

and they come to an attorney with a writ and are told this is going to cost \$1,000 to defend, even though he may win the suit.

Professor Keeton states that he doesn't recommend that anyone take only basic protection. He says one should take additional liability coverages as any well insured person would today. A well insured person doesn't get by on \$5,000 or \$10,000 worth of liability coverage.

Professor Keeton alleges that the cost of this additional liability would be the same as the cost of what one now pays for a corresponding amount of excess liability coverage. But, there is no basis for Professor Keeton's contention. For example, in Massachusetts the minimum compulsory liability has a \$5,000/\$10,000 limit. To double this amount—\$10,000/\$20,000—costs only 15% more than the \$5,000/\$10,000 policy price. The reason for this is simple: a large portion of the premium dollar in the original \$5,000/\$10,000 liability package is for the cost of investigation and defense. Thus, to be insured for twice as much as before, the cost of administration and the probable cost of defending the suit has already been figured. It doesn't cost the insurance company more money to defend a case in which the damages are \$10,000 than it does to defend the case in which the damages are \$5,000.

Since the costs of administration and defense have already been figured, the additional 15% simply covers their exposure to additional liability, but practically no additional cost of administration.

But although the Keeton-O'Connell policy provides for an exemption from liability for the first \$5,000 of pain and suffering, it is not a liability policy. Therefore, if one wishes to secure liability protection against suit from the \$5,000 exemption on upwards, one can not buy, for example, the additional \$5,000 worth of liability at the small cost of 15%.

One must buy a brand new liability policy into which the entire cost of administration and defense must be figured. This will be much more expensive.

Thus, for the person who is well insured because he has purchased a liability policy, as well as the compulsory Keeton-O'Connell accident and health policy, the composite cost of this package is greater than the cost of an equal amount of straight liability insurance.

Yet, with this added cost, he will, if he is injured by a wrongdoer, lose:

1. The benefit of collateral sources.
2. The first \$100 of net economic loss beyond his collateral sources.
3. The first 15% of his wage loss in excess of 1 and 2 above.
4. The first \$5,000 worth of pain and suffering.

Thus, as Dr. Brainard has aptly said: "The good driver pays more and get less benefits."

Professor Keeton, in talking of fraud, has indicated that there is more fraud than there should be. I am certain that every lawyer and every citizen regrets it. We do not want it; we'd like to do something about it.

Let's examine the Keeton-O'Connell Plan and see if it truly alleviates the problem of fraud.

Today, if a man injures his back bowling or shoveling snow, and "wants" to find somebody to pay for the injury, our adversary system compels him to charge that someone else hit him in a motor vehicle and that the other person was at fault.

Professor Keeton may talk about the phantom auto accident cases all he wants, but the fraudulently inclined man still has to indicate in law that there was someone else involved. The fraud may have to go to a friend and stage a dummy accident, or at least say they had one.

But, under the Basic Protection Plan, one is not compelled to do that. The Basic Protection Plan covers one for economic loss arising out of the ownership, maintenance, or use of a motor vehicle. It covers the drunk when he stumbles getting into the car or when he stumbles out. If he hurts himself at this time, he's covered.

If one hurts his back polishing his car, he is covered. If one injures himself putting in a new battery he is covered. If one is hurt opening the car door, he is covered.

Now where is the greater opportunity for fraud—in an adversary system where one must convince a court that somebody else struck him and the other person was at fault? Or in a system where the person need only allege that—in his own privacy—he got a twinge in his back polishing his car?