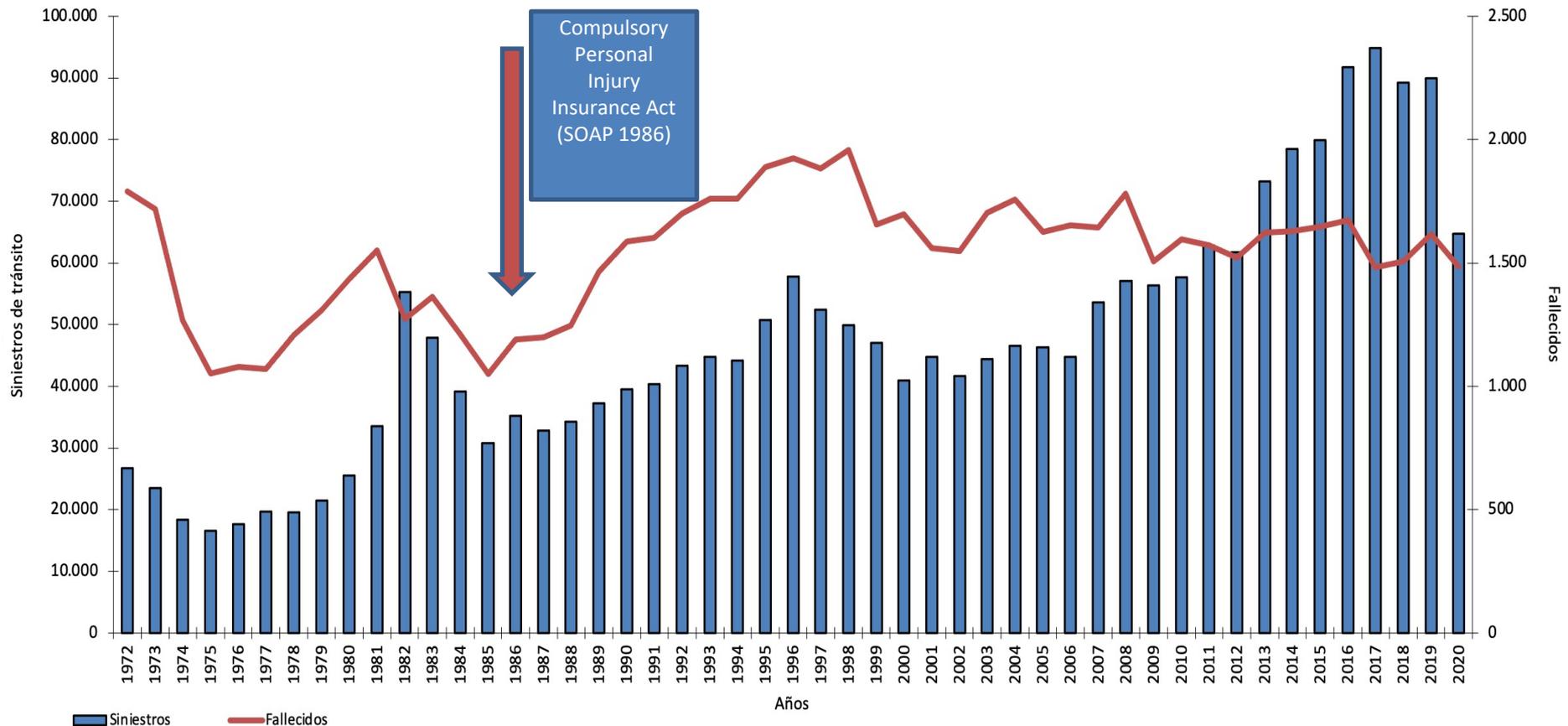
(Numer of Vehicles per Thousand People)

Year	USA <small>(source: office of energy efficiency & renewable energy)</small>	Chile <small>(source: CONASET)</small>
1949	299	
1972	586	40 (401.114 vehicles).
1992	758	99 (1.356.503 vehicles)
2002	816	142 (2.218062 vehicles)
2012	808	230 (3.973.913 vehicles)
2020	Aprox. 911 (Aprox. 276.000.000 cars for a population of 330.000.000)	287 (5.591.145 vehicles for a population of 19.458.310)

Vehicle accidents/deaths in Chile

(Source: CONASET)

Evolución de siniestros de tránsito y fallecidos en Chile (Período 1972-2020)



Vehicle accidents in Chile

Source: CONASET (National Traffic Safety Commission, part of the Ministry of Transportation).

Year	Number of victims	Number of accidents	Number of death people	Accidents per death
1972	25.033	26.727	1.792	¡14,91!
1986	25.176	35.268	1.191	29,61
1992	42.043	43.402	1.700	25,53
2002	45.671	41.734	1.549	26,94
2012	54.748	61.791	1.523	40,57
2019	59.366	89.983	1.617	55,65
2020	43.588	64.707	1.485	43,57

Compulsory Personal Accident(Injury) Insurance: S.O.A.P. (since 1986)

- ▶ Seguro Obligatorio de Accidentes Personales (SOAP).
- ▶ It is, as its name indicates, an accident (personal injuries) insurance.
- ▶ Created by statute (Ley N° 18.490 de **1986**).
- ▶ **Persons inside the insured vehicle and the persons who are damaged by this vehicle are all covered.**
- ▶ These people are the **insureds**, so they may claim against the insurance Company. They just need an accident “certificate” by a court or by the public prosecutors (not a court decision or ruling).
- ▶ The payment of this insurance cover does not affect the right to sue for liability.

Compulsory Personal Accident(Injury) Insurance: S.O.A.P. (since 1986)

- ▶ This insurance has a personal accident coverage of:
 - ▶ 12.000 USD in case of death (originally 4.000 USD);
 - ▶ 12.000 USD for (complete) disability (originally 4.000 USD);
 - ▶ up to 8.000 USD for partial disability (originally 2.400 USD) and
 - ▶ up to 12.000 UF for medical expenses (originally 2.400 USD).
- ▶ Coverage was raised in **2003**. It is a real raise, because the coverage amount figure is expressed in **Unidades de Fomento** (an inflation-indexed unit of account, calculated and published by the Central Bank of Chile (BCCh)).

Compulsory Personal Accident(Injury) Insurance: S.O.A.P. (since 1986)

- ▶ The same 1986 act considered a **compulsory liability coverage**. The act stated that the cover would be compulsory since 1990.
- ▶ The cover amounted to 1.600 USD.
- ▶ The act did not allow the victim to sue the insurance Company directly.
- ▶ But...



Kicking the Compulsory Liability Insurance Can, part I

- ▶ In March **1990**, a bill was sent to extend (prorogue) the entry into force of the obligation to have liability coverage in the compulsory automobile insurance.
- ▶ It was justified on the grounds that there was no consensus among insurance companies on the benefits and costs of liability insurance, which gave rise to uncertainty among policyholders as to the cost that this new coverage would ultimately have for them.
- ▶ The time extension was necessary “to conduct an in-depth study on the effects of its application”.



Kicking the Compulsory Liability Insurance Can, part II

- ▶ In March **1991**, a bill was sent to repeal the part of the 1986 SOAP statute that recognized the compulsory liability insurance coverage.
- ▶ It was argued that:
 - ▶ *Indemnity is only due after a trial, which produces a great social cost.*
 - ▶ *This would give rise to 50,000 new trials annually (no data or study was accompanied to justify this figure).*
 - ▶ *Finally, it was stated that “in view of the extreme complexity of the problem in the case of automobile insurance, given the high rate of claims and the **significant possibilities of fraud, aspects that would have a strong impact on the value of the premium**, it has been decided, on this occasion, to repeal Title II of Law No. 18.490”.*

What about public transportation

- ▶ Public transportation is provided by private companies (regulated)
- ▶ They are obliged to contract the same personal injury insurance as cars (S.O.A.P), but they pay (slightly) higher premiums.
- ▶ **Cover is the same as cars**
- ▶ SOAP premium (annual prices):

Car	Pick up	Taxi	Truck	Minibus
7 USD	9 USD	23 USD	24 USD	28 USD

City bus	Inter city bus
123 USD	265 USD

What about public transportation Kicking the Compulsory Liability Insurance Can, part III

- ▶ In 2004, the Transport Ministry issued a decree (Decreto N° 80), which obliged private transport service to contract personal injury cover.
- ▶ USD 24.000 for death; USD 16.000 for disability; USD 24.000 for dismembering.
- ▶ Article 23 of Decree 80 also stated: “Likewise, the aforementioned Ministry *may* establish the obligation to take out civil liability insurance for passengers, in addition to the mandatory insurance, as well as establish the coverage of such insurance”.
- ▶ Up to date, again, this compulsory liability insurance has not entered into force.



Kicking the Compulsory Liability Insurance Can. Why?

- ▶ Of course, it is unpopular to raise compulsory liability insurance premium, particularly for a new government (we were just coming back to democracy from a dictatorship). So there was a political problem.
- ▶ But what about insurers? Would they not want to sell more insurance?

A thesis on why insurers dislike compulsory insurance

- ▶ Kenneth Abraham on US insurers opposition to compulsory liability insurance:
- ▶ “In the case of compulsory insurance, insurers were concerned about its long-term effect on their freedom of action and, ultimately, on their profitability. Initially, premium revenues would rise if all drivers were required to buy liability insurance. The insurers believed, however, that a compulsory insurance requirement would lead government regulators to **force insurers to cover high-risk drivers whom they did not want to insure**, and they worried that they would be prevented from charging such drivers sufficiently high premiums. **The result of making auto liability insurance compulsory would then ultimately be that the insurers would be forced to insure a portion of their policyholders at a loss**”. (The Liability Century, 2008, p. 73)

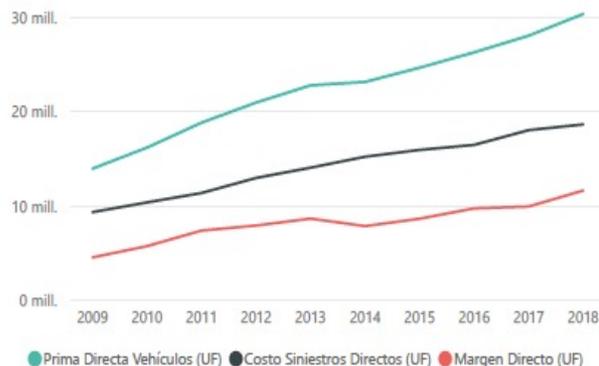
Direct Margin (DM) 2018 (earnings) (source: ACh)

Vehicle voluntary insurance:
 DM 467.671.200 USD
 (Figures do not separate
 damages and liability cover)

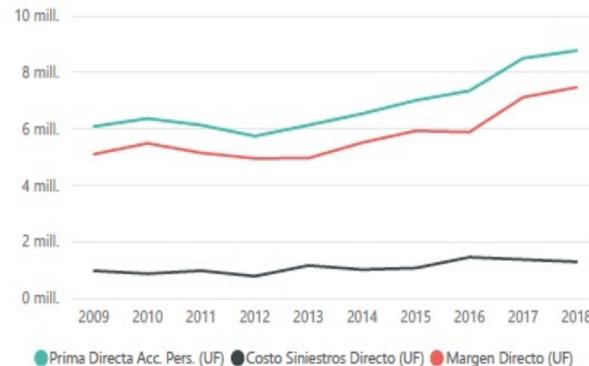
Personal accidents (not cars):
 DM 299.156.400 USD

S.O.A.P (compulsory):
 DM 29.305.360 USD

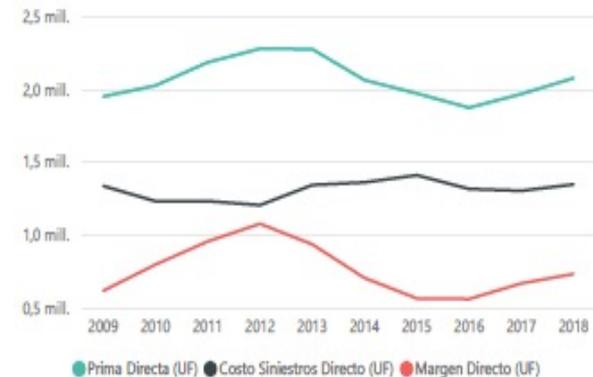
Evolución del Margen Directo
 Cifras en UF



Evolución del Margen Directo
 Cifras en UF



Evolución del Margen Directo SOAP
 Cifras en UF

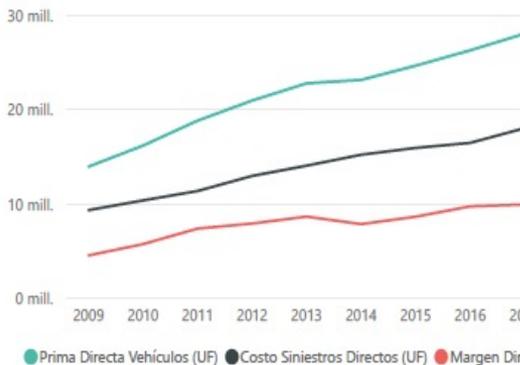


Direct Premium –
 Cost of accidents (claims)—
 Direct Margin—

Direct Margin (DM) 2018 (earnings) (source: ACh)

Vehicle voluntary insurance
 DM 467.671.200 USD
 (Figures do not separate
 damages and liability coverage)

Evolución del Margen Directo
 Cifras en UF

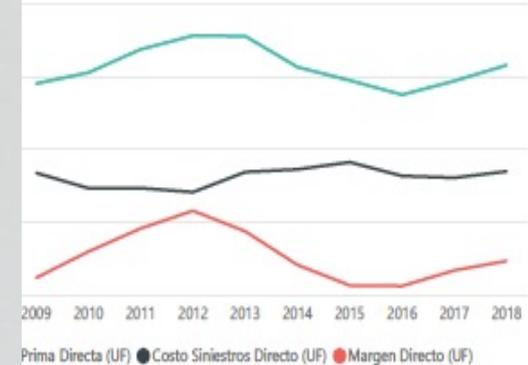


Direct Premium –
Cost of accidents (claims)
Direct Margin–



O.A.P (compulsory):
 DM 29.305.360 USD

Evolución del Margen Directo SOAP
 Cifras en UF



Voluntary liability insurance. Brief description

- ▶ It is a cover, part of motor vehicle insurance, at least since 1992 (maybe earlier).
- ▶ Most motor vehicle insurance is sold with liability cover (according to insurance brokers). Don't have information on percentages.
- ▶ Wording not intervened by statute or insurance regulator (commissioner). Minimum structural (mandatory) rules since 2013 (Insurance Contract law reform). So, **market rules**.
- ▶ **There is no direct action against insurer.**

Voluntary liability insurance. Brief description

- ▶ Minimum cover usually offered: USD 12.000, for all liability. Usually cover is between USD 20.000 and USD 40.000, or:
 - ▶ USD 12.000 for damages (*daño emergente*).
 - ▶ USD 12.000 for loss of profit (*lucro cesante*).
 - ▶ USD 12.000 for pain and suffering (*daño moral*).
- ▶ Also includes additional cover for criminal defence (*defensa penal*), for around USD 6.000
 - ▶ An example:
 - ▶ A voluntary liability insurance with USD 60.000 cover for damages; USD 60.000 for loss of profit; USD 60.000 for pain and suffering.
 - ▶ Cost: 800 USD anual Premium.

Is it enough? Figures in Chile by 2015

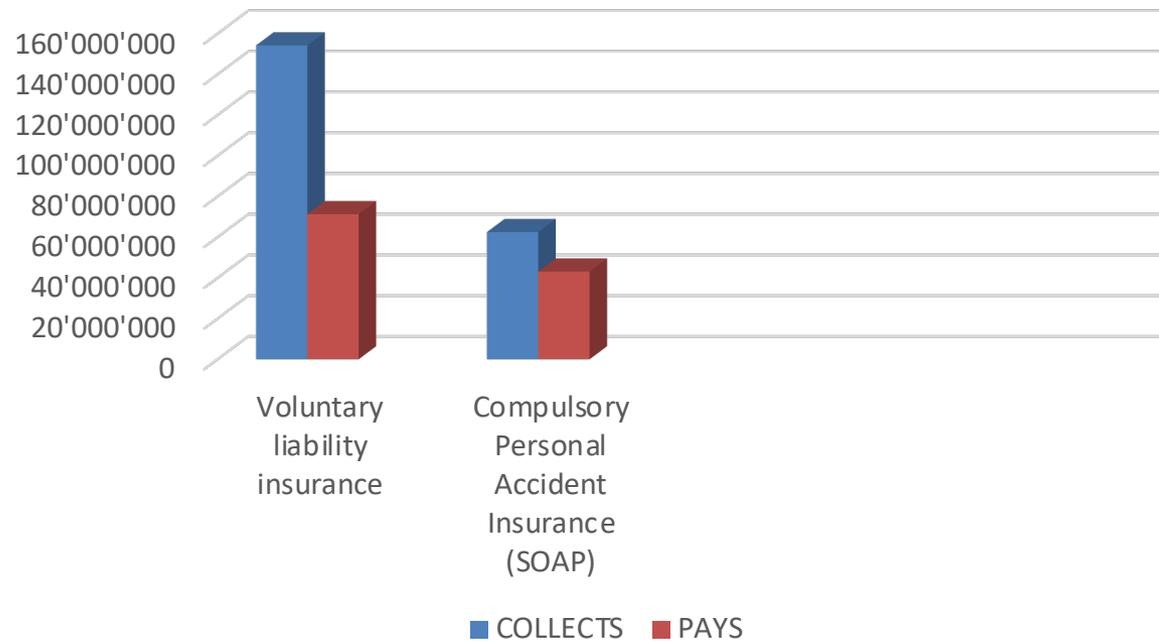
- ▶ Chilean Population 2015: 17.971.000
- ▶ Number of motor vehicles registered: 7.314.305 (Registro Civil).
- ▶ Number of motor vehicles: **4.751.130** (CONASET).
- ▶ Number of SOAP insurance policies valid through 2015: 5.031.052 (CMF)
- ▶ Number of liability insurance voluntary covers valid: **1.171.751** (AACH).
- ▶ Number of motor vehicle accidents in Chile in 2015: **79.880** (CONASET).
- ▶ Number of death people : **1.646** (CONASET).
- ▶ Number of seriously injured people: **7.859** (CONASET)
- ▶ Compensation for death in Chile (**court decisions**): Roughly between **USD 70.000/150.000**.
 - ▶ SOAP cover: **USD 12.000** (for each individual injured).
 - ▶ Liability insurance cover: **USD 12.000/40.000** (for the whole claim).

Is it efficient?

- ▶ Average cost of accident in Chile (for voluntary liability insurance according to ACh): around 700 USD.
- ▶ **Accidents payed** (siniestros pagados) in Chile for **voluntary liability insurance: USD 71.298.856.**
- ▶ Premiums for voluntary liability insurance (Ingreso por primas devengadas): USD 154.203.796
- ▶ **Accidents payed** (costo de siniestros directos del período according to CMF) **SOAP: USD 43.121.983**
- ▶ Premiums for SOAP (prima total according to CMF):USD 62.488.521

Is it efficient?

Insurance for car accidents in Chile:
Voluntary (liability) v/s compulsory (injury) in USD



Consider this figures

	A small new Mercedes	An older (but loyal) Honda Civic
Year	2022	2011
Market value	USD 37.000	USD 8.631
Annual Tax	USD 1.233	USD 73
SOAP cost (compulsory)	USD 7	USD 7
Motor vehicle Voluntary insurance cost (with liability cover)	USD 1.180	USD 800

Number of motor vehicle accidentes in Chile in 2015: **79.880** (CONASET).

Number of death people : **1.646** (CONASET).

Number of seriously injured people: **7.859** (CONASET)

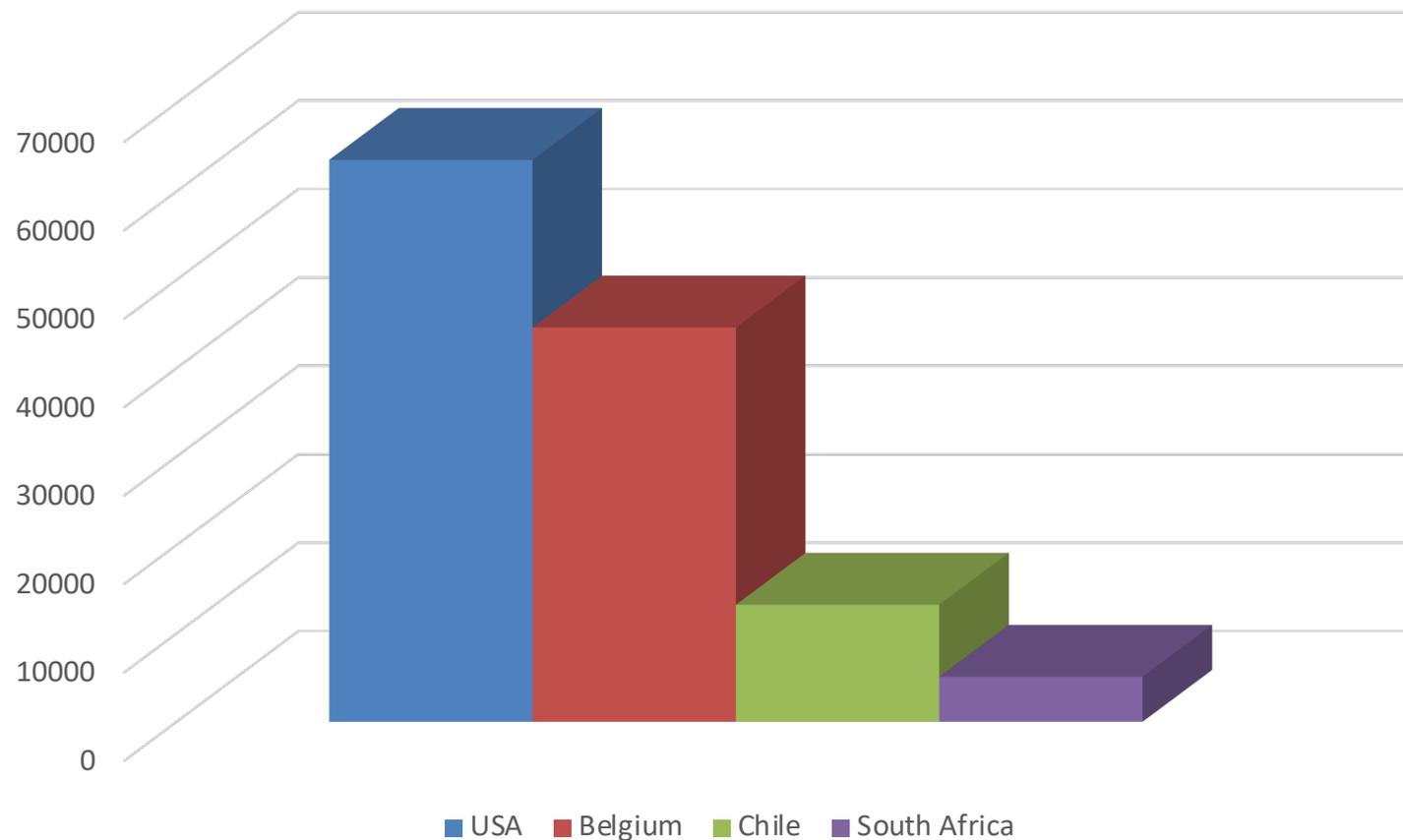
Compensation for death in Chile (court decisions): Roughly between **USD 70.000/150.000**.

SOAP cover: **USD 12.000** (for each individual injured).

Liability insurance cover: **USD 12.000/40.000** (for the whole claim).

How much people can be obliged/expected to pay for insurance?

Gross Domestic Product per capita 2020



Where we should be heading to?

- ▶ In 2015 in Chile, private insurers paid around USD 15.000.000 for death cover in compulsory personal accident insurance (SOAP).
- ▶ That is equivalent to raising USD 3 (yes, just 3 dollars) to the premium of each SOAP policy.
- ▶ Remember, cover for death in (compulsory) SOAP is just USD 12.000 and court compensation between USD 70.000 and 150.000.
- ▶ So, there is ample room for growth in SOAP coverage, particularly death and disability which are the most compelling problems, without having to promote a politically implausible law reform.

Thanks!

- ▶ Thank you very much for your attention and I would be very grateful for your questions or remarks