

philosophy and purpose has proved effective. It is our overwhelming experience, based upon responses from the public as well as the insurance companies, that insurance companies have not indicated any appreciable desire to change the system and in our judgment the public is being fully protected. It is the judgment of the NAIC that the intrusion of the federal government into this carefully structured regulatory system is wholly unnecessary.

THE KEETON-O'CONNELL PLAN

I should like now to turn my attention to a proposal which has received widespread publicity for the past year as an alternative to the traditional system of insurance compensation—the Keeton-O'Connell plan.

The proponents of this plan summarize it as a way to pay automobile insurance claims which is similar to the way health and accident plans are paid—that is, payment without regard to fault. The sponsors of this plan, among other things, assert that it would result in less insurance cost to both the insurer and the insured.

Such a proposal at first blush would appear to be the long sought after panacea. However, before accepting this plan serious consideration must be given to the facts available.

Several legal aspects of the plan must be studied before the plan can be properly evaluated. First, how does the plan in its entirety and particulars compare with what we know about workmen's compensation so that the due process provisions of the federal and state constitutions are satisfied? Second, how would such a plan fit into the already existing scheme of the law in all the states? Would such a plan be unconstitutional in any of the states? Third, accepting the interstate character of many many thousands of accidents what conflict of law problems would be created by acceptance of the plan in some but not all states? Fourth, would the adoption of such a plan really cut down court congestion? What are the actual statistics?

In addition to these obvious areas of research there are more practical considerations—perhaps a more philosophical but certainly a real one is the concept of fault, of liability present in the traditional legal system upon which insurance recovery is founded. The Keeton-O'Connell plan would compromise this factor. If fault is removed what effect does this have on traditional concepts of care and caution.

One of the most salient areas for investigation is that of cost. Backers of the Keeton-O'Connell plan assert cost savings because of reduced court costs, litigation and efficient administration. Yet many view the plan as a package which would serve to stimulate litigation because a litigant has everything to gain and nothing to lose. Further, how many additional claims will be paid if the question of fault is removed?

The Conard Automobile Accident Costs and Payment Study,³ had indicated an increase of about 200%, while a similar study conducted by Temple University of automobile accident claims in New Jersey in 1955 indicates that the increase would be approximately 100%. The chief actuary of the Massachusetts Department of Banking and Insurance estimated that if the plan were introduced in his state the cost of coverage required by statute for private passenger car owners would increase from 19% to 35%. This increase would be in a state which already has one of the highest premium rates. Thus, the result may differ from state to state and certainly the study should reflect these figures.

It should be noted that in at least one state where the Keeton-O'Connell plan was at first embraced and in fact legislation passed the lower house. When the problems were ventilated and the ramifications realized, the bill was defeated—with full knowledge that if such a measure were to pass the upper house the Governor would veto the bill.

I wish to make no judgment in the matter at this time. A plan so far reaching as this must be carefully studied from every aspect and every point of view.

However, I would like to conclude this discussion of the plan with a quotation taken from a recent speech of Mr. Justice Tom C. Clark, Ret. (now Director of the Federal Judicial Center (as created by Congress, P.L. 90-290, December 20, 1967), whose duties, as defined by the Act *inter alia* are to study the operations of the courts of the United States) given at the James Madison Lectures at the

³ As reference material in this statement see: Texas State Board of Insurance, *Report on Automobile Insurance Rating Methods, Insurance Company Profits or Losses, Investment Income as a Factor in Rates and Related Subjects*, December 30, 1966; Brainard, *Automobile Insurance*, 1961.