in what promises to become without any doubt a controversy in which actuaries and insurance people in general will embroil themselves for a long time to come. One can only pity the company actuary who may have to determine a classification system that will fit this plan, the state insurance department official who may have to approve it, and the agent who may have to sell it.

#### DISCUSSION BY RICHARD J. WOLFRUM

# The Paper Is a Timely One

The concept of some sort of an automobile compensation system, particularly for bodily injury caused by the operation of an autombile, has intrigued many people, principally academicians, for over forty years. However, all of the efforts to cope with problems of actually devising a system of this type has been for naught in this country.

Nevertheless, it is a rare time now when you can pick up a trade journal or other insurance publication without reading an article by someone advocating a serious review of the efficacy of the present negligence system of handling automobile liability claims. The authors are no longer only academic people, but are responsible executives in insurance companies, well known legal authorities, and members of legislative and judiciary bodies.

The proposal that seems currently to be receiving the most publicity and discussion is the well thought out system advanced by Professor Keeton and Professor O'Connell (which I will refer to in my discussion as the "Keeton System"). Therefore, Frank Harwayne's costing of the Basic Protection portion of the Keeton System is most timely. I hope it will inspire and encourage more members of the insurance profession, particularly casualty insurance actuaries who should be the ones involved in evaluating the financial aspects of plans of this type, to examine objectively the features of this Keeton System or any other system which can be viewed as representing a progressive improvement over the present system. Too often the discussion of these proposals have been based upon emotions, self-interest, conjecture, personal judgment, or, worst of all, a one-time personal experience by a claimant, claim examiner, or an attorney for either side in the settlement (or non-settlement) of a particular claim.

# Proper Insurance Data Not Available

As you review Mr. Harwayne's paper, it immediately becomes clear that the proper data to evaluate a general compensation system for automobile bodily injuries and particularly the Keeton Plan, are not available today. The proposed Basic Protection coverage reimburses, in part, the persons injured in automobile accidents for their wage loss due to disability or the medical expenses incurred by them. In addition, for death cases, survivors benefits are allowed based upon the economic loss that the death meant to the survivors. It must be astonishing for a layman outside of the insurance business to learn that, with the enormous amount of data we collect and maintain on automobile accidents, we do not keep records of the types of disability or lengths of disabilities, the medical cost of such injuries, the economic status of the persons injured, or the number and types of dependents in death cases. Yet, these are the types of data that we need in order to evaluate in a reasonably accurate way the economic loss of such injuries.

As Professor Blanchard\* did almost 35 years before him, Mr. Harwayne had to revert to data on workmen's compensation injuries, attempting to confine himself to those for which the proximate cause was assumed to be an automobile. While workmen's compensation costs are based upon a system of reimbursing an injured person for part of his economic loss, the distribution of workmen's compensation injuries by type of injury may be entirely different from those caused by automobile accidents—even if limited to workmen's compensation automobile injuries. More than 80% of the automobiles on the highway are personally owned private passenger cars, while workmen's compensation automobile injuries are mainly those involving trucks, salesmen's cars, or taxi cabs. In addition, the economic strata of the people who are reimbursed for their injuries under workemn's compensation coverage does not include:

- 1. Owners of businesses
- 2. Self-employed
- 3. Retired
- 4. Housewives
- 5. Military personnel
- 6. Students
- 7. Children

A small sample drawn on claims settled by my company indicates that these classes of people comprise almost 50% of the people injured in automobile accidents. The economic loss for these people obviously would be much different than the loss for people covered under workmen's com-

<sup>\*</sup> In Report by the Committee to Study Compensation for Automobile Accidents (1932), Columbia University Council for Research in Social Sciences.

pensation. Moreover, the disability cost and medical cost may be evaluated in quite a different manner under a workmen's compensation system with an employer in the picture compared to an automobile compensation system (particularly when you consider a two-party system as proposed by Professor Keeton) where no such monitor appears to be present in many claims settlement procedures.

## We Need Automobile Bodily Injury Accident Tables

In my opinion, it is high time that the insurance industry put together official automobile bodily injury accident tables similar to those now used to value law changes under the various workmen's compensation acts. These tables should show, among other distributions, at least the following distributions:

- 1. The economic status of people injured,
- 2. Injuries by type of injury,
- 3. Disability periods for people injured,
- 4. The medical and hospital cost of injuries,
- 5. Dependency status of survivors for death cases.

With these distributions we should be able to determine, with reasonable accuracy, the overall economic loss of automobile injuries that are currently covered under the tort system.

However, there is also an additional evaluation or costing procedure which has to be made and which is just as important. This is to distribute the overall costs among the various classes of people injured or among various segments of the public. In order to work up the rearranging of the distributions of the overall cost, we should have the following additional distributions:

- 1. The relationship of the injured party to the named insured under the automobile liability policies today, and
- 2. The status of the injured person—passenger in insureds car, guest in insureds car, driver of other car, etc.

With this information we could distribute the overall cost to proper classifications, depending upon whether benefits are paid on the present threeparty bases or on a new two-party basis.

# Uncompensated Victims under Negligence System

Most of the automobile compensation systems propose a so-called "no fault" basis of handling claims. Therefore, to cost such proposals, we also need to have some information on just how many claimants are *not* 

now compensated for their injuries under the present tort system because it is based upon negligence or "fault."

Most of the estimates I have reviewed of the number of uncompensated victims have been made as a result of personal interviews with claimants, personal judgments of claimants attorneys, and company attorneys (which, not surprisingly, are contradictory) or a review of court judgments. These subjective estimates are made more confusing when they involve the question of comparative negligence laws vs. contributory negligence laws. The different concepts in these laws obviously have a bearing on the estimates, but it appears that, from a practical standpoint, the laws are rarely administered (either by juries or by judges or by the insurance carriers) exactly the way the law reads or specifies. In my opinion, we need more objective estimates of the number of such injured persons if we ever want to "cost" this feature of the proposals.

It is surprising to me that many companies do not know what percentage of the accidents reported to them have something actually paid on them. At least this would be a good starting point for obtaining a reasonable estimate of the number of so-called "uncompensated victims." Along with this information, it would be helpful to know how many claimants file claim reports with more than one insured, and some analyses of just how the medical payments coverage only cases fit in with this number, particularly if we want to eliminate duplicate claims by the same injured person.

### Collateral Benefits

The Keeton Plan specifically and carefully offsets any loss under the Basic Protection coverage with practically any other collective benefits available to the injured person except life insurance. This is a very important provision and, to evaluate it, we have to know, or at least have some reasonable estimate of, the amount of coverage under the so-called collateral benefits that have been purchased privately by the public or are available to them through group or other employer financed systems. These include:

- 1. Personal accident and health benefits including Blue Cross and Blue Shield.
- 2. Medicare
- 3. Social Security benefits
- 4. Group accident and health insurance
- 5. Salary continuation plans
- 6. Workmen's compensation benefits

According to information from the Health Insurance Institute, the magnitude of some of these collateral benefits seems to indicate that, at the present time in the state of New York, there is a tremendous overlap of benefits available to an insured, particularly when he is successful in settling a case with or obtaining a judgment against an insurance carrier for an automobile accident. The Source Book of the Institute indicates 93% of the civilian population in New York has some form of health insurance protection. While these New York figures may be overstated somewhat because they are based upon place of employment and not state of residence, nevertheless they have a substantial effect on any costing procedure.

Of course, some of the policy contracts providing these collateral benefits might be immediately revised to exclude coverage for automobile accidents. However, it can be assumed, with some degree of confidence, that this will require some time and serious thinking on the part of those people who are the current purveyors of benefits to the public before they give up quickly their role in this area.

## Claimants' Attorneys' Fees

Several of the proposed automobile compensation systems, in order to promote fast negotiated settlements with injured claimants, generally provide that part or sometimes all of claimants' attorneys' fees will be paid by the insurer. Consequently, we also need to know approximately what proportion of the settlements which are paid to a claimant today actually does not reach his pocket because his attorney takes a certain percentage of the settlement as a fee. We have numerous records within the insurance industry as to what proportion of the claim expense incurred by companies goes to attorneys, staff attorneys, or to outside attorneys, but practically none on claimants' attorneys.

Several studies have been made by outside people as to the percentage of a trial court judgment that goes to the claimants' attorneys, but this provides very little information as to the amount of money that is paid claimants' attorneys on those cases where the settlement is negotiated between the attorney and the insurance company. If we can believe the estimates of many people in the legal and judicial profession who advocate automobile compensation systems, claimants' attorneys take as much as 50% of the total amount of such settlements.

Before we can accept an estimate that this large a percentage of the loss payments do not reach the injured victim, I believe some attempt should be made to obtain reasonably accurate data in an objective way.

Surely the claimants' attorneys have a stake in the present tort system. Therefore, they should provide rather complete statistical data in this area, at least so that they themselves can recognize the scope of the problem and defend their role in the current method of handling automobile injuries. If they do not, their silence will give credence to the large percentages which are being tossed about by their critics.

## Mr. Harwayne's Conclusions Show Effect of Lack of Data

Because of the insufficiency of the data that Mr. Harwayne had to work with, he had to come up with three different estimates of the probable cost of the Basic Protection Plan. These estimates range from a high of 89% of the present automobile bodily injury system, to an intermediate costing which indicated a price tag of 76%, down to an estimate that the Basic Protection would cost as low as 66%. I am not sure that actuaries present a proper image when they have to come out with estimates that have this wide a range. This is not to be critical of Mr. Harwayne because I was greatly impressed by his professional and able study, and have to compliment him on the way that he wrung out as much as he could possibly get from the inadequate data that he had to use.

Let me make it perfectly clear, at this point, that there is no doubt in my mind that the Basic Protection coverage portion of the Keeton Plan, as presently designed, would obviously cost less than the present automobile bodily injury system. In my opinion, you can come to no other conclusion when you read all the restrictions in coverage or restrictions in benefits payable to injured victims under the Basic Protection Plan when compared to the present tort system. In the numerous cases where Mr. Harwayne was forced to make assumptions, he made conservative ones, which means to me that the probability is great that his estimates of the overall cost of the Basic Protection coverage are higher than can be reasonably expected. Possibly, he could have indicated which estimate was the more correct one in his opinion. In any event, I believe it is the actuaries' job to come up with a much more precise estimate of just how much less the system would cost in terms of the present system, or point out in detail the inadequacy of data which prevents more precise estimates.

# The Reductions in Benefits Payable under Basic Protection Coverage Could Apply to Present System

I have indicated above that most of the cost reductions of the Basic Protection coverage, as compared to the present automobile bodily injury system, are due to certain restrictions of coverage or restrictions in the benefits that would be payable for automobile injuries as compared to the present tort system. It should also be pointed out, however, that these same restrictions in coverage or reductions in payable benefits could be applied to the present automobile bodily injury system, so that the lower overall cost is not a result of something revolutionary or something magical. For instance, we could apply the following reductions in coverage or benefits paid to the present system along with the same reductions in present costs as Mr. Harwayne came out with:

- 1. No coverage for 10% of wage loss or \$100 of economic loss, whichever is greater—14.7%.
- 2. A 15% income tax reduction on benefits paid for wage loss—11.7%.
- 3. No benefits paid for pain and suffering-19.3%.
- 4. Offset in benefits payable due to other collateral benefits being available—6%.

If we use these percentages estimated by Mr. Harwayne (and he indicates correctly that these are conservative) these cutbacks in benefits alone amount to a cost reduction of over 40% or over 50% depending upon whether these reductions are additive or multiplicative.

His most conservative estimates appear to be the reduction for the exclusion of pain and suffering and, particularly, for the reduction due to the abrogation of the collateral source rule.

If the information I receive from my claim people is correct, a rule of thumb in claims handling is that, on the average, settled costs under the present tort system are  $2\frac{1}{2}$  times "specials." As I understand their terminology, "specials" are wage loss, medical, and hospital costs. Accepting these figures, we could replace his 19.3% reduction by a factor in the neighborhood of 60% for removing pain and suffering benefits.

If the Health Insurance Institute is correct that about 90% of the public in New York State is covered by some sort of health benefits, then the offset due to the elimination of duplicate benefits payable must indeed be much higher than the 6% Mr. Harwayne used. In addition, social security, medicare, and many other benefits are not included in the Health Insurance Institute's figures.

If I may be permitted to put forward a "guesstimate," as many others before me have done, and use these less conservative percentages for the exclusion of pain and suffering benefits and collateral source benefits, I

would say that if you would include all of these exclusions under a negligence system you could reduce the present cost of providing the much broader benefits under the existing tort system by 75%.

## Basic Protection Coverage Is Only One Part of Total Keeton System

Mr. Harwayne evidently was asked to direct his attention *only* to the Basic Protection portion of the overall Keeton System. It should be mentioned that there are several other additional and voluntary coverages that should be carried by an individual insured in order to complete his insurance protection under the Keeton System. They are as follows:

- 1. Added protection coverage which is a schedule to provide for pain and suffering benefits excluded under the Basic Protection coverage.
- 2. Liability coverage for the first \$100 in benefits excluded under the Basic Protection Plan and for liability for injuries caused by insured in out-of-state accidents.
- 3. Catastrophe protection for economic loss sustained over and above limited benefits paid under Basic Protection coverage.
- 4. Property damage liability coverage—the same coverage purchased today.
- 5. Liability coverage for protection against claims involving economic loss in excess of \$10,000 of economic loss or pain and suffering in excess of \$5,000.

The cost of these additional coverages are substantial, and will offset to some extent any overall savings inherent in the Basic Protection coverage if they are all purchased. Also, the very existence of Basic Protection coverage may well have an effect of increasing the cost of some of the residual liability coverages.

It is hoped that some members of the insurance fraternity will evaluate and cost some of these additional coverages so that the probable overall cost of the total Keeton System can be compared to the overall cost of the complete automobile liability system today.

# A New Approach to Handling Claims Would Be Required

It would appear that, under a "no-fault" system of handling claims, the insurance industry would have to review its whole claim system and institute a novel, legal and claim handling philosophy which obviously has a direct bearing on the cost of the system. In addition, under a two-party system as compared to a three-party system which is followed under the

tort negligence system today, the insurance companies will be faced with an entirely new set of problems of administering or maintaining some control over the benefits paid. New loss control methods would have to be put into effect and some new administrative procedures would have to be followed in order to make sure that fraudulent claims are not easy to collect.

Aside from a comparison of the expenses involved in handling today's claim and legal procedures with the expenses of the imagined procedures that would be followed under a proposed compensation system, there are philosophical "imponderables" that do not lend themselves to objective analyses or actuarial costing methods. These imponderables include:

- 1. To what extent will Basic Protection coverage aid in settling liability claims, rather than financing law suits?
- 2. Are more small claims going to be presented, particularly for disability by non-wage earners?
- 3. Do the potential third-party claims encourage malingering and other first-party costs to build up a basis for such suit?
- 4. Will the "regardless of fault" concept discourage highway safety consciousness?
- 5. Would amounts paid under Basic Protection coverage contain a portion for pain and suffering merely to conclude settlement?

# A Different Distribution of Overall Cost by Classification and Geographical Area Is Required

Once the overall cost of a system is produced, a problem that is just as important as computing the overall cost is to decide how the distribution of the overall cost will be made among the various insureds or members of the public. Such an allocation should be made so that the rates will not be unfairly discriminatory and so that each individual insured will be equally acceptable to an underwriter providing the coverage. It is obvious that under the Basic Protection coverage, where a two-party or "related to insured" system of reimbursing the injured parties is followed, the potential hazard represented by benefits payable under an individual policy becomes drastically different from the hazard in a system where a three-party "unrelated to insured" liability claim handling procedure is followed.

For example, a small sample of our third-party liability bodily injury claims paid indicates approximately 50% are paid to the driver of the other car involved with our insured's car, 30% are paid to passengers in this

other car, 10% to passengers in our insured's car, and 10% to other persons, mainly pedestrians.

However, under two-party medical payment coverage claims procedures, the distribution changes such that 50% of the number of claims are paid to the driver of our insured's car, 35% to passengers in his car, 5% to our insured, or relatives resident in household, injured as pedestrians by any automobile, and 10% to others.

# Underwriting Considerations Will Change Drastically

In my opinion, the foregoing data indicates the underwriting bases underlying the classification systems that we follow today would be turned topsy-turvy. Under a three-party fault system, the principal factor that determines the probable benefits paid under a policy is the potential accident frequency of the driver or drivers of the insured automobile and variations in expected frequency by class vary usually about 200-250%. As far as the expected average claim cost is concerned, very little variation by classification is currently anticipated since there is a randomness about the age and economic status of the people your insured may injure and, consequently, about the value of the injuries he may be liable for. However, under a system where benefits are paid to your own insured and passengers in his car, this randomness in average claim cost is no longer a fact.

While the variation in the potential accident frequency by classification would, of course, continue to be important, the expected average amount of benefits paid to various classes of insureds could differ so drastically that the expected average claim cost, not frequency, would be the primary factor that would determine the price to be charged an individual insured. Since the system pays benefits to the injured owner or his guests in the automobile based upon their economic condition at the time of the accident, and reduces these benefits based upon what other benefits are available, it is obvious that the probability is great that some classes of risks would receive very little in the way of benefits or none at all, while for other classes of risks the average benefits paid would probably be quite high. The variation in expected average claim cost by class could easily vary ten times or more from the overall average. For instance, those persons to whom collateral benefits would automatically be available, such as insureds over 65, would represent low hazard risks, since social security and medicare benefits are paid in lieu of benefits under the basic protection coverage and the monthly benefits paid would probably be nil. Those who are in the lower economic strata such as military personnel or students under 20 would also appear to be the less hazardous risks since their net average wage loss would be very low, probably under \$50 a month. On the other hand, the self-employed man with a high income, with loving spouse and several children, who is a good family man and frequently takes them on long vacation trips in a Volkswagen Bus, and who carries no accident insurance other than loads and loads of life insurance to protect his family, could probably expect to get the maximum monthly payout of \$750 per month.

# Different Marketing Problems Will Develop

The change in potential hazard would immediately take care of some of our current assigned risk problems. However, there may well develop entirely new and unusual problems in the area of restricted markets. For example, the present "Class 2" assigned risk supplement might be replaced with a "Family Man" assigned risk supplement.

A safe driver under any Safe Driver Plan would be one who carefully goes around hitting only other people's automobiles, has only a two-seater sports car to cut down on potential passengers, is alert to avoid pedestrians and trees and takes pains to use his seat belt or do anything else to prevent injury to himself. An insured who is a civic minded individual engaged in such worthwhile activities as boy scout leader or some other function that kept filling his car with passengers would probably find himself penalized under a Safe Driver Plan.

Well-to-do residential areas would be put on undesirable neighborhood lists, particularly those with medical specialists charging high fees, and luxury hospitals with their high costs, since owners of automobiles in these areas would probably use these facilities.

Business use of the automobile or corporate owned automobiles would be preferred because of the availability of Workmen's Compensation benefits. Underwriters would welcome those lucky individuals who are poor enough to be eligible for government benefits and other Great Society Programs, particularly if they continue after an automobile injury.

Keeping these factors in mind, I have appended what I believe would be a typical insurance application for insurance protection under this Basic Protection coverage and, in addition, a comparison of the characteristics that would be considered under a three-party negligence system to those in any classification system that I believe might well be followed under a two-party "related insured" system such as the Basic Protection coverage. Desirable characteristics under the present system become undesirable

characteristics under the two-party system. Risks formerly shunned by underwriters will find themselves pursued by company production forces and advertising media. Many considered "cream" under selective underwriting procedures today will become "skim milk" under the proposed system.

In my opinion, competitive considerations could easily result in erection of classification and territory rates within a state that could vary by more than a 50 to 1 ratio. This would mean that a risk for whom the potential benefits are very high would probably pay much more than what he pays today, simply because his insurer pays his economic losses and not the insurer of the other car which is involved in the accident. There is a question in my mind whether the public is ready to be compelled to accept this type of rearrangement of the distribution of cost of automobile accidents, particularly when all of us normally feel that the "other fellow was at fault" when we are involved in a collision with another automobile.

#### Conclusion

Mr. Harwayne, by his able analyses of available data, has made a worthwhile contribution to the current discussions which are going on in the industry today concerning the "automobile problem." He has shown that the insurance companies can and should increase their statistical knowledge about the inherent workings of the present automobile tort system. Recent events of the past have indicated that the state and federal legislatures would not be shy about changing or taking over our role in the reimbursement of wage, medical, hospital, or other costs to injured members of the public, without waiting for an objective evaluation of the effect or cost of such a move. However, even though the possession of the facts may not actually prevent us from being replaced in our long held position in this area, or being relegated to purely service agencies, at least we will have the satisfaction of aggressively facing this "automobile problem" in a positive and objective manner, rather than approaching it in a negative way and losing the battle by default.

# WE\_PAY\_U INSUPANCE COMPANY

#### ANYWHERE, U.S.A.

# APPLICATION FOR BASIC PROTECTION COVERAGE

Name o	of Insured					<del></del>		
Addres	s of Insured							
Approx	cimate Valuation of Home \$							
Avera	ge Price of Homes in your Neighbo	rhood	\$					
Occupa	ition and Description of Job							
Ţ		_						
A. <u>P</u>	SONAL INFORMATION ON DRIVERS AND POTENTIAL PASSENGERS							
c)	ive following information on your mildren or relatives resident in car pool, answer these questions	your h	nousehold:	(If you dri	ve your car	e. in		
			Driver,	Relative or No. 2	No. 3	No. 4		
1.	. Name							
2	. Relationship to named insured.							
3.	. Age							
t <sub>4</sub>								
		No						
5	. Self-Employed			<del></del>				
		No 						
6	. Retired	No No						
tl	lease answer the following questi	answ		ince benefit	s payable u	inde <b>r</b>		
7	<ul> <li>Average monthly income</li> <li>(a) What part of this is</li> </ul>	•						
	earned income? (Do not include pensions.)							
8	<ul> <li>Are any Accident and Health Benefits available to named person?</li> </ul>	. Yes No						
9	. What type of benefits are avaliable?	,						
	(a) W. C. Benefits			<del></del>				
	(b) Medicare							
	(d) Major Medical							
	(e) Hospital Costs							
	(1) make contribution (10)1:	•						

#### BASIC PLAN COSTS

#### APPLICATION FOR BASIC PROTECTION COVERAGE

- 2 -

			Driver,	Relative or	Car Pool M	
			No. 1	No. 2	No. 3	No. 4
	10.	Do these other benefits exclude automobile accidents? Yes	<del></del>			
		No				
	11.	How many dependents do these named people have? (Need not answer for yourself, wife, or your children who are listed.)				
	•	•				
	12.	What doctor does each person normally visit?Name Address				
	13.	What is his usual visitation fee?				
	14.	What hospital does each person normally use?Name				
		Address				
	15.	What is its usual Semi-Private rate?	-			
	16.	Does any person listed have any present physical disability?Yes				
	17.	If yes, describe				
_				····		
а.	USE	OF CAR				
	1.	What percent of time is car used in	your busi	ness?		
	2.	What percent of time do you carry p				
	3.	Average number of passengers carrie	d			
	4.	Is car driven to and from work? Y	esN	o		
	5•	Miles driven to work one way				
	6.	Used to pull camp or home trailer?	YesNo			
c.	MAK	E AND DESIGN OF CAR			•	
	1.	Make, Year and Model of Car? Mak	е	Year	Model	
	2.	How many passengers can car carry?				

#### BASIC PLAN COSTS

# APPLICATION FOR BASIC PROTECTION COVERAGE

- 3 -

						r Car Pool P		
				No. 1	No. 2	No. 3	No. 4	
MAK	MAKE AND DESIGN OF CAR (Continued)							
3.	Is i	t equipped with:						
	(a)	seat belts?	Yes No					
	(b)	padded dash and sun visor?	Yes No					
	(c)	collapsible steering wheel?	Yes No					
	(d)	other safety features	Yes No					
		Describe						
2.	Give stan	lved in in last five (5) y date and describe the cir ces of each accident. dent #1	reum-					
	Acci	dent #2						
3•		driver or passenger in ins		Yes	No			
4.	loss	es, give estimate of wage and medical and hospital of injuries.						
5•	Was resi	driver or passenger a dent of household? Yes_		No				
6.		ot, what was relationship amed insured?						