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## COMPENSATION WITHOUT FAULT AND THE KEETON-O'CONNELL PLAN: A CRITIQUE

by ABRAHAM MARKHOFF \*

**S**LAUGHTER on our highways has reached such alarming proportions that serious-minded people have finally begun an earnest search into its causes and cures; a necessary concomitant to such study is the problem of recompensing its victims.<sup>1</sup>

The grim statistics of highway travel in the most motorized society in the world are most frightening. Cars have killed more Americans since 1900 than the death toll of all United States wars since 1775.<sup>2</sup> In all wars that the United States has engaged in since the Revolutionary War, over 600,000 Americans have died. On the other hand, road deaths alone in this country have exceeded 1,500,000 in the space of only 25 years. Each week over a thousand are killed and 34,000 injured.<sup>3</sup> In 1966 alone, approximately 24 million cars crashed, injuring 4,000,000 people, disabling 1,900,000 and killing 53,000.<sup>4</sup> It has been estimated that the resultant economic loss caused by this carnage exceeds

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\* President, N.Y. State Association of Trial Lawyers.

<sup>1</sup> The current Congressional inquiry, under the aegis of the Department of Transportation, is a direct off-shoot of the problems and possible cures in the present system. *INS. ADVOCATE*, June 29, 1968, at 10.

<sup>2</sup> *TIME*, Jan. 26, 1968, at 20.

<sup>3</sup> Speech by Paul Sugarman, Esq. (of Boston, Massachusetts), "A Critical Look at Keeton-O'Connell."

<sup>4</sup> *TIME*, Jan. 26, 1968, at 20.

\$12 billion a year. It is reliably estimated that in New York State 2,800 people are killed and 351,000 are injured each year.<sup>5</sup>

In ten years physicians' fees have increased by 39% and hospital costs by 92%. Weekly factory wages have risen 42%, boosting lost-income settlements. Average repair bills have increased more than 50%. Correspondingly, because of the foregoing factors, the average personal injury claim has gone up 31%, and the average property damage claim has increased 46%.<sup>6</sup>

Necessarily, all of these circumstances are reflected in policy rates. Against the background of rising rates for automobile coverage, court congestion in some areas, and dissatisfaction with the fact that in a substantial number of cases no recovery was effected, various plans and proposals have been suggested for a change in the traditional tort system of providing recompense for persons injured or killed as a result of vehicular accidents.

All of these proposals have introduced the concept of "compensation without fault," or a "no-fault system," somewhat analogous to workmen's compensation recoveries regardless of fault.

#### PRESENT LEGAL SYSTEM CONTRASTED WITH COMPENSATION WITHOUT FAULT.

Although the term "Compensation Without Fault" has come into common usage, a better description is "Compensation Regardless of Fault."

The present legal system regarding automobile accidents, and indeed other accidents except those covered by the Workmen's Compensation Acts, generally depends on fault. If one person is injured or has his property damaged through the fault (usually negligence) of another, then he can claim compensation by way of damages from that other person. If injury or damage occurred without such fault, then no compensation can be recovered. Compensation

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<sup>5</sup> *Newsday*, Dec. 1, 1967, at 43, col. 1.

<sup>6</sup> *TIME*, Jan. 26, 1968, at 20.

Without Fault is an attempt to provide payment without regard to who was responsible for the accident. The criterion is not who was at fault, but a simpler one: Was someone injured? (Most Compensation Without Fault plans do not apply to damage to property.)

Details of Compensation Without Fault plans vary. Some provide payment by means of accident policies. The existing Saskatchewan scheme is essentially accident insurance.

In some plans there is restriction on the right to take a common-law action for damages. In some instances the amount obtained from Compensation Without Fault must be deducted from the damages awarded. These matters are discussed later. However, the main point is that under Compensation Without Fault systems if someone is injured, then a payment results without any consideration of whose fault the accident may have been.

#### COMPENSATION WITHOUT FAULT AND COMPULSORY AUTOMOBILE INSURANCE.

In Saskatchewan, Compensation Without Fault is combined with compulsory government-provided automobile insurance and this fact has given rise to the idea that CWF and compulsory insurance, whether provided by the government or private insurers, always go hand in hand. This is not so.

Compulsory insurance is, at present, in force in Massachusetts, New York, and North Carolina. In none of these states is Compensation Without Fault in effect. Compulsory insurance has been in force in Britain for over 35 years and there has never been a Compensation Without Fault scheme. In all these four areas, incidentally, coverage is provided solely by private insurers. Again, although the great majority of Canadian motorists are insured, insurance is compulsory only in Saskatchewan.<sup>7</sup>

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<sup>7</sup> The Automobile Accident Insurance Act, 1963, 12 Eliz. 2, ch. 38 (Saskatchewan), as amended, 13 Eliz. 2, ch. 51 (Saskatchewan, 1964).

## SUPPORT FOR AND CRITICISM OF CWF.

A supporter of the theory of Compensation Without Fault is English Lord Chief Justice Parker, who was reported in February, 1965 as saying:

The time has come when we should recognize that the present methods (of compensating victims of road accidents), even if capable of improvement are no longer adequate, and that some other method is called for. It is not a lawyer's problem: it is a social problem, and I venture to think an urgent social problem of ever increasing extent. Is compensation of victims to continue to be administered under the present outmoded methods by which recovery depends on the proof of fault, or is it to be recoverable regardless of fault under a comprehensive insurance scheme?<sup>8</sup>

A differing view was stated by Mr. Joseph Kelner, past president of the American Trial Lawyers Association, who said in January, 1967:

The increased costs of administering a gigantic pay-without-fault system, and the burden of paying all of the proliferation of claims will stagger the insurance industry and the community that must pay the ultimate costs. The proponents of such plans are theoreticians, whose blue prints foster a revolution of justice without any basis of experience. The Keeton-O'Connell plan [this plan is discussed later] is another panacea that joins other magical formulae such as compulsory arbitration, elimination of jury trial, increasing jury trial fees, split trial and other suggestions for amputating bits and pieces of our system of justice.

The community has a great stake in preventing accidents, but the granting of compensation without fault to all who seek it will eliminate this accident prevention incentive. Thus the floodgates would be open to the drunk driver, the reckless driver, the speeder, the chronic tailgater and others who disregard basic rules of safety.<sup>9</sup>

A statement which may perhaps be representative of the position taken by leaders of the insurance industry was

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<sup>8</sup> THE SOCIETY OF FELLOWS OF THE INSURANCE INSTITUTE OF CANADA, RESEARCH REPORT: COMPENSATION WITHOUT FAULT 2 (1967).

<sup>9</sup> *Id.*

made by Mr. Guy E. Mann, Senior Vice-President of Aetna Casualty in October, 1965, when he said:

The insurance industry should resist an impulsive instinct to oppose all suggestions for change. Instead it should assume the role of leadership. It should undertake a formal study of the problem and its solution, based on factual research and consideration of social and economic impacts.

I suggest that such a study should be an appraisal of present and alternate systems of indemnifying automobile accident victims with the objective of establishing a method that will satisfy the real needs of society.<sup>10</sup>

Another opinion expressed by a leader of the insurance industry was that given by Mr. Harold S. Baile, Senior Deputy General Manager and General Counsel of General Accident, Fire and Life of Philadelphia, in April, 1966:

It is time for the insurance business to ask the question: Why should we shift the loss from one person to another? I think, on analysis, we will find no need for a means of vindication. We will find no significant deterrent of carelessness results from a system of reparations, and that the real objective should be to relieve the economic loss that results from an accident.

If agreement can be reached on this basic and fundamental point the designing of a system of reparations will prove less difficult. [Such a] system should be based on the premise that its purpose is to spread the economic loss caused by the accident, and therefore it should not pay for the awarding of dollar damage except to replace dollars lost. This eliminates awards for pain and suffering as well as auto insurance payments for losses that have already been covered by some other form of insurance held by the victim.<sup>11</sup>

#### WHY COMPENSATION WITHOUT FAULT?

The foregoing quotations are necessarily brief and do not cover all the pros and cons. Accordingly, an attempt is made to summarize the chief arguments for and against CWF.

The arguments in favor of Compensation Without Fault run thus:

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<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.*

(1) The present legal system, depending as it does on fault, leaves many injured persons uncompensated or only partly compensated. The solitary driver whose car skids and runs off the road has no legal remedy for his injuries, except in the few instances where he can prove that negligent services, repair work, or perhaps faulty design caused his accident.

(2) The pedestrian or driver whose own momentary carelessness was the entire cause of an accident in which he was injured has no right to recover. If he is partly at fault his recovery is reduced proportionately under the legal doctrine of comparative negligence which applies in Canadian Provinces. Again proof of fault is often difficult. Automobile accidents frequently happen in a split second. There may be no witnesses, or even if there are witnesses, testimony is often unreliable and the question of recovery may depend on the vague recollection of someone who was only paying partial attention.

(3) These considerations are likely to influence the courts, especially where juries are employed, to favor those injured and thus bend the fault system more into line with the CWF idea.

(4) Where a claim is contested, the need to accumulate proof to enforce it in the law courts leads to lengthy delays and consequent hardship for those injured.

For all these reasons, say the supporters of Compensation Without Fault, the time has come to abandon complete reliance on fault as a criterion and, as regards minimum compensation needs at any rate, to arrange that injury rather than fault shall be the signal for prompt and definite payments.

[There are of course weighty arguments against Compensation Without Fault, but the crux of the matter lies in the implied charge by the "pros" that fault is out of date as the sole factor in deciding whether compensation is to be received for injuries caused by automobiles.

### ARGUMENTS AGAINST COMPENSATION WITHOUT FAULT.

One of the chief criticisms of the Compensation Without Fault idea is based on moral grounds. Why, say the critics, should someone who causes an accident by his reckless, perhaps drunken, driving be compensated?

To permit recovery in such circumstances would tend to remove the deterrent which arises from the fear of having to pay heavy damages and having great difficulty in obtaining insurance afterwards. In the case of drunken driving by the insured for instance, even when the insurer has to pay third party damages under the "Absolute Liability" provisions of the Insurance Acts up to minimum policy limits, it has a right to recover payments from the insured who thus ultimately foots the bill.

Again, Compensation Without Fault payments could be used to finance unjustified suits for damages which might not otherwise be instituted for lack of funds.

Another important argument is "why single out automobile accidents?" Why, for instance, should a person who slips and breaks a leg at the exit of a supermarket have to prove fault, whereas if the injury occurred two minutes later in a car, recovery would be automatic?

Finally, continue the critics, the present system, while admittedly capable of improvement, is basically providing adequate compensation in deserving cases and the disruption of time-tested methods and the extra cost of CWF are unjustifiable.

### HISTORY OF COMPENSATION WITHOUT FAULT IN THE UNITED STATES.

Compensation Without Fault has hardly been tried out in the United States, one of the very few exceptions being the Nationwide Mutual scheme described later. Nevertheless there is a fairly long history of research and proposals. The basic idea has been the subject of discussion for many years, probably originally stimulated by the introduction of Workmen's Compensation, which can be viewed as Compensation Without Fault for industrial injuries. It is per-



haps true to say that the earlier plans are closer to Workmen's Compensation as regards detailed administration than those put forward later.

### *Columbia Scheme.*

One of the earliest detailed schemes relating to automobiles is that contained in the Columbia report based on a study undertaken in 1932 by the Columbia University Council for Research in The Social Sciences.<sup>12</sup> This called for abolition of the right to sue for damages at common law and its replacement by compensation schedules based on the Workmen's Compensation Acts of the states of New York and Massachusetts. Administration was to be by a board in a manner similar to Workmen's Compensation. Insurance was to be compulsory and provided either by private insurers or the state.

Although the Columbia Plan failed to win approval in the United States, it is thought to have influenced those responsible for the Saskatchewan scheme initiated in 1946.

### *Ehrenzweig Plan.*

In 1954-55 Professor Ehrenzweig of the University of California Law School put forward a plan which called for voluntary accident insurance by private insurers. Legislation would relieve those who effected this coverage from common-law liability for negligence. Payment under insurance policies was to be based on fixed schedules and benefits would be paid, generally speaking, periodically rather than in a lump sum.

### *Green Plan.*

In 1958 Leon Green, Professor of Law at the University of Texas, sketched (but did not develop fully) a plan for

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<sup>12</sup> For a description of this plan, and the other schemes which follow, see generally, SOCIETY OF FELLOWS OF THE INSURANCE INSTITUTE OF CANADA, RESEARCH REPORT: COMPENSATION WITHOUT FAULT (1967).

compulsory insurance by private insurers subject to regulation by a special division of the office of the State Insurance Commissioner. This scheme is particularly interesting because it calls for compensation without regard to fault in complete replacement of common-law rights, but provides for the amount to be fixed by the courts subject to a limit set by the State Commission. *There would be no compensation for pain and suffering.*

*Conard Study.*

Professor Conard of the University of Michigan carried out a study published in 1964 which indicated that in 1960, 55% of the recovery by traffic victims came from tort liability, 38% from the victims' own insurance, and the balance from other sources of which social security accounted for only 2%. (It seems reasonable to assume that the percentage for social security would be noticeably higher today.) He came to the conclusion that tort liability recoveries have the advantage of being individually tailored to the losses of the victim according to his earnings etc., and recommended for the future the continuance of the various existing sources of recovery including tort damages and social security rather than their replacement by some form of CWF. He did, however, suggest a number of detailed improvements.

*California State Bar Proposal.*

The proposal of the California State Bar in 1965 is also interesting because it is put forward, not by law professors, but by a special committee representing practicing lawyers. Compulsory insurance is advocated, presumably written by private insurers, covering medical expenses and other economic loss to the insured, or occupants of the insured vehicle, in some such basic amounts as \$5,000 in medical payments and \$10,000 for other economic loss. Medical payments up to \$5,000 to injured pedestrians are also contemplated. All such payments would be made regardless of fault and would be deducted from common-law recoveries

which would still be permitted. In addition, liability insurance for limits of \$25,000/50,000 would be compulsory.

*Blum and Kalven Study.*

In 1965 Professors Blum and Kalven of the University of Chicago published a study. They feel that it is desirable that all automobile accident victims should be compensated, and that compensation be paid promptly. They consider, however, that the chief question is one of cost. They believe that the suggestions for eliminating many of the awards for pain and suffering and removing most cases from the courts would only produce a saving of about 15%, which would be quite insufficient for CWF to be provided by insurers without extra charge. They find faults in various other possible methods of financing the desirable reforms and make a plea for further examination and perhaps improvement of the present system before changing to an untested new one.

*"Nationwide" Scheme.*

The Nationwide Mutual Insurance Company, one of the very large automobile insurers in the United States, inaugurated their Family Compensation Coverage in 1959. Despite the reference to "family" in the title, the original version included coverage for injured pedestrians or occupants of vehicles involved in an accident with the insured car.

This additional feature was, however, withdrawn in 1965 and the plan, which is still available, is now confined to the policyholder, members of his family and other occupants of the insured car. Nationwide eliminated coverage for pedestrians and those in other vehicles because they found that other insurers did not, as they had hoped, offer similar insurance and they felt that only if such insurance was widely available would the problem of the uncompensated automobile accident victim be substantially reduced.

Examples of benefits under the original scheme were: death, \$5,000 for those over 18, \$5 per day for continuous

house confinement for "over eighteens" plus medical expenses up to \$2,000 per person. *A discharge from all claims based on negligence was required, and for all claimants other than the insured and occupants of his car, compensation was reduced by the amount of other insurance benefits (e.g., the victim's own health insurance).*

Payments were not made to third parties if the accident was due to their gross negligence or occurred while they were under the influence of drink or drugs.

The cost in 1963 was \$12 annually (Medical Payments coverage for \$2,000 cost \$8 p.a. so that the extra charge was only \$4). The coverage was bought by about 50% of the policyholders to whom it was available.

During the period the full scheme was in force it was found that the great majority of the claimants were comprised of the policyholder, his family and passengers (83.2% in the years 1959-61). Of third parties, 25% accepted compensation (which as stated involved giving a release from further claims) and 75% pursued their legal rights. Nationwide's conclusion is that third parties only accepted compensation where they knew they were at fault and had virtually no right of recovery at law. (In the majority of states of the U. S. A. negligence on the part of the plaintiff, "contributory negligence," is a complete bar to recovery. In Canada, it merely reduces the amount of his recovery in proportion to his degree of fault).

#### SASKATCHEWAN'S AUTOMOBILE ACCIDENT INSURANCE ACT.

We now turn to Canadian schemes.

Saskatchewan is the only jurisdiction in North America where the theory of Compensation Without Fault has been put into practice by means of legislation.

The Automobile Accident Insurance Act, in effect since 1946, covers every resident of the province against loss arising from bodily injuries suffered as a result of an accident involving a motor vehicle in the Province of Saskatchewan. Saskatchewan residents, who at the time of the accident were riding in a Saskatchewan-licensed vehicle on a highway in Canada or continental U.S.A. are also covered.

The benefits under the Act are quite low by the contemporary North American standards, the maximum death benefit being \$10,000 for one death in addition to \$300 for funeral expenses. Dismemberment benefits can reach a maximum of \$4,000 and payments for various impairments and dismemberments are calculated on the basis of a percentage of \$4,000. For example, the loss of an arm below the elbow calls for a payment of 40% of \$4,000, or \$1,600. In addition, up to \$2,000 is allowed for other out-of-pocket expenses not covered under any other provincial legislation.

Weekly indemnity coverage provides compensation to victims who are incapacitated. A distinction is made between partial and total disability, the top limit being 104 weeks at \$25 weekly for total disability.

*Owing to the minimum nature of the benefits, residents are permitted to bring a suit for negligence, but subject to the important qualification that the benefits previously paid under the compensation section of the Act are deducted from the amount of the award.*

Over the years the A.A.I.A. has been amended to provide the orthodox forms of Automobile Insurance including Third Party Liability, Collision, Fire and Theft and Comprehensive. The limits provided are basic only (\$35,000 inclusive limits and \$200 deductible first party cover), leaving it to the individual vehicle owner to purchase supplementary "package" coverage to provide, in total, higher liability limits and more satisfactory first party protection. The package policy can be bought either from the Saskatchewan Government Insurance Office which administers the Act, or from private insurers.

The basic Automobile Insurance cover as set out in the A.A.I.A. is compulsory and the plan is financed from premiums collected at the time the vehicle is registered or an operator obtains his license.

In the past several years, premium income has fallen short of claims and expenses, the underwriting deficit for 1965-66 amounting to \$991,273. This has contributed to renewed criticism of the Saskatchewan scheme.

*PRIVATE INSURERS' SCHEMES IN CANADA.*

Only a few insurers doing business in Canada have introduced schemes along the lines of CWF and generally the coverage has not been widely sold.

One scheme which has been quite successful is offered by the Co-operators Insurance Association, a Canadian insurer doing business in Ontario, which has for eight years offered under its "Extended Medical Payments and Accidental Death and Impairment Policy" injury coverage to the named insured, his spouse, and relatives living in his household.

The insurance, which is only written in conjunction with a standard automobile policy covering medical payments, applies while such persons are riding in any automobile to which the standard policy applies. Coverage is for death and permanent impairment which must result from collision, upset, burning, explosion or submersion of the automobile. Benefits for death vary according to age and number of dependents from \$500 to \$10,000. Impairment benefits are only paid for permanent disability and the maximum payable for total permanent disability is one-half the corresponding death benefit. Disability which is less than total, qualifies for a reduced percentage of this amount.

There is an overall limit of \$20,000 per accident. In addition, as the name implies, there are certain extensions to the medical payments coverage. All payments are reduced 50% if liquor or drugs were a factor in the accident. The whole "package" costs \$4 annually and about 40% (80,000 policyholders) out of Co-operators' insureds buy the coverage.

Another scheme is written by the General Accident Group. Accident coverage is provided to the insured while a passenger in, or if struck by, an automobile. Death benefits of \$5,000 costs \$4 annually, and a weekly indemnity of \$35 with a two year limitation, \$4.50. The same coverage at the same premiums can be provided for the insured's spouse. The scheme has been available for 12 years and the experience is good, but a very small proportion of insureds buy the coverage.

"BASIC PROTECTION FOR THE TRAFFIC VICTIM."

The above textbook was published by Little Brown & Co. in 1965. Its authors are Robert E. Keeton and Jeffrey O'Connell, professors of law at Harvard University and the University of Illinois respectively.

Their proposals have since become known as the "Keeton-O'Connell" or "K-O" plan for a possible reform of the existing system of compensating victims of automobile accidents.

The leading feature of "K-O" is the abolition of the fault system under which our present tort recovery system operates. In the event of personal injury sustained in the operation or control of a motor vehicle, the injured person would recover from his own insurance company within certain circumscribed limits. (For a summary of the plan, see Appendix.)

Principal arguments in support of the plan, as advanced by its authors, are as follows:

1. The present system is a failure in its measuring of compensation for personal injuries. Many receive nothing, many others recover far less than their actual special damages.

2. Injured persons must seek recompense from the other driver's insurance company.

3. Contributory negligence is a bar to recovery in a substantial number of cases.

4. Personal injury trials have fallen behind; an average delay of 31.1 months exists in metropolitan areas.

5. Costs of automobile insurance would drop an average of 15% to 25%.

6. The present system presents many opportunities for dishonesty.

7. Eliminating awards in small cases for pain and suffering would remove the opportunities for exaggeration in our present system.

8. Waste and insurance costs would be reduced if the victim was paid only actual out-of-pocket loss.

9. Deduction of collateral sources such as sick leave, Blue Cross benefits, vacation pay, one's own accident

policies and all other types of collateral sources would prevent the injured person from making a profit.

#### THE CHIEF ARGUMENTS AGAINST THE PLAN.

##### 1. *Collateral Source*

A major deduction from recovery under "K-O" is anything one receives or is entitled to receive from collateral sources. Such payments do not as a rule redound to the benefit of the tort-feasor. But under the Plan all of the following will be deducted first:

1. Insurance proceeds of all types, including
  - (a) Life insurance
  - (b) Health and accident insurance
  - (c) Hospital and medical insurance
2. Employment benefits, including
  - (a) Sick leave
  - (b) Voluntary wage payments
  - (c) Pensions and retirement benefits
  - (d) Medical services furnished by the employer (especially in the case of servicemen)
  - (e) Workmen's compensation
  - (f) Perhaps even vacation time
3. Gratuities, often in the form of medical or nursing services
4. Social legislation benefits, including
  - (a) Unemployment compensation
  - (b) Social Security
5. Tax advantages<sup>13</sup>

Assume an employee is entitled to two weeks sick leave under a union contract. In January, while driving, he is injured by a car driven by a drunk or hot-rodger. His sick leave is deducted from "K-O" benefits first. He then becomes eligible for the Plan's benefits if still disabled. He thereafter returns to work.

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<sup>13</sup> See INSTITUTE OF CONTINUING LEGAL EDUCATION, PROTECTION FOR THE TRAFFIC VICTIM: THE KEETON-O'CONNELL PLAN AND ITS CRITICS (1967).



In July of the same year, he is stricken with pneumonia arising from an unrelated cause. Having sacrificed his sick leave because of his auto injury in January, he is now "on his own" financially.

Having been a prudent person, he has purchased his own accident policy. Those benefits, for which he paid himself, are first deducted before the Plan becomes operative.

And thus, ad nauseam, all the benefits which he has either bought or his union has negotiated for him are frittered away meaninglessly before he can expect \$1 of relief from "K-O."

Small wonder that the proponents of the Plan argue that its costs would be less than at present.

### 2. *Opportunities For Fraud Would Increase.*

A prominent official of the General Adjustment Bureau, one of America's largest nation-wide investigating agencies for insurance carriers, has estimated that under our present tort system, only 3 out of every 50,000 claims are fraudulent.<sup>14</sup>

Under "K-O", a driver may sprain his back while performing chores in and around his home. If he can only drag himself over to his automobile, he will qualify for "K-O" benefits as his claim will now be that his injury occurred while polishing or washing his car. What luckless insurance carrier would be heard to say nay to that?

### 3. *Undeserving People Would Recover.*

The drunken driver, the hot-rodder, the fleeing felon, would all be entitled to claim benefits for injuries sustained in such pursuits. After all, "K-O" is basically an accident policy, and its benefits would enure to them as soon as injury occurs.

Who pays? The careful driver, the sober person, the decent citizen, because the loss falls on all the insureds.

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<sup>14</sup> Fuchsberg, *A Lawyer Looks at Proposed Changes*, 51 J. AM. JUD. Soc'y 158, 161 (1967).

#### 4. *Premiums Must Rise.*

Although proponents of the Plan insist that premiums would fall by at least 15% to 25%, no accurate statistics have yet been supplied as to its exact or even reasonable costs. No experience has yet been acquired whereby the true cost may be ascertained.

Mr. M. G. McDonald, Chief Actuary of the Division of Insurance, Department of Banking and Insurance of Massachusetts, has reported that premiums payable by private passenger car owners would *increase* 35% under the Plan.<sup>15</sup>

This increase does not take into consideration injuries sustained by non-residents within that state (students, tourists, vacationers, consumers), persons sustaining automobile bodily injury who have no recourse to a Basic Protection Policy but who may recover under the Assigned Claims Plan and other miscellaneous claims, all of which would be covered under Basic Protection.

Since the Plan does not insure the driver who may strike a pedestrian in the street, does not provide insurance for property damage, and does not protect the driver who may be involved in an accident where he has crossed a state line into a state that does not have such a plan, the driver would have to pay an additional premium to cover all of the foregoing contingencies.

There is, however, one area where the premium could be reduced. Dr. Calvin H. Brainard, Chairman of the Department of Finance and Insurance, College of Business Administration, University of Rhode Island, has computed that for the high-risk driver in Massachusetts, his premium would fall from \$374.50 to \$149.44, or by 60 percent. He has concluded that there would be enormous rate increases, however, for low-risk motorists. The heavy surcharges, placed on the premiums of the low-risk groups would be used to finance the generous premium reductions to be enjoyed by the high-risk groups.<sup>16</sup>

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<sup>15</sup> Letter from Mr. McDonald to the American Trial Lawyers Association, Sept. 1, 1967.

<sup>16</sup> Brainard, *The Rise and Fall of Basic Protection in Massachusetts*, 539 Ins. L.J. 724, 730 (1967).

Thus, under the Plan, low-risk drivers would receive reduced payments in the event of injury while at the same time they would be paying increased rates.

As the sense of this inequity filtered through to conscientious motorists, "K-O" reached the height of its trajectory and thereafter began to fall in Massachusetts.

Under the Assigned Claims Plan, non-residents who are involved in accidents within the state are covered by Basic Protection. Therefore, if a non-resident drives his car into a wall, his economic loss will be paid through the Assigned Claims Plan even though he does not carry Basic Protection or any other type of insurance.

Inclusion of non-residents could be quite costly in states where tourism is large, or for some reason there exists a large amount of out-of-state traffic. In Florida, out-of-state motorists average 12 million per year. The end result is that non-residents will receive free insurance at the expense of residents. It may be asked to what extent will this be reflected in the cost of the premium?

If the Plan would really cost less, the reason is only that it takes away many rights that people now enjoy. If rate reduction is the only object, then truly the cheapest insurance would be no insurance at all. Removing all benefits would correspondingly remove all premiums.

##### 5. *Calendar Congestion Must Rise.*

Chief Justice G. Joseph Tauro of the Superior Court of Massachusetts has challenged the claim that "K-O" would materially reduce court congestion, especially the estimate offered of as much as 75% of the court's time.

The Chief Justice saw no basis for such contention and he expressed the opinion that it would be dangerous to take it for granted that it would.<sup>17</sup> Others have expressed the view that a motorist who files a claim under the Plan would still have to file suit to recover.

Past experience shows that insurance carriers still dispute the injury itself, the extent of injury, whether it was

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<sup>17</sup> Letter from Chief Justice Tauro to Governor John A. Volpe, August 29, 1967; Boston Sunday Herald Traveler, Aug. 27, 1967, § 1, at 10, col. 3.

causally related to the accident and whether medical bills are reasonable.

Much of the time of the court is presently devoted to deciding these issues. These same questions must of necessity arise under the Plan, they will be disputed, and will ultimately be decided in the courts.

The framers of our various workmen's compensation statutes expected that the law would become self-executing and that justice would be ground out in slot-machine fashion. The Supreme Court of the United States has had occasion to comment that workmen's compensation has become "deceptively simple" and "litigiously prolific."<sup>18</sup> Is there any reason to expect that dealing with one's own insurance company would result in anything different?

"K-O" will more likely increase the burden on the courts. By preserving tort suits for the more serious claims, the Plan would finance the bringing of thousands of such actions, since the plaintiff will have everything to gain and nothing to lose.

#### 6. *The Plan Would Be Unconstitutional.*

Serious consideration must also be given to the constitutionality of "K-O." The United States Constitution guarantees the right of trial by jury in civil actions where the value in controversy shall exceed \$20.<sup>19</sup>

The authors of the Plan also admit that it is unconstitutional in all of the states whose constitutions prohibit any limitation of the amount recoverable for an injury.<sup>20</sup> It is probably unconstitutional in states like Illinois and Massachusetts whose constitutions guarantee a certain remedy for injuries or wrongs without any obligation to purchase it.<sup>21</sup> Beyond this, this author is of the opinion that the authors' analogy to workmen's compensation insurance will not stand up, and that the basic protection plan will be struck down as a violation of the due process

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<sup>18</sup> *Cardillo v. Liberty Mut. Ins. Co.*, 330 U.S. 469, 479 (1947).

<sup>19</sup> U.S. CONST. amend. VII.

<sup>20</sup> Address by James S. Kemper, Jr., Auto Claims National Conference, at University of Illinois, October 2, 1967.

<sup>21</sup> ILL. CONST. art. 2, § 19; MASS. CONST. art. 11, § 12.

and equal protection clauses of the federal and state constitutions.

One consequence of the doubt in this area could be disastrous: if a state legislature passed the basic protection statute, the system might be installed, and operating before a ruling of the U.S. Supreme Court on its constitutionality were secured; and the Basic Protection Plan represents an irrevocable step. Trying to return to the tort liability system to meet constitutional requirements would be like trying to unscramble an egg.

7. *Children And Retired Persons Will Face Cruel Discrimination.*

Children and elderly people in retirement who are not in the labor market receive no compensation under any circumstances, since they are not employable and have suffered no immediate *economic loss*. Scars or deformities resulting from a vehicle accident to such persons would provide absolutely nothing by way of monetary reimbursement.

Medical bills up to the first \$100 are not reimbursable. Only that excess over \$100 may be recovered, with a maximum payment of \$5,000.

Should a grandparent or child be struck down in the street, a maximum funeral recovery of \$500 is provided, from which is first deducted \$255 burial allowance paid by social security, or a net payment of \$245.

The same generous payment of \$245 in all would be paid for the death of a student or a wife, young or old.

8. *Denial Of Recovery For Pain And Suffering Is Heartless.*

For some strange and unexplainable reason, Professors Keeton and O'Connell subconsciously wince at the use of the word "suffering." One can think of no other reason why the time-honored phrase entitled "pain and suffering" should now be referred to as "pain and inconvenience."

Is it merely *inconvenient* for a person wearing a cast over a fractured right arm? Has *suffering* truly dis-

appeared when injuries are incurred in vehicle accidents only?

Is it equitable to say that if an auto victim's pain and inconvenience are evaluated at \$5,000, he receives nothing? Is it more equitable to say that if a jury evaluates pain and inconvenience as \$7,500, then \$5,000 must be deducted and a net payment of \$2,500 made to the victim?

Suffering has been described as a "window looking into hell." Shall we deny recovery where the injured person, writhing in agony for the first several hours or days after an auto accident looks only half-way through that window?

The authors' proposal in effect, is that:

a) A school teacher who loses a leg but returns to work, or

b) A truck driver who has a horrible facial disfigurement but is able to drive, or

c) A child under 16, suffering the tortures of the damned after an accident that results in loss of a limb or eye or a serious permanent disfigurement shall all share a common fate, viz: no recovery for pain and what the victims would describe as suffering but what the Professors allude to as inconvenience.

For, after all, the authors state that pain and inconvenience are conditions that cannot be measured.

#### 9. *The Built-In Deductions Would Negate Recovery In All Modest Claims.*

Loss of income is limited to \$750 per month, no matter how substantial the accident victim's actual earnings may have been. (See Appendix).

The first 10% of lost income, or a minimum of \$100, whichever is greater, is deductible. The next deduction is 15% of earned income, on the theory that recovery shall be based on net income after the payment of an average income tax of 15%.

Work losses are figured from the date the work loss accrued and not the date of the accident. Simply stated, it is the *loss of earnings* and *not the loss of earning capacity* that is reimbursable.

This necessarily precludes reimbursement to a person temporarily unemployed or a student until the time he would have been employed but for the injury.

A simple example of the authors' arithmetic in computing reimbursement is as follows:

Using the authors' example<sup>22</sup>

(a) *Special Damages:*

Lost Earnings .....	\$1,600.00
Medical .....	500.00

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Total Specials ..... \$2,100.00

(b) *Reimbursement from collateral sources:*

Medical Insurance .....	\$ 400.00
Sick Leave .....	1,000.00

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Total Reimbursement ..... \$1,400.00

It would appear that (a) minus (b) leaves a balance of \$700, to be reimbursed under the Basic Protection Insurance. Not so. By the Keeton-O'Connell formula the reimbursed amount would be \$300, arrived at as follows:

(a) Total Specials ..... \$2,100.00

(b) Reimbursed by Collateral Sources:

Medical Insurance .....	\$ 400.00
Sick Leave .....	1,000.00
Tax Benefit .....	240.00
	(15% of \$1,600 Lost Earnings)

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Total Reimbursement ..... \$1,640.00

Gross Loss ..... \$2,100.00

Reimbursement ..... 1,640.00

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NET LOSS ..... \$ 460.00

Less: Deductible

(10% of gross lost  
earnings) ..... 160.00

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PAYABLE UNDER B.P.I. ..... \$ 300.00

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<sup>22</sup> R. KEETON & J. O'CONNELL, BASIS PROTECTION FOR THE TRAFFIC VICTIM 413 (1967).

This represents a net loss of benefits to the injured person of \$400.00, or almost 20% of his actual out-of-pocket expenses, as against the \$700 claimant *would expect* to receive by the formula set forth in the authors' example, heretofore given.

No reference need be made to the fact that the injured party may have paid premiums for the medical policy which returned to him \$400, or the obvious fact that sick leave used up for this accident is not available to him if he subsequently becomes ill.

In addition, "allowable expenses" is defined to "consist of reasonable charges incurred for *reasonably necessary* products, services and accommodations." As every lawyer knows, reasonable men may differ over what constitutes a reasonable charge or a reasonably necessary product, service or accommodation, and it is certainly not unreasonable to assume that a reasonable number of such differences will end up before juries.

#### 10. *Claims And Actions Must Increase.*

One of the outstanding features of the Basic Protection Plan is that it requires no special governmental machinery to enforce it. This will undoubtedly make it easier to sell to those who are allergic to bureaucracy. But *no paper plan will work without some enforcement mechanism.* This Professors Keeton and O'Connell realize. They hope that claims will be smoothly processed by claimant and insurer, but they know that some friction is inevitable. Consequently, they have included in their proposed statute an article entitled "Claims and Actions."<sup>23</sup>

It provides that benefits are payable monthly, that they become overdue if not paid within thirty days, that interest shall be allowed on overdue benefits, that lump-sum benefits may be allowed in certain cases, but that court approval may be required. Then follow a number of sections relating to court actions for benefits. There is, of course, a statute of limitations. There is also a warrant of authority for

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<sup>23</sup> BASIC PROTECTION FOR THE TRAFFIC VICTIM §§ 3.1-3.10 (These sections and those following are set forth in R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM (1967).)



the court to enter a judgment for future benefits, but there is a proviso that if the future benefits are for more than five years, a retrial may be had upon application. There is a provision for reasonable attorneys' fees for claimants and a provision for the judicial determination of the reasonableness of fees. There is an amazing provision authorizing fees for the insurer's attorney, which reads in part, "Within the discretion of a court, an insurer may be allowed an award of a reasonable sum against a claimant as an attorney's fee for the insurer's attorney in defense against a claim that was fraudulent or so excessive as to have no reasonable foundation. . . ." <sup>24</sup> What an incentive to resist "unjust" claims! What a tool to employ in driving a hard bargain!

11. *Jury Trials Are Abolished In Claims Up To \$5,000.*

"K-O" would deprive all persons injured and the families of all persons killed in auto accidents of their right to a jury trial if the amount claimed is less than \$5,000. Suits for such sums would have to be brought where the insurance carrier resists payments for medical expenses, lost income and losses sustained by survivors.

"K-O" proposes denial of a jury trial in such cases "in the interest of expeditious procedure" and because the claims are "small." Such views are alien to Americans. Our system of jurisprudence is predicated upon the firm belief that the law shall serve both the rich and the poor, the small and the large, with equal devotion and protection, and that justice, not expediency, shall be its hallmark.

12. *Some Typical Examples of the Arithmetic of an Accident Expose the Plan's Basic Indecency.*

A motorist is a married man who, with his wife and two children, enjoys the use of an automobile. Assume also that he is a working man earning around \$125 a week, that he has protected himself and his family by buying Blue Cross-Blue Shield and that he works for the typical com-

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<sup>24</sup> *Id.* § 3.9.

pany that provides him with two-weeks paid vacation and two-weeks sick leave each year. Assume that he goes for a ride with his family on a Sunday afternoon and through no fault of his own, he is involved in an accident, that his medical bills come to \$75 for each occupant of the car and that Blue Cross-Blue Shield paid \$60 out of each \$75. That means that there is \$60 in unpaid hospital or medical bills which our motorist must pay since this plan provides for a \$100 deductible from economic loss.<sup>25</sup> Assume also that our motorist was out of work for one week as a result of this accident, but he received his \$125 and had one week of his sick leave deducted. Under these circumstances, he receives not one penny for the lost time because he has suffered no *economic loss*. It is unfortunate for him if at some later date he becomes ill and needs that sick leave. To portray more vividly what happens to the motorist, assume the above to be true with the only change being that our motorist does not carry Blue Cross-Blue Shield or any other similar plan. On these facts, our motorist must pay the \$300 in doctors' bills without collecting one penny under basic protection. This is because the \$100 deductible applies to *each claimant*.<sup>26</sup>

While these examples have been limited to Blue Cross and sick leave, any such benefits that one receives by way of any hospital, accident, medical, union health and welfare fund or other such policy or plan is deducted before the net loss is determined. So, also, are all accrued vacation and sick leave to which the motorist is entitled and it is immaterial whether he wants to take it under sick leave or vacation or not.<sup>27</sup> One must also note that a further deduction is made from lost wages in the amount of fifteen percent.<sup>28</sup>

Assume the following: your three-year old daughter was playing in her own front yard when a drunken and speeding driver careened off of the roadway into your yard

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<sup>25</sup> *Id.* § 2.3(a).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* § 1.10(a).

<sup>28</sup> *Id.* § 1.10(d).

striking your child and continuing into a tree. What happens now? One way or another, the medical expenses that the child incurs are paid for, either through Blue Cross-Blue Shield or through the motorist's policy, subject, of course, to the deductions that we have discussed before. But what happens to the child, who, as a result of this accident is permanently crippled so that she walks with a limp or has a disfiguring scar across her face? She has no economic loss and so she is entitled to nothing under this plan. But, what about the motorist who as a result of his own negligence is also injured, incurs medical bills and sustains a loss of wages? The following week he is convicted of driving under the influence, speeding, and driving to endanger and is fined a total of \$100. What happens to him? His medical bills were \$100 and his lost wages were \$200. He had no medical insurance so, with the deductions, he collects \$170 of his lost wages and he uses \$100 of this to pay his fine and pockets \$70.

The proponents of this bill have represented to the public that any person can *for an additional premium* buy insurance to cover them for pain and inconvenience. (No cost estimate has ever been made for this coverage.)<sup>29</sup> This is inaccurate, for the only people who have the right to buy this insurance are the named insured and relatives residing in the same household.<sup>30</sup> The non-motorist has no right to buy this coverage. In addition, benefits payable under this extended coverage are geared to inability to engage in an occupation. Since the child under sixteen normally has no occupation, he or she has no right to recover under this plan, nor do the elderly or retired.

It must also be noted that the maximum wages recoverable under this plan are \$750 per month.<sup>31</sup> Let's go back to our little girl who was injured in the yard. The proponents of the bill tell you that she now has the right to sue because, in the example I have presented, her claim

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<sup>29</sup> *Id.* § 2.5(a).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* § 2.3(d).

will exceed \$5,000 in pain and suffering. It *must* do this or it *must* have a net economic loss in excess of \$10,000 for her to have the right to bring suit. For if damages are any less than this, the negligent motorist is absolutely exempt from liability.<sup>32</sup>

Let's continue to look at the little girl. The ugly scar on the face is well healed and she experiences no pain because of it. She experiences no inconvenience from it. This little girl is disfigured for life but, since the bill exempts the negligent party from liability under a situation causing disfigurement without pain and inconvenience, our little girl collects nothing. Assuming that she could overcome these obstacles and she could bring suit, she is not entitled to the first \$10,000 of economic loss nor is she entitled to the first \$5,000 for pain and suffering. And, if she should receive an award from a jury in excess of this amount, how will she collect it? The proponents answer this question very simply. They say that for an *additional premium*, the motorist can take out liability insurance. This coverage is not required and no cost estimate has been given.

Another example to illustrate this point is you. Suppose you could perform the duties of your occupation without an arm or without a leg. Since the pain and suffering offered by the proponents of this bill as an extended coverage is geared to inability to perform an occupation, you would be entitled to no benefits. And since, on your own, you are fortunate enough to have adequate medical plans and sick leave benefits, you would not receive one penny under basic protection.

13. *Remove the Unsafe Driver and Lower the Cost of Insurance by 50%.*

The U.S. Department of Transportation has recently estimated that liquor causes about one half of all accidental highway deaths and a total of at least 800,000 crashes in the United States each year.<sup>33</sup>

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<sup>32</sup> *Id.* § 4.3(c) (d).

<sup>33</sup> N.Y. Times, Aug. 6, 1968, at 1, col. 1.

The 1 to 4 percent of American drivers who are heavy drinkers are responsible for at least half of the fatal accidents involving more than one vehicle. The National Safety Council agreed almost completely with this estimate.<sup>34</sup>

Active support of stern traffic measures is needed to stem this tide. This would take "political courage of the highest order."

There are at least a million people driving cars today who have demonstrated by their records of criminal driving conditions that they cannot be trusted behind the wheel. There is also a large number whose physical condition is such that they are a menace to themselves, their families and the public when they drive.<sup>35</sup>

Taking this small percentage of all the licensed drivers off the road would have more favorable impact on loss costs, and therefore on insurance rates, than any plan that has yet been proposed.

This can only be achieved when a driver's license, both in the eyes of the public and in the view of licensing administrators, becomes a "badge of responsibility."

## CONCLUSION

### DON'T BY-PASS THE COURTS.

The answer, then, to the problem of increasing automobile accident claims lies not in creating non-judicial forums for handling disputes. The lesson to be learned from history has been summarized most eloquently in a recent editorial:

Only a few of the automobile damage claims ever reach the courts. In most of them there is no dispute, damages are small and are paid as soon as an estimate is made. Every claim that is disputed is potential judicial business, and the outcome of it is affected by what happens to those claims that go to court, whether it does or not. The judicial process has built up safeguards for the pro-

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<sup>34</sup> *Id.* at col. 2.

<sup>35</sup> *INS. ADVOCATE*, Oct. 7, 1967, at 27.

tection of litigating parties, and it is in the interest of justice for as many disputed claims as possible to be adjudicated or settled under those safeguards. It is equally in the interest of justice not to burden the courts with work that is not judicial in character—to give non-disputes efficient and economical non-judicial handling.

Pressures for non-judicial handling of all kinds of claims will continue as long as competing systems appear to be more effective and just. The best way to reduce those pressures is to move forward with the reforms, improvements and modernization that will make the courts so advantageous an instrumentality that the demand for an alternative will disappear. In so doing we may preserve for every claimant and every defendant the oldest and most important kind of "basic protection"—the rules of evidence, representation by counsel and other elements of due process of law.<sup>36</sup>

This is the solution on which the legislature should focus to insure expediency while maintaining basic rights.

## A P P E N D I X \*

### *A Summary of the Keeton-O'Connell Basic Protection Automobile Insurance Plan*

1. NEW FORM OF COVERAGE.—Basic Protection coverage is a new form of automobile insurance; most of its features, however, are derived from types of insurance already in use, medical payments coverage of current policies being the closest analogy.

2. PARTIAL REPLACEMENT OF NEGLIGENCE LIABILITY INSURANCE WITH LOSS INSURANCE.—The new coverage partially replaces negligence liability insurance and its three-party claims procedure with loss insurance, payable regardless of fault, and a two-party claims procedure under which

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<sup>36</sup> *Don't By-Pass the Courts*, 51 J. AM. JUD. SOC'Y 368-69 (1968).

\* Reprinted from 51 JUDICATURE 151-52 (December 1967).

a victim claims directly against the insurance company of his own car or, if a guest, his host's car.

3. **EXEMPTION FROM NEGLIGENCE LIABILITY TO SOME EXTENT.**—If damages for pain and suffering would not exceed \$5,000 and other bodily injury damages, principally for out-of-pocket loss, would not exceed \$10,000, an action for Basic Protection benefits replaces any negligence action against an exempt person (that is, a Basic Protection insured) for bodily injuries suffered in a traffic accident; in cases of more severe injury, the negligence action for bodily injuries is preserved, but the recovery is reduced by these same amounts.

4. **BASIC PROTECTION FOR BODILY INJURIES ONLY.**—Basic Protection insurance applies to bodily injuries only. Property damage, including damage to vehicles, is covered by a separate new form of insurance called Property Damage Dual Option coverage (par. 23-26).

5. **BENEFITS NOT BASED ON FAULT.**—In general, a person who suffers injury arising out of the ownership, maintenance, or use of a motor vehicle is entitled to Basic Protection benefits without regard to fault, though one who intentionally suffers injury does not qualify.

6. **PERIODIC REIMBURSEMENT.**—Basic Protection benefits are payable month by month as losses accrue, subject to lump-sum payments in special circumstances.

7. **REIMBURSEMENTS LIMITED TO NET LOSS.**—Basic Protection benefits are designed to reimburse net out-of-pocket loss only; overlapping with benefits from other sources is avoided by subtracting these other benefits from gross loss in calculating net loss.

8. **LOSS CONSISTS OF EXPENSES AND WORK LOSS.**—Out-of-pocket loss for which Basic Protection benefits are payable consists of reasonable expenses incurred and work loss. Work loss consists of loss of income from work (e.g., wages) and expenses reasonably incurred for services in lieu of those the injured person would have performed without

income, e.g., the expenses of hiring help to do work a housewife had been doing before being disabled.

9. **DEDUCTIBLE LOSSES.**—The standard deductible excludes from reimbursable losses the first \$100 of all net loss or 10 per cent of work loss, whichever is greater.

10. **STANDARD LIMITS OF LIABILITY.**—The standard liability of an insurance company on any Basic Protection policy is \$10,000 for injuries to one person in one accident and \$100,000 for all injuries in one accident; another limitation prevents liability for payments over \$750 for work loss in any one month.

11. **OPTIONAL MODIFICATIONS OF COVERAGE: ADDED PROTECTION BENEFITS.**—Coverage with the standard limits (par. 10), exclusion (par. 17), and deductible (par. 9) is the minimum that qualifies as Basic Protection coverage except that larger deductibles, which result in reduced benefits, are offered on an optional basis at reduced premiums. Policyholders are also offered optionally enlarged coverage, called Added Protection (par. 12-13).

12. **OPTIONAL ADDED PROTECTION BENEFITS FOR PAIN AND INCONVENIENCE.**—Basic Protection benefits are limited to reimbursement of out-of-pocket losses and provide no compensation for pain and suffering; a policyholder may purchase an optional Added Protection coverage for pain and inconvenience benefits.

13. **CATASTROPHE PROTECTION.**—This optional coverage provides benefits up to \$100,000 in addition to Basic Protection benefits.

14. **BASIC PROTECTION COVERAGE COMPULSORY.**—This coverage is a prerequisite to registering or lawfully operating an automobile.

15. **AN ASSIGNED CLAIMS PLAN.**—Benefits are available even when every vehicle in an accident is either uninsured or a hit-and-run car.

16. **INJURIES INVOLVING NONRESIDENTS.**—Motoring injuries that occur within the state enacting the plan and



are suffered or caused by nonresidents are covered; when no policy in effect applies to such injuries, they are handled through an "assigned claims plan."

17. **EXTRATERRITORIAL INJURIES.**—Motoring injuries suffered out of state by a person who is an insured, or is a relative residing in the same household, or is an occupant of a vehicle insured for Basic Protection, are covered by Basic Protection; except for this provision, no attempt is made to extend the system to injuries occurring outside the state enacting it.

18. **MULTIPLE POLICIES AND MULTIPLE INJURIES.**—Provisions are made for allocating and prorating coverage when two or more policies or two or more injured persons are involved.

19. **DISCOVERY PROCEDURES.**—Special provisions are made for physical and mental examination of an injured person at the request of an insurance company and for discovery of facts about the injury, its treatment, and the victim's earnings before and after injury.

20. **REHABILITATION.**—Special provisions are made for paying costs of rehabilitation, including medical treatment and occupational training, and for imposing sanctions against a claimant when an offer of rehabilitation is unreasonably refused.

21. **CLAIMS AND LITIGATION PROCEDURES.**—In general the Basic Protection system preserves present procedures including jury trial, for settling and litigating disputed claims based on negligence; modifications adapt these procedures to the Basic Protection system and particularly to periodic payment of benefits.

22. **RULES APPLICABLE IF A VICTIM DIES.**—Benefits extend to survivors when a motoring injury causes death; the exemption (par. 3) applies and special provisions treat overlapping benefits.

23. **PROPERTY DAMAGE DUAL OPTION COVERAGE COMPULSORY.**—This coverage is a prerequisite to registering or lawfully operating an automobile.

24. **COVERAGE FOR DAMAGE TO PROPERTY OF OTHERS.**—Under the Property Damage Dual Option coverage, each policyholder has protection against liability for damage that he negligently causes to others (par. 25).

25. **COVERAGE FOR DAMAGE TO THE POLICYHOLDER'S VEHICLE.**—Property Damage Dual Option coverage can apply also to damage to the policyholder's own vehicle, and gives the policyholder a dual option. If he elects the "Added Protection Option," he is paid for damage to his own car regardless of fault. If he elects the "Liability Option," he is paid for damage to his own car only if he can prove a valid claim based on another's negligence.

26. **MOST NEGLIGENCE CLAIMS FOR PROPERTY DAMAGE ELIMINATED.**—In order to avoid administrative waste that occurs in the present system, the new Property Damage Dual Option coverage, through its system of mutual exemptions, does away with most claims by which one driver's insurance company, after paying for a loss, tries to get its money back from the other driver's insurance company.

27. **THE INSURANCE UNIT AND MARKETING UNALTERED.**—The insurance unit is the same as the present system; a policy will be issued on a vehicle to the vehicle owner. The new coverage will be marketed in the same way as automobile negligence liability insurance.