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Book Review of Daniel G. Baldyga's: How to Settle Your Own Insurance Claim


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57 Geo. L.J. 660-663 (1969) (reviewing Daniel G. Baldyga, *How to Settle Your Own Insurance Claim* (1968))

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Baldyga, Daniel G. *HOW TO SETTLE YOUR OWN INSURANCE CLAIM*. New York: Macmillan Co., 1968. Pp. xi, 159. \$4.95.

Pity the poor personal injury practitioners. Beleaguered on one side by the revolutionary proposals of Professors Keeton and O'Connell,¹ they now face the challenge of ultrareaction embodied in *How to Settle Your Own Insurance Claim*. Though bitterly resisting the Keeton-O'Connell Plan,² the personal injury specialists have yet to raise a public outcry over *How to Settle*, which urges accident victims to be their own attorneys. This restraint, similar to that exercised by the plaintiff's bar toward Walter Matthau's mordant portrayal of "Whiplash Willie," the ambulance-chasing lawyer in the film comedy *The Fortune Cookie*, doubtless reflects a desire not to stimulate publicity which might promote the book, and perhaps a conclusion that up to now the book is not selling well enough to be taken seriously.

How to Settle tries to exploit the same vein mined in spectacular fashion by Norman F. Dacey,³ who parlayed deep dissatisfaction with the probate system and popular resentment of lawyers into a runaway best-seller.⁴ It would seem, up to this point anyway, that people more readily worry about the inevitability of death and its legal consequences than the possibility of personal injury caused by the legal fault of another. Nonetheless, *How to Settle* does merit some attention, at least within the confines of a specialized journal and under circumstances unlikely to promote a sales backlash, so that all its shortcomings cannot be said to have passed unnoticed.

There is much to criticize in the present system of settling and adjudicating accident claims.⁵ *How to Settle*, however, holds no brief for radical change;⁶ instead it seeks to preserve the status quo with one

¹R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM (1965) [hereinafter cited as KEETON & O'CONNELL]. The Keeton-O'Connell Plan would provide exclusive, compulsory, nonfault insurance coverage for auto accident claims up to the first \$10,000 of net economic loss and up to the first \$5,000 of pain and suffering. For a more extreme proposal which would in effect remove the dollar limits of the Plan, see AMERICAN INS. ASS'N, REPORT OF SPECIAL COMMITTEE TO STUDY AND EVALUATE THE KEETON-O'CONNELL BASIC PROTECTION PLAN AND AUTOMOBILE ACCIDENT REPARATIONS (1968).

²See, e.g., TRIAL, Oct.-Nov. 1967.

³N. DACEY, HOW TO AVOID PROBATE (1965).

⁴See TIME, July 8, 1966, at 65-67.

⁵See, e.g., KEETON & O'CONNELL 11-75.

⁶Indeed, at one point the author shudders at the possibility "that our whole system of Liability Tort Law, as we know it, will soon vanish from the face of the earth, to be replaced by some wild-eyed legal contraption, conceived in frustration, nurtured with haste, born in pain to exist in an ignorant state of distrust and confusion." D. BALDYGA, HOW TO SETTLE YOUR OWN INSURANCE CLAIMS 123 (1968) [hereinafter cited as BALDYGA]. He offers no comment on (nor does he inform

major adjustment, arguing that accident victims with clear-cut claims against insured defendants should in most instances negotiate their own settlements without the aid of an attorney. As the author proclaims on the back cover, "In all too many cases, after the attorney has taken his contingency fee, the claimant winds up with less money than if he had negotiated with the insurance company himself." This unsupported assertion is flatly contradicted by data compiled by Columbia's Project for Effective Justice. The Project's analysis of a sampling of New York personal injury cases in which claimants recovered \$1000 or less disclosed that "The average attorney-handled recovery in this size bracket was \$407—more than two and one half times as large as the average *pro se* recovery of \$158."⁷ After deductions for lawyer's fees and other expenses, the average amount recovered by claimants represented by counsel exceeded by about 47% what was obtained by the claimant who handled his own case.⁸

This does not mean that in some minor accident cases where defendant's liability is obvious, the injured victim cannot personally negotiate a settlement to his own advantage. The problem is that *How to Settle* does not limit itself to these instances. Some 40 pages describe a wide range of serious and potentially complicated injuries which could result in substantial recoveries. To make matters even more misleading, the author never really discusses the "one-bite-at-the-apple" rule, whereby a claimant can collect only once, through settlement or court judgment, for injuries arising out of a single accident.⁹ The layman-turned-lawyer is not cautioned explicitly against a premature settlement which might foreclose recovery for any subsequent complications of his injury.

How to Settle predictably focuses on auto accident claims, stressing the liability of the driver and omitting both vehicle and highway as potential causative factors. It furnishes no guidelines to distinguish the clear-cut claim from the tough liability issue. The text and accompanying forms might well induce the reader to make his own investigation of a complex case and unduly delay retaining an attorney. For unknown reasons, the book touches lightly upon "slip-and-fall" cases and claims for injuries inflicted by animals, while making no mention of the numerous other categories of accident claims.

his readers of) developments within the insurance industry, such as the concept of advance payments. See Schroeder, Carpenter & Des Champs, *Advance Payments as a New Approach in The Settlement of Liability Claims*, 34 INS. COUNSEL J. 550 (1967).

⁷Franklin, Chanin & Mark, *Accidents, Money, and the Law: A Study of the Economics of Personal Injury Litigation*, 61 COLUM. L. REV. 1, 17 (1961).

⁸*Id.* at 30.

⁹See C. McCORMICK, *DAMAGES* 299 (1935).

The key section of the book is the development of the author's "exclusive Probability Statistics Formula,"¹⁰ which puts a dollar value on claims. The "Formula" contains a point system which takes into account the probability of liability, the type of injury, the parties involved, the special damages, and the plaintiff's age. By applying this point system to the dollar value of the case, as calculated in accordance with the author's rating system,¹¹ the reader can arrive at a settlement range.

The author takes full credit for devising the "Formula." It is interesting to note, especially in the light of his unflattering references to attorneys in general and particularly to plaintiff's lawyers,¹² that he does not disclose that the point system portion of his "Formula" is in nearly every detail indistinguishable from a point system advocated in an article on settlement written by a plaintiff's attorney in 1954.¹³ Thus may *How to Settle* unwittingly most approximate one of the outstanding features of the Dacey book.¹⁴

Contrapuntal to the author's dim view of claimant's counsel is his admiration for the adjuster, a man "called upon to be doctor, lawyer, accountant, engineer, detective, and merchant . . . a professional in every sense of the word."¹⁵ *How to Settle* proposes that the untutored layman negotiate pro se with this skilled technician. How can an amateur hope to hold his own? Well, underneath it all the adjuster is "Mr. Joe Average Citizen, quite like your own self, out doing his job in the best way he knows how."¹⁶ So, "if you give him half a chance, you will find that he will bend over backwards to give you every possible opportunity to work out an equitable settlement of your claim; and armed with this book you can't possibly miss!"¹⁷

¹⁰BALDYGA 118-26.

¹¹The rating system is rather complex, but does manage to omit the geographical factor, thereby failing to distinguish between the settlement value of urban and rural personal injury claims.

¹²The unkindest cut is the author's suggestion that if the reader must seek expert advice, he should consult a defendant's attorney. BALDYGA 134.

¹³Sindell, *A Formula for the Evaluation and Settlement Negotiation—The Plaintiff's Viewpoint*, in 1 M. BELLI, MODERN TRIALS § 110 (1954). The article reappeared in Sindell, *What Price Personal Injury?*, 3 PRAC. LAW. 37 (1957), reprinted in J. & D. SINDELL, LET'S TALK SETTLEMENT 289 (1963). Thus, the Sindell point system has not suffered from underexposure.

¹⁴Compare N. DACEY, *supra* note 3, at 13-15, with Meyer, *Non-Tax Advantages of the Revocable Trust*, 37 DICTA 333-37 (1960). See also Page, *The Night a Critic Confronted the Author of "How to Avoid Probate,"* National Observer, May 30, 1966, at 5, col. 1.

¹⁵BALDYGA 129.

¹⁶*Id.* at 128.

¹⁷*Id.* at 130.

The author should know. He is the claims manager of a large insurance company.¹⁸

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¹⁸*Id.* at back cover.

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