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### Keeton, O'Connell, and McCord: Crisis in Car Insurance

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**CRISIS IN CAR INSURANCE: Edited by Robert E. Keeton, Jeffery O'Connell and John McCord. Urbana: University of Illinois Press. 1968.**

In 1965, after two years of research, Professors Keeton and O'Connell published a book titled "Basic Protection for the Traffic Victim, A Blueprint for Reforming Automobile Insurance."<sup>1</sup> Since then they have spent a large measure of their time attempting to sell their plan to the public and defending it from attack. In the 1965 publication they asserted rather dogmatically that the automobile insurance system was plagued with "the evils of inadequacy, delay, injustice, waste and corruption."<sup>2</sup> This sweeping indictment of an entire industry and the legal profession has not been accepted without considerable rebuttal from the industry and the bar.

Since that time there have been symposia throughout the country on the subject of "Basic Protection." The present publication "Crisis in Car Insurance," is a compilation of papers presented at one such meeting held in October of 1967 at the University of Illinois College of Law. Those in attendance and the participating speakers were from the insurance industry, the plaintiffs and defense bars, federal and state government and academic and consumer groups. Both the pros and cons of the "Basic Protection" plan were adequately presented and have been included in the book without noticeable emphasis.

Adoption of the "Basic Protection" plan would require legislative action, since well established common law rights would be substantially abolished. Keeton and O'Connell's plan would eliminate the "fault" concept of tort liability insofar as it relates to automobile accidents. Under their plan automobile insurance would be compulsory. Further, the first \$5,000 of damages for pain and suffering would be eliminated and the right to bring suit for personal injury would be waived if "out of pocket" losses did not exceed \$10,000. A cause of action would still exist if damages were in excess of these. The underlying theory of the plan is that an insured would deal with his own company in obtaining a settlement of his loss rather than dealing with the liability carrier of the other party. A settlement is obtained regardless of fault and payments can begin at once and continue until a final settlement is effected, thus avoiding the delay involved in lump-sum settlement.

The plan proposes further restrictions on coverage: 1) \$100

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1. KEETON & O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM, A BLUE-PRINT FOR REFORMING AUTOMOBILE INSURANCE (1965).

2. *Id.* at 36.

deductible per person (each injured person absorbs the first \$100 of his personal injury loss); 2) payment would not occur if the loss is collectible from a collateral source—other policies or plans; 3) fifteen percent reduction in lost wages because of the tax exemption on personal injury compensation; 4) an additional ten per cent reduction in lost wages to deter malingering; 5) a \$500 limit on funeral and burial expense; and 6) a \$750 a month limit on lost wages. In addition, it would remain necessary to carry liability insurance to provide coverage for accidents occurring in states that did not have basic protection and for damages exceeding the basic protection limits. All this is covered in detail by Professors Keeton and O'Connell's revised plan as set forth in this volume.

It is a book well worth reading, but it must be read with an analytical approach since many of those attacking the plan, as well as those supporting it, tend to become emotionally involved. After a careful and logical study of the various sections of the book a better understanding of the controversy is bound to result, even if a definite conclusion is not reached. One conclusion that seems inescapable, however, is that changes in the automobile insurance field are inevitable.

How drastic the changes will be and whether they come about through state legislation, a rapid evolutionary process within the insurance industry or by federal intervention remains to be seen. In any event, much of the credit or blame, depending on one's outlook, must be given to Professors Keeton and O'Connell, who, if not the creators of the "Crisis in Car Insurance," have certainly assisted in bringing it to the forefront.

Some of the papers contained in the book were presented by individuals not directly affected by the plan. These contributions hint at the basic social problems involved. In an automotive age such as ours where the automobile has ceased to be a luxury and has become a recognized necessity, where the need for more and safer roads far exceeds highway construction and where public transportation has almost ceased to exist. deaths and injuries are inevitable. Having accepted this conclusion, and it is apparent that the American public has, a question must be answered; who is to be responsible for the support and rehabilitation of the uncompensated claimant, the person who is injured through his own negligence in either a multiple or single car accident, and who, therefore, does not have a cause of action against anyone.

In all too many instances such persons are faced with insurmountable financial problems and, as a result, are forced to seek relief through welfare agencies. A plan such as "Basic Protection" would tend to place more of the financial burden on the motoring public rather than spread-

ing it over the entire taxpaying citizenry. But, is there a non-motoring public today?

Keeping in mind that the real social problem is the uncompensated claimant and his dependents, it would appear that the proponents of this and similar plans have given altogether too much attention to the alleged reduction in the cost of insurance that would result by adoption of the plan. This book is no exception. Substantial space is devoted to the reduction of insurance premiums that would allegedly have been possible in the State of Michigan had "Basic Protection" been in effect. This portion of the book, while possibly a learned actuarial analysis, is replete with assumptions and quite beyond the comprehension of the average layman.

The question of cost arises in many other sections of the book, the proponents of the plan alleging reduced costs and the opponents alleging no change or an increase in cost because of the additional people recovering. A suspicion envelops the reader that the emphasis given to lower insurance premiums is the "gimmick" used to persuade the man in the street, the man whose interest can be tintilated if promised a reduction in insurance costs, but who becomes pessimistic if told he can assist in correcting a social problem by joining the cause.

Certainly, the Illinois seminar did not reach any solutions and it is questionable if many minds were swayed from their preconceived ideas. A quotation from the ancient Persian poet Omar Khayyam seems apt:

Myself when young did eagerly frequent Doctor and Saint  
and hear great argument about it and about; but evermore  
came out by the same door as in I went.

Further, this publication does not solve the "Crisis in Car Insurance," but, it does forcefully present both positions. In the meantime, the Department of Transportation has embarked upon an intensive study of automobile insurance, Congress is conducting hearings on the insurance industry, various proposals are being introduced in state legislatures and appellate courts are legislating by judicial decision, viz-à-viz the adoption of comparative negligence by the Illinois Appellate Court. As in all complex issues, the term "solution" is often bantered. But, regardless of one's opinion of Professors Keeton and O'Connell's Basic Protection plan, this compilation provides an adequate and fundamental understanding of what the "crisis" is all about.

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