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THE BASIC PROTECTION PLAN — PANAGEA OR INEQUITY*

David J. Sargent** and Philip H. Corboy***

I. Introduction

In 1917 the Congress of the United States, in an emotional frenzy, passed the Volstead Act as an answer to the alleged demand of the public for changes to cure the evils of the day. The tragic consequences of that legislation are all too well known to relate here.

On August 15, 1967, the Massachusetts House of Representatives, in an equally emotional frenzy, voted in favor of the Basic Protection Plan as an answer to the alleged public demand for changes to solve the problems of automobile insurance. The original allure of the Basic Protection Plan was so great that its enactment seemed inevitable. But initial furor was soon replaced by deepening skepticism:

Support for the Keeton-O'Connell compulsory motor vehicle insurance plan which developed almost overnight after it was whipped through the House in a couple of hours, is beginning to crumble.

Closer examination of the controversial proposal has revealed so many flaws and shortcomings, and raised so many doubts and questions that members of the Senate who last week were ready to jump on the Keeton-O'Connell bandwagon are having second thoughts.¹

Fortunately for the people of Massachusetts, the Senate, after three weeks of exhaustive hearings by its Ways and Means Committee, overwhelmingly rejected the Basic Protection Plan. We believe that it did so because the plan does not answer present-day complaints about the existing system of automobile liability insurance, and because it creates an inequitable and socially unacceptable system of compensating deserving victims of motor vehicle accidents.

II. Inequities of the Basic Protection Plan

The Keeton-O'Connell Plan has been hailed by some as new and revolutionary. It is neither, but rather a stripped-down version of the Columbia Plan² which was first proposed in 1932. If the Columbia Plan is the basis for the Basic Protection Plan of Professors Keeton and O'Connell, one may well wonder why no American jurisdiction has seen fit to adopt it in the ensuing thirty-six years. One reason is that the Columbia Plan and all other compen-

* This article is written in response to an earlier one by Professors Keeton and O'Connell, *The Basic Protection Plan for Traffic Accident Losses*, 43 NOTRE DAME LAWYER 184 (1967).

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1 Gallagher, *Insurance Plan Losing Allure*, Boston Herald Traveler, Aug. 24, 1967, at 14, cols. 4-6. It is interesting to note that this same newspaper, only seven days earlier, had heaped praise on both the Keeton-O'Connell Plan and the Massachusetts House of Representatives which voted for it. Boston Herald Traveler, Aug. 17, 1967, at 16, cols. 1-2.

2 *Compensation for Automobile Accidents: A Symposium*, 32 COLUM. L. REV. 785 (1932).

sation plans proposed since then have been vastly more expensive than our present system of liability insurance.

Professor Keeton argued in Massachusetts, however, that his plan would be 25 percent less expensive than the present compulsory liability insurance.³ He based this contention on an actuarial study by Mr. Frank Harwayne of New York City.⁴ But Mr. Harwayne's study is at best an estimate since there is no reliable experience on which to base a definite conclusion of cost. Other studies indicate the cost of Basic Protection would be considerably more than the present type of coverage. Robert Bailey, the Director of the Insurance and Actuarial Section of the Michigan Insurance Bureau, analyzed four of the estimates of the Harwayne study. He found the study inconclusive and the estimates subject to wide variations, even as much as 100 percent. Thus, he concluded that there is little or no basis for a belief that the over-all cost of Basic Protection would be less than present liability insurance costs.⁵

But whether the cost of Basic Protection would be less than liability insurance, as Mr. Harwayne contends, or more, as other experts believe, consideration must be given to what the public will actually receive for its premium dollar. Perhaps the greatest misconception about the proposed Keeton-O'Connell policy is its very nature. It is essentially an accident and health plan, not a liability insurance policy.⁶ Therefore, since 82 percent of the civilian population is already protected by one or more forms of private health insurance,⁷ for the vast majority of Americans Basic Protection represents an unnecessary duplication of insurance coverage they have already purchased.

Keeton and O'Connell contend that too many traffic victims receive little or nothing under the fault system and that something should be done to remedy this situation.⁸ To the extent that this contention may have validity, one may well wonder, in view of the deductions and parasitic nature of the Keeton-O'Connell Plan, how many more, if any, victims would receive meaningful payments under their plan.

It is also interesting to note how meaningless a recovery will be had by the least advantaged members of society—this country's army of 3,000,000 unemployed. Under the Keeton-O'Connell Plan injured victims receive reimbursement for medical expenses and *loss of wages*.⁹ Thus, unemployed individuals will recover substantially less than those with jobs. A man without a job or who works one day a week will lose very little in the way of actual wages for which Basic Protection insurance payments would be forthcoming. Yet dur-

3 Professor O'Connell estimated that the savings would be 86 percent. Boston Globe, Aug. 31, 1967, at 1, col. 4.

4 Harwayne, *Insurance Cost of Automobile Basic Protection Plan in Relation to Automobile Bodily Injury Liability Cost*, 13 PROCEEDINGS, CAS. ACTUARIAL SOC'Y 123 (1966).

5 Bailey, *Insurance Costs of Basic Protection Plan in Michigan, Remarks*, 1967 U. OF ILL. L.F. 557. See also Bailey, *Fallacies Overshadow Validity of Plan's Cost Estimates*, TRIAL, Oct./Nov., 1967, at 45.

6 Davidson, *Basic Protection Automobile Insurance, Remarks*, 1967 U. OF ILL. L.F. 454, 457.

7 HEALTH INSURANCE INSTITUTE, 1967 SOURCE BOOK OF INSURANCE HEALTH DATA 6 (1967).

8 R. KEETON and J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM 34-69 (1965) [hereinafter cited as BASIC PROTECTION].

9 *Id.* § 1.9(a)(b), at 305.

ing the period of accident disability the injured man might have been able to get a job, had he been in sound health.

In contrast, under the present tort system the unemployed worker would be entitled, were he able to prove negligence of the defendant and his own freedom from contributory negligence, to damages for *loss of earning capacity*. The earning capacity of an unemployed worker may be significant even though the actual loss of wages is zero.

If advantaged members of society wrongfully injure unemployed workers and we deny the unemployed the right to recover for loss of their earning capacity under the Basic Protection policy and also deny them the right to recover against the advantaged wrongdoer by giving wrongdoers exemptions from liability, will this not serve to further exacerbate the plight of the indigent unemployed and confirm their belief in the indifference of the "haves" to the miseries of the "have nots"? Under the present system the automobilist procures insurance to recompense others whom he may wrongfully injure. Under the Basic Protection Plan the automobilist procures insurance the essential purpose of which is to protect himself and his family. He no longer cares about other people whom he wrongfully injures. These people are left to their own devices—devices which are painfully inadequate if they are already unemployed. Is this not symptomatic of the alleged shift in American attitudes from concern for others to concern for self?

One might further wonder why Keeton and O'Connell have attempted to convert a social problem into an automobile problem. Four times as many people are injured in the house as are injured in motor vehicle accidents.¹⁰ If it is socially desirable to compensate the man who becomes voluntarily intoxicated and then injures himself in a motor vehicle collision, can it be less desirable to compensate the man who falls down in the bathtub?

We agree with Professors Keeton and O'Connell that some people injured in motor vehicle accidents receive nothing for their injuries from automobile insurance premium dollars. Furthermore, we admit without apology that the tort liability system is not designed to compensate wrongdoers¹¹ (at least not from automobile liability insurance premium dollars). But the tort liability system is designed and does in fact give compensation to the overwhelming majority of deserving victims. To the extent that any deserving victims are presently denied recovery, such inequities can be cured within the framework of the present system.

If the number of victims who recover is increased so as to allow compensation to wrongdoers, as advocated by Professors Keeton and O'Connell, it is only fair to ask: How are we to finance payment to these additional claimants? The answer is simple: Keeton and O'Connell would take money out of the hands of innocent victims and put it into the pockets of wrongdoers. Inherent in our system of justice is the requirement that when a man is injured and seeks recovery for his injuries from another, he must prove that such injuries

¹⁰ *Accidental Death and Injury Statistics*, U.S. Dept. of Health, Education and Welfare 11-12 (1964).

¹¹ W. BLUM and H. KALVEN, *PUBLIC LAW PERSPECTIVES ON A PRIVATE LAW PROBLEM* 81 (1965), published earlier as an article in 31 U. CHL. L. REV. 641, 719 (1964).

were caused by the other's negligence. If he proves this and he himself is free from fault, then he is entitled to recover for all of his medical expenses, all of his loss of earning capacity and all of his pain and suffering. The characteristics of the common law damage system are that "damages are tailored to the individual case, and the damage principle . . . looks to awarding full compensation to victims."¹² However, if a man's injuries are not caused by the negligence of another, then he must look to his own resources for payment. This system recognizes the philosophy that a man should not profit from his own wrong.

Professors Keeton and O'Connell would virtually abolish these concepts of negligence and full compensation to deserving victims and substitute in their place the philosophy that, no matter how you drive your car, you are still entitled to such meager benefits as provided for in their plan. The drunken driver, the dope addict, the criminal who crashes his motor vehicle while trying to escape from the police, and numerous other wrongdoers will be among those entitled to recover. These and others previously ineligible for recovery will benefit. (This, of course, assumes that they do not have adequate collateral sources. In the event that those previously ineligible do have adequate collateral sources, they will remain ineligible for recovery even under the Basic Protection Plan.)

But, by virtue of this reallocation of damage awards and shift in the burden of loss, all victims who would have been compensated at common law would be worse off under the Basic Protection Plan. Damage awards would be given to "less deserving victims" at the expense of "deserving victims."¹³

Thus, Professors Keeton and O'Connell have unsuccessfully attempted to eliminate the expense objection of other automobile compensation plans by drastically reducing the benefits. The late Richard Wolfrum, former Chief Actuary for Liability Mutual, stated that under the proposed Keeton-O'Connell Plan "the total reduction in benefits are so shocking that they raise the question whether these reductions would last over the long pull."¹⁴

The Basic Protection Compulsory Policy allows claimants to recover for their net economic loss. But to arrive at net economic loss the plan requires that claimants deduct from wage loss, medical expenses and other losses:

(1) All amounts actually received or which they are eligible to receive from collateral sources (Blue Cross, Blue Shield, union fringe benefits, sick leave, wage income protection, etc.).¹⁵

(2) The first \$100.00 of economic loss in excess of the collateral sources (or 10 percent of all work loss, whichever is greater).¹⁶

(3) Fifteen percent of the actual wage loss in excess of the amounts previously deducted in both 1 and 2 above.¹⁷

(4) All payments for pain and suffering.¹⁸

12 *Id.* at 33 (footnote omitted), and at 31 U. CHI. L. REV. 671 (1964). See Kalven, *The Jury, the Law, and the Personal Injury Damage Award*, 19 OHIO ST. L.J. 158 (1958).

13 *Id.* at 34, and at 31 U. CHI. L. REV. 672 (1964).

14 Wolfrum, *The Answer to the Plan's Low Cost*, TRIAL, Oct./Nov., 1967, at 47, 48. See also Wolfrum, *Insurance Costs of Basic Protection Plan In Michigan*, Remarks, 1967 U. OF ILL. L.F. 538, 548-49.

15 BASIC PROTECTION § 1.10(a), at 306.

16 *Id.* § 2.3(a), at 309.

17 *Id.* § 1.10(d), at 307.

18 *Id.* § 1.9(c), at 305.

One can easily see that, if the same deductions which are found in the Basic Protection Plan were taken from the present liability insurance policy, the cost would be drastically reduced because there would be virtually no benefits.

Adoption of the Keeton-O'Connell Plan would be most unjust for the vast majority of individuals who have secured for themselves some kind of private health insurance. For example, a union might arrange that instead of a \$5.00 a week pay raise, its members would receive certain sick leave benefits together with an accident and health policy. Assume that at the end of a given number of years, a union member has accumulated five weeks of sick leave benefits and a \$2,000 accident and health policy which he has bought and paid for at the rate of \$5.00 a week. If this man is injured when his car is struck by that of a drunken driver with the result that he is out of work for five weeks and has medical bills of less than \$2,000, he will recover nothing from his own automobile insurance under Basic Protection. Furthermore, he cannot recover from the drunk because the drunk (as well as all other motorists) has an exemption from liability to the extent of the first \$5,000 for pain and suffering or the first \$10,000 for elements of the measure of recovery other than pain and suffering.¹⁹

Now let us further assume that the drunken driver is irresponsible not only in the way he drives his automobile, but also in deliberately failing to purchase or earn any wage income protection and accident and health insurance. If he is injured in the collision, he will be able to recover from his own automobile insurance company. Professors Keeton and O'Connell maintain that there is nothing wrong with this; that a man is not entitled to make a profit from an injury. But the innocent driver who has purchased collateral sources must pay two premiums and yet recover from only one policy to support this philosophy. Under Social Security would we consider telling the retired man who had prudently saved \$20,000 that he must spend and exhaust his savings before he is eligible for Social Security benefits? Professors Keeton and O'Connell would penalize people for being prudent and reward others for being imprudent.

Few will really benefit under the Keeton-O'Connell Plan except those irresponsible drivers who do not have collateral sources. Dr. Calvin Brainard, Chairman of the Department of Finance and Insurance of the University of Rhode Island, has stated that under the Basic Protection Plan:

The only rate classes to obtain appreciable relief from premium costs would be those lying above the over-all average rate — and these are the high risk classes.

[S]ome risk classes, even if they did receive a 25 per cent reduction in premiums, would experience an increase in *real* costs. Their benefits would decrease relatively more than their premium.

For the low risk classes, those which actually suffered an increase in premiums, the increase in real costs would be enormous.²⁰

19 *Id.* § 4.2, at 323.

20 Brainard, *Is Equity of Insurance Being Sacrificed?* TRIAL, Oct./Nov., 1967, at 38, 39. It is interesting to note that Dr. Brainard did a one year study on the economic feasibility of the Keeton-O'Connell Plan under a grant from the Walter E. Meyer Research Institute of Law which is the same foundation that funded Professors Keeton and O'Connell.

Thus, Basic Protection would unfairly discriminate against the good driver in today's low risk class because his premium would no longer be proportionate to the expected cost of his liability protection.²¹

Through the abolition of the traditional concept of damages, Professors Keeton and O'Connell would make another unjust reduction in benefits by refusing to make any payments under the compulsory policy for pain and suffering. They argue that pain and suffering is too intangible to be measured.

However, the authors of the Basic Protection Plan are inconsistent on this point. Although no recovery would be allowed under their compulsory health and accident policy for pain and suffering, they do allow recovery for pain and suffering against the wrongdoer if it is valued in excess of \$5,000. There is no logical reason for establishment of this arbitrary point at which they would allow measurement of pain and suffering. In a suit against a wrongdoer, should a jury find that pain and suffering is valued at \$4,900, the court would have to say, in effect, that pain and suffering is too intangible to be measured. On the other hand, if the verdict were \$5,100, the court would then accept the dollar value given to that pain and suffering. The recovery would not be for \$5,100, however, but only for \$100 since the wrongdoer has an exemption from liability for pain and suffering to the extent of the first \$5,000. Certainly, pain and suffering does not become more tangible when valued at more than \$5,000 merely because Professors Keeton and O'Connell have chosen this as their cut-off point. If the first \$5,000 of pain and suffering is not measurable then how do we arrive at the \$5,000 figure in excess of which pain and suffering is measurable? If pain and suffering really is not capable of measurement, then it is never measurable; but if it is ever measurable, then it is always measurable. By selecting a limit above which pain and suffering can be awarded, Professors Keeton and O'Connell seem to admit that it is measurable.

Although the Keeton-O'Connell Plan would give an exemption from liability up to the first \$5,000 worth of pain and suffering and the first \$10,000 of other damages, it does not exempt a person from being sued. If a holder of just the Keeton-O'Connell compulsory policy is sued, he must retain his own lawyers, investigators and medical experts — all at his own expense. Even if it ultimately develops that the claimant's damages are not in excess of the amount of the exemption or that he is not at fault, the defendant has still had to incur a large expense in order to prove his point. Therefore, as Professors Keeton and O'Connell have admitted, if one wishes to secure liability protection from awards in excess of the \$5,000 exemption, and to have someone to defend him in the event that suit is brought against him, he will have to purchase, at an additional premium, some liability insurance.²²

The cost of such additional liability coverage, contrary to Professor Keeton's belief, would be most substantial. To illustrate, in Massachusetts the minimum compulsory liability policy has a \$5,000/\$10,000 limit. To double this amount

21 "An insurance premium structure is unfairly discriminatory if the premiums are not proportional to the *expected* costs of protection." C. WILLIAMS, *PRICE DISCRIMINATION IN PROPERTY AND LIABILITY INSURANCE* 7 (U. Minn. Studies in Econ. and Bus. No. 19, 1959).

22 Fuchsberg, *Lawyers View Proposed Changes*, 1967 U. OF ILL. L.F. 565, 570.

of coverage costs only 15 percent more than the initial policy premium. This is due to the fact that a large portion of the premium dollar in the original liability package is for the cost of investigation and defense. Under the present system, the cost of administration and the probable cost of defending the suit has already been included in the cost of the basic policy. Thus, when additional coverage is purchased, the added 15 percent simply covers the cost of the exposure of the insurance company to additional liability. But if a Keeton-O'Connell compulsory policyholder wished to purchase \$5,000 worth of liability protection to go with the limited exemption from liability, he would pay substantially more than the 15 percent additional cost for which he can now secure an additional \$5,000 of liability protection. The reason for this is that the basic policy under Keeton-O'Connell is an accident and health policy, not a liability policy, and the entire cost of administration and defense must now be borne by this new liability policy. Thus, for the person who has purchased a liability policy as well as the Keeton-O'Connell health and accident policy, the composite cost will be greater than that of an equal amount of straight liability insurance. But although such an individual has paid more for the same amount of liability protection, look at what he loses in the event that he is injured by a wrongdoer: he loses the benefit of his collateral sources; he loses the first \$100 of economic loss in excess of his collateral sources; he loses an additional 15 percent of his wage loss (above collateral sources and the first \$100 of net economic loss); and he loses the right to recover for at least the first \$5,000 worth of pain and suffering. So the good driver pays more and gets less benefits.

In advocating the adoption of their plan, Professors Keeton and O'Connell contend that the present system is ridden with fraud and clogs our courts, and that their plan, of course, will alleviate these problems. However, the evidence indicates that this argument is not sound.

To the extent that fraud exists in our present system it is regrettable and everything possible should be done to eliminate it, but many responsible critics believe that there will be far more fraud under the Basic Protection Plan. Under the Basic Protection Plan the claimant would be dealing with his own insurance company. Thus, it is contended that a company may well face serious problems of investigation and be pressed into paying exaggerated claims "to protect its business relationship with the insured-claimant" ²³ Similarly, since the claimant must deduct all that he receives or is eligible to receive from collateral sources, can one seriously doubt that there will be a great temptation to many to fraudulently conceal such collateral source benefits in order to prevent a reduction in the amount of recovery under their Basic Protection policies? ²⁴

Under our present adversary system of compensating traffic victims, if a man injures his back by falling down in the bathtub and fraudulently seeks payment for his injuries from automobile liability insurance premium dollars, he must at least allege and prove to the satisfaction of the insurer that he was injured in a motor vehicle accident which was caused by the fault of another.

²³ Marryott, *The Tort System and Automobile Claims: Evaluating the Keeton-O'Connell Proposal*, 52 A.B.A.J. 639, 641 (1966).

²⁴ See, Kemper, *The Basic Protection Plan: Reform or Regression?*, 1967 U. OF ILL. L.F. 459, 465.

However, under the Basic Protection Plan, payment for net economic loss is made for injuries that arise out of the ownership, maintenance or use of a motor vehicle.²⁵ Thus, if one injures his back by falling in the bathtub and again fraudulently seeks to recover Basic Protection insurance premium dollars he need not allege that there was an accident caused by another's fault. Instead, he need only claim that he hurt his back polishing or washing his car, putting in a new battery, or opening the door. Even a drunk who injures his back while stumbling into or falling out of his car could recover.

James Kemper, President and Chairman of the Executive Committee of the Kemper Insurance Group which retained Professors Keeton and O'Connell as independent consultants to help evaluate their Basic Protection Plan, has said that under the plan:

It will be almost impossible to defeat a claim for any household injury, for example, if the claimant asserts he suffered it while getting in or out of his car, washing the car, or otherwise using or maintaining it. . . . We do not believe the Basic Protection Plan will reduce fraud.²⁶

With regard to Professors Keeton and O'Connell's indictment of the tort system for causing court congestion and "delaying (and therefore often denying) justice,"²⁷ none can doubt that in large metropolitan areas court congestion is indeed a great problem. However, many critics of such congestion believe that automobile litigation is not the primary cause of it and that the Keeton-O'Connell Plan would do nothing to alleviate it. G. Joseph Tauro, Chief Justice of the Massachusetts Superior Court, advised Massachusetts Governor John E. Volpe that in Suffolk County (Boston), which has one of the most serious problems of delay in the country, only 13 percent of the total judicial time was devoted to motor vehicle tort cases.²⁸ He pointed rather to the great increase in criminal cases as the reason for court congestion. Judge Tauro further stated that the "assertion that enactment of the Keeton-O'Connell Plan will substantially reduce litigation" is "uncorroborated."²⁹

In fact, there is a definite probability that adoption of the Keeton-O'Connell Plan would increase pressure on the courts rather than diminish it. Since the plan does not set up a separate administrative agency to handle disputes that will arise between claimants and insurers, such disputes will fall upon the courts for disposition.³⁰ Similarly, in attempting to provide comprehensive coverage for

25 BASIC PROTECTION § 104, at 303.

26 Kemper, *supra* note 24, at 465.

27 BASIC PROTECTION 15.

28 Letter from the Honorable G. Joseph Tauro to Governor John A. Volpe of Massachusetts, Aug. 29, 1967, in *Automobile Torts Not A Cause of Court Congestion*, 8 FOR THE DEFENSE 59 (1967).

29 *Id.* at 57.

30 Judge Tauro noted some of these factors when he wrote to Governor Volpe that:

New factual issues, which must ultimately be adjudicated by the courts, may well arise with regard to the preliminary determination of the monetary value of claims for pain and suffering and whether it meets the standards set forth by the Act; the reasonableness of out-of-pocket expenses; the extent of injuries and their causal relationship to an automobile accident; the degree of disability under added protection benefits; and the adjudication of attorneys fees. *Id.* at 59.

every possible contingency, Professors Keeton and O'Connell have made the plan so complex and ambiguous that extensive litigation would no doubt result.³¹ In addition, since the plan creates a compensation system while leaving the tort system in force in cases where the amount recoverable exceeds the exemptions of Basic Protection,

A plaintiff's lawyer would have everything to gain and nothing to lose by trying for a big verdict in a tort suit, secure in the knowledge that he and his client would be taken care of by basic protection no matter what happened in the lawsuit.³²

Thus it appears that even in those jurisdictions such as Cook County, Illinois, where automobile litigation admittedly plays a major role in court congestion, adoption of the Keeton-O'Connell Plan would serve only to compound the problem.

Finally, Professors Keeton and O'Connell urge that the concept of fault is outdated and that in many cases fault can't really be determined. In addition to the fact that there is considerable evidence to rebut this contention,³³ the retention by Keeton and O'Connell of the fault system in the large case, it would seem, effectively destroys their indictment of it.³⁴

III. Conclusion — Full Justice for Deserving Victims

The Basic Protection Plan does not even address itself to most of today's serious problems of automobile insurance, *i.e.*, cancellations, renewals, assigned risks, red lining practices and poorly funded insurance companies. It is our belief that the plan does not effectively solve any of the problems with which it does deal, but only creates new problems which did not previously exist. We do not contend that the present tort system is free from fault, but we believe that rather than abandon our system of justice in favor of another which has far greater faults, we should strive to discover such inequities and injustices as may exist and remedy them, so as to give full justice to all deserving victims.

³¹ Green, *Basic Protection and Court Congestion*, 52 A.B.A.J. 926, 928 (1966).

³² *Id.*

³³ W. BLUM and H. KALVEN, *supra* note 11, at 8-15, and at 31 U. CHI. L. REV. 646-53 (1964).

³⁴ Kalven, *Plan's Philosophy Strikes at Heart of Tort Concept*, TRIAL, Oct./Nov., 1967, at 35, 36. See also Hold, *Critique of Basic Protection for the Traffic Victim—The Keeton-O'Connell Proposal*, INS. L.J., Feb., 1968, No. 541, at 73, 76, where the author notes:

Instead of following the nonfault principle throughout their proposal, the authors [Professors Keeton and O'Connell] incorporate the fault principle just as it is interpreted today. Fault or negligence is the basis for the allocation of damages above and below the stated Basic Protection insurance limits and for types of losses such as property losses which are not covered under the Basic Protection coverage. The justification for allowing fault to continue as a basis for loss allocation appears to be essentially fourfold: (1) to give the Basic Protection Plan public appeal; (2) a desire to place more of the economic burden of accidents on the negligent driver; (3) that damages not covered by Basic Protection are being compensated for through a nonfault system; and (4) to keep whatever deterrent value liability based on fault has on the occurrence of accidents. [Footnote omitted.]