U. S. DEPARTMENT OF LABOR
JAMES J. DAVIS, Secretary
BUREAU OF LABOR STATISTICS
ETHELBERT STEWART, Commissioner

BULLETIN OF THE UNITED STATES BUREAU OF LABOR STATISTICS · · No. 385

WORKMEN'S INSURANCE AND COMPENSATION SERIES

PROCEEDINGS OF THE ELEVENTH ANNUAL MEETING

OF THE

INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS

HELD AT HALIFAX, NOVA SCOTIA
AUGUST 26-28, 1924

MAY, 1925

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ANNUAL MEETINGS AND OFFICERS OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS

Annual meetings			President	Secretary-treasurer
No.	Date	Place		
1	Apr. 14, 15, 1914	Lansing, Mich	John E. Kinnane	Richard L. Drake.
(1)	Jan. 12, 13, 1915	Chicago, Ill	do	Do.
2	Sept. 30–Oct. 2, 1915	Seattle, Wash	do	Do.
3	Apr. 25–28, 1916	Columbus, Ohio	Floyd L. Daggett	L. A. Tarrell.
4	Aug. 21–25, 1917	Boston, Mass	Dudley M. Holman	Royal Meeker.
5	Sept. 24–27, 1918	Madison, Wis	F M. Wilcox	Do.
6	Sept. 23–26, 1919	Toronto, Ontario	George A. Kingston	Do.
7	Sept. 20–24, 1920	San Francisco, Calif	Will J. French	Charles H. Verrill.
8	Sept. 19–23, 1921	Chicago, Ill	Charles S. Andrus	Ethelbert Stewart.
9	Oct. 9–13, 1922	Baltimore, Md	Robert E. Lee	Do.
10	Sept. 24–26, 1923	St. Paul, Minn	F. A. Duxbury	Do.
11	Aug. 26–28, 1924	Halifax, N. S	Fred W. Armstrong	Do.

[1] Special meeting.

BULLETIN OF THE

U. S. BUREAU OF LABOR STATISTICS

NO. 385 WASHINGTON MAY, 1925

PROCEEDINGS OF THE ELEVENTH ANNUAL MEETING OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS, HALIFAX, N. S., AUGUST 26-28, 1924

TUESDAY, AUGUST 26—MORNING SESSION

CHAIRMAN, FRED W. ARMSTRONG, PRESIDENT I. A. I. A. B. C.

The eleventh annual meeting of the International Association of Industrial Accident Boards and Commissions was called to order by the president, Mr. Fred W. Armstrong. Addresses of welcome were delivered by Hon. E. H. Armstrong, Premier of the Province of Nova Scotia, and Hon. John Murphy, mayor of Halifax, to which response was made by F. A. Duxbury, of the Minnesota Industrial Commission, a former president of the association.

ADDRESS OF THE PRESIDENT

BY FRED W. ARMSTRONG, PRESIDENT I. A. I. A. B. C.

It is a pleasure for me to welcome you to the eleventh annual meeting of the International Association of Industrial Accident Boards and Commissions. This is the first meeting in the new decade. Ten meetings have passed and gone. This is perhaps a time when it might be well to ask ourselves if we have justified our existence. Have we acquired anything of value in the meetings we have held? The objects of the association as laid down in the by-laws are very broad, and as we glance over them we must feel that we have fallen short of dealing with all the subjects mentioned. It may be that we have tried to grasp too much, but the printed proceedings, while recording many things, do not tell all—the quiet talks and the discussions after our regular meetings, the personal touch, the letters from one commissioner to another asking, "What would you do in a case like this?" or "How does your board handle claims of this kind?" These are the things that count.

The printed proceedings are a mine of valuable information in regard to the work of the association, the following features of which are outstanding:

1. Classification of industries, which is the basis of a large percentage of rating schedules.
2. Standard permanent disability schedule.
3. Standardization of claim procedure.
4. Standard eye disability schedule now under consideration.
5. Acting as sponsor for safety codes.

These and many other items have added greatly to the literature and helped new commissions and boards to get a grip on the tasks which they assumed. All this could never have been accomplished unless we had been able to meet together and to know each other personally. It is the personal touch that counts.

I would bring before the association the loss which we have sustained in the past year in the death of Carl Hookstadt, of the United States Bureau of Labor Statistics. No person, in my opinion, had a better knowledge of compensation laws, of what a compensation act should be, and of the proper method of administering the same than Mr. Hookstadt. By his death the association loses a very valuable member. This matter will be brought before the meeting at a later date.

The program for this meeting is very interesting, and I trust that every person present will carry away valuable information and be greatly benefited by the papers read and the discussions which ensue.

BUSINESS MEETING

The president declared the meeting open for business and presented the report of the executive committee. The following committees were appointed:

Committee on nominations.—George A. Kingston, Ontario, chairman; Richard J. Cullen, New York; Ralph Young, Iowa; Fred M. Williams, Connecticut; L. A. Tarrell, Wisconsin; F. A. Duxbury, Minnesota; Joseph A. Parks, Massachusetts.

Committee on resolutions.—O. F. McShane, Utah, chairman; Miss Rowena Harrison, Maryland; William M. Scanlan, Illinois; G. N. Livdahl, North Dakota; Thomas Duffy, Ohio; H. G. Wilson, Manitoba.

Auditing committee.—J. P. Gardiner, Minnesota; William H. Horner, Pennsylvania; A. E. Brown, Maryland.

The president referred to the continued illness of Hon. Ethelbert Stewart, the secretary-treasurer of the association, necessitating his absence from the meeting and stated that Charles E. Baldwin, Assistant Commissioner of Labor Statistics, was present to represent him. On motion, duly seconded, Mr. Baldwin was elected acting secretary of the association. On motion of Mr. Kingston, duly seconded, it was voted to send a telegram to Mr. Stewart, expressing the sympathy of the association in his serious illness.

On motion, duly seconded, it was voted to adopt Bulletin No. 359 of the Bureau of Labor Statistics as the minutes of the last meeting of the association, the reading of which was dispensed with.

Charles E. Baldwin presented the report of the secretary-treasurer of the association covering the business for the past year, together with the financial statement.

REPORT OF THE SECRETARY

The International Association of Industrial Accident Boards and Commissions now includes 33 active members:

United States Bureau of Labor Statistics.
United States Employees' Compensation Commission.
Connecticut Board of Compensation Commissioners.
Georgia Industrial Commission.
Hawaii Industrial Accident Boards (counties of Kauai, Maui, Hawaii, and Honolulu).
Illinois Industrial Commission.

Iowa Workmen's Compensation Service.
Kansas Court of Industrial Relations.
Maine Industrial Accident Commission.
Maryland State Industrial Accident Commission.
Massachusetts Industrial Accident Board.
Michigan Department of Labor and Industry.
Minnesota Industrial Commission.
Montana Industrial Accident Board.
Nevada Industrial Commission.
New Jersey Department of Labor.
New York Department of Labor.
North Dakota Workmen's Compensation Bureau.
Ohio Industrial Commission.
Oklahoma Industrial Commission.
Oregon State Industrial Accident Commission.
Pennsylvania Department of Labor and Industry.
Utah Industrial Commission.
Virginia Industrial Commission.
Washington Department of Labor and Industries.
West Virginia State Compensation Commissioner.
Wisconsin Industrial Commission.
Wyoming Workmen's Compensation Department.
Department of Labor of Canada.
Manitoba Workmen's Compensation Board.
New Brunswick Workmen's Compensation Board.
Nova Scotia Workmen's Compensation Board.
Ontario Workmen's Compensation Board.

The Maine Industrial Accident Commission has rejoined the association after dropping out for one year.

The United States Bureau of Labor Statistics, the United States Employees' Compensation Commission, and the Department of Labor of Canada are exempt from the payment of dues.

The following are associate members:

Idaho Industrial Accident Board.
Industrial Accident Prevention Association, Toronto, Ontario.
Porto Rico Workmen's Relief Commission.
Republic Iron and Steel Co., Youngstown, Ohio.

The Canadian National Safety League has resigned as an associate member since the last meeting.

At the St. Paul convention Mr. Fred W. Armstrong, of Nova Scotia, was elected president of the association for this year, but owing to the location of Halifax, the place of holding the eleventh annual meeting was not decided upon, but was left to the executive committee for decision. Accordingly a letter ballot was taken, and a majority of the executive committee voted for Halifax.

During the year no meeting of the executive committee was held.

On May 7, 1924, a meeting of a subcommittee of the executive committee, composed of the president, the secretary, and Dr. Royal Meeker, was held in the office of the secretary in Washington, D. C., at which meeting a program for the Halifax convention was arranged. Mr. Charles H. Verrill attended this meeting by invitation.

On December 3, 1923, the Secretary of Labor, through the United States Bureau of Labor Statistics, called a conference of representatives of the more important industrial States for the purpose of working out specific plans for compiling industrial accident rates. At this conference it was agreed that the committee on statistics and compensation insurance costs of the International Association of Industrial Accident Boards and Commissions should prepare the necessary standard classifications and formulate uniform methods and definitions for the use of those jurisdictions undertaking this work. Accordingly the committee on statistics and compensation insurance costs held a meeting in Washington, D. C., on January 3, 1924, at which meeting such definitions and methods were worked out.

On February 1, 1924, a letter was sent out to the membership of the association by the secretary, taking a vote as to the desirability of the United States Bureau of Standards conducting tests of elevator safety devices. The vote was in the affirmative, and the ballot was referred to the Bureau of Standards for its action thereon.

At the St. Paul convention it was suggested that the paper on "The differential diagnosis between organic and functional nervous conditions following injury," which was given at that meeting by Dr. Arthur S. Hamilton, of Minneapolis, Minn., be printed and distributed to the membership of the association. This was done.

The death of Mr. Carl Hookstadt, of the United States Bureau of Labor Statistics, on March 10, 1924, in St. Paul, Minn., is a loss which will be seriously felt by the association, and has made it necessary to postpone work which the Bureau of Labor Statistics had under way, and still other work that had been planned in the interest of the association, in the prosecution of which his services would have been utilized.

One of the activities delayed by the death of Mr. Hookstadt was taking up the subject of experience of the various boards and commissions relative to remarriage of widows, for the purpose of developing an American remarriage table, since the Dutch table is believed by most students to be inadequate in itself and not at all applicable to American conditions. A circular was, however, sent out during the latter part of July, to which a number of interesting responses have been received, and it is hoped that by the next convention something definite upon this subject can be reported.

During the past year the following persons represented the International Association of Industrial Accident Boards and Commissions upon the safety code correlating committee of the American Engineering Standards Committee:

Representatives.—Martin H. Christopherson, Department of Labor of New York; Ethelbert Stewart, United States Bureau of Labor Statistics; C. H. Kunneman, Industrial Commission of Illinois; Royal Meeker, Department of Labor and Industry of Pennsylvania.

Alternates.—Henry McColl, Industrial Commission of Minnesota; G. R. Yearsley, Industrial Commission of Utah; H. R. Witter, Department of Industrial Relations of Ohio.

The association approved the woodworking safety code, for which it was a joint sponsor with the National Bureau of Casualty and Surety Underwriters, and on July 21, 1924, forwarded the code to the American Engineering Standards Committee for its approval. The code is now in the hands of the American Engineering Standards Committee and when approved by that committee will be published as a bulletin of the United States Bureau of Labor Statistics. The Bureau of Labor Statistics has published the following safety codes to date, in the formulation of which the association took part:

Bul. No. 331. Code of lighting: Factories, mills, and other work places.
Bul. No. 336. Safety code for the protection of industrial workers in foundries.
Bul. No. 338. Safety code for the use, care, and protection of abrasive wheels.
Bul. No. 351. Safety code for the construction, care, and use of ladders.

It now has in press the following:

Bul. No. 364. Safety code for mechanical power-transmission apparatus.
Bul. No. 375. Safety code for laundry machinery and operations.

The following codes are still in process of formulation; and with the exception of the safety code for conveyors and conveying machinery, on the sectional committee for which Mr. Cyril Ainsworth of the Department of Labor and Industry of Pennsylvania was appointed to take the place of Mr. James C. Cronin, the association was represented on the various committees by the same men who were appointed to represent it previous to the tenth annual convention:

Building exits.
Compressed-air machinery.
Conveyors and conveying machinery.
Electrical power control.
Elevators.
Floor openings.
Forging industry.
Gas.
Head and eye.
Machine tools.
Refrigeration.
Sanitation.
Walkway surfaces.

Since the tenth annual convention the association has appointed the following men to represent it upon the sectional committees formulating the codes indicated:

National electrical code.—Sponsored by the National Fire Protection Association. Association represented by Rowland H. Leveridge, Department of Labor of New Jersey.

National electrical safety code.—Sponsored by the United States Bureau of Standards. Association represented by L. W. Chaney, United States Bureau of Labor Statistics.

Rubber manufactures safety code.—Sponsored by International Association of Industrial Accident Boards and Commissions, and National Safety Council. Association represented by L. W. Chaney, United States Bureau of Labor Statistics, Rowland H. Leveridge, Department of Labor of New Jersey, and Robert E. Lee, of the Firestone Tire and Rubber Co. (appointed through the Department of Industrial Relations of Ohio).

It was suggested that the International Labor Office at Geneva be requested to send a representative of that organization to this convention. After a favorable vote of the executive committee an invitation was accordingly sent but I have not been officially advised as to whether or not that organization will be represented at the eleventh annual meeting of the association.

An invitation to attend the eleventh annual meeting of the association was sent to the representatives of the Central and South American Governments, and I was advised that several Governments would have representatives at this meeting. The Government of Peru definitely delegated Dr. Santiago F. Bedoya, who we are glad to say is represented on the program for a paper at this convention. Mr. J. Dâmasco Fernández has been delegated by the Mexican Government to attend this convention, and though his name was sent in too late to be included on the printed program I trust that he will enter into the discussion.

The proceedings of the St. Paul convention have been issued by the Bureau of Labor Statistics as its Bulletin No. 359, and copies are available for members who desire them at the headquarters here in Halifax.

In closing I would refer again to the seriousness of the loss of Mr. Carl Hookstadt. As much as the United States Bureau of Labor Statistics may wish to further studies of value and importance to the work of this association, it will be some time before a man can be developed with such a fund of information concerning workmen's compensation laws and their administration, together with such personal enthusiasm and untiring interest and energy in planning and executing studies of interest to the association and to each and every one of its members, as Mr. Hookstadt possessed.

Respectfully submitted.

ETHELBERT STEWART,
Secretary-Treasurer.

AUGUST 15, 1924.

FINANCIAL STATEMENT OF THE SECRETARY-TREASURER, SEPTEMBER 15, 1923, TO AUGUST 15, 1924

BALANCE AND RECEIPTS

1923			
Sept.	15.	Balance (bank deposits, $1,098.19; Liberty bonds, $1,700; Canadian bonds, $500; unexpended postage and telegraph fund, $1.66)	$3,299.85
Oct.	8.	Manitoba Workmen's Compensation Board, 1924 dues (Canadian exchange deducted)	49.10
	10.	Washington Department of Labor and Industries, 1924 dues	50.00
	13.	Pennsylvania Department of Labor and Industry, 1924 dues	50.00
	16.	Interest on Liberty bonds	14.88
	23.	Montana Industrial Accident Board, 1924 dues	50.00
1924			
Jan.	22.	Porto Rico Workmen's Relief Commission, associate membership dues, 1924	10.00
	24.	New Jersey Department of Labor, 1924 dues	50.00
Apr.	16.	Interest on Liberty bonds	14.87
	18.	Nevada Industrial Commission, 1924 dues	50.00
July	1.	Interest on bank account	11.10
	11.	Republic Iron and Steel Co., associate membership dues, 1925	10.00
	11.	Industrial Accident Prevention Associations, associate membership dues, 1925 (Canadian exchange deducted)	9.88

1924			
July	11.	West Virginia Workmen's Compensation Commissioner, 1925 dues	$50.00
	11.	Maryland Industrial Accident Commission, 1925 dues	50.00
	12.	Manitoba Workmen's Compensation Board, 1925 dues (Canadian exchange deducted)	49.35
	19.	Nevada Industrial Commission, 1925 dues	50.00
	21.	Kansas Court of Industrial Relations, 1925 dues	50.00
	23.	Minnesota Industrial Commission, 1925 dues	50.00
	25.	Wisconsin Industrial Commission, 1925 dues	50.00
	25.	Ohio Industrial Commission, 1925 dues	50.00
	28.	Michigan Department of Labor and Industry, 1925 dues	50.00
	28.	Iowa Workmen's Compensation Service, 1925 dues	50.00
Aug.	1.	New Brunswick Workmen's Compensation Board, 1925 dues (Canadian exchange deducted)	49.85
	2.	Connecticut Workmen's Compensation Commissioner, second district (Dr. James J. Donohoe), 1925 dues	10.00
	4.	Georgia Industrial Commission, 1925 dues	50.00
	7.	Massachusetts Industrial Accident Board, 1925 dues	50.00
	8.	Wyoming Workmen's Compensation Department, 1925 dues	50.00
	11.	Connecticut Workmen's Compensation Commissioner, first district (Leo J. Noonan), 1925 dues	10.00
	15.	Unexpended postage fund	4.03
			4,392.91

(Receipts for the year, $1,093.06.)

DISBURSEMENTS

1923			
Sept.	15.	Unexpended postage and telegraph fund	$1.66
	26.	Louise E. Schutz, services at tenth annual convention	25.00
Oct.	5.	Ethelbert Stewart, expenses attending tenth annual convention over amount allowed by Bureau of Labor Statistics (authorized by executive committee at Chicago convention)	44.00
	6.	Enterprise Printing Co., printing 3,000 addresses of Mr. F. A. Duxbury, $27; 500 programs (reprinted at St. Paul), $24.75; 200 registration cards (reprinted at St. Paul), $4.50	56.25
	6.	Mills & Bell Motion Pictures (Inc.), projection and operators' services, tenth annual convention	20.00
	24.	Eva M. Taylor, partial payment stenographic services, 1923–24	50.00
	24.	Glenn B. Lumpkin, as above	50.00
	31.	Ethelbert Stewart, honorarium, 1923–24	300.00
Nov.	6.	Postage and telegraph fund	5.00
	8.	Maryland Casualty Co., bonding treasurer	12.50
	27.	Master Reporting Co., reporting tenth annual convention	232.22
Dec.	5.	Gibson Bros. (Inc.), printing 2,000 letterheads	30.00
	7.	Glenn B. Lumpkin, stenographic services, 1923–24, partial payment	45.00
	7.	Eva M. Taylor, as above, balance, 1923–24	45.00
	17.	Postage and telegraph fund	5.00
1924			
Mar.	6.	Gibson Bros. (Inc.), 1,000 letterheads (reprinted on account of changes in personnel of committees)	17.50
	11.	Postage and telegraph fund	10.00
Apr.	5.	Gude Brothers Co., flowers for funeral of Carl Hookstadt, $10; telegraphing of flowers, $1.16	11.16
May	8.	Ethelbert Stewart, luncheon to subcommittee of executive committee in re program	6.25
	15.	F. W. Armstrong, expenses at subcommittee meeting in re program, May 8, 1924	159.43
	31.	Royal Meeker, as above	13.95

1924		
July 2.	Glenn B. Lumpkin, balance, stenographic services, 1923–24	$25.00
		1,164.92
Aug. 15.	Balance (bank deposits, $1,023.96; Liberty bonds, $1,700; Canadian bonds, $500; unexpended postage and telegraph fund, $4.03)	3,227.99
		4,392.91

Approximately $40, interest on coupon bonds, is not included in this statement, as the secretary-treasurer, on account of illness, has been unable to go to the bank to open his safety deposit box containing the bonds. Money in bank beginning of fiscal year (September 24, 1923, date of tenth annual convention), $1,098.19, and $1,700 invested in Liberty bonds, as well as $500 in Canadian bonds. Receipts for year ending August 15, 1924, shown in detailed statement, $1,093.06; disbursements total $1,164.92, as shown in detailed statement.

The following checks were received after the bank book was sent to the bank to be balanced and therefore are not included in the balance and receipts:

Oklahoma Industrial Commission, 1925 dues	$50
Connecticut workmen's compensation commissioner, third district, 1925 dues	10
Connecticut workmen's compensation commissioner, fourth district, 1925 dues	10
Connecticut workmen's compensation commissioner, fifth district, 1925 dues	10
Illinois Industrial Commission, 1925 dues	50

Check for active membership dues has been received from Nova Scotia, but report has not yet come from the bank as to the amount deducted for exchange.

BILLS RECEIVABLE

Hawaii Industrial Accident Boards	$50
Maine Industrial Accident Commission	50
Montana Industrial Accident Board	50
New Jersey Department of Labor	50
New York Department of Labor	50
North Dakota Workmen's Compensation Bureau	50
Oregon Industrial Accident Commission	50
Pennsylvania Department of Labor and Industry	50
Utah Industrial Commission	50
Virginia Industrial Commission	50
Washington Department of Labor and Industries	50
Ontario Workmen's Compensation Board	50
Idaho Industrial Accident Board	10
Porto Rico Workmen's Relief Commission	10
	620

Several of the above States have sent vouchers to be sworn to in order to pay dues through regular channels.

The following bonds are in safety deposit box S–363, National Savings & Trust Co., Washington, D. C., Ethelbert Stewart:

No. 1217874	$100
No. 1217875	100
No. 236204	500
Unregistered bond	1,000
Dominion of Canada bonds (5) Nos. 1852–1856, inclusive, at $100 each	500
	2,200

Respectfully submitted.

ETHELBERT STEWART,
Secretary-Treasurer.

AUGUST 15, 1924.

The following report of the secretary on the experience of the States and Provinces in regard to remarriage of widows, the data being obtained through a questionnaire sent out in accordance with the recommendation of the committee on statistics and compensation insurance costs, was read by Charles E. Baldwin, acting secretary.

REPORT OF THE SECRETARY RELATIVE TO EXPERIENCE OF THE STATES AND PROVINCES IN REGARD TO REMARRIAGE OF WIDOWS

It is not believed that the Dutch remarriage table, now generally in use, correctly reflects American conditions, and the St. Paul convention of the International Association of Industrial Accident Boards and Commissions referred to the executive committee the question of preparing and compiling material for a remarriage table based on American experience.

Accordingly, on July 23, 1924, a letter was sent out from the office of the secretary to every compensation board and commission in the United States and Canada, inclosing a questionnaire based upon the recommendations of the committee on statistics and compensation insurance costs published in Bulletin No. 276 of the United States Bureau of Labor Statistics, and requesting statistics relative to the experience of the States and Provinces along this line.

To date 24 replies have been received. Of these, five—Oregon, North Dakota, Alberta, New Brunswick, and Vancouver—sent statistics of their experience. Some of these do not give all the desired information and it will be necessary to communicate with such boards further. It is also hoped that additional reports will be received later. Therefore these statistics have not been brought together in one compilation as yet but are being held until further material is available.

Two States—Maryland and Vermont—stated that they would give information as soon as possible.

Virginia will not have any records showing the maximum possible time of exposure of widows to the remarriage hazard until January 1, 1925, and then the number will be very small, but by January, 1926, it will be in a position to give full experience in all fatal cases in which widows are awarded compensation for the year 1919.

Minnesota has no information at present, but a new statistical bureau is being organized for the purpose of tabulating compensation data from 1921 to the present time, and it is possible that information relative to remarriage of widows can be furnished at a later date.

The State Insurance Commissioner of Washington uses the Dutch remarriage table when setting up the reserve for widows. It is stated that he has thought of making a special investigation into the experience of remarriages, but so far nothing has been done.

Tennessee states that the act is administered by the courts, and that though it would be possible to obtain the desired information from the annual reports, the office force is not sufficiently large to allow of doing such work. On the first of the year, when the yearly report is compiled, it will make special notice of same and give the requested information concerning the present year's experience.

Nebraska states that it has not a sufficiently large office force to compile such figures, but that it would be very glad to assist anyone who might be sent to do the work, and that the records and files would be placed at his command.

Montana has not sufficient funds to do the work, which would require going over 50,000 or 60,000 cases.

Alabama is also unable to furnish information because of lack of funds.

In Kansas the compensation law is administered by the courts, and the law provides that dependents of deceased workmen shall receive three times the average yearly wage of the deceased.

Oklahoma has no law allowing compensation for dependents, as at death the commission loses jurisdiction, due to the constitution prohibiting the legislature from making a law limiting the amount for death.

The States listed below stated that they are unable to furnish the information requested:

California (law makes no deduction for remarriage).
Louisiana (law under court administration).

Maine.
Michigan (does not compile statistics).
New Hampshire.
Ohio (law makes no deduction for remarriage).
Rhode Island (records not kept in form requested).
South Dakota (no provision for collecting statistics).

Much more complete information would have been furnished to this convention had not the death of Mr. Carl Hookstadt, of the United States Bureau of Labor Statistics, occurred, as this was one of the subjects assigned to Mr. Hookstadt, and the work was very much delayed because of his death. Nevertheless, it is thought that the material above outlined is a definite beginning, and it is hoped that adequate statistics upon which to base an American remarriage table can be furnished to the next convention.

ETHELBERT STEWART,
Secretary-Treasurer.

AUGUST 21, 1924.

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CHAIRMAN, WILLIAM M. SCANLAN, CHAIRMAN ILLINOIS INDUSTRIAL COMMISSION

The CHAIRMAN. The first item on the program is the presentation of the report of the committee on forms and procedure, by Miss R. O. Harrison.

Miss HARRISON. Before presenting the report of the committee on forms and procedure I wish to say to the delegates of this convention that it does not contain the recommendations that I, as chairman of the committee, had hoped to present at this convention.

Early in April a letter was written to each member of the committee, requesting him to name a time and place for a committee meeting which would make his attendance possible. Chicago was decided upon as the place of meeting and immediately after the convention of governmental labor officials as the time.

Realizing that not all of the members could be present at the meeting, a letter was written to each one, requesting that he send to the committee, especially if he could not be present, three suggestions for greater efficiency in the administration of compensation provisions, so that even if he could not be present we would have his recommendations for consideration.

Four members were present at this meeting. Not a single suggestion was received from the absent members. Those present were A. J. Altmeyer, of Wisconsin; H. M. Stanley, of Georgia; A. W. Becker, of Illinois; and myself. We were glad to have with us Mr. Ethelbert Stewart, United States Commissioner of Labor Statistics.

REPORT OF COMMITTEE ON FORMS AND PROCEDURE FOR COMPENSATION ADMINISTRATION

SUGGESTIONS AS TO IMPROVEMENT OF WORKMEN'S COMPENSATION ADMINISTRATION

The committee on forms and procedure for compensation administration appointed by the executive committee of the International Association of Industrial Accident Boards and Commissions to offer further suggestions that will be of some value in aiding the commissions to improve their administrative procedure presents the following suggestions:

1. Reviews of awards shall be granted only in the discretion of the administrative board upon the ground of a change in conditions or the discovery of material new evidence.

Some States have no power to deny petitions for review, and in such States it will be necessary to seek remedial legislation.

The purpose of this recommendation is to avoid the necessity of considering the same contention more than once.

2. Administrative boards shall, whenever it is impossible to determine the extent or duration of disability at the time of hearing, exercise continuing jurisdiction, issuing interlocutory orders only.

The purpose of this recommendation is apparent. It is highly important that boards have the power to hold in abeyance the determination of the extent of disability while making findings on all other issues. They then have an opportunity to direct payment of compensation clearly due while keeping the injured employee under observation until his condition becomes fixed and determinable.

3. The wage basis of a part-time employee or an employee who divides his time between two or more employments shall be the full-time wage in the employment in which he was injured.

The theory underlying this recommendation is that the industry causing the accident shall bear the burden. At first glance it may appear unfair that a part-time employee should be compensated on the basis of a full-time wage. However, when it is remembered that the likelihood of injury is reduced accordingly, it will be seen that the industry does not bear any greater cost than in the case of full-time workers. Looking at it from the injured employee's standpoint, it is obvious that he must live on a full-time basis regardless of the fact that he may have been working on a part-time basis.

4. The administrative board should not be bound by the common-law or statutory rules of evidence or by any technical or formal rules of procedure.

There is a difference of opinion among students of the commission plan of administrative justice as to whether there must be a residual amount of evidence which would be admissible in a court of record on which to base an award. They are agreed, however, that administrative boards should not be hampered by court rules of procedure in the introduction of evidence and the hearing of a case. The function and the superiority of an administrative board lie primarily in the investigation of facts. Hearings should be public and no ex parte evidence should be taken without giving the party adverse in interest opportunity to refute it. This is a part of what is meant by due process of law. However, if technicalities and formalities are permitted to creep into the procedure, the peculiar advantage possessed by administrative boards over courts ceases.

5. No compromise of a claim shall be valid without the approval of the administrative board.

One of the purposes of a compensation act is to protect the injured employee from being overreached by unscrupulous employers and insurance companies. An administrative board is not merely a quasi court adjusting disputes brought before it, but it is also a legislative agency acting as a protector of the weaker party.

6. No final settlement receipt should be accepted by the commission without the written signature of the injured employee or his mark of acknowledgment. If the injured party refuses to sign the receipt, the reason for his refusal should be set out in the place provided for the signature.

This requirement also protects the injured employee. It prevents the closing of the case until the injured employee feels that he has recovered sufficiently to have his compensation cease.

7. The committee recommends that but few lump sums be granted.

It is contended that an injured employee could not get his wages in a lump sum, and as compensation is to take the place of wages a lump sum should not be granted unless there is absolute assurance that the granting of a lump sum will inure to the best interests of the injured employee.

FORMS

This committee has been requested to prepare standard forms, the complaint being that there are forms of various sizes, some calling for an abundance of information and others for only a reasonable amount, and that if they could be made uniform much good would result. It seems to be practically impossible to work out a standardized or uniform system of forms to be used by all the States. From the interchange of ideas and suggestions resulting from the meetings and sessions held by the committee, whose members come from various sections of the country, the committee recommends that each and every commission prepare, adopt, and use the simplest forms possible under its law and the industrial conditions existing in the particular State. If all commissions will go over their forms and eliminate questions that are not of much use, it is believed that better results will be obtained, and more genuine cooperation will be secured from the employer if he is impressed with the reasonableness and brevity of the information required of him on the accident report.

As to the employee, no argument is required to convince one that his interest will be best subserved when the claim form to be filled out by him is prepared in accordance with the greatest possible simplicity and clearness, eliciting only such information as is essential in arriving at a proper conclusion in disposing of his case.

We want to say to the members present that we do not feel that the work that can be accomplished by such a committee is completed. If all of the members could get together once a year and exchange ideas on forms and methods of procedure, giving two days to this work, it is our belief that the work of commissions could be simplified, duplication could be cut down to the point that it would not interfere with the respective rights of employer and employee, and valuable suggestions could be made annually to this convention, not to speak of the benefit it would be to each individual attending the meeting. However, this committee, for the past three years functioning as best it could, realizes that its endeavors may not have been as fruitful as might be desired. Nevertheless, it is hoped that as time passes some of the suggestions offered by it may be of aid to those endeavoring to assimilate the best there is in the various compensation acts. With this thought in mind we respectfully ask that the committee be discharged.

DISCUSSION

[It was moved and seconded that the report of the committee on forms and procedure be received, spread at length upon the minutes, adopted, and the committee discharged, in accordance with the request of its chairman.]

The CHAIRMAN. It has been moved and seconded that the report of the committee be received, spread upon the minutes, and the committee discharged. Are there any remarks upon the question?

Mr. PARKS. I would like to ask a question of the chairman of the committee concerning recommendation No. 6. The report states, "This requirement also protects the injured employee. It prevents the closing of the case until the injured employee feels that he has recovered sufficiently to have his compensation cease." May I ask the chairman of the committee if in any State a final settlement receipt does close out the employee's rights? I am led to believe by that statement that the committee is of the opinion that it does.

Miss HARRISON. It does in Maryland, but the case can be reopened; that is, the employee is required to sign the final receipt to close the case—to stop payments under the commission's order, so to speak. When he signs that receipt his disability is supposed to have ceased. If he is not able to go to work and has to have his money and he does not sign it, then, you see, the case is not closed. If he does sign it, then it is closed until reopened by the board.

Mr. PARKS. Then it can be reopened at any time. If he does sign it under the apprehension that his disability has ceased, when, in fact, it has not ceased and the disability continues, then he can have his case reopened.

Miss HARRISON. On the final receipt we want the reasons for his refusal to sign it.

Mr. PARKS. Why the necessity of that last paragraph, then?

Miss HARRISON. It prevents the closing of the case until the employee feels that he has recovered sufficiently to have his compensation cease. That is the way the committee felt about that. If there is any reason for not signing we want to know it. It may be that in a good many cases the final receipts are sent in and the case closed without the claimant's signature, you understand.

Mr. PARKS. I know only what we do in Massachusetts. The final settlement receipt does not mean a thing. It merely gives the insurance company permission to stop his compensation temporarily. If in fact the disability continues to exist, all he has to do is to demonstrate that fact to the board and his compensation will commence again. Signing the settlement receipt does not close out his rights.

Miss HARRISON. If he does not sign it, there certainly is some reason for it. If the insurer or employer is going to close the case anyway, it is apt to send the report in without his signature, and we, thinking it to be just a copy, might accept it. The idea is not to accept this final receipt without the original. Let the insurer or employer send us the original or the reason why the signature is not there.

Mr. ARCHER. Personally, I think the report is commendable and I am happy to say that in the New York jurisdiction each one of these recommendations obtains as an established practice.

With respect to No. 6 and the taking of the final receipt, the practice in New York is to require the taking of a receipt for each payment of compensation to an injured workman. Hearings are

had in all cases, and it may be, where there is continuing disability, that there are a number of hearings, but the taking of a final receipt renders it incumbent on the part of the insurance carrier or the employer paying compensation thereupon to notify the industrial commissioner of the cessation of payments. That in itself sends the case to the calendar for a final hearing, at which time, upon the call of the calendar, the claimant, presumably present, has the right and the opportunity to say whether or not he is still disabled. The whole practice in that respect grew out of New York's conviction that there should be a hearing in each individual case.

Perhaps a remark should be made with respect to No. 1, in which it is recommended that reviews of awards shall be granted only in the discretion of the administrative board. New York happens to have the dual system of an administrator or an executor in the person of the industrial commissioner, aided by an industrial board, which is the judicial body. In our jurisdiction rehearings may be granted either by the industrial commissioner, the chairman of the industrial board, or the referee who last heard the case. The practice tends, however, to throw such applications for review into the hands of the chairman of the industrial board in order that a uniform practice may obtain.

With respect to the final recommendation as to the brevity of forms, I am in full accord. I have been in this work now for 13 years and have gone through all sorts of experiences with forms, long and short, and I agree with the chairman of the committee in her report and in the statement she made on the floor that the shortest forms consistent with doing justice to all parties are a desirable thing.

Mr. PARKS. Perhaps I ought to make myself a little clearer. I do not know how many States have the same procedure as we have in Massachusetts. Where an employee is injured the insurance company—we have nothing but insurance companies—makes an agreement with the injured employee. Once having made that agreement with the employee, compensation can not cease without his permission or the permission of the industrial accident board or a member thereof. He gives permission by signing a settlement receipt. That is, he did up to a month or so ago, when we changed the system. We substituted for the settlement receipt a form, stating, "I hereby give permission to have my compensation discontinued."

We found some abuses cropping up in the signing of settlement receipts. The injured man would be told various things about the settlement receipt and he would sign it not knowing that it stopped the compensation. Now, we want him to know that unless he signs this agreement which reads, "I hereby agree to discontinuance of my compensation," his compensation can not stop unless the board says so. However, if perchance he does sign it, his rights do not stop. If later he has a disability, all he has to do is to let the board know it and the board gives him a hearing. It may be done at a conference or a hearing. Notwithstanding the fact that he has signed that so-called settlement receipt, his rights are wide open.

The receipt merely acts as a stoppage of compensation for the time being.

From what I know about the compensation game—I have been in it for nearly 13 years in Massachusetts—I think this is an excellent report. I particularly like No. 4, which says that, "The administrative board should not be bound by the common-law or statutory rules of evidence or by any technical or formal rules of procedure." They have crept into the law in Massachusetts, unfortunately. I say unfortunately, because I do not think they belong in the administration of a compensation act.

I should like to see this convention do something more than merely to adopt this report and then to file it. I think the report is worth something, and that it should be sent broadcast. The rest of the United States should know that this convention went on record as opposed to having common-law rules of evidence govern hearings before the administrative boards under this act. It is an excellent suggestion.

I think that in Massachusetts we now follow all of the other suggestions.

Mr. KINGSTON. Coming from a jurisdiction that is exclusively State fund, if I may use the term—that is, the administrative board has entire charge of the handling of the claims as well as the handling of the State fund—the problems that are presented in some of these suggestions do not find a place with us, but I should like to say, with reference to the suggestion of a receipt, that it seems to me that the signing of a receipt under such a law as we are administering here should have no place at all.

I do not believe that we should ask the workman for a receipt and I do not believe it should be necessary. Where the amount of compensation is entirely a matter for the board to determine, why the necessity of a receipt at all? The insurance company, I know, always wants a receipt to close its case formally, but you will all admit that the signing of a receipt really does not mean anything so far as closing a man's real rights are concerned. Then why go to the trouble of getting a receipt?

I presume all compensation in all jurisdictions is paid by check. That check should state on its face what it actually represents, and if you want to indicate to a man that his case is closed, why it is a very simple matter to put on the words "final compensation" or "compensation in full" or something like that.

With us, when it comes to a case of final compensation, we use the words "in full." Sometimes an objection is raised by a man who receives a check and he says, "I do not believe that that is sufficient; I am still disabled and it ought not to be compensation in full." We say to him then, "If that is the situation, use the check without any hesitation, and you can at any time come to the board and we will give you a rehearing."

However, I believe you are going to a great deal of trouble in those boards which are trying to get a receipt from an injured workman, which really does not mean anything in the administration of the law.

Regarding No. 4, I will just state for your information that it is a part of our law in Ontario that the board is not bound by legal precedent. I presume it is the same in Nova Scotia.

Mr. PATON. No, it is not the same.

Mr. GLOSTER. In Michigan it is a good deal like it is in Massachusettts. If an employee has an accident, in the ordinary case the agreement is submitted to the commission by the employer. We do not have a hearing in every case. In 95 per cent of the cases the employer and the employee enter into the agreement. Compensation is payable under that agreement, or, in a disputed case, under an order, until the period of liability has been consummated.

If there comes a time when the employer or the insurance carrier is of the opinion that compensation should stop, it is up to the employer or the insurance company to secure a settlement claim. If the employee refuses or demurs, then the burden is upon the employer or insurance company to show why compensation should be stopped or reduced. The burden is always placed upon the insurance company or the employer to show why compensation should be stopped.

Even if you secure a settlement receipt from the employee it is not an estoppel; it does not stop his compensation. We simply file it. We do not pass upon it at all. In other words, the burden is always upon the employer and the insurance company to show why compensation should be reduced or stopped. It does not mean anything if he does or does not sign it. If he does sign it, it is merely a temporary suspension.

Mr. ARCHER. May I ask how the employer or the insurance carrier sustains that burden of proof without a trial? What raises the question?

Mr. GLOSTER. In Michigan he can petition for a hearing to stop or reduce, and we will give him a hearing and he can make a showing.

Mr. ARCHER. Then he is saddled with the burden?

Mr. GLOSTER. The burden is upon the employer and insurance company always.

Mr. ARCHER. How does the insurance company discharge the burden?

Mr. GLOSTER. By proving that the disability has been ended.

Mr. ARCHER. How is that proof effected unless the employee petitions for a further hearing?

Mr. GLOSTER. Unless the employer or insurance company presents proof, compensation continues.

Mr. ARCHER. If it stops, the presumption is that justice has been done. Then you say that the burden of proof is upon the employer and insurance company. What acts do they do or perform to show that they have discharged their liability under the law?

Mr. GLOSTER. If the company believes that compensation should stop and the employee will not sign a settlement receipt, it is up to the company to petition for an order permitting it to stop the payment of compensation. It goes to a hearing and testimony is taken.

Mr. ARCHER. But if the employee signs the settlement receipt, so called, then the presumption is that the law has been satisfied?

Mr. GLOSTER. Yes. Then later on if the employee believes that he should have compensation, the burden is upon him to petition for a reopening or a continuance of compensation; but the matter is not finally closed upon the signing of a settlement receipt.

Mr. ARCHER. There is no more important phase of the administration of workmen's compensation laws than this very matter of whether or not there shall be a hearing in every case.

New York at one time had the agreement plan—the same as that outlined by the gentlemen from Massachusetts and Michigan. Under that agreement plan, the practice also obtains of allowing the employee to make a claim for compensation, which claim would bring the case up for a hearing.

As a matter of practice, we began by receiving 70 agreements in 100 cases, and 30 formal claims demanding a hearing. Then, under the pressure of administration, we were presently receiving 60 agreements instead of 70, and 40 claims instead of 30. Out of those 60 agreements we found reason to question 12 out of 100 and on our own motion sent them to the calendar for a hearing. Thus under that plan we were actually hearing 52 cases out of 100.

Then began the investigation of the so-called agreement plan (which was a looking into 48 cases out of 100) which has been heralded all over this country and the revelations were startling. In simply tens and hundreds of thousands of cases the workmen were not adequately paid, chiefly because they did not know what their rights were. Many cases were discovered in which a claimant who had been paid for temporary disability had a permanent disability for which he had received nothing, with the result that in New York we found that we could not trust the agreement plan at all, and, with one exception, have abolished it altogether.

An agreement may be entered into for the commencement of compensation payments, but in no sense can an agreement continue to the end and affect a closure of the case. I dare say if the gentlemen in the various States will investigate their agreement cases they will find a great deal of unpleasant information.

At that time I sent a questionnaire to every State in the Union. I found out that Massachusetts was hearing more cases out of 100 than any other State in the Union except New York, and Massachusetts was then hearing about 10. California was next, hearing about 5 cases out of 100. The rest were, relatively, nowhere. I am not including Ohio, which had a pure State fund at the time, nor the State-fund States.

So I believe that under no agreement system such as obtains in Massachusetts and Michigan does the injured employee receive anything like an adequate compensation, even as provided by the laws of the respective States.

Mr. GLOSTER. I do not know what is the matter with the State of New York, but in Michigan, with an average of 22,000 cases a year, we do not have 500 hearings a year. There is a waiting period of seven days. On the eighth day after the accident the employer has to make one of two reports. He reports either a compensable or a noncompensable accident, depending upon whether or not the man

is still disabled on the eighth day. If he is not disabled, he files a noncompensable report showing the man has gone back to work, and there is no compensation due; if he is disabled, he files a compensable report with full data of that accident. That report includes the name of the employee, his address, the name of the employer, his address, the nature of the accident and all about it.

An agreement is filed. That agreement states whether or not the man is totally disabled, and his wages. On the fourteenth day the employer is required to file an agreement, which is usually done. That shows whether or not it is a proper agreement. The agreement, when approved, is in full force and effect until the case is closed by a settlement receipt, a temporary closure; or if the employee will not sign the receipt then it goes to a hearing and an order is made.

As I say, there are about 22,000 accidents a year in our State, and there are probably 500 hearings. That has been the average over all of the years. The employee does know where he is, because, under the method of computing his average weekly wages, he knows what compensation he is entitled to receive. It is paid each week, and a receipt showing it has been paid is filed each week.

That has been the practice in Michigan over the years. I doubt if anybody can dig up a case where there has been any actual abuse of that practice or where the employee did not know where he stood.

Mr. KINGSTON. What does the employer agree to do in that agreement?

Mr. GLOSTER. He agrees to pay this man compensation at the proper rate per week during the period of his disability.

Mr. KINGSTON. Is that not in effect simply agreeing to do what the law says he must do?

Mr. GLOSTER. It specifies the amount, which is paid until the employer can show that it should be reduced or stopped. The burden is upon the employer. He must pay until he can show that it should be stopped or reduced. That is where the burden should be. This is a workmen's compensation law; it is not a law in the interest of insurance companies particularly. It is a law to provide compensation for injured men.

Mr. KINGSTON. Why the necessity of an agreement at all?

Mr. GLOSTER. So that the employee will know what he is entitled to receive. It protects his rights.

Mr. KINGSTON. The law states what he is entitled to receive.

Mr. GLOSTER. It makes no difference. When he has that agreement in his hands he knows what he is entitled to receive; that is, until the employer can prove something to the contrary.

Mr. DUXBURY. How can you make your agreements definite with reference to an undeveloped partial permanent disability?

Mr. GLOSTER. In Michigan when a man becomes partially disabled, his compensation is fixed at 60 per cent of the difference between what he earned at the time of the injury and what he is able to earn when he returns to work in his partially disabled condition. As long as the condition remains stationary in that respect he receives that 60 per cent, but if his condition changes, there is a readjustment to meet the change, but he always gets 60 per cent of the

difference between his wage at the time of the injury and what he is able to earn thereafter in his partially disabled condition. It is up to the employer to show if there should be a reduction; the burden is upon him.

Mr. DUXBURY. Do you permit that to be determined by agreement also?

Mr. GLOSTER. Yes.

Mr. DUXBURY. In all cases?

Mr. GLOSTER. Yes. If the agreement does not seem satisfactory to the commission we investigate it. We do not merely take the employer's or employee's word for it.

Mr. DUXBURY. The average employee is not well informed about the extent of a permanent partial disability. He must rely very largely upon others.

Mr. GLOSTER. If there is any question about that in the minds of the commission, we investigate and see whether or not it is adequate.

Mr. PARKS. When a man receives an injury in Massachusetts we have various ways of protecting his rights. The employer is obliged to report the accident to the board within 48 hours, and the penalty for not doing so is a $50 fine. That fine is inflicted if he does not comply with the law. That is why Massachusetts is the promptest State in the Union in the reporting of accidents.

The accidents are all tabulated and checked up. Immediately upon the receipt of that report of an accident the board, through its clerical force, sends to the employee a card telling him what his rights are, telling him where the office of the board is, so that he may notify us if he does not get what that card says he is entitled to.

Then the insurance company is bound under the law. The burden is upon it to get on the job and pay compensation immediately. Mr. Kingston asks, "Why the agreement?" Why, the agreement is to let the man know that he is entitled to compensation. Mr. Kingston again said, "Why doesn't the employee know?" The employees do not know. The average workman is ignorant on this matter and does not know his rights; he must be told.

The only way in which we know he is getting his rights is by this agreement which he signs. If the man is not getting what he is entitled to, his card will tell him where to write. Every once in a while we look them up. A supplementary report has to come in. We have an inspection force that goes out and investigates. Compensation can not stop under that agreement until our board says so or until the employee says so himself.

Mr. Archer has me at a disadvantage. I did not know that the question of the number of hearings held in Massachusetts was coming up. We do not think we are holding a great many. New York never had a system like the Massachusetts system. I can not contradict Mr. Archer's figures, however, because I have not those figures here.

Mr. HORNER. I want to say a few words in defense of the agreement system. We have been using the agreement system in Pennsylvania since 1916, when the law went into effect. I challenge the representatives from any State in the Union to come into Pennsylvania and show that the injured workmen there are being short-

changed to any greater degree than they are in other States that may have another system.

We check up pretty closely on the agreement and accident report before it is approved. If there is any doubt in our minds as to whether that agreement is giving the injured workman the full benefit of the law the agreement is not approved but is sent back for correction until the case is investigated.

We also require a final receipt, but on it we require the additional information as to when the injured workman returned to work and at what wage. If there is any dispute as to the length of time during which compensation is payable, if the physician in the employ of the insurance company is under the impression that the injured workman can return to work and the workman disputes it, the case then goes before a referee and by competent testimony it is determined whether or not compensation payment should cease.

Of course the agreement does not bar the injured workman from his rights. If he has a recurrence of disability the case can be reopened at any time within 500 weeks. That does not mean that the case must necessarily go before a referee or the board. A supplementary agreement can be entered into and the case can be reopened without any litigation before the board or referee.

Our statistics show that 97 per cent of all accident cases where compensation is being paid are adjusted on the agreement basis and only about 3 per cent go to the referees for decisions. I dare say that it has been working out very satisfactorily.

Mr. DUFFY. There is one thing that I would like to have made clear in the discussion of the States where they have this agreement system; that is, where the injured worker and the employer make an agreement and that agreement is filed with the industrial accident board or commission, what is the machinery established by the State department to ascertain whether or not the facts contained in that agreement are in accord with the law in cases other than where one of the parties raises the issue?

The reason I ask is, that we do not recognize any agreement under our system in Ohio. If a claim for compensation is filed, then we control all the machinery from that time on, and we have within our own possession the information necessary for a final disposition of the claim.

For instance, the matter of an agreement would not appeal to me as a commissioner. If we have, say, a partial disability case before us, the important thing to us would be, what did our doctor, representing the industrial commission—not the employer's doctor, not the claimant's doctor—find and what does his report show? If his report shows the loss of an eye or an arm or a leg, we base the award upon that.

I do not think that, from the standpoint of the administrative body, we have a right to assume that either employers or claimants are honest, nor have we any right to assume that either employers or claimants are dishonest; but the responsibility is placed upon us as administrative officials, and it seems to me that the machinery through which we operate ought to bring to us information, not from either of the two parties, but through our own processes, so that

nobody can raise a suspicion and say, "Well, perhaps the employer took advantage of this ignorant man," or vice versa.

The reason why I asked the question a moment ago is this: Who gives this claimant the information? Is it assumed in this system whereby an agreement is made that the employer shall give to the claimant the information as to his rights under the law? I do not know how you find it in other States, but I think the employers in Ohio need as much information as to what the law contains and as to what their duties are under the law as do the workmen. So I would like to know what means the accident board or commission has of ascertaining that feature.

Mr. ARMSTRONG. I think the discussion has arrived at a stage where we are not discussing any paper read before the association. I think it would be well to go on with the program, and after that is finished we can take up this matter.

The CHAIRMAN. I think the point is well taken. The question now occurs on the motion to adopt the report, have it spread upon the minutes, and discharge the committee. Are there any further remarks?

Mr. GARDINER. I would like to amend that motion by adding that the committee on forms and procedure be given a hearty vote of thanks for the effort and work that it has put forth in preparing this report.

[The amendment was accepted by the maker of the original motion, and the motion as amended was carried.]

The CHAIRMAN. The next paper is "How Nova Scotia handles its extraterritorial problems," by V. J. Paton.

HOW NOVA SCOTIA HANDLES ITS EXTRATERRITORIAL PROBLEMS, WITH SPECIAL REFERENCE TO LONGSHOREMEN

BY V. J. PATON, CHAIRMAN NOVA SCOTIA WORKMEN'S COMPENSATION BOARD

In dealing with the subject of longshoremen herein reference will be made incidentally to railway employees, because in my belief these two classes of workmen have presented more difficulties in the administration of the compensation acts in the United States than any other two subjects that could be named.

It is my purpose to refer briefly to those difficulties and to contrast the position of a longshoreman and of a railway employee under State compensation acts with the position of such workmen under the compensation act of Nova Scotia, and to show that though there is at present a great divergence between the law in the States and the law in Canada, it is because of what might be considered a mere accident that we in Canada escaped the difficulties you in the United States have had, and still have, and probably always will have, with respect to longshoremen and railway employees, and a mere accident that you did not escape those difficulties altogether as we did.

LONGSHOREMEN

If there is one thing more desirable than another for employer, workmen, and those who have the responsibility of administering a

compensation act, it is that there should be absolute certainty that a workman when engaged in any particular kind of work is either within or without the scope of the act during the whole period that he is performing that work. Unfortunately, since the decision in the Nordenholt case handed down by the Supreme Court of the United States in May, 1922 (259 U. S. 263), a longshoreman in the United States is in the predicament that one minute he may be within and the next minute he may be outside the scope of a State compensation act. Take, for example, a stevedore who is conveying freight from a vessel to the wharf. While he is on the vessel and during his passage over the gangplank he is under maritime law and not entitled to compensation if injured; but he is under the compensation act the moment both feet are on the wharf, as the wharf is considered an extension of the shore.

The decision in the Nordenholt case appears to draw the line between maritime law and the compensation act at the water's edge.

A railway employee is really in a worse plight than the longshoreman because it is impossible to draw a line, like the shore line in the case of stevedores, which can be easily recognized as a dividing line between work which has to do with interstate commerce and work which is of a local character. As illustrations I shall refer to three cases:

1. A man was injured while removing grass and weeds from a railway yard. He was not entitled to compensation because interstate cars as well as intrastate cars were switched about in the yard. (Quirk *v.* Erie Ry., 230 N. Y. 405.)

2. A man employed to repair a railway bridge was injured while carrying bolts needed in the work. He was not entitled to compensation because interstate trains as well as intrastate trains passed over that bridge. (Pedersen *v.* Delaware, L. & W. Ry., 229 U. S. 146.)

3. On the other hand, a railway workman who was injured while repairing a set of track scales was held to be entitled to compensation although the scales were used to weigh merchandise delivered for interstate transportation. (Vacca *v.* Genesee & N. Y. Ry. Co., 233 N. Y. 613.)

The distinctions are so fine that one tribunal may take one view and another tribunal may take another view. Uncertainty leads to litigation, and while in Canada we have had practically no litigation over the right of a workman to compensation, I notice that the industrial commissioner for the State of New York says in the special bulletin which came to hand last week that in New York State alone several thousand appeals in compensation cases have been argued in the courts in the 10 years the law has been in force.

The source of all these perplexing problems is to be found in the division of legislative authority between the Federal Government and the State legislatures, whereby certain subjects like maritime law and interstate commerce were assigned to the Federal Government.

In Canada we might have had a similar situation, because we also have a distribution of legislative authority between the Dominion Parliament and the provincial legislatures. At the time of confederation in 1867 the British North America act assigned to

the Dominion Parliament the exclusive right to make laws in relation to certain subjects, including: (*a*) The regulation of trade and commerce; (*b*) navigation and shipping; (*c*) seacoast and inland fisheries; (*d*) lines of railways, lines of steamships or other ships, and other works and undertakings connecting the Province with any other Province or extending beyond the limits of the Province.

These are the same subjects that are assigned to the Federal Government in the United States. Nevertheless, it is unquestionably true that longshoremen are within the scope of the Nova Scotia workmen's compensation act, and are entitled to compensation whether the accident causing disability happens on the vessel which is being loaded or unloaded, or on the wharf. This is true irrespective of the nationality of the vessel or of the trade in which the vessel is engaged. The only exceptions are those made by regulations of the compensation board for administrative purposes. In Nova Scotia it is the duty of the board to discover and assess every employer who carries on an industry within the scope of the compensation act. Owing to the difficulty of assessing or collecting an assessment from a vessel that may be in port for a few hours, the board, as it is empowered to do, excluded stevedoring when carried on by persons employed by the captain of a foreign vessel.

In the case of railway employees it is also true that they are entitled to compensation under our Nova Scotia act though handling trains or cars engaged in interprovincial traffic. And this is so in spite of the fact that the regulation of all trade and commerce is within the exclusive jurisdiction of the Canadian Parliament.

In passing it may be said that the only railway employees in Nova Scotia who are not directly subject to the provisions of the provincial act are the employees of the Dominion Government itself, but even they are entitled to compensation in accordance with the provisions of our act by virtue of an act to that effect passed by the Dominion Parliament, which authorizes the provincial compensation board to treat Dominion Government employees the same as if they were employed by a private individual.

In view of the similarity in the exclusive powers conferred on the United States Federal Government and those given to the Canadian Parliament with respect to shipping and navigation and trade and commerce, it excites one's curiosity as to how it is possible that employers carrying on and workmen engaged in those industries may become subject to a provincial compensation act. The answer is to be found in the fact that the Privy Council in England, which is the highest court for all parts of the British Empire outside of the British Isles, with wonderful wisdom and foresight, as we think, rejected a line of argument and process of reasoning which the Supreme Court of the United States accepted and made the basis of its decisions. Similar arguments to those presented to the Supreme Court of the United States were used before the Privy Council in the attempt to have provincial legislation touching subjects assigned to the Dominion Government declared unconstitutional. There was nothing to prevent the Privy Council from taking a view quite the contrary to the one adopted, and the great variance between the present state of our law and the law as it is in the United States is due to the mere accident that the

learned judges of the two great courts happened to differ in their ideas as to the proper solution of very difficult problems. This is emphasized by the fact that the United States Supreme Court divided five to four in at least two cases of supreme importance.

The decisions of the Privy Council to which I have referred were rendered not in compensation cases but before our modern compensation acts were passed in connection with other matters which involved principles that are applicable to compensation legislation. For instance, the Dominion Parliament is given the exclusive jurisdiction to legislate with regard to "banks and banking." On the other hand, the provincial legislatures are given the power to make laws in relation to the following, among other subjects: (*a*) Direct taxation within the Province in order to raise revenue for provincial purposes; (*b*) property and civil rights within the Province; (*c*) generally all matters of merely a local or private nature in the Province.

It will be seen that by giving the fullest effect to the meaning of the powers conferred upon the Dominion and those conferred upon the Province there must be an area of overlapping. A company desiring to carry on a banking business must obtain its incorporation from the Dominion Parliament. On the other hand, the provincial legislature has the right to impose taxation for the purpose of raising revenue for provincial purposes. A question arose some time ago, in a case that went to the Privy Council, as to whether a provincial legislature could tax a bank doing business within the Province. The argument was pressed that the provincial legislatures might lay taxes so heavy as to crush a bank out of existence, and so nullify the power of the Dominion Parliament to erect banks under its exclusive legislative authority. The Privy Council upheld the right of the Province to impose the tax upon banks and stated that if on the due construction of the British North America act a legislative power falls within the section under which the provincial legislatures get their powers, it would be quite wrong to deny its existence because by some possibility it may be abused or may limit the range which otherwise would be open to the Dominion Parliament.

Other cases decided by the Privy Council illustrate the principle that subjects which in one aspect and for one purpose fall within the powers exclusively conferred upon the Dominion Parliament may in another aspect and for another purpose fall within the powers of the provincial legislatures. In one case the court said that it is necessary that the literal meaning of the words "regulation of trade and commerce" should be restricted in order to afford scope for powers which are given exclusively to the provincial legislatures; for, taken in their widest sense, they would authorize legislation by the Parliament of Canada in respect to several of the matters specially enumerated in the powers conferred upon the provincial legislatures and would seriously encroach upon the local autonomy of the Provinces.

Applying those principles to compensation legislation we see that the Province may impose taxation upon employers of longshoremen as well as other employers as a means of raising a revenue for provincial purposes, viz, for the purpose of taking care of injured workmen.

EXTRATERRITORIAL PROBLEMS

As Nova Scotia is surrounded by water, with the exception of the isthmus that connects it with New Brunswick, and as the railway running between Nova Scotia and New Brunswick is owned by the Dominion Government, the only extraterritorial problems encountered in Nova Scotia were in connection with the operation of vessels. Under the British North America act the powers of the local legislature are confined to the Province, and of course the compensation act could not apply to navigation and shipping beyond the 3-mile limit. This gave rise to confusion and difficulties in the case of concerns operating a line of steamships between Digby and St. John, between Yarmouth and St. John, and operating vessels between Nova Scotia and New Brunswick, Prince Edward Island, and Newfoundland. For instance, if an accident occurred on a vessel it was necessary to determine whether the ship was at the time inside or outside the 3-mile limit, which was not always an easy matter. It also became necessary to adopt some kind of a working rule to arrive at what percentage of wages of the crew should be included in pay-roll returns to cover the period the vessel was within the 3-mile limit and subject to the provisions of the act. It is obvious that such a condition in the law was most unsatisfactory. In the case of fishing vessels leaving Nova Scotia for the Grand Banks the same unsatisfactory condition prevailed. There was a strong desire manifested to have the fishermen covered during the entire period they were engaged in fishing and to find some method of enabling the act to be applied to vessels running between Nova Scotia and near-by places. The legislature, of course, could not simply say that the act should apply beyond the 3-mile limit, for that would be ultra vires. It was necessary to find some other way out of the difficulty, and this is how it was accomplished. Under the British North America act, as heretofore mentioned, the provincial legislature was given jurisdiction over "property and civil rights with the Province." That furnished a clue to the discovery of what turned out to be a solution of the problem. The power to legislate concerning property and civil rights includes the power to legislate with respect to contracts made with the Province. So legislation was passed whereby every contract between an employer and a workman should, unless there is an express agreement in writing to the contrary, be deemed to include a covenant on the part of the employer that before permitting the workman to perform any services out of Nova Scotia he would apply to the workmen's compensation board to have the industry to be carried on out of Nova Scotia admitted as being within the compensation act; that he would pay all assessments required to keep the industry within the scope of the act; and that if he should neglect or fail to do so the workman, or his dependents in case of his death, should be entitled to recover from the employer an amount equal to the compensation that would be payable under the compensation act if the accident had happened in an industry within the scope of that act. The covenant was made to apply only to voyages between Nova Scotia and New Brunswick, Prince Edward Island, and Newfoundland, and to fishing voyages made from a Nova Scotia port, and then only in

connection with vessels registered in Nova Scotia or operated by an employer residing or having a place of business in Nova Scotia. The workman, on the other hand, was deemed to enter into a covenant with his employer to the effect that if the employer brought his industry under the compensation act the workman would accept such compensation as the board might award in lieu of all other rights or causes of action that the workman might otherwise have against the employer. To protect the employer against double payments for the same protection, and to prevent the giving of double rights to the workman, it was necessary to provide that the covenants referred to should not apply while the workman is in a jurisdiction in which there is a compensation act under which the employer is liable to be assessed or taxed and the workman is entitled to compensation.

In conclusion it may be said that since we solved our extraterritorial problems the fishermen engaged in Lunenburg's great fishing fleet and the seamen and sailors of Nova Scotia are to a large extent entitled while out of Nova Scotia to the benefits of our compensation act as fully as workmen employed in industries carried on within the Province.

DISCUSSION

Mr. WILLIAMS. The fundamental difference between the problems presented to any Canadian or British tribunal and the problems presented to compensation commissioners of the American States arises from the fact that we have a written organic law and they do not. It is hopeless for any general discussion to take place on the subject, because while we sometimes think that the Constitution of the United States may be held to stand in the way of things we would like to do, yet we still believe that it is rather an important document and on the whole rather necessary to our continued existence as a nation.

The relation of our compensation laws to the subject of interstate commerce was tested early in their history in the case of New York Central R. R. Co. *v.* Winfield. The original act of 1911 in New York had been found obnoxious to the New York constitution in the case of Ives *v.* South Buffalo Ry. Co., after which the New York constitution was amended, and the New York Central, as I happen to know from certain relationships with some of their representatives, had a very hopeful idea that the compulsory compensation act would be found obnoxious to the fourteenth amendment.

The railroad picked out a very clever test case where there was no possible negligence. Winfield was engaged in tamping ballast on the four-track stem of the New York Central between Albany and New York. A piece of rock flew up, hit him in the eye, and put his eye out. There was no negligence on the part of anyone. There was no remedy under the employer's liability act. The railroad intended to raise the proposition that the New York compensation law, a compulsory act, was taking its property without due process of law.

The New York compensation commission awarded Winfield compensation for the loss of his eye. The case went up through the various courts, and the New York Court of Appeals agreed with

the compensation commission. When it came up to the United States Supreme Court it was a couple of years before it was decided.

In the meantime the case of New York Central R. R. Co. *v.* White got there ahead of it. That case illustrates one of the distinctions which we have to wrestle with and which Mr. Paton, Mr. Armstrong, and Mr. Kingston, fortunately for them, do not have to wrestle with. White was a night watchman where the road was building a cut-off to straighten a curve. It was not an instrumentality of interstate commerce because it was not finished. This fellow got hurt while they were building it. The court said the New York compulsory act was constitutional, and White was entitled to compensation because, while this new construction would ultimately be an instrument of interstate commerce, it was not such then.

Then the Winfield case came along and was decided on the other issue, that because the right to regulate interstate commerce was one of the enumerated rights given to Congress in the United States Constitution, it was not competent for a State to undertake to legislate thereon.

Very shortly that was followed by the decision of the United States Supreme Court in Southern Pacific R. R. Co. *v.* Jensen, Jensen being hurt on a lighter which was part of the equipment the Southern Pacific Railroad used in some of their water freights.

We can not repeal the United States Constitution, and while Canada and Great Britain have certain advantages, it is idle for us to discuss with the British and Canadian representatives the limitations placed upon us by the Constitution, because while once in a while it is troublesome, still we want to keep it.

Mr. ARCHER. Before the discussion is closed I would like to say one thing. The United States Supreme Court in its various decisions has finally pointed out a method by which longshoremen may be compensated while on the gangplank or on the boat—in fact, two methods remain. The United States Congress may adopt a Federal workmen's compensation law, administered as a Federal function, or the Constitution of the United States may be amended, giving back to the States the right to enact compensation laws for longshoremen.

You see, when the Federal Constitution was formulated the Federal Union had no powers except those delegated to it, and the various colonies at that time delegated to the Federal Union all their functions with respect to maritime and admiralty matters. Therefore, these functions remain to-day in the hands of the Federal authorities alone. Congress, itself a creature of the Constitution, could not effect an amendment to the Constitution depriving the Federal Government of certain powers through legislation. Especially is this true as the Constitution itself provides how the Constitution shall be amended. So that in the United States two methods remain by which longshoremen may be compensated when offshore, and undoubtedly one of them will soon be adopted.

The CHAIRMAN. The next topic is "State fund versus competitive insurance"; first, "What a State fund is," by George A. Kingston.

STATE FUND VERSUS COMPETITIVE INSURANCE

WHAT A STATE-FUND SYSTEM IS

BY GEORGE A. KINGSTON, COMMISSIONER ONTARIO WORKMEN'S COMPENSATION BOARD

There is really not very much use in discussing the subject "What a State-fund system is," because there is hardly any subject upon which the delegates here are better informed than this subject of "State fund." Some things should, however, be stated even though they have been stated and restated until possibly they are almost threadbare for the stating.

Before doing that, however, I wish to make one or two remarks, or, as a legislator would say, "I rise to a question of privilege."

Some time ago the superintendent of our provincial insurance department, thinking it would be of some interest, sent me a pamphlet which is put out without any name other than "Workmen's Compensation Publicity Bureau." It began with the announcement, "This paper is divided into two parts: First. Some points against monopolistic State insurance." I said, "These people are very fair. They are going to state first the points against monopolistic State insurance, and then the points in its favor." It continued: "Second. Arguments for monopolistic State insurance," but they put in the word "answered." So one part is "Some points against monopolistic State insurance," and the other is "Some arguments for monopolistic State insurance answered." Just what the difference between those two parts is I leave you to judge. What I want especially to refer to are two statements therein made. One is:

> For several years, the United States Bureau of Labor Statistics has been carrying on more or less active and open propaganda in favor of State insurance. I don't think this is generally known by the public. If it were, I don't think it would be generally approved by the public.

Well, I am not going to speak for the United States Bureau of Labor Statistics. I fancy it is able to take care of itself. But I do wish to say this, and I think you will all agree with me, that while the United States Bureau of Labor Statistics has been active along the lines of certain investigations, it should not be charged with being a propagandist organization. A department created by the United States Government, I imagine, is for the purpose of ascertaining facts and of informing the public of such facts, and I think the late Mr. Hookstadt was, in so far as he was active in that work, true to his trust. But this is the statement to which I take exception:

> There exists an organization known as the International Association of Industrial Accident Boards and Commissions, to which most compensation commissioners in the United States and Canada belong. For a few years there was an attempt to convert this into an agency for such propaganda. Finally this effort has petered out. A very large majority of those administering workmen's compensation insurance, as would appear from an expression of their views at these meetings, are against monopolistic State funds.

For 11 years now I have been attending these conventions, not having missed a single convention since 1915, and I take exception to that statement. This association has never existed as a propagandist organization. This association has no ax to grind, to use a homely expression. As an association, it has no reason to care whether this

State or that State adopts State fund or competitive insurance, or whatever system it may wish to adopt, but it is interested in discovering and reporting the facts, and in distributing to the public throughout the United States and Canada all the information that can possibly be secured for the purpose of making compensation commissioners, employers of labor, and workmen throughout the United States and Canada acquainted with the actual conditions as they develop in this, that, or the other State. We all regret very much the passing of Mr. Hookstadt, who was such a very valuable man in the employ of the Labor Department at Washington for getting at what was actually being done in the matter of workmen's compensation in the various States of the Union.

On this question of State fund, I feel that the expression "State fund" is a misnomer. "State fund," in itself, would suggest that it is a fund raised by the State—I mean, out of general taxation. Of course, it is true that it is raised by the State or under the authority of the State or the Province, but too often I fear that a workman coming to the compensation board with a claim, particularly if the claim is one that is not just, has a sort of feeling that the State fund is part of the public chest, and sometimes people are not too careful with regard to claims they put forward when they think the Government is going to pay.

The State or the Province, under the State-fund system, is not really a contributor to the fund at all, and does not really exercise control over the fund. It simply gives to the administering board the taxing power of the State for the purpose of raising by assessment the amount of money necessary to pay the cost of the various accidents reported to it, and that on a rate basis which the board itself determines.

The State fund is simply a collective liability system. In some cases it is competitive, but in all the Canadian Provinces it is exclusive and compulsory as regards the industries covered. We may not be right, strictly speaking, in calling it an insurance system. When you use the word "insurance," you immediately suggest that somebody is insured. True, the employer is insured, but we look at it from the other point of view. The workman is the man who is protected. This is a workman's act, not an employer's act, and the workman is protected whether or not the employer pays his assessment. This is where our systems in the Canadian Provinces differ, I think, from your State systems. It is up to the boards in the Canadian Provinces to collect the amount of money required to pay the accident cost, but the employees of these various industries do not depend for their compensation upon whether or not the employer pays his assessment to the board. The law says the employee is entitled to compensation if he is injured, in the course of employment, in an accident arising out of his employment. The question of where the money comes from is a matter of no concern to him. It is up to the administering board to collect that money on a basis which is considered under the law the proper, equitable basis. Therefore, it is probably not correct at all, from one point of view, to say that it is insurance.

Some outstanding features of this system are, or rather should be:

First, it should be exclusive. Here there will be a difference of opinion, but from the point of view of the problem as we see it, no other system of insurance should compete in the field where the so-called State fund operates.

The advantages of this system seem to me to be obvious. The problem of getting business is one of the difficulties that one sees in a competitive system. The State ought not to be a competitor of private enterprise. If the State is going to run the business, it is capable of running it all; if it is proper for the State to run the business, it should run it all. If you are going to permit a State fund at all, why allow the situation to be messed up by competition? Where competition is indulged in between a State system and a private system of insurance there is always a certain amount of confusion and sometimes a condition one would like to avoid.

For 10 years now I have been engaged in assisting in the administration of this system in Ontario, which from the first has been exclusive, and from our point of view (and I do not say that we have the last word in the law—I am not here to extol our law or to say that our law is the best) I say without hesitation that competition between State and private insurance is unwise. As far as the State is concerned, we have no purpose to serve except to get sufficient money to pay the compensation costs.

If in any year we collect too much money, we merely adjust that when we come to make the rate the following year. As I pointed out last year at St. Paul, in my paper on rate making, any overassessment in any class of industry in any one year can be very simply adjusted in the rate making the following year.

It seems to me that you might as well suggest competition in the postal service as competition in this matter of workmen's compensation. Workmen's compensation insurance should be a natural State function, freed from the embarrassment and confusion of competition with private interests, to say nothing of the hostility of private insurance carriers engendered by such competition. The ideal to be aimed at is the greatest possible benefit to the workman and his dependents at the least possible cost to the employer.

It should be stated that besides the Canadian Provinces there are eight jurisdictions in the United States which do not permit insurance companies to operate in their fields, namely: Nevada, North Dakota, Ohio, Oregon, Washington, West Virginia, Wyoming, and Porto Rico.

The next feature is that the system should be compulsory; that is to say, all employers in the industries covered by the act should be subject to its provisions and called upon to pay the required assessments. Varying provisions of the various laws on this subject are somewhat confusing. In Ontario all employers in the classes covered by the schedules are subject to the compensation provisions, but only those in what we call "Schedule 1" are compelled to pay assessments to the board, or, as some would say, are compelled to insure in the State fund.

Perhaps a short explanation of Schedule 2 will not be out of place. The employers in Schedule 2 comprise for the most part the large public-service corporations and the municipalities, and

with them self-insurance is permitted. I do not know why, originally, the act was left that way. No doubt the railways urged very strongly that they ought to be permitted to carry their own insurance if they wished to do so. Ultimately, the law was so framed, and they were put in Schedule 2 and excused from the operation of the assessment provisions of the law as contained in Schedule 1. The municipalities are also in Schedule 2, but it may be a matter of some interest to state that some four or five hundred municipalities have come to us with the request to be transferred from Schedule 2 to Schedule 1. They are permitted to carry their own insurance under the law, but the law provides that they may request the compensation board to carry it. Upon such request they pay the required assessments based on the rate for their class and thereafter they have the benefit of all the insurance provisions of the act.

There is, however, a feature of our law which I want to refer to especially—it is a weakness I imagine in a great many of the laws—viz, that there are large groups of employers who do not come within the provisions of the law at all, and consequently their workmen have no protection other than the common law. I refer to farmers, householders as regards domestic service, merchants, educational institutions as regards their teaching staffs, churches, hospitals, hotels, restaurants, barber shops, shoe-shine parlors, office buildings, apartment houses, lawyers, doctors, and even compensation boards. Why should the employees of these industries or institutions be deprived of the benefit of the protection which this law affords to other workmen?

In Ontario the workmen's compensation board has applied to the workmen's compensation board to be protected under Schedule 1. Our board actually pays an assessment to itself; that is, out of its administrative expense fund it pays an assessment into the accident fund, so that the 100 employees of the board, if they should be injured in the course of their employment, would be entitled to compensation. We have had one small claim, I think, in the two or three years since we have been operating on this basis.

There is really no sound reason why the employees in the lines just enumerated should be denied the benefit of the compensation law, and until they do receive those benefits it is scarcely right to use the word "compulsory" in this connection in anything like a universal sense. Perhaps the only reason they have been left out is the practical difficulty in collecting assessments from so many very small employers. The great mass of our industrial workers, however, are covered, and as regards their employers, the law is, of course, compulsory.

With the exception of farmers, those listed in the above enumeration do not, of course, comprise a very hazardous group of employers, so that on the whole, perhaps, there is not, except in very odd instances, any real hardship imposed on anyone in leaving him out of the covering schedules.

We had a very serious accident in our Province last week in a class not enumerated here, but which should have been, viz, the manufacture of cheese. The boiler in a small cheese factory in the country blew up and three men were killed. Cheese factories were not enumerated in Schedule 1 originally, but the board proposed to

include them. Upon this a very strong plea was made to us urging that they should be excluded. In the manufacture of cheese usually only two, or sometimes three, are engaged in any one factory. We did not regard the hazard of the industry as a very serious one, and the request to have the industry excluded from the act was so universal that we permitted it, subject to a number limit. It remains to be seen whether these factories still feel that they should be excluded. However, it is very unfortunate that in this particular case there will be no compensation for the dependents of the unfortunates who were killed.

We come now to the next point, the question of economy. The State-fund system is much more economical than any other system. It is estimated that it costs the employers of the United States alone in the neighborhood of $30,000,000 extra annually to have their liability insurance carried by stock or mutual companies rather than in State funds. Going back to the Connor report of 1919 covering the situation in New York, it stated that the employers of that State alone who were insured in stock companies during the period covered by the report—I am not sure, Mr. Archer, how many years that period covered; was it three or four?

Mr. ARCHER. I think it was based upon an annual estimate.

Mr. KINGSTON. It said they paid $18,000,000 more for their protection than it would have cost them had they insured in the State fund.

Mr. ARCHER. That meant from the inception of the system up to the time of the investigation.

Mr. KINGSTON. I am not sure how many years that covered.

Mr. ARCHER. It began in New York July 1, 1914. The investigation was in 1920 or 1919.

Mr. KINGSTON. In round figures, the stock companies in the United States write about $90,000,000 of liability insurance premiums per year, which represents about 60 per cent of the liability business; that is to say, the rest of it is self-insurance or State-fund insurance. On this basis the $30,000,000 estimated excess over State-fund requirements is probably low, because it is generally estimated that about 40 per cent, or nearly that, of the premium income fairly represents the overhead of the insurance companies.

In an investigation which the late Mr. Hookstadt made some time ago he reported the following approximate expense ratios to premium income: Stock companies, 35 to 40 per cent; mutual companies, 15 to 20 per cent; competitive funds, 6 to 15 per cent; exclusive State funds, 3 to 8 per cent.

Referring now to the well-known five-year review of Pennsylvania's experience, from 1916 to 1920: The earned premiums in Pennsylvania during those five years were $80,000,000; losses paid, $35,000,000. I took that report from a publication of the Labor Bureau, but in speaking to Mr. Horner yesterday with reference to it he stated that the losses paid, $35,000,000, covered compensation only. In addition to that there are the figures with regard to hospital and medical aid. The expenses of the insurance companies, as returns were made, amounted $24,000,000. With regard

to the $21,000,000 unaccounted for in those figures, presumably part of it went for reserve and the balance for companies' profits. That is to say, for every $100 which the employers of Pennsylvania paid for insurance during those years the workmen got $44, plus whatever amount would be added for medical and hospital expenses.

Comparisons are odious but can not very well be avoided in this discussion. During that same period, for every $100 paid by the employers of our Province in Ontario, $98 went directly to or for the benefit of the workmen. In other words, out of every $100 in this insurance State of Pennsylvania $44 or perhaps $50 went to the workmen, while out of every $100 under a pure State-fund system, as in Ontario, about $98 went to the workmen.

The British Home Office report for 1920 indicates a condition somewhat similar to that in Pennsylvania. A large percentage of the liability business in Great Britain is carried by stock or mutual companies, and these are required to make annual returns to the Home Office. These returns show (converting their sterling value into currency) in round figures: Premium incomes, $44,000,000; losses paid, $14,000,000; commission and expenses, $14,000,000; transferred to reserves, $7,000,000; set aside for profits, $8,000,000.

These are the official figures from the British Home Office. In other words, for every $100 paid to the insurance companies by the employers of Great Britain, the workmen got about $33, or, assuming the $7,000,000 transferred to reserves was intended to meet deferred liabilities under policies, the figures would be about $47 out of every $100. That is practically the same situation as exists in Pennsylvania.

In making this comparison it is only fair, of course, to say that the insurance companies are required to pay quite a substantial sum in State as well as municipal taxes, from which the so-called State funds are free.

In the matter of service, investigation has shown (I am referring again to Mr. Hookstadt) that State-fund systems, where administration of the fund is by a commission, are much more prompt in the payment of claims than either self-insurers or private insurance companies. One reason for this will be obvious. The boards administering the law not only adjudicate the claims but also actually pay them.

Going back to the question Mr. Duffy raised in the discussion earlier in the afternoon, with us there is no delay over any question of agreement or receipt. When our file is assembled and it is indicated that a man is going to be disabled for several months, that man at once receives his compensation up to date. Take, for example, a man with a broken femur. We know that it will probably take five or six months for that man to recover so that he can go back to work. Within a week after that accident happens, if the claim reports are in promptly, he will be notified of his compensation and a check sent to him. He is not asked to sign anything, and his rights are stated to him, because we send with that first check a short synopsis of the law, which states in very simple language just what his rights are. He knows the moment he gets his check what it is for, and why it is limited to such and such an

amount. He is put down for compensation without any further consideration except an occasional report from his attending surgeon as to what progress he is making, until quite near the time when, in the normal course of things, he would recover, when he will either be brought in or be sent to a referee for examination.

In other words, when the board decides that a claim should be paid, it is paid at once instead of having to order someone else to pay it, as is the case under a competitive system, and we are all familiar with the delays frequently entailed when the concern ordered to pay for some reason starts a controversy over the payment. Even when there is no objection to payment on the part of the insurance carrier, we all know the truth of the expression, "If you want anything done quickly, do it yourself." That applies here, for surely it takes longer to get a sum of money paid by ordering someone else to pay it than by paying it yourself.

It has been suggested, and the man who wrote the pamphlet heretofore referred to, has taken a great deal of trouble to state, that one of the reasons why the insurance carriers' costs are so much heavier than the State-fund costs is that the insurance carrier has a claims organization whose business it is to investigate all claims on behalf of the insurance companies, and they claim that that is doing a wonderful service for the employer. Perhaps it is, but I think the main object of a claims organization or an investigating organization of an insurance company is, not to see how much or how quickly it can pay the workmen, but to see how little it can get off with. Its purpose is to try to find reasons against the allowances of claims rather than in favor thereof.

Doubtful cases should, of course, be carefully investigated, whether it is a State fund or an insurance company, but I should judge that for one doubtful claim that is presented there are 10 that are genuine, and to have these 10 personally investigated by a special claims official is not only useless but wasteful. A well-organized system of periodical reports by claimant, employer, and attending surgeon will develop the truth in nine cases out of ten just as well as personal investigation can do and at very much less expense.

There is just one other item and that is the question of financial security. The boards, having the taxing power of the State, are in a position absolutely to secure the fund against the possibility of insolvency. There is no doubt in the world that most of our large insurance companies are perfectly solvent, and there is no question as to their ability to pay their liabilities. But there is also no doubt of this fact: that in several jurisdictions weak companies have been permitted to do business and their financial collapse has left a trail of tragedy in their wake which makes very painful reading.

I am not saying that the Ontario law or the law of any of the other Canadian Provinces, or the State-fund laws on this side, are altogether ideal laws, but when I was asked to discuss this subject of State fund I felt that there were some facts that ought to be stated, and stated as facts, not as propaganda. It is of no interest to me whether you gentlemen who have competitive systems continue with your competitive systems or adopt an exclusive State fund. I do not want it said, however, that this organization is an organization for the purpose of distributing propaganda.

DISCUSSION

Mr. HORNER. May I say something in addition to what Mr. Kingston has said with reference to Pennsylvania?

I was informed by the assistant manager of the State Workmen's Insurance Fund of Pennsylvania that during the year 1920 the amount which it paid out for medical, surgical, and hospital expenses was equivalent to the amount it paid in compensation. You must remember that in Pennsylvania our maximum compensation rate is $12 per week and payments begin after the first 10 days of disability.

Also, I want to take the opportunity of making this statement: Some time ago there appeared in an editorial in the Toronto Star, I believe it was, a statement to the effect that in 1920 the premiums paid the insurance companies in the State of Pennsylvania were $80,000,000 as against $35,000,000 paid out to injured workmen. That, of course, was an error. I think what the author meant to say was that that covered the five-year period. In 1920 in Pennsylvania the amount of premiums paid to the insurance companies was something over $14,000,000—I can not tell you the exact figures—and the compensation paid by the insurance companies during the same time was something over $6,000,000, not including medical, surgical, and hospital expenses.

Mr. KINGSTON. In order that it may be stated in the record in this connection, we have in Ontario a provision for full medical and hospital expenses. While I can not give you the exact figures, the relative figures in Schedule 1 between compensation in the year 1922 and medical aid (I am including in medical aid hospital as well as doctors' and nurses' bills) is about $3,500,000 for compensation and about $750,000 for medical aid. So that the element which Mr. Horner refers to, that of a small maximum, must have a very large influence in making the relative figures in Pennsylvania what he has stated them to be.

Mr. HORNER. What is your maximum compensation rate?

Mr. KINGSTON. In Ontario it is $25.64 a week; that is the weekly equivalent of two-thirds of $2,000 a year. No one can be allowed compensation on a higher annual wage basis than $2,000.

The CHAIRMAN. The next topic to be discussed is "What competitive State insurance is," by William C. Archer, of New York.

WHAT COMPETITIVE STATE INSURANCE IS

BY WILLIAM C. ARCHER, SENIOR REFEREE NEW YORK DEPARTMENT OF LABOR

Competitive State insurance is a system in which the business of workmen's compensation insurance is done by other agencies than the State. That, I think, is the generally accepted meaning of competition in that respect. The other agencies beside the State are the stock and mutual insurance companies. Common to all systems is the system of self-insurance, because in nearly every jurisdiction self-insurance is allowed.

Self-insurance may be dismissed with the remark that it is a privilege extended to employers to discharge directly the obligations laid upon them by the statute to compensate their injured workmen for time lost through industrial accidents.

I am in favor of self-insurance when it is justified. I think it is justified only when an employer has an exposure of pay roll large enough to operate under the laws of chance the same as the class to which he belongs. Then, of course, there is no chance of a contingency which may put him out of business.

There is a secondary justification for self-insurance, and it is a justification which motivates a great many employers who are engaged in self-insurance. That is the desire to do more than the statute requires in the way of taking care of injured workmen.

In the past generation or two, the universal ideal of our civilization has been to gather wealth. Bobby Burns might have said, "To gather gear by every wile that is justified by honor," sometimes to overstep the mark.

Slowly that ideal is changing, because, with a great many people, on achievement it has changed to Dead Sea fruit. A great many noble men who have organized large businesses, who have demonstrated their ability to override their environment, and to do large things in a large way, have gone beyond the mere building up of a great business organization with its great sales and its great collections and its considerable profits, and have considered their workmen in a true spirit of compassion. So that we have all over our land a considerable number of noble-minded employers whose ideals embrace also that of making admirable working conditions for their employees. These men, many of them, pay more compensation than the law requires, and add to it other forms of protection, such as group insurance, sickness benefits, hospital service for the care of their sick and injured workmen and their families.

For the State to say to that employer, "You must abandon the right to deal directly with your workmen and surrender to somebody else" is not right, so the plan of self-insurance is common to all. The real competition, so called, is between the State on the one hand and the stock and the mutual companies on the other hand.

The object of State insurance is different in the various States. Ohio and other States in the United States and the Province of Ontario consider it to be a proper function to be exercised by the State government. The constitution, for instance, of the State of Ohio says in so many words that the State may provide a State insurance fund, naming only one form of insurance in that regard. The truth of the matter is that Ohio, even when competition prevailed there and before the adoption of the constitutional provision referred to, had no statutory law providing for the organization of mutual companies, which brings us to the remark that corporations, such as stock and mutual companies, doing this business in their corporate capacity do not do it as a natural right. An insurance company does not engage in the insurance business as a natural right, as a grocer engages in the grocery business, but has to be created by the State as an artificial person authorized to do a certain business, with the provision of certain securities, etc. So that is one object of State insurance as illustrated by these States.

In New York it seems to be the object of the State insurance to demonstrate a more or less ideal form of workmen's compensation insurance in all aspects, including administration, and to be a guide to reasonable rates. The State insurance commissioner has the

function of overseeing the rates of the State fund and of the various insurance companies for the sole purpose of guaranteeing adequacy of rates. I think it would be an improvement if the rate-making supervisory body were charged with the duty of seeing to it that the rates were not only adequate but reasonable, and reasonable would imply adequacy. If a dollar per hundred is an adequate rate, of course anything above a dollar is still an adequate rate, and in that sense a rate may be adequate to the point of absurdity. But if the requirement is that the rate of one dollar shall be a reasonable rate, then it means that enough money shall be collected, but no more than is necessary, to do the business provided by statute in the manner provided by statute.

Of course, the idea has prevailed that the State fund should be established to enter the field and to demonstrate what it could do, and that if it were overwhelmingly a more adequate system, its growth would be thereby entailed, and that eventually it would preempt the field, but a 10 years' experiment, for instance, in the State of New York (and I think it is true in every other State that has the so-called competitive plan) shows that the status quo remains year after year with respect to the relative amount of business done by State funds and various stock and mutual companies. That is very strange, indeed, and worthy of consideration.

Why is it so? I think it is so for several reasons. One is that the supervisory rate body has practically the same rate for stock and mutual companies and therefore prohibits the slashing of rates, so that the agent placing the business can not say. "This company is cheaper, and that company is dearer." Rather does he say, "I will place your insurance, and the rate is so-and-so."

It is true that the State-fund rate is less in New York, but the difference between the rate that the State fund charges and the charges for other forms of insurance is made up usually by the brokerage paid for the other forms. It really costs the employer more money, more dollars and cents, from start to finish, and yet the relative amount of insurance done by these various insurance organizations is much the same year after year, as the reports will show. That is true without regard to the merits of the stock or mutual companies within their own field.

We may well divide commercial insurance companies into three classes—a class which shows a very decent regard for the requirements of the law and does its business in a more or less adequate manner; a class less desirable; and a class which seems to have improper ideals motivating it. Yet the latter class retains its relative amount of business right along year after year, showing that other elements enter into the placing of insurance, and certainly they do. For instance, in a State like New York where there are over 20,000 brokers, the average employer does not give very careful consideration to the question of compensation insurance. He simply goes to his broker and places his insurance; he counts it as a necessary part of the overhead and the broker places the insurance in whatever company he wishes to place it.

You and I buy fire insurance in the same way. I say to my broker, "I want fire insurance," or "I want it increased," and he will send me another policy. Not until I open the envelope do I know what company is insuring me.

So the broker places the insurance, and the employer who goes to the broker often accepts the advice of the broker as an expert in that line. The broker naturally is not a friend of State insurance because he gets no brokerage out of it, so he is going to place it with one of the companies which makes it possible for him to be engaged in business.

There are other elements right there. That broker may place fire insurance at the same time, and often he can render very excellent advice in the placing of fire insurance with respect to arrangements to be made within the factory in order to get the advantage of certain preferred rates. The same broker may often be visited by the employer who needs a bond, and he may be able to get a bond for the employer. When he gets the bond for the employer—and he may get it under circumstances in which the employer could hardly get the bond at all—the insurance carrier will say, "I should like to have your compensation insurance. I should like to have your fire insurance." The rule of noblesse oblige governs, and the insurance is placed in that manner.

Likewise, there is the influence of banks. Many times an employer is under obligation to a bank for borrowed money or credit, and the bank itself may be interested in an insurance company financially; it may not be interested directly as a bank, but through a common ownership of stock; so that the bank may indicate to the employer that it would prefer the employer to place his insurance with a certain stock company or with a certain mutual company.

You may say, and it is often said, especially by stock and mutual companies (I have read it in books of propaganda), that the State has a peculiar advantage in the matter of having to pay no brokerage. Well, that is an advantage, but it is counterbalanced by the brokers having so many friends in the field, so that the argument might be stated the other way. Therefore, when you come to consider it, the seeming advantage is counterbalanced by the apparent disadvantage.

The States very rarely engage in lively competition for business. They are content to answer employers who seek information on the subject, but they seldom go out after business. I know the State of Ohio did at one time go out for it in a very active manner; it conducted a competitive business on good strong lines. There was just about as much knockdown and drag out in the contest as you have ever seen a State engage in, with the result that it was very successful.

There is a general fear, too, on the part of a great many employers with regard to the increasing functions exercised by the States. While personally I do not think that is a sufficient objection with regard to workmen's compensation insurance in itself, I share the general belief that there should not be constantly encroaching functions of either State or Nation, and I think, especially in the United States, that the time will come when the States probably will have to reassert in a great many respects States' rights and defend themselves against the encroaching power of the Federal Government in things that should be of local concern.

We can not but say that this fear which is implanted in the hearts of many employers is a sincere and wholesome fear on their part.

The point is that we can not denounce them for that as being inspired by unworthy motives, because I think the converse is true.

Of course, if one stops to take cognizance of the figures given in dollars and cents by Commissioner Kingston, one is confronted by an argument which is indeed a poser. If it be true that in the Province of Ontario out of each dollar collected 98 cents goes to the workmen, and that for the other 2 cents the administration is effected, the money is collected and distributed, that is certainly a high degree of efficiency, and challenges private enterprise in any branch of business done anywhere. If it be true that in the State of Ohio a dollar and five or six cents collected from industry will accomplish all the work of collection, the work of distribution and administration, and leave a dollar for the injured workman, certainly that stands up like a mountain peak challenging consideration.

In no State in which private companies operate does anything like that obtain. In New York $1.60 to $1.65 has to be collected from industry in order that the entire working of the machinery may be accomplished and $1 given to the injured workman. Of course, the insurance companies come in and say that they render an additional service. Well, I think that that claim, in itself and standing alone, is pure buncombe.

A while ago I paid tribute to some companies as doing business in an admirable way, granting that they already have the right to do business and have secured their claims. I would be unworthy of myself and of truth if I did not say that, and I am qualified, through my own experience, to bear testimony in that particular respect. In my opinion if the companies were allowed by their directors a larger budget for the mere handling of claims better work would be accomplished and in the end the insurance companies would save money. All the insurance companies could put out more money as an administrative budget without collecting a higher premium, do more effective work in the administration of the law, and have a little bigger margin of profits in the end.

Where does the State fund stand with respect to its ability to handle claims? It is second to none. It is as good as the best. It comes before the tribunal in New York State as well prepared with facts as does any company, large or small. It is as quick in making payments as the quickest; certainly it makes payments more quickly than some of them do.

So, after all, to repeat what I have said on many and many an occasion, administration is the great solution of the workmen's compensation problem. Administration must have power, it must have will and ideals, and it must have machinery. I have a profound conviction that the workman alone will not be able to discover his rights, even if you give him a copy of the law and all sorts of forms.

Why, it takes a trial with learned men on each side, and lots of time to determine such questions. It has taken the courts in the various States of the United States all these years on numerous appeals to lay down what the law is, and no ordinary workman can know what his rights are under the law, or anything like it.

A poor woman who had sustained a permanent injury to her wrist was before me the other day. She was ill at ease, waiting for her

case to be called. She reprimanded us for taking up her time, saying, "I was out 18 weeks; I got paid for 18 weeks; they did justice, and that is all there is to it." I said, "Let us send you up to the medical department to have your wrist examined." The report came down that there was a degree of permanency of stiffness there and that she was entitled to $1,100 more money. I have seen more instances of that than you could count, which has brought home to me the profound conviction that we should have a trial or an opportunity for a trial in every case.

Looking back over 12 or 13 years, I think there has been advancement everywhere along the line, and a changing of sentiment toward the whole matter. At first, the old-fashioned settlement agents of the liability insurance companies took over the compensation business and carried it on with the perverted ideal of another day. That was poor business. Such men are being replaced, and to-day a great number of men are engaging in the business who are real gentlemen, who have hearts, and many of whom have sufficient power to do justice under the law.

So there has been advancement there. It is probably well that we are going ahead in the manner in which we are going, in order that the different kinds of insurance may be fully tested. We can not adopt a system such as Germany has, because that is autonomous. The Germans are a homogeneous people; they are trained to discipline; they will accept the dictum of the State and be obedient. Therefore, the administration in Germany is by organized labor on one hand and the employers on the other. Certainly it would not be bad administration if we could get absolutely face to face on each particular case in the shop, because the facts then would be apparent to all.

England, on the other hand, has a law with no provision for machinery at all, so to speak. The law simply says to the employer, "In such and such a case you shall pay so much." It says to the workman, "Your rights are so much." The English system has worked well because of the character and quality of the people and their long tradition as to doing business in that way.

In the American States, with our heterogeneous people and the fact that only part of the labor is organized and much of it is unorganized, the unorganized labor can not properly represent itself; there is still, sad to say, too much feeling in many instances between organized labor and its own employers so that they are not in the best mood in the world to get together, although, as Mr. Duffy of Ohio says, nothing has brought the employer and the employee together at more points of contact than the workmen's compensation law, whose inception invited them to get together around a table.

But we have our own heterogeneous population and we have our own system of administration, and I bear testimony to the fact that on the whole there is general improvement all along the line.

DISCUSSION

Mr. KINGSTON. Lest I be misunderstood with regard to a statement I made, arising out of what Mr. Archer has said, I stated that out of every dollar collected from the employers, 98 cents was paid to the workman during the period covered by that Pennsylvania

report—the five years from 1916 to 1920. That was at a time when our provincial Government paid a very large proportion of our administrative expenses. Within the last year or two we have come to the point where all our administration expenses are payable out of our fund, so that to-day out of every dollar collected from the employer practically 96 or 95 cents is payable to the workman. I want the record to be correct on that.

The CHAIRMAN. This subject will be discussed by Mr. T. J. Duffy, of Ohio.

Mr. DUFFY. Mr. Archer made reference to the natural rights of the insurance companies to write workmen's compensation insurance, or, rather, he said they had no such natural right. I want to emphasize that point in this way: In my experience, I find that many times those who are opposed to this plan attempt to create a prejudice against it by saying to employers that the State has as much right to take over this business as to take over any manufacturing or any agricultural business.

Why does a manufacturing or an agricultural business exist? It exists because it is necessary to supply the natural needs of mankind. If there was never any legislation on the subject of agriculture or manufacturing, we would still have the need of these manufacturing and agricultural businesses.

Why does workmen's compensation insurance exist? What brings it into existence? It is brought into existence because the State or the Province or the Nation enacts a law conferring a new legal right upon injured workers or upon the dependents of killed workers, and imposing a new legal obligation upon employers. When the State or the Province does this, it does it as a matter of public policy, to meet some social, industrial, or public need.

When the State does this to meet a public need and throws this burden of expense upon industry, how can it reasonably be said that a business brought into existence to take care of a public need should be left to private enterprise rather than to public control? I do not think this plea will stand the test.

I also wish to voice my agreement with previous speakers in this respect: I believe if the State goes into this business, it should be a monopoly. I am opposed to the State competing with private enterprise. I am opposed to it for the reason that such competition can not be fair. That was demonstrated in New York. I am not going to take up your time talking about that because I wish to say things which I think are more important, but will simply refer you to a published address made by Mr. Baldwin which shows that all the competitors—stock insurance companies—no matter what differences they had among themselves, combined in their opposition to the State fund.

Besides that, I believe that when the State takes over any business, it should be justified in doing it as a proper public function. If the conditions do not warrant taking it over as a monopoly, the State has no right to take it over.

In a report by Mr. Hookstadt, published by the Bureau of Labor Statistics before his death, he pointed out that if all the States had this monopolistic insurance fund it would mean a saving of $30,000,000 a year to the industries of this Nation.

We made a survey of that kind for 1918, I think. Taking the insurance companies' manual, we found that had we charged the same rates, based upon the pay roll exposed that we used, we would have collected almost $7,000,000 more in premiums for that year.

That goes to the foundation of this matter. The justification for the State monopoly is economy. Must it be said of this system of civilization that we can not take care of injured workers or dependents of killed workers without placing upon industry a toll of $30,000,000 a year for an unnecessary service? I believe that an admission of that kind does more harm to the established system than any efforts of anarchists or socialists can possibly do.

We boast, when we start out on this principle, that our aim is to eliminate waste, together with other humanitarian features. Mr. Hoover, whom no one will accuse of being an agitator, about three years ago, I think, appointed a committee of engineers to study the subject of industrial waste. That committee made a partial report, which, perhaps, some of you have read. In that report it is said that the greatest problem before industry, in the United States at least, is the elimination of industrial waste. It shows that industrial waste runs into billions and billions of dollars a year. An attempt is made to apportion it in rather a crude way—so much charged to inefficient labor, so much to excessive overhead expenses, so much to inefficient management, so much to sickness, etc. However, the report emphasizes the importance of the problem, and without going into it further, let me say that if it is right (and I believe it is) then we can make some contribution to the solution of this problem through this State monopolistic insurance feature, because if we can save $30,000,000 in the industries of the Nation and put it in the pay envelopes of the workers, or let it stay in the pockets of the consumers of our products, it will certainly do us more good than if we put it in the coffers of an insurance company because of a mere sentimental idea of keeping competition.

That brings me to another statement I might make. It has often been said that you can not succeed without competition, that it is impossible. They have told me so in various States where I have been speaking upon this subject. Well, my answer to-day would be that there is the record of the Ohio State fund—not a theory, a history—a record that shows the greatest success, if you will pardon my boasting a bit, of any insurance carrier in workmen's compensation insurance.

But if an argument be necessary, let him who says that this old motto, "Competition is the life of trade," must be involved in this movement, that competition of insurance companies is necessary, come to our industrial commission office any day, unannounced. He will see there a number of people who have been asked to come there for medical examination by some of our medical staff. They come there some of them with arms in slings, some on crutches, some with patches on their eyes, etc. When he gets through looking over that line let him go into the hearing room. He will find there some widow waiting for the commission to make an award of compensation because of her husband's death. He might find there some widow to whom an award has already been made, who is waiting for a lump-sum award to purchase a home or to pay off a mortgage on a home, or he might find a young man, injured and crippled for life, asking

for a lump-sum award so that he can make another effort, in his disabled condition, to become a self-supporting and self-respecting citizen.

If that is not competition enough to bring out the very best there is in your hearts and your minds, then I say God has made you of different stuff than He did me. I need no other competition to make me do my best on a job like this.

There are many other things I would like to say, but it is pretty hard to pick out the most important. However, let me try to drive this point home: I admit that you can have a good compensation law without a State fund; I admit that those who carry the insurance may have just as good hearts as those of us who administer the State funds; but no one can explain how by competitive insurance you can raise the fund and pay the compensation at the same cost as you can under the monopolistic State fund. It is impossible; it can not be done.

Much might be said, as was indicated by Mr. Archer, about the service that insurance companies render besides the coverage. In the light of experience I think the insurance companies will not boast much about that to-day.

Just within the last few days I read an article in an insurance magazine which is very much opposed to State insurance, either competitive or monopolistic, in which it is said that insurance men may as well recognize the fact that they have been going on a wrong principle when they have been rating risks on physical inspection, and, pointing out that many companies are in such condition now that they have to raise their rates, this article advises them to get some other system. So it seems to me that if their service had been so much greater than that rendered by these State-fund departments, that condition would not exist.

However, I do not say that physical inspection should not be done—it should be done. Physical inspection is a good thing, but it has its proper place. However—so that you may understand our position on that—we passed a constitutional amendment last November, which gives us the authority to expend a portion of the premium collected, not to exceed 1 per cent, in safety work.

We figure that 1 per cent will give us more than $100,000 a year, and with that we expect to have a safety department of expert safety men which will be superior to anything now in existence.

The CHAIRMAN. The next one to discuss this subject will be Joseph A. Parks, of Massachusetts.

Mr. PARKS. The unfortunate thing about my entering into this discussion is that, against my will, I have forced upon me the job of backing up a system operated by insurance companies. For your information, I will say that I was appointed on probably the first commission to study workmen's compensation acts. I think New York had an act at that time—it was the only State that we could go to get any help. While we were studying the New York act it was declared unconstitutional by the court of appeals in Ives *v.* Buffalo Street Railway, so New York was without an act for a time.

We got information wherever we could in the United States and in Europe. Finally I decided that I wanted an act which would eliminate all insurance companies. That opinion was written into the act which was recommended to the legislature. I was a member of that legislature, and in fact was called the labor leader of the house, so you can readily see what my sentiments were. I did not want insurance companies, but the legislature allowed them to come in.

That explanation is made to show you that I am no friend of insurance companies. I make them live up to the law—that is part of my job as commissioner in Massachusetts. I want to tell you how that act operates in Massachusetts and I do it without holding any brief for insurance companies.

I listened with attention to Mr. Kingston, who, of course, knows nothing about the administration of compensation acts by insurance companies. He says he may be biased. Of course, he is biased. He knows nothing except administration by State fund. He gave some information as to how many had State insurance—eight States have State insurance. He said he was acquainted with insurance adjusters and knew how much they could do to injured employees.

In fairness to insurance adjusters, I will say that in Massachusetts we have dealt with insurance adjusters. In the first year or two of the act I had the very great pleasure of having a few of them discharged. We had to dispense with their services. As Mr. Archer said, they had the old ideas. We had to get men with new ideas, and we have, I am glad to say, insurance adjusters who, we believe, make honest settlements with injured employees. We know they do because we investigate such settlements and have sufficient machinery to ascertain beyond any possibility of doubt whether they are in conformity with the law. There is absolutely no question about it.

Once in a while we find some one who is not getting what rightfully belongs to him, and when we do we see that he gets it. No matter how late it is, he can have his case adjusted.

In all the remarks which have been made, I have not heard a thing about that all-important thing in the administration of workmen's compensation acts—service to the injured man. For whom was that act passed? Was it passed for employers? No one can say that. Employers were content to go along as they were. Was it passed for doctors or State officials? Of course it was not. It was passed for the injured workman. It was passed for the purpose of doing everything possible for the injured workman, giving him the best possible medical attention—not cutting him off at the end of two weeks or with an expenditure of $200. It is a barbarous thing to limit the medical attention, shutting off the man with a crooked arm when an operation would give him a useful arm, and not to take care of the widow and orphans in good shape.

How do we give this service in Massachusetts? It is given in the only way it can be given—by competition. It is all right for Mr. Duffy to talk about there not being any competition, and preferring to have all the widows and orphans come before him, because he has a great big heart. I think he loves the injured workman, and

wants to give him everything that belongs to him. That is why Mr. Duffy advocates this system—he honestly believes it is best for the injured workman. But he can not take care of such workman and his associates can not take care of him. It requires more machinery than that.

In Massachusetts we have 45 insurance companies competing—in what? There is only one thing in which they can compete. The rates are fixed by the insurance department. There is a rate-making bureau. The employers are assessed according to how safe their plant is, how well they look after their injured employees in their hospitals. We have safety work conducted with the highest possible degree of success, and are doing as much in safety work as any other State in the Union. All that is fixed by the insurance department, so that all the insurance broker can do is to say that he gives service to the injured employee.

These 45 insurance companies have offices in all parts of Massachusetts. Connected with their offices they have hospitals where injured employees go, their wounds are looked after, and they are examined from week to week, and kept track of as far as it can possibly be done, doctors being in attendance. Almost every factory and workshop of any size in Massachusetts under this competitive system has a first-aid hospital connected therewith, and a nurse and doctor are always in attendance.

In that connection, I am to read a paper to-morrow on "Medical attention in connection with rehabilitation of injured employees." That subject is wrapped up in this; it is hard to separate the two. I am going to submit that paper to-morrow in support of my argument that competitive insurance is better for the injured workman.

Because I delivered a public speech on the subject I suppose I will be accused of favoring insurance companies, as that speech helped insurance companies, they having printed it. It was a comparison of the Ohio and the Massachusetts systems, and I have not heard any one since answer a single thing I said about the difference between Massachusetts and Ohio systems. I think I succeeded in showing the people in Massachusetts the difference between the two systems because the State Federation of Labor convention last year voted almost unanimously in favor of the Massachusetts system—one hundred and something for to twenty-nine against the Ohio system as compared with the Massachusetts system.

In my dealings with insurance companies I have found that they are jealous of one another with regard to giving service. We find them falling over each other in trying to get compensation quickly to the injured employee. That may make you laugh. It does make you laugh, but it is the truth. The only competition there is among the insurance companies is in getting compensation to the injured employee, giving him adequate medical attention, following up the case to see that he is rehabilitated, placing him in a job as soon as he is able to work—and getting the injured worker back to the job is the biggest thing we have in compensation work. Preventing accidents is important, but the most important thing is to rehabilitate a man when he sustains an injury, to do everything for him that medical science permits.

In Massachusetts we expended last year $250,000 for medical attention alone, to rehabilitate these injured employees so that they

would again become useful citizens, and to give them back their limbs as well as we possibly could.

I can not imagine a State fund in Massachusetts that could take the place of all that organization and give the efficient service now being given. I have said many times that if I were an employer of labor I would advocate a State fund, because it is cheap. The only thing of importance that Mr. Duffy said this afternoon for the State fund was that it is cheap, that it saves $30,000,000 a year. However, if competitive insurance costs $30,000,000 more, what is being done with that $30,000,000? Is it being wasted? If this $30,000,000 is being spent in rendering service to injured employees, getting the money to them quickly, giving them medical attention, rehabilitating them, watching the progress of their cases from start to finish, keeping close tab on them, giving them the service that only this great big organization connected with 45 companies can give, I say it is money well expended. If that is the only argument for a State fund, then I do not think that the State-fund advocates have made out a case.

I want to mention one argument that I have heard put forward, although not here—that in Ohio the State fund takes its spare funds that have been accumulated from the various employers and lends them to the Commonwealth to provide work for the unemployed in times of distress. That is an absurd argument. Any State in the Union can, of course, pass an act appropriating money to provide work for the unemployed in times of distress, and it can get such money at a very low rate of interest. If the State fund is to remain a solvent proposition and the money is to be expended as it should be, and if the money of the employers of labor is to be preserved as it should be preserved, they can not afford to let the State of Ohio have it even for that philanthropic purpose without getting a reasonable rate of interest for it. So that that argument should never be used before intelligent men. It has nothing whatever to do with the State fund. Such matters should not be mixed up with the workmen's compensation problem.

In closing, I want to say that all discussion of this question, every bit of it, should be around the one question: What system is best for the injured employee? When you convince me that the State-fund system is best, or competitive insurance is best, for the injured workman (and for no one else, because it was for his benefit that we enacted this legislation), you will find me at this convention, even if I am not a delegate, to tell you that I am an advocate of that system.

Mr. DUFFY. May I ask Mr. Parks a question, so that there will be no misunderstanding? Did I understand you to say, Mr. Parks, that the Federation of Labor of Massachusetts, by the figures you gave, voted not to accept the Ohio plan?

Mr. PARKS. I forget the exact figure. At the convention August 14, 1923—

Mr. DUFFY. What plan did they vote to accept?

Mr. PARKS. They voted to have a State—

Mr. DUFFY. A monopolistic State fund.

Mr. PARKS. Yes.

Mr. DUFFY. The only objection they had to the plan was that part which gives the employer the right to self-insurance. Is that not true?

Mr. PARKS. Do you want me to tell you what happened at that convention? The only reason the other matter was introduced was to meet the Ohio State-fund propaganda, and neither one of the plans was pressed at the following session of the legislature. They were both withdrawn. Do you know that?

Mr. DUFFY. I am speaking of the Federation of Labor convention. The expression of the laboring people of Massachusetts through the State Federation of Labor was for a monopolistic State insurance fund.

Mr. PARKS. The question before the Federation of Labor convention was whether the Ohio system, the Ohio bill, should be introduced in the Massachusetts legislature. That was the issue before the convention. The vote was one hundred and something to twenty-nine—I forget just how many.

Mr. DUFFY. In favor of the monopolistic State fund.

Mr. PARKS. You are absolutely wrong, Mr. Duffy. They voted one hundred and something to twenty-nine against the Ohio system. Is that not so, Mr. Duffy?

Mr. DUFFY. I make the statement here so that we can get it clear, that the Massachusetts Federation of Labor went on record for the monopolistic State insurance fund.

The CHAIRMAN. The next item on the program is a discussion by Mr. G. N. Livdahl, of North Dakota.

Mr. LIVDAHL. I will confine my remarks to some things that have a bearing on both sides of the question brought up here, and will preface them with this: In the 1923 session of our legislature two bills were introduced to set aside or eliminate, or to replace our present workmen's compensation law, which provides for an exclusive State fund and is exclusive in the strictest sense of the word.

Under one of these proposed laws all kinds of insurance—insurance companies, self-insurance, mutuals, etc., together with the State fund—would be allowed; under the other proposed law the State fund would be eliminated and there would be competitive insurance by companies only.

At that time the Legislature of North Dakota was very evenly divided and both sides wanted to know the situation and what to do with the law that we have. So, in order to give the people the information they wanted we said, "We will bring in to the insurance committees of both the house and the senate all the information that we possibly can, and at the same time we ask that you have representatives of the insurance companies and any one else who is interested in competitive workmen's compensation insurance present their side of it."

We told the committees that we held no brief for any insurance company but that we had no quarrel with them whatsoever. Personally I have written a lot of insurance for insurance companies and I have a very friendly feeling toward them, but the State had decided to try out an exclusive State-fund plan for workmen's compensation insurance. I said, "If you gentlemen of the legislature

find that we should not try out this plan further, change it for either of the other two bills that you have here."

It developed that the representatives of insurance companies had to present the case for the two bills that were introduced. You will readily understand why. There was no one in the house or in the senate, even those who had sponsored the bills, who knew anything about the contents of the bills or about the law as it was operating. The insurance companies therefore naturally defended the bills introduced, and they presented a clean, nice case. Some of the arguments advanced were to the effect that the system is monopolistic. We admit that absolutely—it is and it must be. The insurance companies said it was unfair. We challenge that. We do not think it is, no more so than the mail system or anything else we have in common.

It was said that the State fund was subject to political manipulation. For my part I do not think that is the case, because in our State we have a commission of five. Two of them are elected by the people of the State and three of them are appointed by the governor. They hold office for five years and no two are appointed in the same year.

It was also argued that the present system prevented the choice of insurance carriers, which is true. It was also said that it did not leave the way open for the formation of mutual insurance companies by employers. Of course that is true, but that will be covered in other points.

It was also declared that the State fund interfered with or took away business belonging to private insurance companies. That is absolutely true. You can not have an exclusive State fund and at the same time pay tribute or anything else to insurance companies. It was further argued that insurance companies paid tax to the State and that, therefore, the State would lose a large tax income.

On the other hand, arguments were presented for the State fund and against these other arguments. It was argued that the State fund gave every service that could be obtained from any source and provided the insurance at cost. We said it was the cheapest to the employers, since in our State we furnish the insurance at about 10 per cent of premium income, whereas the record of the companies doing business in other States, not ours, showed that it cost from 37 to 40 per cent. We chose the figure 38 because that was the average.

In our State, we did business to begin with at a little less than 10 per cent of our premium income, but last year it went up to 10.3 per cent, for which there was a good reason. We had rather high rates, comparatively, to begin with. They were, of course, taken from other States and from other manuals, and as our industrial conditions were not the same as those others, at the end of the first year, for instance, we had a large general surplus. Since that our rates have been cut down very materially until a year ago. We reduced the rate on 75 classifications, but had to increase it on 14. This last July we cut down the rate on 35 classifications and increased it a little on 17.

Besides that we inaugurated a system to declare a dividend, which ranged from 10 to 30 per cent on various classifications, and in addition we are again allowing a credit, so that on the whole our rates are way below any other rates that we have found.

In this connection I want to say that the State pays nothing toward our administrative expense; it all comes out of the State fund. The people are not taxed directly for any of our expenses.

We argued that every additional insurance company writing this class of insurance in the State would produce additional expense, to be paid by policyholders in additional premiums, without giving additional or better service. There the question of service comes in, which has been argued so freely this afternoon that I will not argue it.

A mutual insurance company would have to compete with other insurance carriers and that would tend to increase the total expense to be borne by the public and could add nothing to the service. Also, any tax paid by the insurance company must be paid by policyholders in additional premiums. It can not be paid in any other way. While the insurance companies pay taxes, of course, it has to come out of the premium receipts in that State or Territory or over the country covered by them at large.

Then a mutual company of employers would in our State produce controversies between employees and employers. That exists in all the competitive States and you can not avoid it. There arises a spirit of controversy, because one has to pay and the other receive. I think that we have eliminated that entirely, although, through ignorance I might say, it is not entirely eliminated; that is, neither the employers nor the employees know when they have a good thing.

Even under competitive insurance a tribunal administering the law and adjudging controversies would have to be maintained, adding still further to the expense without adding to the service obtained under the present law.

Since the State makes the insurance obligatory, there is no valid reason why the State exclusively should not supply that insurance. Since the cost of this insurance is eventually shifted to the public, it is not fair that any private concern should profit by any part of it. That, of course, is obvious to anyone who thinks seriously on the subject. As I have said, we know very well that there are insurance companies which are well conducted and have assets so much larger than our State fund that our State fund sinks into insignificance; but at the same time people can not help but remember a few incidents which I do not want to enumerate. We find that if we want the confidence of the people we must have something absolutely stable, and in our State at least they have learned to think that the State is it.

Not being a commercial proposition for profit, it can be made a humane institution providing for rehabilitation and restoration of useful energy and power. In our State we are trying to do that. We are trying to go the limit in rehabilitation and restoration to earning energy and power. We are in doubt as to whether or not to establish such an institution of our own, but so far we have been using the means at our disposal to bring about the desired end. I might cite a large number of cases, but it would be of no avail to you.

We cited the fact that the exclusive State fund is giving satisfaction in several of the States and in nearly all of the Provinces

of Canada. With this we showed figures which had been sent us by similar institutions. Then, of course, we have conditions in North Dakota that do not obtain in any other place. For instance, in our State the industrial field is very limited, and there is absolutely no reason why it should be split up between State insurance fund on one side and competitive insurance on the other.

We also find that an exclusive State fund gives 100 per cent opportunity to obtain and compile statistics. We have discovered that other jurisdictions find it quite difficult to get statistics of various kinds from insurance companies. That is not to be wondered at, as they do not keep the records with that particular object in view.

Also, in North Dakota we have no home insurance company now doing or that is capable of doing this class of business. Consequently, we would have to send all our premium money out of the State.

These were the arguments presented for and against the bills presented and the law as it was. After the two committees of the legislature had heard them all and had had ample opportunity to study the question and to get all the information they wanted, our legislature, I think quite unanimously, rejected the two bills to eliminate the State fund; so apparently our State legislature was satisfied to continue for some time longer the exclusive State fund we have.

Mr. ARCHER. For the sake of proper information I would like to say a word on one point. The State fund of Ohio is not loaned at a low rate of interest. I speak because I was once secretary of the Industrial Commission of Ohio. By provision of the law of that State, any political subdivision having bonds to sell must first offer them to the State fund at par and accrued interest. Such being the case, the State fund has had the very enviable position of being able to buy bonds in the market and to hold them at approximately 6 per cent.

In a case recently taken to one of the courts of the State of Ohio, however, that provision was declared unconstitutional, so that such political subdivisions can now go into the open market to sell their bonds, but as it stands the State fund is well secured by high interest-bearing security.

[The meeting adjourned.]

CHAIRMAN, M. D. MORRISON, M. D., CHIEF MEDICAL OFFICER NOVA SCOTIA WORKMEN'S COMPENSATION BOARD

MEDICAL PROBLEMS

The CHAIRMAN. The meeting this morning is perhaps the most important meeting of the whole convention. It is to deal with technical subjects, which will be taken up and handled by experts, analyzed by them, and their findings presented for assimilation by laymen. I need not tell you that this is an exceedingly difficult thing. It is much easier for a doctor to address a gathering of men composed entirely of doctors than a miscellaneous assemblage like this. You know doctors think along scientific lines, and to translate their views and opinions into popular language is not an easy matter by any means.

The writer of the first paper to be read this morning is a professor in Dalhousie University—professor of surgery. Doctor McDougall, to whom I refer, is one of the best known surgeons not only in Nova Scotia but in the whole of Canada. When I tell you that he is vice president of the American College of Surgeons you will understand that he is no small toad in the American medical pool. Doctor McDougall will now read his paper on "Hernia."

HERNIA AS A WORKMEN'S COMPENSATION PROBLEM

BY J. G. M'DOUGALL, M. D., F. A. C. S., HALIFAX, N. S.

Within recent years the question of hernia has become of renewed interest to the surgeon on account of its difficulties and importance to industrial boards which have to deal with it as a compensation problem.

In order that the surgeon and industrial boards may properly understand each other, it is necessary to dispense with or modify considerable of the textbook terminology and adopt terms or names that both will understand as signifying a single and definite entity, since much confusion arises from the meaning that each attaches to the terms employed by the other. This suggestion is simply made in passing, as time will not permit going into this important part of the subject. It should, however, at some time be considered conjointly in order to prevent some of the present misunderstanding and confusion which now complicates the question.

The importance of hernia from the viewpoint of industrial boards centers about its relation to accident or injury as a causative factor. If it is due to an accident, then it is without question compensable, but if it is claimed to be due to other causes, then the discussion as to a proper basis of settlement reveals the many problems of hernia.

There is a hernia due to injury—that is admitted at the outset—and it occurs at that part of the abdominal wall where the direct

violence was received. It is always produced by direct application of force; e. g., falling on a stake or peg, or being struck by a bar, or being gored by a horned animal. But this hernia does not occur at any of the three classical spots for hernia (navel, groin, or thigh) unless the violence happens to be applied there. To produce it the muscular and fascial layers of the abdominal wall must be actually torn or rent, and the remaining layer or layers not being able to resist the intra-abdominal pressure, the hernial protrusion shows soon after the injury.

This hernia occurs so rarely at any of the three classical sites of hernia that it is practically negligible. Coley, of the New York Hospital for the Ruptured and Crippled, is reported as never having seen a case, and others of very large experience have seen exceedingly few. One authority reports five, one of which was doubtful. This is the condition known to the surgeon as "traumatic hernia," and sometimes called true traumatic hernia.

Let us now consider the hernia occurring in the course of the day's work, apparently due to heavy lifting or doing any work causing increased intra-abdominal tension, or it may be ascribed to a slip or fall. On such an occasion and time the hernia is noticed for the first time, and it seems so obvious to the workmen, juries, and courts that this effort was the cause that there would seem to be no other cause. One must confess that it appears axiomatic. Here indirect violence, i. e., muscular action, is the factor instead of direct violence as in traumatic hernia.

This hernia is termed by some "occupational hernia," and by the French by the better term, "hernia of effort." These terms imply injury or accident as the cause and consequently the idea of compensability.

It is this group that causes the chief difficulties and perplexities for industrial boards. The surgeon will tell you, and rightly so, that such a hernia is often present, though the person himself does not know it. It is often discovered by the surgeon in the course of routine examination, the patient having no idea of when it occurred, though it has reached the stage where it is visible and palpable to the surgeon.

It is practically always a matter of gradual development and the time required to reach the degree of development that renders it obvious varies in different persons; in some it may not appear until late in life. The frequency of hernia in persons of sedentary occupation suggests causes other than laborious occupation.

"This hernia is never due to accident or single increase of intra-abdominal pressure," says MacCready, the greatest English authority on hernia; and Grasser, one of the highest German authorities, states that "a hernia can never arise at the moment of accident or by a single increase in the intra-abdominal tension, be it ever so great." This, at first sight, seems at gross variance with what is actually experienced by the workman who experiences during sudden severe effort, an abnormal sensation at one of the three places named, and then finds a lump never previously noticed.

What happened is that an extra amount of bowel, or omentum, has been forced down and added to the unnoticed part previously there, thus rendering it recognizable. Thus what he ascribes as the cause is simply the occasion.

The surgeon and the anatomist can readily explain and demonstrate for you why all this is as stated. There is a thin congenital sac of varying length, with its mouth open to receive the gut, or omentum. This is called the preformed sac, that normally should have shriveled into a slender cord without an opening. The bowel plays into this sac as a shuttle, just barely entering in a small way at first, and as the sac expands from month to month, and year by year, it has pushed far enough and has become large enough to be felt and seen. The surgeon can often feel the small soft hernial protrusion before it is visible or noticed by the patient in any way.

In many cases one can feel the thickening on one side caused by the presence of the preformed sac before hernia has developed, and can with reasonable assurance forecast the coming of hernia.

It is only in a small percentage of cases that pain is an important feature, even in those cases that apparently occur suddenly.

On operation this sac can be readily demonstrated, and in many cases, from its appearance and consistency, it is strikingly obvious that it had been present long before the hernia appeared.

In operating to cure hernia in childhood, all one has to do in many cases is simply to remove this sac, after tying it off, and without putting in the usual deep stitches. No recurrence of the hernia occurs. Thus the presence of the preformed sac, as known to surgeons and anatomists, constitutes the etiological factor in the production of this hernia.

This is greatly at variance with the cause asserted and believed by the workman, but no matter how obvious and real the cause offered by the latter may be to him and others, one can not think that inference and belief can long hold the place that naturally belongs to the facts of science.

The man with a hernia, then, began life with a defect of the human machine, which has its natural culmination in hernia, whether he is a laborer or living in ease, entirely apart from the question of accident or occupation. He is in the same position as the person with mild congenital heart disease or any one of the many congenital defects or weaknesses, each in time progressively developing its own special disability.

This puts "hernia of effort" in the category of disease, and for the purposes of the board it should be classed as "disease" technically.

It is the opinion of the writer that justice will not be fully done to all concerned in this question (workmen, industrial board, employer, and the State) until this idea is adopted as the fundamental basis in the consideration of this troublesome question.

In Switzerland a person suffering from hernia is entitled to indemnity on the following conditions only: (1) It must appear suddenly; (2) it must be accompanied by pain; (3) it must be of recent origin; (4) there must be proof that the hernia did not exist before the accident.

The question of pain might well be eliminated, for it is not actually so common a feature of hernia as we are led to believe, and, further, it is not easy to prove that the pain was not there, if the person (counting it as an asset in getting his compensation) asserts that it was. We can establish its presence by inference only.

If such a plan as the above be adopted, the medical examination of workmen for hernia and the registration of all cases would be very helpful.

Adopting the idea of hernia being a disease and not compensable, it would still be quite in order to compensate for accidents to or in aggravation of the hernia, as you compensate bona fide cases of "accident aggravation" of any disease, when such is proven to the satisfaction of an impartial medical board acting in conjunction with the industrial board, in doubtful or complicated cases requiring technical medical knowledge and experience. This does full justice to all.

Some would not go so far as this, but would without reservation place "hernia of effort" in the noncompensable class, suggesting that if some compensation were allowed in special cases and under special circumstances, after full investigation, it should be on the basis of a moral obligation only, for humane or economic reasons. This seems rather too rigid and severe, but on the other hand it would eliminate the tremendous abuses and enormous number of unjust claims arising out of hernia. These unjust claims and abuses have developed to such an extent that the limit of tolerance has been reached and passed, and one who knows this is not surprised that so rigid a ruling is urged, and possibly may have been adopted in some places.

In conclusion it might be said that true traumatic hernia at the classical hernial areas (i. e., that produced by direct violence) should be compensated. The number of such cases, however, will be so small as to be practically negligible.

While, as already stated, "hernia of effort" should be logically placed in the disease category, nevertheless one would feel that some provision should be made whereby justice would be done or at least made possible for special cases or conditions arising out of hernia, the compensation being granted not for the hernia, but for some special condition of it, or aggravation by injury or accident.

If a competent medical board is constituted to act in an advisory capacity to the industrial board in dealing with such cases the chances for abuse are reduced to a minimum, and at the same time there is adequate provision for those who might be deprived of possible rights by the application of a rigid rule. While the general principle holds true and would be applicable to all cases, certain features in special cases would seem to call for such elasticity.

It seems to the writer that only by the getting together of industrial boards and surgeons for full and free discussion can this complicated and difficult problem of hernia in relation to compensation be satisfactorily solved. It must be seen through the practical as well as the scientific eye properly to understand it and satisfactorily to solve it.

DISCUSSION

The CHAIRMAN. The question of hernia is a very important one. I think that some of the doctors present this morning should give their views on this question, and when they are through I am going to ask Mr. Archer of New York to give his views on hernia as the question is dealt with there.

Doctor FRASER (Nova Scotia). The paper that has just been read has afforded me a good deal of pleasure. The conclusions arrived at are pretty much what we are feeling in our jurisdiction.

In regard to the first class of hernia, traumatic hernia—direct injury—we are all in agreement on that class of case. In the other class, hernia of effort, the practice we have adopted is this: When a man makes a claim for disability arising from hernia, if he can establish that it dates from some particular day or incident, a slip or fall or twist, followed by pain, frequently nausea, sometimes so great as totally and immediately to incapacitate him for work, followed in the course of 24 hours by a swelling, we would recognize that as a hernia which is compensable—one not necessarily caused by the incident but undoubtedly an aggravation of an existing hernia which was previously not recognizable.

I think I am not quite in agreement with Doctor McDougall in regard to the importance of pain. Doctor McDougall rather stressed pain as a negligible symptom of hernia or the aggravation of an existing hernia. In my experience, where a claimant states that pain is absent and there is no appreciable discomfort, I am inclined to view it with suspicion; but where he complains of some degree of pain and frequently quite severe, with a definite history of pain and discomfort, I view that as a symptom of some importance in establishing the fact that the hernia has recently been aggravated by the incident upon which he bases his claim.

On that general principle of differentiating the various classes of hernia, we have arrived at the point where we feel that the hernia question is pretty well settled. We usually attempt to settle the claim along the lines of differentiation in that way.

Doctor BAY. From the medical standpoint, Doctor McDougall's paper is a very excellent one. Just how much it will help the industrial accident boards and commissions to decide hernia cases I am not prepared to say. I think that when most of us are dead and gone, there will still be discussions as to whether a hernia is the result of injury or whether it is from a natural cause.

I do not believe that any hard and fast rule can be fixed for hernia. Hernia is a definitely mechanical problem, and while those of us in the medical profession may say that hernia is never the result of an accident, yet, when we consider it as a mechanical proposition, we must consider that something takes place which breaks down the abdominal wall sufficiently to allow the hernia to show itself.

Certainly in the majority of hernia cases there is a predisposing cause. That is true even in the case of an infant. Any number of infants will have hernia following whooping cough, following excessive vomiting. It takes only a certain effort to produce a bulging or an increased pressure. You all know that the slightest constant pounding at a weakened spot will produce an opening—in fact, will enlarge it so that the hernia can get through.

I do not believe that we can have any hard and fast rule about hernia, and I believe that the commissions will have to rule on hernia according to the history which the individual claimant gives.

I think, as has been suggested, that in lots of cases a medical board will probably do your body more harm than good, because if there

are two or three medical men they will undoubtedly differ as to whether the hernia is congenital or traumatic, or caused by something else.

If you will take my advice you will stay just as far away from medical advice for traumatic hernia as you can. It is up to the medical man to say whether the man has a hernia, and it is up to you to decide whether or not it is due to trauma.

Mr. KINGSTON. Speaking from the point of view of an administrator, a commissioner, I have no hesitation in saying that this question of hernia presents one of the most difficult problems with which we have to deal. Its companion problem of back strain probably takes up more of the commissioner's time than all other disabilities put together.

We have adopted a working rule, not a hard and fast rule by any means, but a working rule, which we have found fairly satisfactory. I sometimes wonder whether the other commissioners have found any such rule satisfactory. If we find on the evidence—I do not mean on the medical testimony, but on the evidence as to the occurrence (I am speaking now of this type of hernia called hernia of effort)—that on a certain occasion, when a workman was putting forth perhaps a little extra effort or the culmination of a long-continued series of only ordinary efforts, he suddenly gave indication of pain, either by saying something to his fellow workmen or by a demonstration of pain observable by those who were associated with him and he immediately had to sit down or rest for awhile, we have no difficulty in allowing for that type of hernia, although it is quite apparent that it is not, strictly speaking, an accident. We do not call it an accident, but, nevertheless, if those circumstances are indicated in the evidence we have no difficulty in allowing that case as a compensable one.

The main difficulty, however, arises in this type of case: A man suddenly finds he has a hernia. Then he begins to look back for a day, or two, or three, or a week, and he remembers that on an occasion last week, or yesterday, or the day before, "I was lifting something and I remember I felt a little pain there. I didn't think anything about it; it passed off. Not until three or four days later did I feel anything." He is trying in that way to relate the hernia back to a circumstance three or four days or a week old, sometimes longer than that.

That type of hernia we rarely allow. Perhaps the case is really as meritorious as the other, but on the evidence we feel that it is not a safe type of hernia to pass as a compensable case.

Those are the simple rules we are using as our guide, not as an absolute hard and fast rule. However, the result is that perhaps 50 per cent of our hernia cases are compensable. It may be far wide of the mark when I say that. However, a large percentage of our hernia cases are compensated, working according to that rule.

Mr. MCSHANE. I would like to ask Doctor McDougall a question, if I may. I understood you to say that while pain might be present and usually was present, it was not a determining factor as a symptom. I would like you to state, for the benefit of those present, what the usual symptoms are that accompany the hernia of effort.

I can readily understand that the question of pain is one that is determined by the kind of individual. If a Greek sustains an injury of a more or less serious nature, everybody knows it; he suffers excruciating pain. A Jap who, from all outward indications, suffers just as serious an injury, will say nothing about it and will not complain of pain. Then there are the different types of individuals in the same nationality.

I mention that simply because it is so apparent in the coal-mining injuries we have in the West, with those two extreme types. With one the pain is always present, it is always terrific; with the other, mangled just as badly, there is little attention paid to it. Some fellows squeal quicker than others from the same class of injury.

The CHAIRMAN. I am going to ask Doctor McDougall to close the discussion after a few remarks by Mr. Archer.

Mr. ARCHER. Speaking of the practice which obtains in the New York jurisdiction, I think I am correct in saying that we go upon the theory of the disease, and its origin or origins, as outlined by Doctor McDougall in his paper. That is, that the hernia of effort is congenital in origin fundamentally, and that the hernia proper, which finally appears, is the result of congenital causes plus the activities of life throughout the years of life, or, especially on the part of workmen who are very actively engaged physically, is the result, in addition of a series of efforts, culminating in a final effort which causes the hernia to be revealed to them. That final effort we call accident, inasmuch as it is unforeseen, fortuitous in its nature, and truly accidental in the sense of the compensation law that a time and place is ascertainable and provable.

Therefore we compensate hernia upon the theory upon which all other cases are compensated; that is, as causing disability; that the accident produces an increased manifestation of hernia resulting in disability.

We go carefully into the question of proof, because our courts, in reviewing a great many hernia cases, have patiently taught us to be careful about proof in order that we may associate the increased manifestation of hernia with the event which is an accident. In other words, our chief difficulty from a compensation standpoint is the difficulty of proving, rather than the difficulty in the theory of the case.

With respect to proof, we follow a practice which is much similar to that outlined by Commissioner Kingston in his remarks on the floor this morning. If there be proof of employment and at the same time proof of a competent producing cause of an increased manifestation—not merely, for instance, walking across the floor, but actually doing something laborious which in itself even the physicians would admit was a competent producing cause of the increased manifestation, such as lifting or jumping or a strain—and if that be accompanied by any evidence of distress or that general alarm which the incurrence of the hernia in the last instance causes, then we consider that the case is proved and it is compensated.

The degree of compensation is as follows: The medical service necessary for operating procedure and six or eight weeks for recuperation are charged against the insurance carrier and the employer. That six or eight weeks is not fixed as a definite time, but,

I may say, is the ordinary time for which the hernia is compensated. If a workman can wear a truss and declines to be operated upon, then he is compensated for the time of disability up to the time when he can put on his truss and receives no further compensation. If later he wishes to be operated upon, the operation is given him but he can not have compensation in the interim between his declination of the operation and its performance.

In that connection we have strangulations and also hernias in old men or in men in which operation is contraindicated. If an operation be contraindicated on account of the condition of the heart or arteries, so that a doctor will not operate, then, if the claimant is totally disabled on account of his hernia, he passes into the permanent total disability class. We have had a few permanent total disability cases resulting from hernia from the ordinary cause in old men who had got to the point where some little thing would tip them over the line.

On the other hand, hernia is one thing and strangulation is another. In the consideration of the strangulation itself we have the key to the legal theory of compensating hernia in the first instance. A strangulation of a hernia is compensable, even though the hernia preexisted and may have existed for many years, if the strangulation be caused by effort. Such being true, we find that there the fundamental cause of the hernia is not accident and yet we compensate.

So likewise and by the same legal reasoning we compensate the increased manifestation of hernia causing a disability even though it be imposed upon an existing hernia or what the surgeons might call hernia.

Mr. WILLIAMS. I would like to ask Doctor McDougall a question and also to make a suggestion. I will make the suggestion first and ask the question afterward.

It seems to me that too much attention is paid to theories as to preexisting conditions of this kind, and that too often we lose sight of what Lord Chancellor Loreburn said in the case of Clover-Clayton Co. *v.* Hughes, 3 Butterworth's Workmen's Compensation Cases—that is, that previous condition of health is not to be considered. You take your workman as you find him. You simply inquire whether what he is doing so aggravates that previous condition as to make him incapable of continued labor.

The question is, whether Doctor McDougall differentiates between ordinary indirect hernia and the somewhat less frequent direct hernia.

Doctor DONOHUE. Hernia impresses me as one of those conditions which are very largely congenital weaknesses, and it strikes me that employers are tending toward the view that when they find an employee in their employment who has a hernia it is much cheaper in the interest of efficiency and economy to allow that employee to have an operation, which will probably cost about a couple of hundred dollars, than to bear the cost of replacement of that individual.

I think that most hernias are congenital weaknesses, and while they come on coincident with employment, I seriously question if very many of them are due to strains and lifts. I believe there are some definite cases in which we can attribute the hernia to a strain

or a lift, but I think that cough and straining at stool are far more conducive to the production of a hernia than the ordinary lift and strain.

Almost any man who is working in an employment can fix a time when he thinks he made a certain lift or had a strain, and he thinks that that produced his hernia. As a matter of fact, the probabilities are that the opening was there, the ring was open, and he had just discovered it.

Of course I do not want to be too forceful on that particular point, but I think that most of the hernias are conditions existing in the individual, and some little incident, such as a lift or strain, caused a little pain there which drew the man's attention to it and was the producing factor. It may have been a contributing cause and have had something to do with the production, but in my opinion very trifling.

I rather think that before we get through the tendency in compensation cases will be to say to every employee who has a hernia, "If you want an operation, go and have it done." That will be much cheaper, and will stop the disputes which are bound to arise in hernia cases. Hernia is a very fertile subject for a dispute.

If the employer is going to stand strictly on the letter of the law in compensation, he will ask the employee to prove that he has a hernia. Eventually the employee will prove it. There are very few of these cases we disallow, because we think that in the interest of efficiency these men ought to be operated upon.

Regarding Mr. Archer's statement concerning the man who could not be operated upon because of arteriosclerosis, etc., I have not yet, in my observation covering about a dozen years, seen any man whom I felt could not be operated upon. I think that under local anæsthesia you can operate on practically anybody. We are operating on such cases right along. They do not suffer from it. Of course, we have the recurrences to contend with—about 10 per cent recurrence.

Very seldom do we find anybody whom we consider a disability case in hernia. It is either an operation or a truss. Sometimes men do not want an operation but very soon they come to the conclusion that they do wish an operation.

We consider a disability period of about six weeks to be the average. After the six weeks' period I think it is well for the patient to be very careful in doing certain kinds of heavy work, as the tendon has been cut, that being the compensable case generally. With the closure of the tendon, it is well to have the patient wait and not undertake heavy work for a period of a few months. There is less danger of recurrence in those cases.

In some of the work in the Army they operated upon every case of hernia and then put the men into intensive training right after the operation. In those cases 50 per cent broke away again. So it behooves us to be a little careful about putting the claimant at too heavy work too soon after the operation.

I feel quite strongly, as I said in the first place, that the time is coming when we are practically going to take the position that employers say to an employee who has hernia, whether or not it is

claimed to be an injury arising out of and in the course of employment, "If you have a hernia, go ahead and have it operated upon." It makes the man more efficient and more satisfied and contented—a condition in which we are interested.

Mr. ARCHER. May I crave your indulgence for half a minute to make a point that I omitted—that is, that New York handles these hernia cases without trepidation. Our tendency is toward liberality, and that tendency has not been checked in the least.

We compensate a great many hernia cases, especially if a workman has been able to work up to the time that he claimed he sustained his hernia, and we find by competent evidence that he is not able to work. We have no hesitation whatever in granting compensation in such cases. So our tendency is toward liberality, and it will continue to be so.

The CHAIRMAN. There are other members present whose views would be very valuable. I would like to have the opinions of the chairman of the Nova Scotia board put upon the record, but perhaps the time is too short. Mr. Paton, if you will care to take a few minutes to express your personal views on this question, we will be glad to hear from you. After that Doctor McDougall will close the discussion.

Mr. PATON. In view of the remarks made by Mr. Archer and Mr. Williams I think that it is well to have it stated here to-day what the Nova Scotia board is doing, especially as I think that the two gentlemen referred to are, in the administration of their act, departing from the exact words of the act.

It may be a very nice thing for them to do so from a humanitarian point of view, but as a lawyer construing the words of the act, which state that the disability must arise from an accident, I think that we must first discover whether the hernia is a result of an accident. If there is no accident, then we should not compensate the workman under the workmen's compensation act as it exists in Nova Scotia and as I believe it exists in New York.

If we are going to compensate a hernia simply because it occurs while the workman is at work and though no accident has occurred, we are legislating, we are usurping the functions of the legislature, because it is not a proper interpretation of the act.

I think that if it is the desire of the public or the employers that all cases of hernia should be operated upon to make the workmen more efficient and better able to carry on their work in the community, that is a matter for the legislature to deal with and to provide a method for so doing, rather than to put the entire burden upon the employer.

It is not an accident when a hernia occurs simply because a man is engaged in his work. A series of ordinary efforts during a man's work which may eventually bring on a hernia is not an accident. No accident occurs at any particular moment of the time when the man is at work. It is only an accumulation of his activities, and you can not say that that is an accident.

Consequently here in Nova Scotia we do not compensate unless there is an accident. We consider an extraordinary lift which causes a hernia to protrude through the inguinal ring as an accident. For instance, in coal mining (we have quite a number of

cases arising in coal mining in Nova Scotia) where the coal box goes off the track, the men are often called upon to lift it on again, and to do so they have to strain themselves, they have to put forth a very great effort to get it on and they do sometimes strain themselves. We consider that a hernia produced in that way is undoubtedly an accident.

Mr. WILLIAMS. For the purpose of the records it should appear that neither the Connecticut act nor the Massachusetts act contains the word "accident," but "injury arising out of and in the course of employment."

Mr. DUXBURY. I have listened to this discussion with a great deal of interest because the question of hernia with us is as perplexing as it seems to be with all. I was interested especially in what the chairman of the Nova Scotia board has said, but I think it is well settled—nobody seems to question the conclusions of science as stated by the doctor who has read the paper here—that the class of hernia which we are having difficulty about is rarely, if ever, the result of accident. It would be more properly designated, probably, as an occupational disease, because it belongs definitely in the class of diseases.

Our difficulty is to determine when that developing occupational disease, which is being developed by coughing, by straining at stool, and by many human experiences, is peculiarly aggravated to a disabling degree by something which occurs in the course of employment. In discussing this question, however, we constantly hear the expression used that this class of hernia (hernia of effort) is produced by lifting. I think that is quite inaccurate.

Unless these doctors and scientific men are entirely at variance on the subject, this kind of a hernia is never, comparatively speaking, produced by lifting. It is possible that a hernial condition that is closely approaching the disability stage may be made a disabling condition by lifting or by some effort or some fortuitous accident. When the hernial condition is aggravated to a disabling degree by something that occurs in the course of employment, it is properly compensable; but there is the difficulty which administrative boards have.

We find courts indulging in the expression that that sort of hernia, which the doctors say is never produced by certain conditions or circumstances, is produced in that way; in other words, the courts say the doctors do not know anything about their own science, which is quite absurd on the part of the courts.

Of course the courts have determined some facts. In early times in Massachusetts they even determined that some poor, innocent old women were witches. As a matter of fact they judicially determined that to be true. We laugh at it now. I think the time is approaching when some of the judicial determinations of what causes hernia will be considered almost as absurd as the judicial determination of witchcraft.

We ought to get away from that expression that hernia is caused by these things which scientific men tell us can not cause it at all, and we ought to be more definite in the expression that a hernial condition which existed was aggravated to a disabling degree making a compensable disability arise from that circumstance.

Mr. PARKS. In discussing this matter we lose sight of the fact that some States have, and some States do not have, the word "accident" in their act. Massachusetts does not have the word "accident" in its act. A man does not have to meet with an accident as such to receive compensation. The wording of the act is, "a personal injury arising out of and in the course of his employment."

If I were giving a description of what Massachusetts would do, I would say that it is exactly what Mr. Archer describes. We interpret hernia liberally. We look upon it more as an occupational thing. In most instances it comes upon a man gradually until something severe happens which calls his attention to it and he can not work any more.

I differ with the chairman of the Nova Scotia commission. I can not quite understand the logic of his position. He says that hernia by accident, with one exception, is not compensable. When a man lifts a coal box and gets a hernia that is an accident. The converse of that would be that if he lifts anything lighter than a coal box he has not met with an accident, although a doctor may say that that accident caused by lifting something lighter than a coal box caused the hernia from which he is suffering.

I think it is a matter of evidence, not the particular thing. He may lift a coal box in a particular way and not get a hernia. He may slip in a particular way, without lifting anything, and get a hernia. I think it is a matter of evidence. To lay down a hard and fast rule that one particular thing is an accident and all the others are not is not only misconstruing the act (not interpreting it illegally as it is hinted that New York and others are doing because of humanitarian feeling) but not doing your duty, legally speaking.

Mr. STANLEY. The courts in Georgia have construed this question in a very liberal manner, as they have all questions of compensation. They hold that a person may have an incomplete hernia, may have an enlargement in the groin, may have an enlarged ring, and still be entitled to compensation if it becomes complete by a strain or by an accident. That question is settled with us very definitely and we have no trouble at all with it.

The CHAIRMAN. I will ask Doctor McDougall in as few words as possible to close the discussion.

Doctor MCDOUGALL. The first question is that of operation. I think it was Mr. Archer who brought up that point. Practically any hernia can be operated upon. As far as I am concerned as a surgeon, the important question is, Is the case a suitable one for operation so that the result will leave the patient better after operation than he was before?

A large percentage of cases should never be operated upon for that very reason—that you do not get a result that justifies the operation. That would be the bar in my mind against operation, and not a question of moderately advanced or even well-advanced arteriosclerosis, bronchitis, or some other thing forbidding operation, because it is the easiest thing in the world to operate on practically any case of hernia with the use of a local anæsthetic—no difficulty whatsoever.

In the case of a man well advanced in years who has had a hernia playing up and down there for years, the ring has come, by the constant drag of the hernia, to be placed opposite instead of obliquely, the canal is completely obliterated, and you have simply one ring, with a hole through which you can run your fingers. There is no external ring, there is no internal canal—it is all one thing, a ring. The muscle tissue has become atrophied, and even if you remove the sac in that case and bring the pillars together with the best sutures you like, you are practically sure of getting a very poor result. If you have a recurrence of the hernia in that case, the man is tenfold worse off than he was before you operated upon him. That is all I have to say in regard to the question of operation.

Direct versus indirect hernia: The direct hernia is a different proposition altogether from the one that we have been discussing—the indirect or oblique hernia. The direct hernia comes down through the internal ring, through the canal, through the external ring, and it may cause bulging before it has got out of the canal and into the external ring, or it may go down into the scrotum.

The external ring has a pillar outside and a pillar inside—the internal and external pillars. The direct hernia is a hernia that pushes its way through the actual wall and may appear at the external ring, but does not traverse the internal ring and the canal. It is a hernia brought about because of some muscular weakness. It is a different proposition entirely. Because of congenital weakness of the muscle, because of some particular disease of the nervous system or whatnot, you may get a special weakness of the muscle at that point and the hernia pushes right through, but as far as I have had experience with it and as far as I know it is not a hernia that is subject to the dangers of the oblique hernia. It will produce a bulging, and that is about all that you can say. It is not in a sac—there is no preformed sac there at all. There you have the hernia providing its own sac from the lining membrane which lines the interior of the abdominal cavity; it pushes it ahead of it, so that you get a bulging, but you have not the disabling features with that, so far as I know, that you have with the other; consequently, I did not mention it, although I suppose I should have done so.

Regarding the question of pain: You can do just as you like about that. You will find that in the final analysis it does not matter the snap of a finger whether you regard pain as an important feature or as a negligible matter. If I were a man trying to make the utmost capital possible out an inguinal hernia which I knew had been there for some considerable time, I should be delighted to have the opportunity of presenting my case for consideration before Doctor Fraser, or before any doctor who has so much faith in mankind that he will accept the statement of pain without proof or without having a means of determining that the man had pain. I should use the pain proposition for all it was worth. I should use it first, last, and always, because it would be my chief stock in trade.

You have no means of measuring my pain, and if I study my case well enough, I can make that pain fit so admirably that I will have you weeping. You can not measure my pain, and the man who goes before a compensation board to get compensation without having a right to it knows that very well and uses it for all it is worth.

In the case of a man who comes to me and says, "Look, Doctor, there is something wrong with me. I was lifting there the other day, or I slipped, and all at once I found some peculiar sensation down there. There was just a sharp pain at first, and ever since I have had a peculiar, unnatural sensation, a sense of distress, something I can not describe well, but a pretty sharp pain when this thing happened, and look, I have a lump," that man is absolutely straightforward and honest, and I would say at once that when that man said to me that he had pain he actually had it.

I want to point out to you that the textbooks make a great deal of capital of this question of pain in connection with hernia, so-called acutely produced hernia. The same textbooks will tell you that there is tenderness for some time over the area where the hernia occurred, and they will speak of achymosis; that is, the discoloration. I speak to you as if I were giving testimony under oath that I have positively never yet seen a case of achymosis within the first few days or at any time after the production of a hernia which acutely appeared.

In regard to the question of tenderness I might practically put it in the same category. That is what I had in mind when, in the opening of my paper, I said we had to get together and delete some of these things which are accepted as facts, for they are nothing more nor less than inferences. You have to weed out a whole lot of inferences before you will get anywhere in connection with this question of compensation for hernia.

The symptoms, then, of a hernia I would say are these: there may be pain—in a goodly number of cases there is pain. It may only be discomfort or a sense of some unnatural feeling that the patient can not describe aptly in words. He is conscious of a sense of something having happened there, an absolutely new experience, and at the same time or very soon after he discovers that he has a lump and there is some discomfort for some time after.

Roughly speaking, that is what you find, but you do not find that in every case. Cases differ a great deal in their mode of onset. Cases vary a great deal with respect to the question of compensation, pain, etc. However, in the main that is about what you would find.

Mr. LIDVAHL. How about nausea?

Doctor MCDOUGALL. That would be determined entirely by the question of how tight the ring was through which the hernia was forced. If you have a ring that is not properly proportioned to the mass that is passed through it forcibly, causing pinching or tightness, then you have nausea and vomiting of a very severe type.

Once in a while in operating we come across quite a large sac but with a relatively small ring and the tissue that constitutes the ring at the neck of the sac is very much condensed and very unyielding. In a case of that kind the first time that the hernia actually comes down and shows it is nearly always strangulating. The first time it comes down into prominence it is strangulating. That is very generally true, I think.

In a case of that kind I would add to the group of symptoms that I gave you and say great weakness amounting to shock, pallor, cold clammy sweat on the brow and feeble pulse, nausea and vomit-

ing—the patient exhibits all outward appearances of something very serious having happened.

In regard to the question of proof, if you are going to open the door quite generously, then your only salvation is to have such thorough investigation of your cases and such adequate proof as it is humanly possible to get, because otherwise you are going to have it put over you and put over you badly.

I have nothing to say about that, except that the greatest care should be taken in establishing these proofs, and that is why I suggested that there was a certain phase of that that could best be done by reputable surgeons, and I still maintain that ground. Notwithstanding what Doctor Bay said, I believe there are surgeons who would get together and in the most judicious, most unimpassioned and humane way deal with this question to the entire satisfaction of any industrial board. That is my feeling.

The personal equation, as far as the doctor is concerned, enters into it, as it does in respect to all the affairs of human life. I believe that our own board here in Nova Scotia will tell you that it has had a great deal of satisfaction from conferences with surgeons in respect to some of the problems that were causing it difficulty.

Hence, in regard to this very question of the establishment of proof, I would still say that the surgeon can be of great help to the board, and at the same time I would remind my friend that it is to the surgeon and the anatomist that you turn and respectfully offer your greetings for setting before you the scientific facts that underlie the etiology of hernia.

HERNIA

BY RAPHAEL LEWY, M. D., CHIEF MEDICAL EXAMINER NEW YORK DEPARTMENT OF LABOR

[Submitted but not read]

ALL HERNIA NOT OF CONGENITAL ORIGIN

Hernia may be defined as a protrusion of viscus (however slight) through a normal or abnormal opening. I do not concur in the opinion of those who consider every hernia to be congenital. My own idea of a congenital hernia is one which manifests itself either at birth or within a very short time thereafter. Such hernias are mostly umbilical hernias, hernia of the brain or of the lungs, etc. A hernia which produces symptoms after the individual has attained adult life, unless it is a specific type of hernia, namely, a hernia in the processus vaginalis, can not be considered a congenital hernia. Neither do I concur in the opinion of those who consider that all hernias are congenital, if by this term they mean to imply that the structures which are involved in the later development of the hernia are congenitally weak. If such a weakened structure is due to congenital defects, and yet from the time of birth to the attainment of maturity there are no symptoms of hernia, I do not hesitate to say that although there may have been a congenital predisposition, the defect was only a latent one if the hernia itself gave no manifestation. The development of hernias, unless of the con-

genital type which I have described, can be due to only one cause—increased intra-abdominal pressure—against a weakened abdominal support. During the lifetime of the individual, in consequence of his daily physical exertion, especially in some of the more laborious occupations, the abdominal support may be gradually weakened. This in itself does not constitute a hernia, and this weakened condition may exist for many years without the knowledge of the person affected. The event which causes a distinct hernia (the first protrusion of a viscus) may be due to physical overexertion. I should then consider such exertion the activating factor of a preexisting, possibly congenital, weakened muscular defect.

What I have said is based on clinical observation, and I support my argument by referring to a very large number of persons who, upon their entrance into a certain employment, were examined by competent physicians and passed as apparently normal healthy men who gave no evidence of any hernia and yet who, after working in their vocations, developed hernias within one year. Where would there be a congenital hernia in such men? This experience is also shared by military surgeons who during the examination of drafted men passed them as in perfect health, and yet during the first year of military training many of these men developed hernias after excessive marching, swimming, horseback riding, or bicycle riding. These examples suffice to prove to me that all hernias are not of congenital origin.

Among 3,800 workmen digging the St. Gothard tunnel, Bronberg found 80.2 per cent who had a predisposition but not a hernia, and the index finger could be easily inserted in the external ring. My experience in examining thousands of cases of men has taught me that the normal external abdominal ring is not circular, but slit-shaped, and the index finger is inserted with great difficulty while the individual is in a standing position.

Schwening, of the German Army, refers to the examination of 1,250,000 men, the best and strongest of their own men, of whom 15 per cent showed hernia but did not know they had it.

Zollinger examined 4,800 laborers, of whom 43.4 per cent had slight predispositions but no hernia, 20 per cent had a tendency but no hernia, 4 per cent had incomplete hernia, and 2 per cent had fully developed hernia. But most important (which conforms with my conception of the subject) is the experience of Murray, who, during his autopsies of 200 men who throughout their entire lives had no evidence or sign of hernia, found that 34 per cent had a well-defined peritoneal sac but no hernia contents.

POINTS NECESSARY TO CONFIRM TRAUMATIC HERNIA

In studying the histories of injured persons who attribute their hernias to some direct trauma or physical exertion, I consider the following points necessary to confirm such trauma:

First. The individual must be aware of the accident immediately, and report same.

Second. The accident can be either direct impact or force, or physical exertion.

Third. The individual must perceive pain immediately in the inguinal region and be compelled to discontinue work temporarily in any event.

Fourth. The pain, however, need not continue.

Fifth. There must be evidence of a hernia either immediately or within a period of about 24 hours after an alleged injury.

Sixth. The hernia ought to be small; however, a severe strain may cause a complete scrotal hernia.

SIGNS INDICATIVE OF THE EXISTENCE OF HERNIA PRIOR TO ACCIDENT

The signs which indicate the existence of hernia prior to the alleged injury are:

First. Atrophy and depression of the tissues of the inguinal region, indicative of having worn a truss for some time.

Second. A lax external abdominal ring, permitting an easy insertion of one or more fingers to the external abdominal ring.

Third. A large scrotal hernia (if not reducible, surely a hernia of long standing). I do not mean the acute strangulated hernia.

Fourth. The coincidental existence of a hernia in the uninjured inguinal region.

Fifth. The inability of the individual to state the exact time of the alleged accident.

Sixth. The absence of acute pain at the time of the accident, the individual being able to continue working and then stating that after he has returned to work, or within 24 hours, he has noticed a hernia.

TRAUMATIC HERNIA DEFINED

It may be well to describe traumatic hernia. In a traumatic hernia the inguinal canal is perfectly normal from the anatomical standpoint. Such a hernia is an exceptionally rare occurrence, and an injury which is forcible enough to cause an abdominal hernia in such a person would immediately jeopardize his life and would show the most serious sequelæ immediately following the injury. Such person would require urgent hospital attention. These hernias are caused by severe pressure, such as being caught and squeezed between two heavy immovable objects, or by application of direct force, such as being gored by a bull, or they may be due to falling upon sharp-pointed implements which penetrate the scroto-inguinal region.

Time and space are lacking to amplify the subject further, but I think I have said enough to show the great importance of an adequate recognition of the existence of latent or dormant disease, especially in its relation to industrial medicine and surgery.

The CHAIRMAN. We will now proceed to the next subject on the program, and that is a paper by Dr. Nelson M. Black, entitled "Compensation for eye injuries, being a résumé of work done by committee on compensation for ocular injuries, Ophthalmic Section, American Medical Association."

[Before reading his paper Doctor Black distributed among the delegates some spectacles arranged to reduce vision and some small charts. He also called attention to a series of letters on the blackboard.]

COMPENSATION FOR EYE INJURIES

RÉSUMÉ OF WORK DONE BY COMMITTEE ON COMPENSATION FOR OCULAR INJURIES, OPHTHALMIC SECTION, AMERICAN MEDICAL ASSOCIATION

BY NELSON M. BLACK, M. D., MILWAUKEE, WIS.

The committee on compensation for eye injuries, of which the writer is chairman, was appointed by the eye section of the American Medical Association in 1919. It has submitted several reports. These have been accepted but, at the request of the committee, not adopted, as more time was deemed necessary for further research. It has been found expedient, as the investigation developed, to modify and in some instances entirely to change our original ideas—for the better, it is hoped.

SCOPE

The aim of the committee is to evolve a method of determining the loss in industrial efficiency of an individual following his recovery from an occupational disease or injury to the eyes, such loss to be the basis upon which to estimate the amount of compensation he should receive.

COMPENSATION COMPUTED ON VISUAL EFFICIENCY OF INDIVIDUAL

Heretofore compensation has been computed as that percentage of the compensation provided by law for total permanent disability of one eye equal to the percentage loss in industrial visual efficiency, *not of the individual, but of the eye in question.*

The committee is of the opinion that compensation for loss in industrial efficiency *should be that percentage of the compensation provided by law for total permanent disability of both eyes equal to the percentage loss in industrial visual efficiency of the individual.* It will be noted that this method of computing compensation makes unnecessary a separate provision for compensation for total disability of one eye and for total disability of both eyes.

Indeed, unless the ratio between compensation for total disability of one eye to total disability of both eyes is the correct ratio, which ratio can only be determined by experimental work still to be performed, separate provision for each circumstance will not only be useless but necessarily incorrect in one or both provisions. It is accordingly urged that legal enactment be changed so as to establish only the compensation figure for total permanent disability of both eyes.

ESSENTIAL AND IMPORTANT FACTORS OF VISION

The basis for computing compensation now in general use takes into consideration only one of the essential factors of vision; i. e., acuteness of vision. There are, however, two factors recognized as essential to the act of seeing, viz, (*a*) acuteness of vision (central visual acuity) and (*b*) field of vision, in that the considerable, but less than complete, loss of either reduces the eye substantially to a state of uselessness with respect to its employment in industrial processes.

Two other factors are recognized as important but not essential to the act of seeing, viz, (*c*) depth perception and (*d*) single vision with two eyes (the function of the extrinsic eye muscles). The complete

loss of either, while temporarily materially interfering with industrial effectiveness of vision, is overcome in the first instance by the development of the ability to estimate depth with one eye and in the latter (in many cases) by the suppression of the vision of the poorer eye.

MAXIMUM AND MINIMUM LIMITS OF ESSENTIAL FACTORS OF VISION

In order to measure loss to visual efficiency maximum and minimum limits must be established; i. e., a 100 per cent and a 0 per cent of industrial visual efficiency.

The maximum limit, or 100 per cent, of the essential factors of vision is established, independent of human judgment, by the innate characteristics of the normal eye. Average normal acuteness of vision is recognized throughout the world as the ability to recognize letters or characters which subtend an angle of 5′, the unit parts of which subtend 1′ angles. The average normal field of vision extends outward 90°, upward 50°, downward 70°, and inward 60° from the point of fixation.

The minimum limit, or 0 per cent, of the essential factors of vision (industrial blindness) must be established by the consensus of competent judgment as to the degree of deficiency in these factors which reduces the eye substantially to a state of uselessness with respect to its employment in industrial processes.

The committee's unanimous estimate, lacking the experimental work yet to be performed, is that vision reduced to the ability of barely recognizing a letter or character subtending an 80′ angle constitutes industrial blindness as to visual acuity.

The committee's similar estimate with respect to field of vision is that the concentric contraction of field to 5° constitutes 0 per cent visual efficiency or industrial blindness.

VALUE OF IMPORTANT BUT NONESSENTIAL FACTORS OF VISION

The committee is in accord as to the allowance that should be made for the temporary loss of depth perception (one of the important but not essential factors of vision).

As to the second of these important but nonessential factors, the function of the extra-ocular muscles, one member of the committee holds that irremediable double vision should be considered as a loss to visual efficiency equal to that of loss of vision of one eye, irrespective of the acuteness of vision or field of vision of the eye. On first thought this seems reasonable, as one eye must be closed or covered constantly in order to prevent seeing two objects, unless, as in many instances, the individual learns to suppress the vision of the deviating eye. One must, however, take into consideration the potential value of the sight of the deviating eye in case of loss of vision to the fellow eye in the future. For this reason the majority of the committee do not agree that the same value should be given to this factor as to the two essential factors of vision (visual acuity and field of vision).

MEASUREMENT OF INDUSTRIAL VISUAL EFFICIENCY

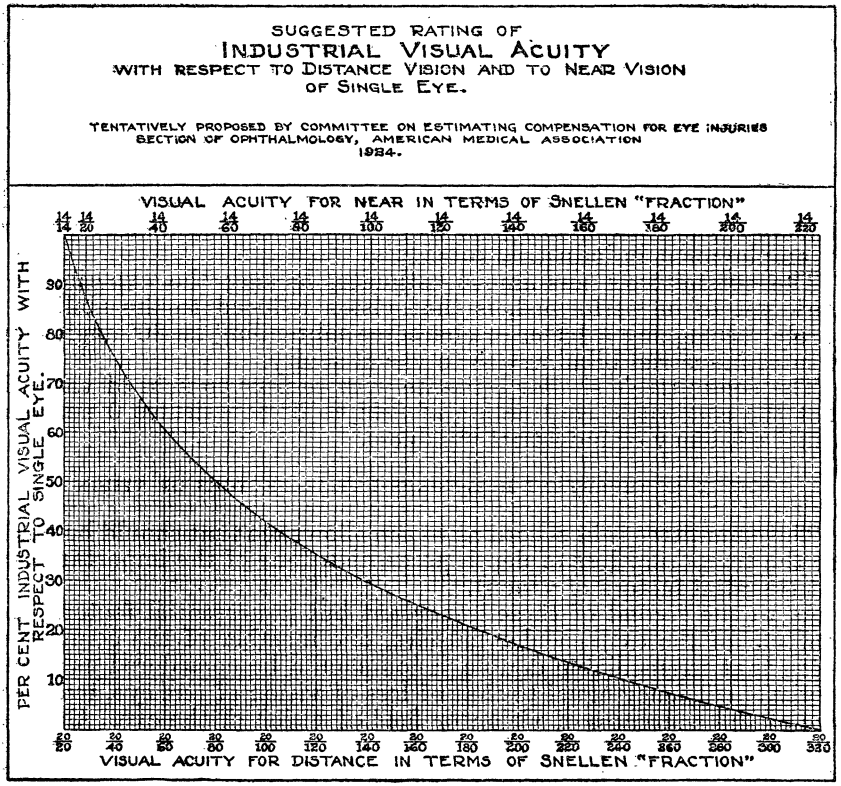
Rating Acuteness of Vision

In determining the visual acuity rating, the best central visual acuity obtainable, with correcting glasses if necessary, shall be used.

If there exists a difference of more than four diopters of spherical correction between the two eyes, the best possible vision of the injured eye without glasses or with lenses of not more than four diopters of difference from the fellow eye shall be the acuity upon which rating is based.

Unit changes in acuteness of vision do not have equal visual importance throughout the range of industrially useful vision. The ratings of acuteness of vision therefore change as a curved-line function between the recognition of a 5′ character and the recognition of an 80′ character. (See Chart 1 and Table 1.) In

CHART 1



rating visual acuity, the acuteness of vision shall be measured both for distance and for near. The rating expressing the visual acuity of the eye shall be a weighted value, twice as great importance being assigned to visual acuity for near as that assigned to visual acuity for distance. Thus, if the visual acuity rating for near is 40 per cent and the visual acuity rating for distance is 70 per cent, the visual acuity for the eye in question would be—

$$\frac{(40\times 2)+(70\times 1)}{3}=50 \text{ per cent acuity.}$$

Visual acuity for distance shall be measured at a test distance of 20 feet (or 6 meters). Visual acuity for near shall be measured at a test distance of 14 inches (or 35 centimeters). The Snellen test letters or characters are used to determine acuteness of vision for distance and for near. These subtend a 5′ angle and their component parts a 1′ angle. The test letters and characters on industrial vision charts increase in size in geometrical progression, the common factor being 1.26. This ratio has been accepted by ophthalmologists throughout the world, as it practically expresses the smallest variation between the size of characters which may just be recognized and those which may not as vision fails. By using this principle, visual acuity may be measured by numbers which are in true geometric progression and each graduation expresses a unit of vision of equal value.

Table 1 shows per cent of visual acuity efficiency of one eye for partial loss between 100 per cent vision and industrial blindness, for distance and for near. This table is based upon the best data to-day available, but is admittedly incomplete and hence subject to correction as a result of further experimental work.

TABLE 1.—PER CENT OF VISUAL ACUITY EFFICIENCY OF ONE EYE FOR PARTIAL LOSS BETWEEN 100 PER CENT VISION AND INDUSTRIAL BLINDNESS, FOR DISTANCE AND FOR NEAR

Per cent of visual acuity efficiency	Visual acuity for distance at 20 feet—Snellen equivalent	Visual acuity for near at 14 inches	Per cent of visual acuity efficiency	Visual acuity for distance at 20 feet—Snellen equivalent	Visual acuity for near at 14 inches
100	20/20	14/14	42	20/101	14/71
92	20/25	14/18	33	20/129	14/89
83	20/32	14/22	25	20/160	14/112
75	20/40	14/28	17	20/202	14/141
67	20/50	14/35	8	20/254	14/178
58	20/64	14/44	0	20/320	14/224
50	20/80	14/56			

Industrial Rating For Field Vision

The portion of the field of vision immediately about the fovea (or center of vision of the retina) is known as direct vision. One degree eccentric to this region direct vision abruptly drops 1/3 to 1/4 in acuteness and at 2°–3° is reduced to a much greater extent, becoming indirect vision. The acuteness then gradually diminishes as the periphery of the field is neared. The efficiency of the field therefore depends upon the degree of concentric contraction; a field may be contracted to 5° with central acuity unimpaired, but the possessor will be industrially incapacitated, for the reason that objects or movements outside of the direct line of vision would register no impression upon his retina. He would be practically in the position of one attempting to work looking through a tube extending from his eye to his working place.

For slight concentric contractions of the field there is but slight loss in visual efficiency; the loss increases in proportion as the point of fixation is neared. Therefore the committee has considered the loss to visual efficiency by contraction of the field of vision to be a square-root function, a field contracted to 65° being no loss, and

one contracted to 5° being industrial blindness. (See Chart 2 and Table 2.)

CHART 2

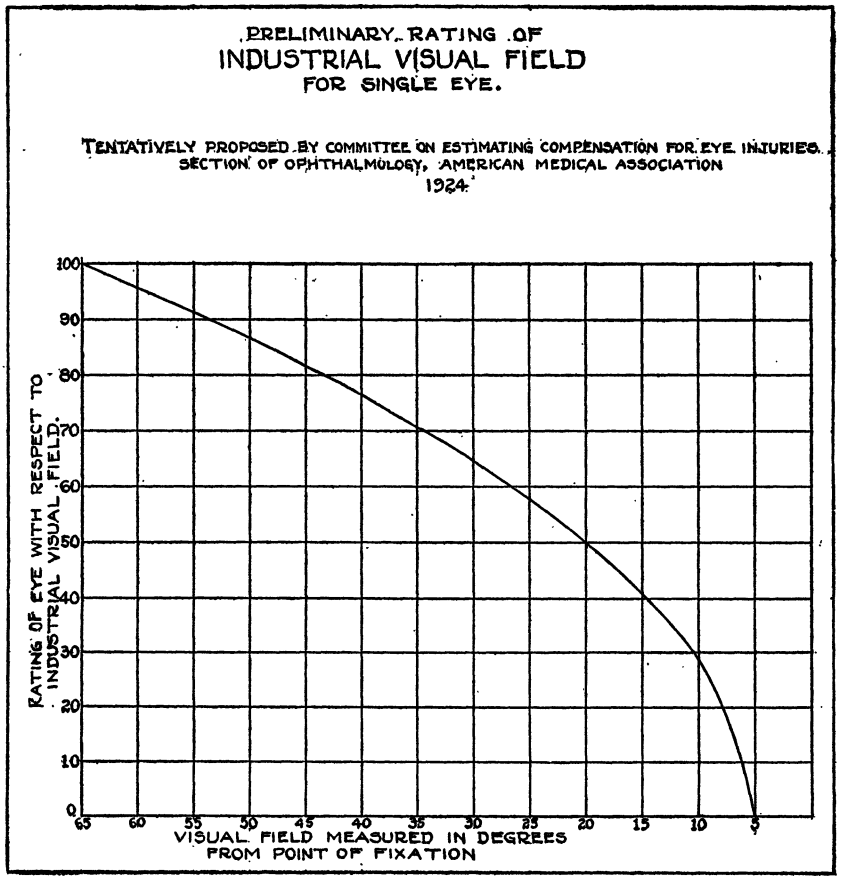


TABLE 2.—PER CENT OF VISUAL FIELD EFFICIENCY OF ONE EYE FOR PARTIAL LOSS BETWEEN 100 PER CENT VISION AND INDUSTRIAL BLINDNESS (SQUARE-ROOT FUNCTION)

Contraction to—	Per cent of visual field efficiency	Per cent of industrial field	Contraction to—	Per cent of visual field efficiency	Per cent of industrial field
65°	100=square root of	100	30°	65=square root of	42
60°	96=square root of	92	25°	58=square root of	33
55°	91=square root of	83	20°	50=square root of	25
50°	87=square root of	75	15°	41=square root of	17
45°	82=square root of	67	10°	29=square root of	8
40°	76=square root of	58	5°	0=square root of	0
35°	71=square root of	50			

INDUSTRIAL VISUAL EFFICIENCY OF ONE EYE

The industrial efficiency of one eye is expressed by the product of the industrial acuity rating by the industrial field rating. Thus if

the visual acuity rating is 40 per cent and the visual field rating is 81 per cent the visual efficiency of the eye will be $0.40 \times 0.81 = 32.4$ per cent.

INDUSTRIAL VISUAL EFFICIENCY OF THE INDIVIDUAL

It is a fact well established by common experience, a fact confirmed and in part explained by ophthalmological knowledge, that the visual efficiency of the individual is by no means reduced to one-half (50 per cent) by the complete loss of one eye, vision in the fellow eye remaining normal. This is true even when due weight is given to what may be called the "expectancy of efficiency" consideration, namely, that any subsequent loss of vision in the remaining eye will involve a correspondingly complete loss in the visual efficiency of the individual. Similarly, with partial loss of vision in one eye or with unequal loss of vision in both eyes, the vision efficiency of the individual is higher than would be expressed by an unweighted average of the efficiencies of each eye; hence the necessity for weighted average. The incomplete researches of the committee indicate that a weighting factor of 3 applied to the more efficient eye gives an efficiency rating in substantial agreement with the consensus of technical judgment as to correct visual rating of the individual, such judgment being based on actual reproduction, comparison, and relative evaluation of various specific conditions of visual efficiency.

Specifically the industrial efficiency of the individual is computed as follows: To the percentage figure expressing the industrial visual efficiency of the less efficient of the two eyes is added three times the similar percentage figure for the more efficient eye. If depth perception is absent, 20 per cent is subtracted from the sum. If irremediable diplopia is present, an additional 40 per cent is subtracted from the sum. The result so obtained is divided by 4, the quotient being the percentage figure expressing the industrial visual efficiency of the individual.

Thus if the visual efficiency rating of the injured eye is 40 per cent and that of the fellow eye is 100 per cent, no loss of depth perception and no diplopia, the visual efficiency of the individual will be found by the following formula:

$$\frac{(40 \times 1) + (100 \times 3)}{4} = \frac{340}{4} = 85 \text{ per cent.}$$

If depth perception is also lost the formula will be:

$$\frac{(40 \times 1) + (100 \times 3) - 20}{4} = \frac{320}{4} = 80 \text{ per cent.}$$

If irremediable diplopia is present the formula will be:

$$\frac{(40 \times 1) + (100 \times 3) - 20 - 40}{4} = \frac{280}{4} = 70 \text{ per cent}$$

individual efficiency, and compensation will be 30 per cent of that allowed for total disability for both eyes.

Certain types of ocular injuries may result in disabilities the value of which can not be computed by any scale as yet scientifically possible of deduction. Such are disturbances of color vision, disturbances in adaptation to light or

dark, metamorphopsia, entropion, lagophalmos, and epiphora. For such disabilities additional compensation shall be awarded; but in no case shall such additional award bring the total compensation for loss in industrial visual efficiency to more than that provided by law for total permanent disability of both eyes.

Compensation for loss in industrial visual efficiency, as above provided for, does not include compensation for any cosmetic defect incident to eye injuries or to ocular affection due to adverse occupational conditions; for mental or physical suffering; or for cost of medical attention or for time lost from gainful occupation during period of treatment previous to final computation of compensation as provided for below. Additional compensation should be awarded for the various losses here enumerated.

Compensation shall not be computed until all adequate and reasonable operations and treatments known to medical science have been attempted to correct the defect; further, at least 3 months shall elapse after the last trace of visible inflammation has disappeared before the examination on which final compensation is to be computed shall be made, except in cases of paralysis of extrinsic ocular muscles, optic nerve atrophy, sympathetic ophthalmia, and traumatic cataract. In such cases at least 12 months and not more than 16 months shall intervene before the examination shall be made on which final compensation is to be computed.

In cases of loss in visual efficiency additive to a preexisting subnormal visual efficiency arising from other causes, compensation shall be based wholly on the loss arising from the eye injuries or occupational conditions specifically complained of. In case there exists no record of preexisting industrial visual efficiency, it shall be assumed that said efficiency was 100 per cent.

If the committee's suggestion—viz, that compensation for loss in industrial visual efficiency shall be based upon the visual efficiency of the individual—is adopted, considerations of equity will require that the compensation to be paid shall vary with the occupation, the age, and the probable future earning powers of the individual.

A little consideration will convince one of the indisputable character of the principle here stated. The financial loss of the individual and his dependents is clearly greater in the case of an individual of large earning power than in the case of an individual of limited earning power. So, too, the financial loss is much greater when the injury is experienced early in life than when it is experienced late in life. Both these factors are of such magnitude that they can not be ignored without a gross inequity.

Therefore it is one of the aims of the committee, with the assistance of the United States Bureau of Labor Statistics and the industrial commissions, to compile a table which will afford an approximate but equitable basis for computing average future earning power in terms of current earning power.

DISCUSSION

The CHAIRMAN. I think I may prepare Doctor Black not to expect too much discussion of his paper because it is of a highly technical character, very complicated and difficult to follow. At the same time we realize that it is an exceedingly important paper and one that will receive its due merit when published and more time can be given to the consideration of the question dealt with therein.

So far as our compensation board here in Nova Scotia is concerned, at the present time our method is to refer the claimant to a specialist, one of the consulting staff, who gives us a report as to the amount of vision remaining in the particular eye that is injured.

One point made by Doctor Black in his paper which has appealed very strongly to me is that instead of computing total disability as referring to one eye, we should take into consideration the total remaining sight of both eyes. That point had never occurred to me before, and to my mind it is an exceedingly valuable one.

Mr. KINGSTON. I think the association is very much indebted to Doctor Black and his committee for the time they have spent in producing this splendid paper. Probably most of us who are not familiar with the committee work can not really absorb what the report contains just by listening to it. I therefore make the suggestion to the executive committee that, if possible, it should have this report printed much earlier than the printing of the regular report of this convention and get the complete text of this report into the hands of the members within possibly three or four weeks or a month from this date so that we will be able to study it, and then we will be in a much better position to discuss it and understand it intelligently at the next convention.

Mr. ARCHER. I should like to speak upon the point of the complexity of the rule for computing loss of vision laid down in the report read, and to venture to assert that there is a degree of impracticality in that.

The learned doctor, in presenting his paper, admitted the incompleteness of researches at the present time which would enable the committee to say the last word on the subject even from its own viewpoint. It seems to me that inasmuch as most laws provide for a definite schedule for a certain number of weeks for loss of vision, and as that schedule is based upon a mere estimate—a mere arbitrary figure taken by the legislators in framing their original enactments—that alone would throw an unscientific element into the case which would so color the entire computation that the result would lack in scientific accuracy from the standpoint of industrialism, for, after all, the loss of vision that a man sustains is the loss of vision as a workman and not merely the loss of vision from the viewpoint solely of the eye itself.

For instance, there is the question of the loss of binocular vision. The committee reports that the loss of binocular vision should not be considered equivalent to the loss of the use of one eye, because in the event of the subsequent loss of the good eye, the eye which suffered its aberration might be rehabilitated and become useful, but that very consideration implies a contingency which is not likely to happen, and the scheduled period for the loss of binocular vision covers no more than the disability period that the claimant would suffer while that injured eye is retiring from the field, as it does in nature.

The relative degree of importance given to central vision and to field of vision from an industrial standpoint seems to me to lean too far, to give too much weight to loss of field of vision as compared with loss of central acuity of vision. After all, if a carpenter wants to hit a nail on the head he has to see the nail directly and then to use the hammer and hit that nail directly. While his field of vision is auxiliary and entirely useful, yet it seems to me that with his central acuity lost, though he has plenty of field left, he will still, from an industrial standpoint, be to a great extent a blind man; that is,

a disabled man, because disability is the foundation of all the estimates of loss.

In New York one eye is paid for if one eye is lost. If binocular vision is lost it is accounted equivalent to the loss of the use of one eye. If 80 per cent of loss of central vision is found, it is equivalent to the loss of one eye.

The other eye is compensated for in exactly the same manner. If vision in both eyes is lost in a single accident, the cost is charged against the employer or the insurance carrier. If a man blind in one eye goes to work and in his employment loses the other eye, the employer or the insurance carrier is charged with the cost of only the one eye, and as totality of vision is lost permanently as a result of the loss of that one eye, the other having previously been lost, the totality of loss is paid for out of a special fund created by collecting $500 in each death case in which there are no dependents. In that case we do in an indirect way take cognizance and make application of the principle that the loss of one eye is not in itself loss of half the vision.

Doctor DONOHUE. I want to ask the Doctor a question. In arriving at the total loss of vision, what percentage are we allowed as an estimate for the different elements entering into that total loss, such as acuity of vision, field of vision, and binocular vision?

Doctor BLACK. Mr. Archer spoke of the complexity and impracticability of the method of arriving at the visual efficiency of the individual. That is not up to the industrial commission; that is up to the ophthalmologist. The ophthalmologist arrives at the visual efficiency of the individual and states that he is 25, 50, 75 (or whatever the amount may be) per cent efficient. Consequently that is deducted from 100 per cent of the total allowed as compensation, and he is paid that amount. So I do not think the members of industrial boards or commissions should worry about that. Let us worry about it.

Mr. ARCHER. Is not that from an objective consideration of the eye itself?

Doctor BLACK. How do you mean?

Mr. ARCHER. Between the ophthalmologists and the eye itself without regard to working conditions, without regard to the man's occupation.

Doctor BLACK. That is something that has to be considered further and I think it will need the combined efforts of the industrial commissions, the Department of Labor, and the ophthalmologists to determine what a man's earning capacity will be in the future, taking into consideration his occupation and his age. We have that under consideration but I made no mention of it in the paper. The idea is primarily to divide occupations into four different groups, the first group, "A," being those which require fine visual acuity, not necessarily a large visual field; the second group taking in the occupations which do not require as accurate vision, and so on down to the common laborer.

That is something that will add complexity to the estimation later on, but that part will be our trouble because we will give you the visual efficiency of the individual, and the table for expectancy of

efficiency will have to have coordinates and the necessary abscissa in the chart to determine what the compensation should be for that particular individual in that particular occupation.

Mr. ARCHER. To give one point of illustration, suppose, Doctor, that you have cutting through your examination in a particular case an irregular astigmatism, a thing of very common occcurrence but in itself not measurable even by the best scientist, and yet which certainly affects the vision of the workman.

Doctor BLACK. Absolutely, but I beg to take issue with you on the statement that that is not measurable or correctible by the ophthalmologist. That was the one point on which I hoped there would be considerable discussion. That is the paragraph reading:

Measurement of industrial visual efficiency—rating acuteness of vision.—In determining the visual acuity rating, the best central visual acuity obtainable, with correcting glasses if necessary, shall be used.

Mr. ARCHER. That eliminates the irregular astigmatism which can not be corrected but is probably a condition antecedent to the accident.

Doctor BLACK. I know, but it has to be taken into consideration when you are determining that man's visual efficiency.

Mr. ARCHER. I am glad to hear you say that, because in another part of your paper I thought you said the loss of vision added to an already impaired vision, and not the whole thing, should be the compensable feature. That would be contrary to our whole theory of compensation.

Doctor BLACK. No; I do not think you understood that. May I read that again:

In cases of loss in visual efficiency additive to a preexisting subnormal visual efficiency arising from other causes, compensation shall be based wholly on the loss arising from the eye injuries or occupational conditions specifically complained of. In case there exists no record of preexisting industrial visual efficiency, it shall be assumed that said efficiency was 100 per cent.

You can not do otherwise. As to the relative value of the essential factors of vision—visual acuity and visual field—naturally visual acuity is of major importance and was mentioned first. If visual acuity is so low—reduced to the point where the man can not do his work—and the visual field is unimpaired, you have zero visual acuity efficiency times 100 per cent visual efficiency, which equals zero.

Consequently, the factor of field is only one of the factors in the product to find the visual efficiency of the individual. Conversely, if the visual field is reduced to a contraction wherein the man can not see except directly in front of him and has to move his head to see an object a half inch or an inch or so away from his field of work, he is industrially incapacitated. You see it is not a sum; it is a product.

The member of our committee with whom we do not agree as to the irremediable diplopia, or double vision, being equal to the essential factors, as we determine them, of visual acuity and loss of visual field, is Doctor Snell of Rochester, N. Y., and while he agrees with us in spirit he has to abide by the laws of his State. Conse-

quently, we are at variance on that point but will probably arrive at some conclusion later.

However, in estimating the visual efficiency of the individual that is taken into consideration and that is allowed, 60 per cent is deducted from the total of the visual efficiency of the two eyes before the visual efficiency of the individual is determined. So that is taken care of. Naturally double vision would do away with depth perception, which is allowed 20 per cent, and if, in addition to that, diplopia exists, there is 40 per cent added, making 60 per cent. I think that my remarks have covered your question, have they not? If they have not I will explain it further.

Doctor DONOHUE. The only question in my mind was whether or not the percentage of loss for acuity of vision was as large as those of us dealing with industrial conditions ought to consider it.

Doctor BLACK. The average industrial condition has the vision reduced to this point (indicating on chart), as industrial blindness. We do not think that that is low enough vision, because thousands of men with vision reduced to that amount in both eyes are in gainful occupations. Supreme courts in some States have reversed decisions because of the fact that while the individual had vision of that amount, which according to the enactments of the commission made the man industrially blind, still he was in a gainful occupation; consequently, we have reduced the minimum visual requirement to 20/320. If any of you who put on those glasses and found out how much your vision was reduced, then attempted to do what you could, you found you were far from industrially blind. So I think we are allowing a big leeway.

Mr. MCSHANE. Does that mean that you see at 20 feet what you ought to see at 320?

Doctor BLACK. Yes.

Mr. HUBER. I would like to know whether or not I am industrially blind. Using your glasses I can not see a thing. Putting my own glasses in front or back of yours I can read all those letters. Now am I industrially blind?

Doctor BLACK. Can you read the small letters?

Mr. HUBER. I can read the upper letters.

Doctor BLACK. What can you read without the glasses?

Mr. HUBER. Only the upper line.

Doctor BLACK. You are not industrially blind. You have 20/100 vision there, which would give you a 42 per cent visual acuity efficiency. We do not know what your visual field is.

Mr. HUBER. I would like once in a while to see these discussions carried on in such a way that I, as an adjuster for 54 companies, would be able to make it better for the employee and better for the company. Your discussion runs only along the line of what makes it better for you as commissioners.

In Oklahoma a man may have an injury to his eye. He puts on glasses and does the finest work on gas meters that can be done, but still I pay him for the loss of the eye. There is something wrong there.

Also there is something wrong in a situation like this: In the State of Kansas I pay for one eye. The same man goes into Okla-

homa and loses the other eye. I pay for both there. So I have paid for three eyes.

Doctor BLACK. It looks as if there should be a get-together meeting on the part of all the industrial vision people.

Mr. HUBER. I would like to get something to take back to Oklahoma which would make it better for the company and better also for the employee.

Doctor BLACK. Did you hear the paper?

Mr. HUBER. Yes.

Doctor BLACK. That point was brought up. My report states:

The committee is of the opinion that compensation for loss in industrial efficiency should be that percentage of the compensation provided by law for total permanent disability of both eyes equal to the percentage loss in industrial visual efficiency of the individual. It will be noted that this method of computing compensation makes unnecessary a separate provision for compensation for total disability of one eye and for total disability of both eyes.

That would relieve you of all your troubles.

Mr. HUBER. That is on the basis of the bare eye?

Doctor BLACK. That is covered in another paragraph that I read in the discussion:

In determining the visual acuity rating the best central visual acuity obtainable, with correcting glasses if necessary, shall be used.

You have to put your man in the best possible condition to send him back to work. If he requires glasses, that is as essential as giving him an artificial arm or an artificial leg, is it not? Could you get along without your glasses? Could I get along without my glasses? No. Well, they are as essential to our industrial process as are eating and drinking and sleeping.

Mr. HUBER. I consider myself three-quarters blind without my glasses. With my glasses I see entirely too much. Now this is the point: Should I pay compensation according to the test of the eye without glasses?

Doctor BLACK. Not according to the recommendation of our committee.

Mr. HUBER. In the case of the man I mentioned we paid full compensation. He was fixed up with glasses and now he does the finest possible work with the eye that was injured, because the other one was poor to start out with. Give me something whereby I do not need to pay quite as much.

Doctor BLACK. You have to change your laws. We are making suggestions here.

Mr. DUFFY. Doctor, what I think is a practical question, one that interests me as a commissioner, is this: For instance, using your glasses, I can not read anything there.

Doctor BLACK. You are industrially blind then.

Mr. DUFFY. With my naked eye I can read everything but the last line on this side. Do I understand the test?

Doctor BLACK. You mean you can read this line?

Mr. DUFFY. All but that line. That other line reads P E C F D.

Doctor BLACK. With your glasses on?

Mr. DUFFY. I can read it all.

Doctor BLACK. Can you read this bottom one?

Mr. DUFFY. It reads D E F P O T R U.

Doctor BLACK. No. E C.

Mr. DUFFY. I can read beginning with the third line with my naked eye. With your glasses I can not read anything.

Doctor BLACK. Those glasses were gotten up simply to give you an idea of what you would be like if you were industrially blind or worse. With those glasses on what could you see to do? They were not to aid your vision at all; they were to reduce your vision to a point where you were industrially blind, to make you artificially an industrially blind individual.

Mr. DUFFY. Another point. I can read those lines without my glasses. I can read any ordinary newspaper without glasses, but if I did that for an hour or for two hours I would probably have to retire for the rest of the day. Is that a factor that can be measured in these tests?

Doctor BLACK. Absolutely. It is measured and corrected with your glasses, because you have none of that trouble with your glasses. Suppose you go 24 hours without food. You are practically in the same condition. Are not those glasses as necessary to your health, to your ability to do work, as food and drink?

Mr. DUFFY. I think that seems reasonable.

Doctor BLACK. That is just the point we are trying to get at; that is why we say the visual efficiency of that individual shall be determined after he has returned to as near normal as possible—with glasses on, if necessary. If the glasses do not help him to see better, they are unnecessary. If they do bring his visual acuity to a higher point, then they are necessary; and if he does not use them he is going to suffer, as you do, with headaches and discomfort when attempting to use his eyes.

Mr. DUFFY. That would be all brought out in the test and taken care of, as I understand it?

Doctor BLACK. Yes.

Mr. HUBER. I would like to know how many of these commissioners make allowances for glasses.

Doctor BLACK. I do not think any of them do.

Mr. PARKS. I am under the impression that in most of the States, when trying to determine whether a man has lost the sight of an eye from injury, the test is with glasses. It is in Massachusetts. I thought it was in most of the States.

First, you have to bring that eye to as high a percentage of vision as an oculist can get it. In Massachusetts, after you do that, if you can raise it to above one-tenth of normal vision with glasses, proper fitting glasses, then he is not entitled to specific compensation; that is, extra compensation for the loss of his eye. If you can bring it up further to working efficiency, so that he can work with it with glasses, then he is not disabled.

Doctor BLACK. If you could bring that individual to read a line of letters smaller than this line [indicating on chart], the next pro-

gressive step, which would be one-tenth, it would not entitle him to compensation.

Mr. PARKS. As a matter of fact it does not work out that way at all. We have to take into account whether a man is a common laborer and has to work with a pick and shovel. If so, he can hit some part of the ground with his pick. If he is a carpenter and has to make straight edges, or a machinist who has to handle fine tools, he can not do that work the same as the laborer can do his work with a pick.

I would recommend to Oklahoma that it have the kind of law we have in Massachusetts. I presume Ohio and most of the other States have it. If you do not do that you will be paying extra compensation all the time and paying disability compensation. A man will collect; then he will go out and put on a pair of glasses and be just as good as ever. I have to have my glasses on to be able to read.

Mr. DUFFY. We pay for the uncorrected vision in Ohio.

Doctor BLACK. I think that is the rule in the majority of States and I do not think it is right.

Mr. MCSHANE. We pay for the uncorrected vision. While it may be wrong, a man has lost his vision just the same. We have coal miners with artificial legs mining coal but they have lost their legs just the same and we pay for them.

Mr. PARKS. After furnishing the artificial leg, if the man can work with it you do not continue to pay him disability benefits?

Mr. MCSHANE. We pay a specific indemnity for the loss of the leg.

Mr. PARKS. We do, but if the furnishing of the leg restores him to working capacity we do not continue to pay him for disability. Likewise if a pair of glasses will allow that man to work, we do not continue to pay him for disability.

Mr. HUBER. In Oklahoma a man broke his wooden leg and he demanded compensation.

Doctor BLACK. He should have it until his leg is given back to him. You can usually replace a broken pair of glasses in 24 hours. It takes longer to replace an artificial leg.

Before stopping I would like to state that it is the desire of our committee on compensation of the Ophthalmic Section of the American Medical Association that the International Association of Industrial Accident Boards and Commissions appoint a committee on compensation for ocular injuries to work in conjunction with our committee.

I think that thereby we can in time arrive at something definite which will enable us accurately and easily, and with justice both to the employer and the employee, to determine the amount of compensation an individual should receive for loss due to industrial ocular disease or injury.

[A motion was made, seconded, and carried that the executive committee select a committee from this association to cooperate with the American Medical Association to work out this question of industrial vision.

Meeting adjourned.]

CHAIRMAN, M. D. MORRISON, M. D., CHIEF MEDICAL OFFICER NOVA SCOTIA WORKMEN'S COMPENSATION BOARD

MEDICAL PROBLEMS—CONCLUDED

The CHAIRMAN. The first paper this afternoon will be read by a young doctor of this city who is making rapid strides in his specialty of orthopedic surgery. After graduating from Dalhousie University Doctor Acker spent two strenuous years in this special work in Montreal, Boston, and New York. He has come back now to his native city and is, as I have said, already making rapid strides. He is on the consulting staff of the Nova Scotia Compensation Board, as are also Doctor McDougall and Doctor Eager. I will ask Dr. Acker to read his paper.

ETIOLOGY, DIAGNOSIS, AND TREATMENT OF BACK PAINS

BY T. B. ACKER, M. D., ORTHOPEDIC SURGEON, HALIFAX, N. S.

Back pains, because of their prevalence and many etiological factors, form a subject of great interest to the entire medical profession, and any discussion that aids in diagnosis and treatment is warranted. Like many medical problems, this one has been approached too frequently from the standpoint of the specialist. The orthopedist, urologist, gynecologist, psychiatrist, all have interpreted the cause of backache from their respective points of view. The orthopedist who is called upon to treat a large number of cases of backache should appreciate the variety of factors giving rise to the pain and should realize that a wide knowledge of clinical conditions is often required for the solution of the problem. Backache, like arthritis, if approached with a narrow vision, not only may be treated without relief, but actual damage may be done to the patient by the removal of the so-called foci of infection. Undoubtedly, many laparotomies have been performed without relief of the condition because the pelvis alone was considered. On the other hand, many types of retentive apparatus have been employed in cases where the lesion was entirely or largely surgical. In the treatment of backache, therefore, a very thorough investigation of all possible etiological factors should be made, so that the proper treatment may be advised. The surgeon who does not use every means at his disposal is bound to be unsuccessful in the treatment of a large proportion of his cases. On the other hand, it is my opinion that when great care is used the treatment of backache is an entirely satisfactory problem.

In this discussion on back pains, it is purposed to include only those types of cases that come up before workmen's compensation boards.

There is usually a history of injury or trauma or an acute strain. The numerous cases from the mines give a history of a fall of coal

or rock from overhead striking the patient in the small of the back, or a fall landing on the buttocks or back. These cases are laid up in the hospital from one to three months, and frequently are not able to take up their work, often receiving compensation for from six months to several years.

Such cases are often classed as chronic lumbago, but it is probable that there is in many instances a distinct injury of the ligaments or deep muscles of the spine, fracture of a body or transverse process, compression of an intervertebral disk, or strain or displacement at the sacroiliac articulation, aggravated in many cases by an arthritis.

Infections also play a part. They may be focal or direct.

In regard to focal infections as a cause of backache, I believe they act always through intermediate conditions, the most common of which is arthritic infection. Focal infections, therefore, may be considered under the treatment of arthritis, the well-known cause of back pain. I do not wish to belittle the importance of focal infections, but I do wish to emphasize the need of giving attention to the intermediate condition that the infection produces, as well as to the eradication of the focus itself.

With regard to focal infections, the teeth, sinuses, gall bladder, and gastro-intestinal tract should be investigated. With regard to the direct infections, gonorrhea, syphilis, tuberculosis, and typhoid must be considered.

Frequently a hypertrophic arthritis, caused from a focal infection, is the cause of the back pains, and symptoms first appear after a slight injury or back strain.

With regard to malignant tumors of the spine, sarcoma of the spine may occur at any age, and involves the body. Carcinoma of the spine is always secondary, most frequently following cancer of the prostate in men.

Static and postural lesions.—The term "static" implies an alteration in the relation that the different parts of the body bear to each other. The human body works always in fixed lines and planes, with certain variations and limits of motion. Checks to the motion of the back are ligaments about the lower end of the spine which are particularly strong and relax only under extreme stress and strain.

If abnormal positions are maintained for a sufficient length of time, these ligaments may be constantly strained or the spine or other structures may be affected, and static backache results. Constant postural and static strain may affect the back to such an extent as to cause actual arthritic changes in addition to backache. If a chronic condition persists, the postural defect may progress to actual displacement of the last lumbar vertebra. This may be demonstrated by lateral X rays of the spine. The displacement causes a pinch in the posterior vertebral body and is responsible for much of the pain, arthritic changes, and referred leg pain occurring in this type of case.

Postural changes causing backache may be primary, classified as flat back, lordosis, round shoulders, faulty position in the back itself, or secondary, from abdominal ptosis or overweight.

The static defects are chiefly due to flat feet. knock-knees, short leg, congenital dislocated hip, and scoliosis.

Many of the postural defects develop from assuming a definite position in the performance of an occupation or from making constant rythmic movements involving the spine.

A great deal has been written about the recognition of this static element. In 1910 Reyonds and Lovett propounded the "static" theory that backache is due to the forward displacement of the center of gravity of the body and that the undue strain on the posterior muscles and ligaments causes the pain.

Strain.—A change from the normal position produces a strain on the ligaments and muscles. A simple muscular or ligamentous strain is a common industrial complaint. The strain may be acute or chronic. Faulty posture may cause an acute strain. A dorsal position on a table maintained for a long period during operation may produce an acute strain of the lumbar ligaments. Chronic strain occurs in cases of congenital dislocation of the hip, short leg, and static defects in the lower back.

The chronic types may develop into low-grade arthritic processes. Therefore, in making an examination, these static, traumatic, and infectious processes should be kept in mind.

A diseased appendix, the chronic retrocaecal type, will cause a back pain which is not a true back condition and can be ruled out by the other signs of appendicitis. Disease or displacements of the pelvic or abdominal organs must be ruled out also in many cases.

Impinging transverse process of the fifth lumbar and spondylolisthesis are conditions which occur most often in young adults and not infrequently are the cause of backache.

Diagnosis.—In general, a diagnosis of a probable orthopedic cause for back pain may be certain in any patient who presents limitation of motion of the spine, and may be considered very probable in all cases in which this limitation of motion is accompanied by muscle spasm and local tenderness and pain.

The diagnosis is made by means of your subjective and objective symptoms.

In reference to the subjective symptoms, pain is the most outstanding. Pain may be local or referred. Frequently there is local tenderness over several spinous processes or certain motions of the spine will cause pains in certain areas.

Coccydinia may be due to a fractured coccyx. All coccydinias are not coccygeal in origin; they are most commonly referred pains from a back condition.

Referred pains along the sciatic nerve, sometimes extending down to the heels and frequently spoken of as a sciatica, are let go at that diagnosis without investigating and diagnosing the primary condition, which in 90 per cent of the cases is a back condition, frequently an osteo-arthritis or a fracture.

In reference to the objective symptoms, a list or lateral deviation of the spine is an early symptom of a back condition.

The antero-posterior and lateral motions of the spine are limited and the spasm of the erecti muscles present is accentuated in attempting motions.

Areas of local tenderness can be frequently elicited over the spinous processes or on deep pressure. There is sometimes swelling over the sacroiliac joints and a flattening over the lumbar region. Straight leg-raising tests (flexing the thigh over the abdomen) are of great help in

estimating the acuteness of the condition and checking up the progress under treatment.

X ray.—X-ray examination should be made early in every case and is usually of great assistance in checking up the progress during treatment. The X ray may be negative or it may show mild arthritic or hypertrophic changes: Crushing or thinning of the intervertebral disks; destruction of the disks or bodies due to tuberculosis or malignancy; displacements lateral, forward, or subluxation; fractures of the bodies, laminæ, transverse, and spinous processes; or impinging transverse processes and spondylolisthesis.

Treatment.—In lumbago (myositis or myalgias), or mild arthritis, remove the focal infection, which experience has taught us plays a very important part in any back or joint condition and apply a protective strapping to the back.

Overweight, static conditions, round shoulders, flat chests, prominent abdomens, foot strains, must all be taken care of, as experience has shown us that relief of the symptoms is greatly delayed by not observing such conditions.

The treatment of mildly acute back strains consists in rest and protection of the joints involved in proportion to the acuteness and duration of the condition, governed as well by the X-ray findings; a back strapping each week over a period of two or three weeks; and relief from aggravating occupation such as bending or lifting.

In the severer types of back strain in which muscle spasm is more marked and there are indications of a more acute condition, more protection is required and the patient will have to be put into a steel back brace or leather or plastic jacket, depending on the severity of the condition.

In the very acute or chronic cases, especially those with marked limitation of motion, flat backs, lists, and positive straight leg-raising tests, it is necessary to keep the spine at absolute rest by putting the patient to bed on fracture boards, and gradually increasing hyperextension for a period of from 10 days to 2 or 3 months, until the relief of weight and the rest on the joints of the spine clear up such acute symptoms as your experience shows will enable the patient to tolerate weight bearing in perfect immobilization suitable for each case.

Those backs in which the X ray shows hypertrophic changes as a rule require absolute rest and more protection than the ordinary acute back strain case.

In those cases in which there is absorption from infection the convalescence is prolonged.

In very acute back cases and those of long standing, with lists and very positive straight leg-raising tests, the periods of disability are of considerable duration, these types of backs being slow in adjusting themselves to weight bearing and occupational conditions. In such cases the period of disability may range from one month to one year.

In those cases of fracture of the spine which are seen immediately after the accident, give an anesthetic and put the patient into a plaster hyperextension jacket, keeping the jacket on for from six to eight weeks; then follow with operative interference, i. e., a tibial graft, especially in compression fractures. The higher up the fracture, the more imperative the operation. Supportive treatment is never adequate above the lumbar region, and it is perfectly obvious

that no jacket will support the crushing effect of weight bearing in cases of fracture of the upper dorsal or cervical vertebræ.

In many cases where apparatus necessary to hold the patient was so cumbersome as to interfere with his work, operative interference has cut down the time of disability and enabled him to return to his previous occupation. Where there is sweating and dust, as in mines, leather jackets are also unsatisfactory.

Patients with back injuries as a rule should not immediately return to their previous type of work, but should be put on work to which they can gradually accommodate themselves and after a time they can get back to their previous line of work.

The CHAIRMAN. I am sorry that Doctor Acker has not some cases here with which he can demonstrate the principles that he laid down and some of the apparatus that he applies in such cases, for in that way this paper would be of special benefit. However, such things can not well be arranged for and we can not have them now.

We will now ask Doctor Eagar to favor us with his lantern views and his address. Doctor Eagar is a specialist in his line, having given upwards of 20 years to this work. He has always kept abreast of the times. He has a laboratory at Dalhousie University, which with its sparks and noise would suggest to a novice Dante's Inferno.

Doctor EAGAR. I entitled this paper "Spinal hypertrophic arthritis—Its relation to compensable injuries." When one uses that term, which I suppose is familiar to all of you, one is doing nothing more than speaking of rheumatism or rheumatoid arthritis or one of those terms which have become more or less obsolete, and now we speak about villous arthritis and hypertrophic arthritis and atrophic arthritis and an infectious arthritis of sorts.

When Doctor Morrison spoke to me the thought occurred to me that this subject would be of interest to you, as it has become to me during the course of the work upon which I have been engaged, particularly since I have been associated to some extent with the workmen's compensation board here.

The question brought up by Doctor Acker and brought up this morning is a question which is particularly pertinent to this subject, inasmuch as serious injuries to the spine may occur without a so-called actual injury; that is, without a person being hit or falling. We often see cases of fractures of the transverse processes of the vertebra with consequent disabilities; perhaps where stevedores are engaged in carrying a heavy weight, such as a bag of salt, one of them may slip, throwing the weight of the bag suddenly upon one man with the possibility of fractures of the transverse processes.

SPINAL HYPERTROPHIC ARTHRITIS—ITS RELATION TO COMPENSABLE INJURIES

BY W. H. EAGAR, M. D., RÖNTGENOLOGIST VICTORIA GENERAL HOSPITAL AND CAMP HILL HOSPITAL, HALIFAX, N. S.

The object of this paper is to present to you an old subject in a new and concise form, and one which I think will apply particularly to the work upon which you are engaged.

Spondylitis or hypertrophic osteoarthritis of the spine, considered from the standpoint of compensability, is a condition which

may either be the result of an injury, or, as a preexistent condition, be accentuated following an injury.

The condition may be severe and extensive in its destruction, as in Pott's disease, with marked deformity, or as in the earlier stages of hypertrophic arthritis, where a clearly defined joint slightly angular, or showing lipping at the edges, may be the only evidence of a disease.

During the war I had the opportunity of examining many spines for that most infectious disease in the army known as myalgia, as well as for injury. At that time I felt that a spinal lesion was of very rare occurrence, but our technique then was not the same as it is to-day. Plates were imperfect and taken under conditions which could not demonstrate the earlier lesions. This has been overcome and with the advent of the Potter Bucky Diaphragm many lesions are now shown which were then overlooked, and to-day it is quite common to find arthritis during the routine examination of kidney and gastrointestinal cases.

The point of special reference to which your attention is called is that a serious and definite disability of the spine may result from injury without there having been a fracture, but purely as a result of the contusion to the vertebrae.

On the slide now being shown, the complicated structure of the vertebrae is clearly demonstrated. It is obvious that we have multiple articular surfaces and bony processes surrounding the outlet of the nerves which are supplying the various organs, muscles, etc., of the human body.

Any one of these articular surfaces may, as the result of injury, develop an arthritic condition without the other articular processes being of necessity involved. The symptoms, therefore, may be extremely vague and indefinite and a patient may be able to perform many movements without suffering, while some particular movement may occasion most exquisite agony. It is also to be remembered that hypertrophic arthritis of traumatic origin may not manifest itself until long after the injury occurs.

There is no doubt that many cases of so-called lumbago are really, in fact, inflammatory conditions and muscle spasm as the result of such injuries. It is surprising how extensive an existent spinal lesion may be without occasioning the patient any very definite symptoms or disability until long after the injury occurs.

The question that arises in compensable cases, such as you are constantly seeing, is as to the degree of disability resulting from the injury. It is impossible for you to determine this unless an examination of the spine is made as soon after the injury as is consistent with the man's environment and general condition. It is not always possible to have these cases X rayed at an early date; first, on account of the suffering to the patient, and second, because of the inability to secure radiographs of sufficient value to make a diagnosis possible, as is the case in many of the smaller districts where such accidents occur. So that as a rule, when we see these cases, many months have elapsed since the injury occurred, and it is practically impossible to differentiate between a gross lesion of long standing and an actual fracture.

From the slides now being shown, you will see how it may be possible for an injury to cause disability by a fracture, not of the vertebrae proper, but of the exostosis which has occurred as a result of disease.

In other slides you will observe how nature has endeavored to arrest the disease and give relief to the patient by a bony ankylosis occurring between the vertebrae, actually taking the place of a splint or bone graft, such as is being done for such cases.

In the interpretation of these conditions a thorough knowledge of anatomy and X-ray anatomy with the congenital anatomical variations is essential. A common injury is that of fracture of the transverse process. To diagnose this, more especially in the upper lumbar vertebrae, one must remember that there is a separate center of ossification for these processes and that union may not have occurred with the vertebrae proper. This can be determined by the appearance of the process at its junction.

The fifth lumbar vertebra offers the greatest problem, not only from its position, which makes it difficult of demonstration in the lateral position, but from its many anatomical variations. Moderate sacrolization of this vertebra may occur without showing evidence of nerve pressure, and extensive exostosis may be present which can not be differentiated from fractures of long standing.

While I have confined myself to the röntgenologist's viewpoint of spinal hypertrophic arthritis in connection with your work, and have not attempted to open the subject of causation and pathology, I should state that similar lesions occur in other joints, and while offering compensable problems, are not as a rule so latent in their manifestations.

As a reminder of what may occur as the result of injury without fracture, let me mention myositis ossificans. Here we get a definite bony growth in muscle, sometimes quite widely removed from a bony source—during the war I saw a number of these cases as a result of kicks from horses, and I will show you a few slides, demonstrating the condition.

In closing let me impress upon you the necessity of early and intelligent X-ray examination of injuries. The röntgenologist is not a photographer, but a medical specialist whose opinion can be of the greatest help to you in deciding your procedure and compensation, while at the same time lessening the period of suffering of those who come under your care.

DISCUSSION

Mr. ARCHER. I should like to ask Doctor Eagar if a mere strain can set up the inflammatory process in the back, to the point of producing disability which will be evidenced by the shadows, the increased shadows revealed by the X ray, or whether it requires direct trauma.

The CHAIRMAN. Are there any other questions?

Mr. WILLIAMS. I should like to ask the gentleman what course he pursues with the ordinary hypertrophic arthritis which you are likely to find in any person who has passed middle life and engaged in laborious work, when it is complicated with a sacroiliac dis-

turbance which does not yield readily to mechanical support and appliances?

Doctor EAGAR. I think that some of these questions are more pertinent to Doctor Acker's subject; I think those are his questions.

Mr. KINGSTON. I have heard the suggestion made that you can sometimes judge whether or not a back-strain claim is a compensable one by the length of time the man is disabled. If it is one that comes within the description of a disease rather than of an accident, the probability is that there will be quite a long disability, but if it is a matter of only two or three or possibly four weeks' disability, then there is a reasonable probability, upon which you may act without much chance of error, that the strain was the real cause of the disability.

I wonder if Doctor Acker can say, with any degree of accuracy which will be of help to us, what length of disability we should expect in a man who comes to us claiming that he was injured at his work by a lift, or that he has a back strain?

The CHAIRMAN. Is there anything else? Doctor Corbet, have you any question to ask?

Doctor CORBET. None whatsoever. Doctor Acker's paper was one which would well repay discussion. Asking a few odd questions will not get at the root of the matter.

He classifies many backaches as due to static or postural lesions. That is absloutely true. It is also true that practically all those cases should go to an orthopedic man for treatment instead of a surgical or medical man, as the majority of such cases are curable only by orthopedic appliances.

Take fractured legs—the femur, the tibia, and fibula—if the condition is bad you are bound to get some static changes a little later. In paying a man compensation only for his leg, the question is are you paying full compensation, for he is bound to have some back trouble a little later.

That same thing applies to cases of injured feet, such as when heavy bodies fall upon the feet and later on the injury produces some static changes in the body. Personally, I would say all those cases should be referred to the orthopedic surgeon.

I think all of us should be able to eliminate at once the spinal hypertrophic arthritis. We deal with it quite arbitrarily, and it is valuable to have the X-ray examination and very important to have it at the very beginning, so that the medical officer of the board, as well as the attending surgeon, should be able to eliminate a lot of questions as to whether the case is one of accident or of disease only.

The CHAIRMAN. If there are no other questions, I will ask Doctor Acker to answer the questions asked.

Doctor ACKER. With reference to the first question about hypertrophic arthritis and the question of strain, I think practically every case of hypertrophic arthritis first manifests itself following a strain. I do not think a diagnosis is ever made of hypertrophic arthritis unless the case shows the history of a strain. In our experience with board cases of patients who have the slightest strain the X ray often shows hypertrophic changes.

As to the length of disability from a back strain, you can not very well judge that. It depends upon the treatment previously had; that is, in a back strain without any treatment whatever the length of disability will not help you in your diagnosis. Is that the point?

Mr. KINGSTON. I should like to get a suggestion which will enable us to differentiate between what is ordinary lumbago and a compensable back-strain case. A man is at work and suddenly he feels a kink in his back. It may be ordinary lumbago and the lifting or whatever he was doing had nothing whatever to do with the kink in his back, but it comes at a time when he is engaged in something in the way of a lift, and so he comes to us with the story that he believes it was that lifting that caused the kink in his back. Can we have any help on that line?

Doctor ACKER. Frequently when these cases of lumbago are X rayed they show hypertrophic arthritis, changes in the joints of the spine.

Mr. KINGSTON. They are really not lumbago at all?

Doctor ACKER. Yes; or you will find evidence of arthritis somewhere else. It may be myalgia, and the treatment in that case would be for focal infection.

I also agree as to the importance of X ray in reference to back conditions. You may be treating a case for lumbago, without an X ray. On X-ray examination you may find that you have a case of hypertrophic arthritis—a back that needs more protection than the medical man usually gives for lumbago. It is not a question of rubbing and applying liniment or heat. It is a question of protection, which you can judge only by your X-ray examination.

Mr. KINGSTON. Then, after you have discovered the hypertrophic arthritis by the X ray, is it probable that the strain or the lift, or whatever he may have been doing, has any relation to the condition from which the man is actually suffering?

Doctor ACKER. No; no more than that the lift or strain brings out the hypertrophic arthritis; it makes it manifest itself. I have often gone so far as to say that such a man has probably had this condition for five years. If he had not lifted in that certain position, so that he produced a strain, he would have gone along for five years longer.

Mr. KINGSTON. That is the point I wanted to get at.

Mr. PARKS. Please differentiate for me between lumbago and hypertrophic arthritis.

Doctor ACKER. Lumbago is really the manifestation of a hypertrophic arthritis, a pain manifesting itself in the region of the back. Practically every hypertrophic arthritis manifests itself in that way, in a back pain.

Mr. PARKS. I asked the question because I thought there was an impression that it was a different thing.

Mr. ARCHER. How much time is it safe to allow to elapse after the occurrence of the trauma before the X ray is taken in order for the X ray to enable you to make the diagnosis as to cause?

Doctor ACKER. That is rather hard to state. However, I should say it would be a year before you could get actual hypertrophic changes shown up by the X ray.

Mr. KINGSTON. Then does this put the situation clearly—that every hypertrophic arthritis such as you have described will, when it breaks out, manifest itself with symptoms of lumbago, but the converse is not true, of course?

Doctor ACKER. No, the converse is not true.

Mr. KINGSTON. A man will recover from what is simple lumbago in a week or two or three, but with the other condition—do I understand you to say it will take a year to clear up?

Doctor ACKER. Yes, sir. Lumbago may clear up rather quickly. That is, by means of early protection you can get rid of lumbago, if it is just lumbago and not a hypertrophic arthritis. Hypertrophic arthritis will, in some cases, take a year.

Doctor EAGAR. Are we not wandering a bit from the subject?

The CHAIRMAN. No, I do not think we are.

Doctor EAGAR. We have been concentrating on hypertrophic arthritis and lumbago. There are any number of arthritic conditions. Doctor Acker mentioned a number. Lumbago is presumably an inflammatory condition of the muscle. It is an inflammatory condition of the lumbar muscle as I have always known it, but it may be a deferred pain symptom from some spinal condition. That is, you may not necessarily have a hypertrophic condition. It is not alone a hypertrophic condition of the spine that causes pain. You can have a pure villous arthritis without having hypertrophic changes.

A person suffers terrific pain in the inflammatory conditions of a joint in what we call rheumatic fever, but that is not hypertrophic arthritis.

My thought was to show you how this hypertrophic arthritis may exist for years and years without the person being aware that he has such a condition. Then there comes an injury, direct or indirect. It is not necessarily a direct injury. We have fractures of the transverse processes of those vertebrae where the injury is absolutely indirect; it does not touch the man's back, but is due purely to the strain—of catching the bag of salt, for instance—but the hypertrophic condition being there, the thing of interest to you is as to whether or not this man had a preexistent arthritic condition. If so, to what extent have we to compensate him for having brought this condition into a state of activity? That can be done only by observation and repeated examination—first, examination as soon after the injury as possible and then a later examination to detect the process going on.

The CHAIRMAN. The next subject on the program is a paper by Joseph A. Parks, a member of the Industrial Accident Board of Massachusetts, entitled, "Medical attention in connection with rehabilitation of injured employees."

MEDICAL ATTENTION IN CONNECTION WITH REHABILITATION OF INJURED EMPLOYEES

BY JOSEPH A. PARKS, MEMBER MASSACHUSETTS INDUSTRIAL ACCIDENT BOARD

Prior to the awakening to the need of conserving life, there was little organized attention given to the man incapacitated by the

warfare of industry. When a man was injured he collected damages or insurance, oftentimes inadequate in amount, and practically no attention was given to the question of his rehabilitation. He was left with his handicap to fight his life battle and to overcome such handicap as best he could. He fell upon the human scrap heap, a living sponge from which had been squeezed all hopes and ambitions, and frequently all but the mere thread of life itself. The lack of advanced surgical attention in the "first-aid" stages of the injury sometimes left a monument to a neglectful State.

There was no wonder at this apathy in treatment of a serious problem, for a constant stream of labor was flowing into our country from all parts of the world. It was absorbed into our industry as so much raw material, and one more or less thrown upon the community as a worn-out cog from the wheels of industry meant little to our increasing material development. This stream has ceased to flow toward us.

The passage of workmen's compensation acts in the various States has brought home to employers the realization of their duty to men and women injured in industry.

I have been a member of the Industrial Accident Board of Massachusetts since its inception in 1912, and every day I am brought face to face with the terrible consequences of serious injuries. I can not help but feel that the most important function of the industrial accident board should be to restore to these victims of industrial accidents their old feeling of self-assurance and renewed interest in living, so that they may be brought back to economic usefulness.

It is true that the workmen's compensation act comes to the aid of such an unfortunate for a time, but after a few years the benefits are exhausted and the injured man is entirely cut off in the prime of manly vigor from the work he knows so well how to do. He sees no occupation open to him, and it seems to me that everything surgical skill can do for him should be done, so that he may be able to take up some form of remunerative employment.

In my opinion, medical attention plays the most important part in the rehabilitation of an injured employee. Without immediate and constant expert medical attention the injured man is liable to become a cripple for life, and not only costs the insurance carrier but his employer the maximum amount payable under the compensation act.

When the compensation act was first passed little or no attention was given to the medical phase of it. Most of the States allowed, as we did in Massachusetts, medical attention for the first two weeks. At the end of that time the employee, in most instances, was left to his own resources. Sometimes he went without any attention; in other instances he received it in such a haphazard way it was of little or no benefit to him. It took only a few years for insurance companies and employers to realize that in order to reduce the ratio payments of compensation benefits they must do something to care for the injured man medically.

Insurance companies in Massachusetts have come to realize that the best in medical service is the cheapest in the end, as competent and adequate treatment of injuries returns the employee to his work in the shortest time and in the best possible condition, thus reducing

to a minimum the amount of compensation to be paid. They have added to their staffs a corps of doctors who are experts in their various lines. They have established clinics and in some cases own and control hospitals. They have established first-aid rooms and hospitals in connection with the various industrial plants throughout the Commonwealth, where a nurse and in most instances a doctor are continually in attendance.

Insurers seem to have left no stone unturned to give the injured employee the best possible treatment they can secure. His case is studied from the moment of the accident. If the case is a puzzling one to the doctor in attendance, consultations are held by various groups of doctors and the case is studied with the view of finding the best possible method of treating it.

Although under our law the insurer is liable only for medical attention during the first two weeks, and for a longer period at the discretion of the board, the insurance companies have had it brought home to them by hard experience that it is good economy, apart from the humanitarian aspect of it, to provide full medical attention. Most of the companies give this without any suggestion or interference from the industrial accident board as to the unusualness of the case, provided the employee will place himself under the care of the insurance company. Insurers feel that it is a paying investment to expend vast sums of money on medical care. During the past year $2,250,000 was expended in Massachusetts for medical attention in the treatment of injured workmen.

In connection with the medical work being done by the insurance companies the industrial accident board has adopted a rule requesting a full medical report of all the treatment which has been or is being given an injured man after a certain length of time. These reports are studied by our medical adviser to see what, if anything, can be done to improve the treatment which is being accorded the injured employee or to bring about his rehabilitation more rapidly. Many times injured men are brought in and referred to various experts whom the board appoints as impartial examiners. The injured man is X rayed, if necessary, and many times in the course of these impartial examinations he is examined by a half dozen doctors in various lines. If his case is an extremely difficult one, he is referred to a hospital for admission and study by the entire staff of that hospital. After the study has been completed, recommendations are made to the insurance company in a full written report. The insurer invariably carries out the suggestions and recommendations of the industrial accident board. Subsequently, after these recommendations have been adopted, various reports are filed with the board showing the progress of the case, so that we keep in touch with every case throughout the entire period of disability for which the man is receiving compensation. As a result of the methods adopted in Massachusetts many marvelous feats of surgery have been performed and remarkable instances of rehabilitation are numerous.

As an example of how thoroughly our impartial physicians do their work, I offer you the following report of an examination made in the case of an employee who had received a fairly serious injury

to his hand and who was not responding to treatment as quickly as it was thought he should:

I have carefully examined, February 6, 1923, the employee above named.
I find sloughing, granulating wounds of four partial fingers.
The treatment indicated in this case is prolonged and very careful preliminary cleansing of the stumps of the four fingers and the whole remaining hand, then such partial amputations and plastic operations that all of his remaining hand may be preserved, together with the thumb. He will then have left eventually a useful thumb and some part or parts of stumps of fingers and palm of hand—which will be very useful in ordinary work.
No amputations or plastic work should be attempted until the hand and stumps of fingers are thoroughly cleansed in gross and made as nearly as possible sterile. Any surgery done without great care in the above particulars might be attended by reinfections and serious consequences.

We have received the whole-hearted cooperation of the medical profession and the hospitals in Massachusetts. They have given us the very best that is in them in working out the problem of rehabilitation of injured employees. All the medical work is being done and directed by Dr. Francis D. Donoghue, our medical adviser, who has been with the board since the enactment of the act and has given to this work the very best of the extraordinary knowledge and skill obtained in his wide experience and education.

I must not neglect to discuss the importance of occupational therapy in conjunction with rehabilitation. Occupational therapy, properly applied, is the medium through which the desired result can be accomplished. It is the link connecting the bedside treatment with job placement. It nurses the stricken life back into fruition. On this subject a famous surgeon writes, "We learn to rely more and more upon therapeutic work for the physical, nervous, and moral reconstruction which must follow medical treatment and without which much of the brilliant work of the operating room and the laboratory will be lost."

From the early stages the benefits of mechanotherapy, physiotherapy and occupational therapy should be applied, looking forward to the best possible functional recovery for occupational adjustment. Naturally this should be done under the treatment of a competent medical man familiar with the physical requirements demanded by industry and who should subsequently examine the men with a view of making an appraisal of functions.

I could cite numerous instances of marvelous recoveries from serious injuries through the injured employee receiving the benefit of expert medical attention. I would like to tell of a few of the many cases I have come in contact with so as to picture to you what happens when a cripple is restored to usefulness by proper medical care.

The most remarkable cases have been those of so-called broken backs. There was the case of William M——, who was struck by a street derrick, knocked down and pinned to the ground. Jacks had to be utilized to lift the derrick from the employee's body. X ray showed a crushing fracture of the second lumbar vertebra, with dislocation forward of the first lumbar vertebra upon the second, also fracture of the transverse processes of the third lumbar vertebra on the left side. The lower portions of the employee's body were paralyzed and his case appeared to be a hopeless one. It was thought he would die as a result of the injury or remain a help-

less cripple for the remainder of his life. Finally, a surgeon was appointed to study the case. Following his study an operation was performed, consisting in the removal of a quarter-inch wedge of bone from the anterior portion of the tibia about eight inches in length, which was inserted into the split spinous processes of the eleventh, twelfth and four upper lumbar vertebrae (Albee technique). Subsequently, the man left his bed and walked around with the aid of crutches. Later he used a cane and finally, after a remarkable convalescence, was able to walk without that help. I kept track of the case and found that the employee returned to his work within a year after the accident. His ability as a workman was later recognized and he was made a foreman and subsequently superintendent of a construction gang, with materially increased wages. The benefits of that one case, both financially and economically, can hardly be estimated. Figuring roughly, the insurer probably saved in the neighborhood of $2,500, taking into consideration the cost of medical attention and the compensation which had been paid the injured man before his return to work. He also was saved to industry and, being a reliable man, certainly is of benefit to it. Of course, we can not overlook the benefit accruing to the little family of this workman. He is able to bring up his four children in comfort and to educate them; they have not become the public charges they might have been had he not been restored to usefulness by competent medical attention.

Another case was that of a young man 19 years of age who received a very serious injury, resulting in the crushing of his right hand. He was taken to a hospital, where it was recommended that the hand be amputated. The young man demurred at this and would not give his consent. Later, he entered another hospital and received the same verdict. His case came before a member of the board on the question of whether or not he was acting unreasonably in refusing to have the hand amputated. As a result of the conference a famous surgeon in Boston was called into the case and, after examining and studying the injury, he said that he thought with a long period of treatment he could do something for the injured hand. The treatment was started, and inside of six months the employee had a useful hand, and after a long period of physiotherapy he went back to work. I have seen the hand, and there is hardly any impediment in it. If the hand had been amputated in the first instance, the insurer would have had to pay for 50 additional weeks, at $10 a week, for the loss of the hand and also disability compensation probably until the end of the compensation period. There was a saving of about $1,500 as a result of providing this expert attention.

Still another case was that of a middle-aged man who had received an injury to his knee, tearing the ligaments and sinews so badly that it was decided finally that amputation of the leg at the knee was the only thing to be done. The man naturally was alarmed at the prospect of losing his leg, and applied to a member of the board to see if something could be done for him. As a result of the conference this employee was turned over to a surgeon in Boston, who operated upon the leg, putting his expert knowledge and training into the work. To-day this man is walking without crutches or

cane, with stiffness of the leg the only remnant of his injury. He returned to his old position, and to-day is a happy, contented workman instead of a cripple with one leg.

Just before I left Massachusetts I had a case in which medical attention was being given to an injured man who had only 15 weeks' compensation coming to him, when he will have received the entire amount due him under the act. He was in an extremely bad condition, and although the treatment accorded him has not brought about his recovery, it has at least eased his pain during the years since his injury.

Many States give this question of medical care very little attention. I think it is absolutely wrong to limit the amount of medical attention which may be given in any one case. Medical attention should be unlimited. I have seen quite a few cases in Massachusetts where over $2,000 was expended for medical attention in one case. The insurers do it cheerfully, as it is good economy. They are not always the gainers financially, because sometimes, notwithstanding their efforts, they are not able to restore a man to usefulness, but at least they do the very best they can, and that is all that can be expected of them.

From the experience gained in the administration of the workmen's compensation act for 12 years, I would recommend most earnestly that every State which has not already done so take up very seriously the medical phase of the act and broaden its scope in every possible way.

The CHAIRMAN. A paper on "Injuries of tendons and their repair," has been prepared by Dr. Alexander Gibson, of Winnipeg, who is not present, but as the paper is of such an excellent character a request has been made that it be read by Doctor Fraser.

INJURIES OF TENDONS AND THEIR REPAIR

BY ALEXANDER GIBSON, M. D., F. R. C. S. (ENG.), WINNIPEG, MANITOBA

[Read by A. J. Fraser, M. D., chief medical officer Manitoba Workmen's Compensation Board]

Injuries of tendons are very frequent in industrial surgery; the majority of the lesions affect the hand or the forearm or both. The problems presented by such lesions are frequently difficult. When a successful solution is obtained the result is correspondingly gratifying to patient and to surgeon.

From the standpoint of repair, two characteristics of tendons must be kept in mind: 1. They possess little vascularity; 2. They are freely movable.

Let us glance briefly at the structure of a tendon. Bundles of white fibrous tissue are arranged in lines roughly parallel. Between the bundles are a number of flattened cells and a small amount of loose connective-tissue packing. In this packing a few blood vessels are found. For its nourishment the tendon depends chiefly upon a rich lymphatic network. From this it follows that the presence of an irritant can not be responded to by the rich accession of blood which usually marks the response of a vascular tissue. Hence death of the part or necrosis may occur before the defense mechanism has had a chance to apply a counterstroke.

A tendon may be anatomically entire, but it is of no use unless it can move freely in its sheath. The sheath is generally composed of fibrous tissue and is lined by synovial membrane, which secretes synovia or lubricating fluid, enabling the tendon to glide freely. It follows that any condition which disturbs the secretion of fluid so as to bring about excess or the reverse will disturb the function of the tendon, and if the tendon become actually adherent to the sheath, its function may be altogether suspended.

Here, then, we have the two main enemies of successful tendon surgery: 1. Tendency to necrosis; 2. Tendency to adhesions.

Practically all lesions of tendons can be classified as follows: 1. Recent—(1) aseptic; (2) septic. 2. Old—(1) aseptic; (2) septic: (*a*) Without loss of substance; (*b*) with loss of substance.

If we take the simplest possible case, say a cut on the back of the hand, severing an extensor tendon, and suppose it is seen at once, we have, quite apart from the problem of rendering or keeping the wound aseptic, two points to consider: 1. The tendon must be sutured sufficiently firmly to hold it until union occurs; 2. We must avoid adhesions.

There are many methods of suture employed. Considerable difference of opinion is held, for example, as to whether or not the suture material should lie between the ends of the tendon. On two points, however, all are agreed:

(1) The tendon and its sheath must be handled with extreme delicacy. It must not be roughly grasped with artery forceps, or, indeed, handled any more than is requisite to bring about neat coaptation of the ends.

(2) As soon as possible, movement of the tendon in its sheath should be begun. The ideal is that the suture should be sufficiently firm to permit of active (not passive) movement of the tendon as soon as the patient has recovered from the anesthetic.

It will be clear that strict asepsis is essential. The slightest degree of infection will imperil the results. It will render active movement more difficult, delay the union, and promote adhesions. A moderately good suture under aseptic conditions is preferable to a perfect anatomical coaptation with a trace of septic infection.

Let us now consider the case where we have a recent wound that has been infected, even if the tendon has not been cut.

Here we have the additional danger of the spread of infection along the open tendon sheaths. Even if no sloughing of the tendon itself occurs we have the fibrous cord firmly glued in its sheath. If several tendons are in the same large sheath, as occurs in front of the wrist, the whole mass may be cemented into one. Again the tendon so nearly fills the tunnel it occupies that drainage of an infected sheath is poor and thus suppuration is apt to be prolonged, so we end with a mass of scar tissue, extending from the skin to the sheath and from the sheath to the tendon itself.

Very often, however, this is only part of the story. The tendon, not very vascular at the best and fitting closely in its surroundings, may be entirely deprived of its nourishment by swelling of the synovial lining of the inelastic fibrous sheath. Attacked thus by organisms from without and unsupported by a blood supply, part of the tendon dies. When a portion of the body dies, the surrounding

tissue detaches it and casts it off. This is what happens in the case of necrosed tendon, but the scanty blood supply means that it is a long time before the detachment is complete. Hence suppuration is prolonged, there is great proliferation of fibrous tissue, and the sheath is destroyed, its lumen completely obliterated.

With such a case, the only treatment possible is directed to combating the septic infection, limiting its spread, and by increasing the vascularity of the part, e. g., by heat, hastening the separation of the necrosed tissue.

When a case of this character has ultimately healed, it falls for consideration under the heading of old cases. The main lesson for us so far is that in recent wounds involving tendons, no effort should be spared to maintain or acquire an aseptic state of affairs.

Let us now consider the old case. The simplest possible case is where there has been no breach of the surface, but after some time we find the function of the tendons in abeyance. Such cases are fairly common, and they ought never, or at least very seldom, to be met with. A fairly elderly patient has suffered from a Colle's fracture. The displacement is well reduced, splints are applied and firmly bound on to prevent recurrence of the displacement. The fingers swell somewhat and are painful, but that is not unexpected. Two weeks later or even after the lapse of further time when the fracture is judged to be consolidated, the retentive apparatus is removed; the wrist and fingers appear to be almost as firmly consolidated as the fracture, and the hand, as a hand, is worse than useless. What has happened? Fracture of bone always involves hemorrhage, and in many cases this hemorrhage has occurred into the tendon sheaths. Instead of its absorption being promoted by massage and a certain amount of active use of the tendons, it is allowed to become organized into firm fibrous tissue; nay more, the effusion is increased by the tightness of the splinting. The lesson of this is clear. In persons beyond early middle life, take a chance on slight recurrence of displacement rather than run the risk of a hand which for months will be a source of pain and anxiety, and which may never regain more than a fraction of its usefulness. This is no idle warning. Months of massage, passive stretching, and exercise will be required to make such a hand useful. The unfortunate patient must have inexhaustible perseverance, hope, and courage to endure a daily session of painful manipulation, rendered all the more disagreeable by the knowledge, obtained sooner or later, that it need never have happened. Think also of the economic loss. A man with a Colle's fracture if it is properly handled may be fit for work in a few weeks, but if it is improperly handled he may be a burden on the community for many months, and finish with a considerable degree of permanent physical disability. Besides this, think of the loss of morale entailed by prolonged forced idleness, and by the termination with permanent physical impairment.

The next in simplicity of the old cases is that in which, as a result of a penetrating wound, a tendon has been partially severed, and where rest has been maintained for so long a period that adhesions are too firm to be broken down by active or passive movement. In these cases, one may open the sheath, sever the adhesions,

repair the tendon, and immediately commence active movement. The results are generally good.

Another class of old case is that where the tendon has been severed and the distal end of the proximal portion has retracted within its sheath, possibly has curled up, while the distal portion lies passively in its normal situation. This class of case is more difficult to deal with than the preceding. There may be a gap between the ends of the tendon, or the ends may be connected by scar tissue. It is sometimes tempting to free the mass of scar tissue and close up the wound, with the hope that this may give functional as well as anatomical continuity. The hope is vain. All scar tissue must be removed, or with the resumption of active use of the tendon, the scar tissue will elongate, and the apparent immediate post-operative success will prove an ultimate failure. By posture it is nearly always possible to approximate the ends, and even if the immediate results are not so brilliant the retracted muscle will stretch in time, or later on if necessary the tendon can be lengthened under the most favorable conditions.

Let us next consider the old case that has, after long suppuration, at last healed. Part of the tendon has gone, the sheath has disappeared. From skin down probably to bone there is extensive scar formation. Can anything be done for this? These are discouraging cases. After a long, trying, and painful period of disability, they finish by leaving a finger that is stiff, or nearly so, that gets in the way when trying to grasp objects, that is always being wrenched by inadvertent blows. With a mass of scar tissue that is apt to melt like snow in summer when subjected to surgical intervention, they are unfavorable subjects for a delicate and uncertain surgical procedure. Mentally, they are seldom anxious to contemplate a measure which is not sure, and for many of them a partial amputation is the method of choice. In the fingers it is frequently possible to preserve the first phalanx, and a hand lacking one finger is much preferable to a hand with five digits, one of which (unless it be the thumb) is disabled.

At the same time, amputation is always a confession of failure, and so wherever possible we attempt to conserve the part. Every such reconstructive operation has a twofold outlook: 1. Reconstruction of the tendon; 2. Reconstruction of the sheath. On the back of the hand and forearm the tendons play readily in the subcutaneous tissue; this can be made to function as a sheath. For this reason reparative measures applied to the extensor tendons carry a more hopeful outlook than do similar measures applied to the flexor tendons.

How are we to reconstitute the tendon? Grafts of living tendon have been taken from positions where they were more easily spared, for example, from the tendon of the palmaris longus, or from the tendon Achilles. Similarly the fascia lata of the thigh has been pressed into service, and many excellent results have been achieved. The use of dead tendon has also been tried experimentally by Nageotte in dogs and applied to the human subject by Sencert. The employment of dead tendon grafts, however, is not yet by any means widespread, and as far as I know successes have been obtained in such grafts only where they were placed in the subcutaneous tissue.

Of equal importance with the reconstruction of the tendon is the

reconstruction of a sheath in which the new tendon may play easily. While immediate or early movement is of extreme importance, the use of some sort of wrapping material to facilitate gliding has been tried. One difficulty, for example, in the fingers is that when such a wrap has been fashioned the scar tissue in the skin prevents stretching, or there may be actual loss of skin so that the wrapping material can not be completely inclosed. The risk of septic infection is thus increased. Various materials have been suggested for use. Of these the favorite is fascia with some fat adhering to it. Pericardial tissue, hernial sac, amniotic membrane have also been spoken of, but they can not always be available in the fresh state. Another proposal has been made by Duvergey to use the great saphenous vein. The number of substitutes suggested is the best evidence that not one of them is in all circumstances satisfactory.

Whatever the method of reconstruction employed assiduous aftercare is necessary. This comprises appropriate splinting to permit of movement in a controlled direction. Massage, active exercise, and systematic training are of the highest importance.

There are many other problems connected with the surgery of tendons, such as shortening, lengthening, and transplantation. The aim of this paper has been to discuss principles rather than details, and to show that in the simplest as in the most difficult problem with which we may be faced the absolute requisites are scrupulous asepsis, gentleness of handling, and neatness of execution. The surgeon who has mastered these knows something of his craft.

[The following paper, though not read at the meeting, was authorized to be incorporated in the proceedings:]

BACK PAIN, WITH SPECIAL REFERENCE TO SACROLUMBAR AND SACROILIAC LESIONS AND THE APPLICATION OF PHYSIOTHERAPY IN TREATMENT

BY C. STEWART WRIGHT, M. D., SURGEON TORONTO ORTHOPEDIC HOSPITAL, AND ORTHOPEDIC SURGEON AND CONSULTANT IN RADIOLOGY, TORONTO WESTERN HOSPITAL

[Submitted but not read]

The object of this paper is to draw attention to certain complaints which focus about the spine and to indicate the sort of treatment which has proven beneficial in such cases.

From time immemorial the question of back pain has been more or less mixed with fancy and fact; that is, it has been generally assumed, when the cause of the pain was not obvious, that it was often due to imagination and patients were described as neurasthenic, or, even worse, possibly malingerers. This phase of the case presented itself in the most acute form when litigation was in progress—hence the well-known name of railway spine.

Apart from the cases where it pays to have pain, my experience leads me to believe that in cases of back pain, either from inflammation, disease, or injury, there is a psychic accompaniment to the back condition which is more marked than with a similar disturbance in nearly any other part of the body. There is that mental fear that something more terrible exists than is really present.

For that reason it is essential that our examination should be so thorough as to enable us, as far as is humanly possible, to give

definite information to our patients, and where we have reasonable ground for supposing a good prognosis is justified, it should be given with confidence and emphasis, for nothing else will more quickly change that ever-present but vicious psychic element into channels conducive to our aid and the patient's healing. It is much better to be positive when our experience and clinical opinion justify it, even though we may fail, than to create failure by admitting doubt. I know of no other condition in which you get so much aid towards healing if you are able to relieve the patient of the fear of lasting or permanent disability.

Yet there is nothing which receives so little attention from the general physician as back pain. It is a common thing to see patients with back pain and leg pain such as sciatica who have been frequently prescribed for without an examination having been made. This omission is seldom met with if the complaint is in the abdomen, but abdominal examination seldom includes a spinal examination.

It is well known that pains in the abdomen or chest, or in the limbs, may originate at the nerve roots along the spinal column, but that knowledge does not seem to be generally enough applied. It would seem to be limited to the sign of one disease, namely, tuberculosis of the spine, in which case, as a sign, it is usually quite late. Having access to this knowledge, I venture to suggest that nearly all physical examinations should include an examination of the back, and that if this be performed as a routine, many otherwise obscure conditions will be easily revealed, while at the same time we will be educating ourselves to interpret more exactly what is meant by any departure from the normal which may be found.

In this Province an effort has been made for some time to get a definition of medicine, and in the process to curtail or restrain certain cults from practicing healing. This effort is, I believe, a commendable one, aiming at the greatest good to the greatest number, in that its principle of restraint is based on an acknowledged educational standard.

Have we ever inquired as to why any regulation is necessary? If we have, I believe the answer is found largely in this question of back pain, more than in any other cause. As a profession, we have neglected back and limb pains, and have been too ready, when the cause is not obvious, to call such patients neurasthenics. We have not examined backs frequently enough to become acquainted with what such an examination reveals.

It is a fact that most of the clientele of the osteopaths were derived from patients with back or leg pains, and usually these patients had previously sought relief from our profession. We have failed to relieve mostly because we have failed to examine. The patients practically never go to the osteopaths as a first choice, but go later on a gambling chance to get relief—on the advice of someone who has claimed benefit.

Better, however, than any law or regulation in the curtailment of the right to heal is our ability to satisfy the needs of those who cry for help. In this the law of supply and demand also works, and the degree to which irregular practitioners have succeeded is to some degree the index of our failure either to be interested in or to treat successfully certain types of lesions.

Just a word here as to why this tendency to neglect spine examination exists, for it has been so often stated in my presence that I know it does exist. It is largely because such an examination is considered complicated or difficult, but to those who think so my advice is that it should be approached in the same manner as the examination of any other joint. It is joints you are examining, only each vertebra represents three or four joints.

You have bone, cartilage, synovial membranes, ligaments, fascia, blood vessels, nerves, and muscles. They are subject to the same conditions of disease or injury as other joints, but influenced by their different structure and arrangement. You can usually readily limit your area, and, after a careful history has been taken, your mental processes of analysis should be the same as applied to other joints or parts of the body.

The type of lesions referred to above is not the more serious lesions, such as severe injuries or fractures, or tuberculosis, which is common enough, or the more rare ones such as sarcoma or carcinoma, for these are evident or in time reveal themselves so fully as to force the diagnosis upon us. It is the milder lesion, such as a mild arthritis, or such as follows an attack of arthritis, in which probably adhesions are left such as occur in other joints following similar affections. There are also the afterresults of the more moderate strains or injuries from which often annoying and persistent pains develop, which may express themselves in the back or in the distribution of any peripheral nerve.

Realizing that we are considering a structure comprising practically 100 articulating surfaces, and in addition in the dorsal area articulating surfaces of the ribs, and that these articulating surfaces vary in different individuals in size, shape, and form, it is not, I think, conceding the ridiculous, if we admit that in such a structure we may at times have even partial displacement or catches of these articulations, such as are so commonly claimed by the spine adjusters.

While it is quite ridiculous to believe that these lesions occur as frequently as is claimed, or if they do exist that they have all the detrimental influences which are claimed for them, yet that they do exist and sometimes account for symptoms I have no doubt. In fact, more than once I have demonstrated that these lesions do exist, as judged by the sensation in relieving them and by the subsequent results in relief of symptoms, and occasionally by the X-ray appearance.

The following case will illustrate: Mrs. A., age 37, referred by Doctor P., had a painful back, the pain being in the dorsolumbar area, but fairly well localized over the twelfth dorsal. It had been present for two years, and was first felt during a quick turning and bending movement to save one of her children from falling. She thought at first it would wear away, but when it did not she made different efforts to get relief. The examination was practically negative, except for the localized soreness and slight limitation of lateral bending to the right, though all movements in the extreme increased the tenderness.

By X ray we were unable to determine any definite lesion. This was 10 years ago, and I was more in doubt what to do then than I would be now. However, I told the patient I thought the pain due

to a partial displacement of the joint, and undertook to manipulate it into place. With the patient in the prone position, my left hand on the lesion and the right arm carrying the legs and pelvis under control, with the first firm lateral movement I felt something give way. The patient gave a faint cry, went limp, and seemed to pass through a very transient collapse. I went no further. She said, "You hurt me very badly." I replied, "Yes, madam, but for the last time. You will have no more pain." I felt that something definite had happened. I also felt that if the psychology of it was a factor I would leave no lurking doubts. This patient reported the next day, saying she had had the first complete night's rest in months, and confirmed my prophecy—she had no pain. A similar report came for two more days, and then she returned home. As to the exact nature of the lesion I am not certain, but from the history of the occurrence and its local character and response to treatment, I would think it related to a lateral articular facet and was probably a partial luxation.

Other cases, especially those after falls on the back, as on a stairway, with very slight initial pain, no more than would be expected from bruising, and for which a physician may not be consulted until weeks or months after, and then only because of persistent or renewed ache or pain, get very prompt relief from a full manipulation of the spine in which the full limit of normal movement is established.

Crepitation can be distinctly heard and felt during manipulation. The relief is definite though not complete, and it usually needs some aftertreatment by suitable physiotherapeutic methods. These probably represent adhesions from exudate.

Cases likely to be misleading, to which I have already referred, are those in which symptoms are expressed in areas other than the spine. Mrs. F., age 23, referred by Doctor O., complained of pain in front over the pit of the stomach and lower end of the sternum. She also had the sensation of a lump in the throat, which seemed to rise and fall on swallowing. The duration was three months. If I understand what is meant by globus hystericus, that seemed to be it. She also had some pain over the left shoulder and back. Examination revealed a distinctly tender area along the left margin of the spine, which under pressure radiated across the left shoulder to the front. It seemed clear we were dealing with an inflammation, and while it did not matter much what tissue was affected, it was evident that the nerves were expressing themselves by pain in front.

In following up for the source of the toxemia, as all previous history was negative, I asked for an X ray of her only filled tooth (she had otherwise a perfect set). As an immediate treatment I applied a fly-blister, which in 24 hours gave about 75 per cent relief of pain. The tooth was abscessed, and within a week of extraction all pain had vanished. This patient illustrated very well the psychological side. She was under great apprehension of having some incurable condition, so I did not hesitate to assure her that we knew what was the matter, and that it only required a little investigation to find the cause of it, that she would be completely cured and need entertain no further fears about it. The improved mental attitude, when you are able to give this assurance, is at once evident, you get complete

cooperation in your efforts and feel as though the cure was half accomplished.

Another patient of the same type with right side, chest, and abdominal pain, had for 11 years been treated for recurrent attacks of supposed pleurisy, and recently a diagnosis of gall-bladder trouble had been made and an operation advised.

Conditions similar to the above were found, involving the seventh to the eleventh dorsal areas, and though the investigation of causes was a little more complicated, similar methods have produced recovery.

Some cases, coming some time after an injury, may be quite misleading unless guided by a careful history and examination. A patient, Miss G., seen in March, 1922, for pain in the back, gave a history of a fall in October; her feet had slipped out and she had bumped on her back down the steps. She said it did not hurt her much at the time. She was inclined to laugh at her escapade, but of course the back was bruised. There was some slight soreness for a time, but it became more troublesome about December, marked mostly by pains shooting up the neck. She consulted her physician, who said her muscles had been bruised and advised her to rub them. She claimed previous perfect health, except for tonsilitis at 10 years of age and again 10 years ago. All her teeth were attended to in the spring and were in good shape.

Examination revealed the most tender area at the second to fourth dorsal, though the point of injury was in the tenth to twelfth dorsal, and there the tips of the spinal processes were still tender. All movements were free, but contraction of the erector spinæ caused a tenderness more or less general along the spine.

It will be noticed that the area of greatest tenderness, namely, in the high dorsal, is usually safe from trauma in such an accident through efforts to save the head, and she agreed that that area had not been hurt.

In this case, I considered, we were dealing with an inflammatory or toxic condition, and the accident was only coincident or possibly influenced its localization.

Going into the history again for symptoms of other joints, she remembered the winter previous having had some stiffness in the knees which cleared up in the summer, and at the time of speaking had noticed a stiffness in the hands in the morning so that she had to rub them. The teeth, which had been attended to in the spring were X rayed and revealed four distinct abscesses and two infected areas. The subsequent progress is indicated in the previous histories.

SACROILIAC LESIONS

Another side of back pains which I wish to discuss is that of back pains produced by accident, especially lesions of the sacrolumbar and sacroiliac areas and as such often coming before compensation boards for consideration. Of late years a good deal has been written on the sacrolumbar and sacroiliac joints, following comprehensive articles by Goldthwaite and Osgoode in 1905, and subsequent articles by Goldthwaite and others. As a result of these studies, certain conditions as regards sacroiliac articulation may be taken as accepted, namely (1) that it is a true joint, having all the

structures of a joint; (2) that normally it allows some movement, slight in the male and subject to modifications in the female.

Granted these, it then follows that it is subject to the same conditions of disease or injury as other joints. It is influenced, however, especially by its position in being the relatively fixed connecting joint between the trunk and the legs. In this position, being at the base of all flexion movements of the spine, it is necessarily under great strain, as the flexion at the hips is at a certain point limited by the strong extensors of the thigh and buttocks, so that it is in reality the leverage point between two levers, the legs and the trunk.

The massive ligaments in connection with its structure also suggest that it must bear great strain, and it is built accordingly, in so far as its ligaments are concerned, but its articular structure, being practically a flat surface, excepting for slight irregular waves, does not in itself afford any strength.

The massive ligamentous support is advanced as an argument against possibility of displacement of this joint. Those who hold that opinion remind me of the professor who inquired what would happen if an irresistible force came in contact with an immovable body, the reply being that there would be some interesting by-products. The by-products in connection with this joint are pain, disability, and often deformity.

That relaxation of the joint occurs, according to the related experience of many observers, no longer admits of doubt. From an extensive article by Dunlop the following synopsis as to etiology is given: (*a*) Physiological—1. Pregnancy; 2. Parturition; 3. Menstruation. (*b*) Traumatic—1. Acute; 2. Chronic. The acute represents any direct or indirect injury, and the chronic any long-acting cause, as bodily deformity or prolonged strain. (*c*) Those influenced by disease, as the various types of arthritis.

The symptoms run all the way from headache to pain in the feet, but are mostly various kinds of backache and sciatica. Some cases are reported to have simulated appendicitis. These pains are variously explained, through the close contact of the joint with the lumbar-sacral cord and sacral plexus, and also its close relationship to the sympathetic ganglion.

In this paper I can not discuss the various symptoms as they relate to relaxed joints, but wish to consider more particularly traumatic sacroiliacs, which I prefer to call partially displaced and caught joints, fixed and not relaxed. In passing, however, I would like to remind the general practitioner and obstetrician that backache, when it occurs in pregnant women, can usually be prevented or cured by proper support of the sacroiliac joints. I have seen these patients being X rayed for kidney stone and spinal disease in order to locate the cause of a severe backache, which was entirely relieved by sacroiliac support. To both obstetrician and gynecologist I would urge the consideration of this condition as a cause of back and leg pain following difficult labors, and also before performing operations for various doubtful intrapelvic conditions which are supposed to cause back pain. On the other hand, from the orthopedic standpoint it is just as necessary to exclude gynecological conditions which may be the cause or a contributing factor in sacroiliac pain or relaxation.

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In considering traumatic sacroiliac lesions, I would like to point out the angle at which the sacrum is held between the ilia in relation to the rest of the spine. The angle with which the sacrum meets the fifth lumbar vertebra is much more horizontal than generally considered. Since what movement does take place in the sacroiliac joint is of a rotary nature, with its axis about the center of the sacrum, the articular portion being nearer the lower part, it follows that strain by superincumbent weight on the trunk in the erect position is transmitted to the upper end of the sacrum, tending to depress the upper end of the sacrum and to lift the lower articular portion backwards from the ilia.

In forced flexions of the spine, as long as the lumbosacral ligaments hold and the ilia are held firm by the extensors of the leg and thigh, the same type of force prevails; so where strain or displacement occurs by muscular action, it should be of the same type. This type of displacement is what seems present from clinical examination in certain cases, and has been observed in one cadaver specimen dissected by me while preparing for a fixation operation on relaxed joints which I had failed to hold by other methods. Exostosis had developed about the luxation and the joint was ankylosed.

Some of the clinical cases of what appears to me to be partly displaced and caught sacroiliacs are as follows: Mr. M., 1918, a strong, well-built man referred by Doctor L., walked with marked list to the right and evidently suffered great pain, said to be in the back and left leg. Twenty-four days before, he said, he jumped from a wagon while it was in motion, caught his heel, was bent rather forcibly forward, felt a slip, and was seized with pain in the back. The doctor failed to relieve and he tried an osteopath, with no better result. He returned to his physician, and at the time I saw him he was in so much pain that it was difficult to examine him—so much so that I had some doubt as to whether it was genuine. This was one of the cases in which spasm of muscles was so intense as almost to hide the point of tenderness. He was tender over the left sacroiliac joint, hyperextension or straight leg raising was impossible, and he was unable to turn over without assistance. The X ray was negative, so far as I could see. He was manipulated, under anesthesia, in the presence of a number of medical men. All could hear a distinct click with the first manipulation, and I may say when I get this click I usually proceed no further. This patient slept almost continuously for two days, had no more pain, though some soreness, and returned to work in about four weeks.

I wish now to review a few cases which bring up the question of the value of the X ray as an aid in diagnosis of these lesions. So far as I am personally concerned, I have seldom found the X-ray appearance of such a nature that I have felt secure in relying on its findings apart from the clinical examination, though I do think that it is often a valuable contribution when carefully correlated with the clinical picture. However, for reasons which I will show later, I think it advisable that an X ray should always be taken, as negative results are not necessarily useless.

The following case illustrates: Mr. D., 1921, referred by Doctor W., had been hurt in the back some weeks previous while lifting a heavy girder in operations on a high building. His companion lost

his hold and threw the whole weight on him, which he had to assume to avoid falling. He said he felt his back give out and had severe pain. With rest he had not shown much improvement. Examination showed definite sacroiliac tenderness and other signs of injury there. I manipulated him and strapped his back, followed it by 10 days' rest, and had commenced baking, massage, etc., of the back muscles. He seemed to improve steadily, but one day he reported that after leaving the office on the previous visit he was nearly run down by a motor, and in making an effort to escape he felt something go in the back again. I tried to discount the seriousness of what had happened, but after this could make no progress in treatment. In order, however, to test his sincerity, and if possible to help him, I asked him to allow me to manipulate him without an anesthetic. I explained that it might hurt, but that if successful it would be worth while. He consented. I had him lie face down, got as much relaxation as possible, and handled the affected leg gently to get him off his guard, as I knew his resistance was too great unless taken by surprise. With the first firm lift he completely collapsed, so that I was able to complete my manipulation and strap his back. He was evidently severely shocked and broke into a profuse perspiration. After that experience I was completely satisfied that this patient was not malingering. I saw him a few times after that, and each time he had improved. He soon left the city and I have lost track of him. I had one previous experience in producing collapse from a manipulation without anesthesia, and I do not know to what the very marked result is due, but it may be associated in some way with the sympathetic system connection. The X-ray findings were negative.

In March, 1922, I was examining, with Doctor B., a patient, Mr. C., who had been injured three months before; while lifting a heavy wheel something in his back gave way. He dropped the job at once on account of the pain in his back, which lasted three or four days, whether he was resting, standing, or walking. It gradually got easier when he was lying down, but was always sore when he was up, with pain running down the left leg. He walked slightly bent, both erector spinæ stood out prominently, and he did not bend forward well—lateral bending was restricted, especially to the right. On pressure over the sacroiliac joints, he was very tender on the left side and slightly so on the right. Straight leg raising of either leg caused pain on the left side. The posterior iliac crest was more prominent on the left side. Very firm pressure over the left sacroiliac caused so much pain that the patient gave way at the knees. During this examination Doctor P. happened in, and, after watching, said he had a patient he thought had a similar condition, and wondered what he should do for him. We decided to manipulate our patient, and Doctor P. watched the proceeding. We could all hear the familiar click and all agreed that, coincident with it, the prominence of the posterior iliac crest of the left side had disappeared.

When I visited the patient that afternoon, he seemed quite cheerful, and said that the pain in his leg was gone, and that although there was some soreness in the back, he felt so different, in his free-

dom in moving the legs, that he knew his trouble, whatever it was, had been removed. He got quite well.

The next morning, Doctor P. brought in his patient. Briefly, the history was as follows: He had been injured four weeks earlier while lifting a radiator, when something gave way in his back and he collapsed with pain. For five days thereafter he was in severe pain almost continuously. It gradually got easier, but was still quite tender and sore to bending, and he felt quite unable to do any lifting or stooping. The X-ray findings were negative.

Examination gave the usual signs of a sacroiliac lesion confined to the left side, including the slight prominence of the ilium on that side. We advised manipulation under anesthesia and obtained immediate relief of the leg sensations, the patient saying that he could move his legs freely in any way without straining the back. He was kept at rest 10 days and returned to work in about three weeks.

In May, 1922, I examined, with Doctor R., a patient, Mr. M. He complained of pain in the back, mainly on the left side, which had bothered him for six months. It came on with a lift in the bending position and with the legs spread. He felt something "sort of slip." He was always sore thereafter, but as a construction foreman and engineer he could avoid heavy work if necessary and was able to keep on the job. He thought he had sciatica and was treated for that at first, and said he had made up his mind that he would not let sciatica conquer him. However, he had lost 35 pounds in weight, and had become nervous and pretty much exhausted.

He stood with a very marked tilt to the right, and right lateral bending hurt more than left, but both hurt. He put his finger on a spot over the middle of the left sacroiliac as indicating the worst point of pain. It was very tender on pressure, over the left sacroiliac, upper half—backward bending hurt very much, and forward not so bad. In the prone position it was tender over the same spot—was very tender to hyperextension of the left—and he could not lie on the abdomen without pillows under the pelvis; he could not lie on the left side and it was very difficult to turn over. There was pain down the outside of the leg, which crossed in front and ran down to the big toe, which felt numb. This had been present since he was first hurt but was improving. Examination showed there was partial loss of sensation of part of the big toe, also the second one, and half of the third. My diagnosis was partial sacroiliac displacement of the left side, and I advised manipulation for reduction. In this case we could not get any sensation of a slip, in fact nothing to indicate that a reduction had occurred, except the lessened prominence of the posterior spine. By the next day, however, he complained of less pain in the leg, could turn freely in bed, either to the right or the left, could lie on the left side without distress, and seemed to feel that whatever was wrong had been adjusted, though his back was very sore, as I expected it would be. He made a complete recovery in two months and has regained his normal weight. The X-ray findings were negative.

In August, 1922, I examined another patient, Mr. H., who had been hurt about a week before while standing on a ladder and lifting a heavy plank over his shoulder, which he had to hold for some time. He felt a slip in his back but held on, and when he was relieved of the plank he could not straighten up. He tried to work

for a couple of days but had to give up. He thought he had lumbago. He was a tall man about 6 feet 3 inches, and presented the worst deformity in a marked tilting to the right which I have ever seen, and complained of pain in the back and down the right leg as far as the calf. His tenderness was limited to the right sacroiliac joint, and he had all the other classical symptoms, which I will not repeat. He was very helpless and when lying could not turn without assistance. During manipulation a definite crack could be heard by all present. In the afternoon of the same day the patient could roll in bed without discomfort, and when I visited him I found him sitting up and he wanted to get up. He made an uninterrupted recovery, though soreness and some stiffness persisted for a few weeks. He returned to work in about six weeks.

As intimated, cases of this type often have to be considered by compensation boards, and it is important that our examination should be thorough. Most commonly the lesion has to be differentiated from some of the toxic conditions such as lumbago. In this connection I would also advise against too great a dependence on X-ray plates in such lesions; in my experience they are seldom diagnostic alone but may lend valuable aid to other clinical evidence. In fact, I think a negative X-ray interpretation valueless in the face of positive clinical evidence.

I am rather doubtful that, three or four weeks after an attack, one can diagnose lumbago and differentiate it from sacrolumbar or sacroiliac back injury from history alone, but I am prepared to say that in almost every case, by careful clinical examination, it is possible to determine whether you have lumbago or a traumatic joint lesion, but not necessarily easy to say whether it is a displacement. The soreness over the joint can be localized and pain is produced as much by passive movement as active movement, while in lumbago pain is induced mainly by muscle contraction. Several cases I have seen were simple sacroiliac strains without displacement, in which only rest and fixation were necessary.

As stated above, I have felt certain that a slight sacroiliac displacement may occur and the X ray not show it, but in order to check up my opinion and experience I wrote to some others whom I knew were interested in this subject, reporting some of the cases I have cited. Doctor Goldthwaite, who has as it were put this subject on the map, replied as follows:

Your note has been received. I am perfectly sure that real slips at the sacroiliac joint occur without X ray showing, or at least without the X ray showing it as we are able to study the X rays at the present time. The cases which you describe sound like sacroiliac cases, and to put the entire decision upon the X ray would seem to me entirely irrational. Only in the severe cases does the X ray usually show the displacement, which can be demonstrated so easily in other ways.

I also addressed a letter to Doctor Fasset of Seattle, Wash., whom I had known to be interested in this subject, as he gave a very interesting paper on it as his thesis before the American Orthopedic Association in 1917, and as, I understand, he was accepted for membership on it, it is presumed that his views met with the approval of the members of that body. He replied as follows:

My conviction as expressed in the paper at Pittsburgh remains unchanged—that we have here a definite kind of trauma no matter what is shown or not shown by the X-ray picture. Some are simple sprains which show no more

in the picture (X ray) than is seen in a sprained ankle, but which are just as real in the symptoms they cause. Others are slight displacements, but the displacement is measured in millimeters rather than in quarter inches and so are invisible to the X ray.

I also inquired of Doctor Painter, of Boston, to whom I acted as house officer for a year, during which time I assisted him in handling a number of these cases and some interesting lumbosacral lesions as well. He replied as follows:

My experience in regard to the group of sacroiliac lesions which we see from time to time has led me more and more firmly to believe that the sacroiliac joint is a true joint possessed of the anatomical features of any joint, modified in accordance with the unusual use to which this joint is put, it being less of a joint than it is a shock absorber, and there are ligaments and there is cartilage in connection with it and the former may be stretched, allowing a little more play than the joint normally permits. In this class of disturbance, which presents the symptom of strain essentially, the X ray shows nothing whatever. Indeed it does not in any sacroiliac lesion except the few inflammatory ones that are met with now and then or the very traumatic ones where there is a fracture of the innominate bone and a disruption of the sacroiliac joint. Just what the mechanism is by which that large group of lesions corresponding to sprains, clinically, are brought about, I don't know, but what I do believe is that they are essentially sprains complicated by the peculiarities of the makeup of the joint itself. These slippings that we not infrequently detect in manipulating these joints undoubtedly represent the sliding over one another of the spur-like processes characterising the interior of the joint and giving it its peculiar makeup.

DIAGNOSIS AND TREATMENT

The diagnosis in these traumatic cases is usually a question between sacroiliac strain or displacement, sacrolumbar strain or displacement, and some of the toxic conditions like lumbago. I do not think it is difficult to determine between the traumatic joint lesions and the toxic lesions, as in the joint lesions passive movement causes as much distress as active movement; in other words, you are determining between ligamentous tissue which is not in itself contractile and muscle tissue which is, and besides you can usually localize the most tender spot over the joint line.

It is, however, sometimes more difficult to determine whether you have a partial displacement or a simple strain. I am inclined to think, however, that where there is definite leg pain in addition to the back pain, and where the pain is unilateral, or when it persists severely for over 24 hours or longer, in spite of rest, if there is evidence of nerve lesion, by signs of numbness or partial loss of sensation, or an irregularity in the relations of the anterior or posterior spine of the ilium or a variation in length of the legs, in addition to the usual signs of pain on straight leg raising or hyperextension, it is wiser to assume that you are dealing with a partial luxation of the joint, whether or not the X ray confirms you.

Treatment

If there is no displacement, the indications are for rest, and this may be made more efficient and add to the patient's comfort by a firm adhesive-plaster strapping of the back. If there is a displacement, it should be treated as other displacements, and immediately reduced, for which an anesthetic is desirable and I think usually absolutely necessary. Follow the reduction by any kind of fixation which you prefer. I used to use a plaster spica. Re-

cently I have used adhesive strapping as in the sprain cases. It is quite possible we could do without anything, merely putting the patient to bed, but the support adds greatly to his comfort.

These cases of sacroiliac strains, with their common accompaniment sciatica, have for years been the happy hunting ground of the osteopath, and I doubt if there is one among you who has not heard from your patients of some one who had some type of leg or back pain and was treated for weeks or months without relief, but who has been relieved or cured in one or two treatments by an osteopath.

The greater proportion of the patients whom I see, barring the acute cases, have been treated by either osteopaths or chiropractors, and while in some cases there are obvious reasons why they fail, in others I think it is only because the necessary relaxation is not obtainable without an anesthetic.

The tendency of any displaced joint is to return to its normal position as soon as the spasm of muscles controlling the joint has been removed, and I think the displacement in this joint is represented merely by the sharp and denser bony margin being displaced sufficiently to imbed itself and catch in the softer cartilagenous surface. The tendency is to reduction when relaxation is obtained. There are many cases on record where spontaneous reduction has occurred.

In the more chronic cases reduction is often difficult, and in accomplishing it one runs some risk of straining the lumbosacral area, and this leads me to a consideration of the lumbosacral lesions. Referring again to the work of Doctor Goldthwaite, in the paper published in 1911 he reports having produced a displacement of the sacrolumbar articulation while attempting to reduce a sacroiliac lesion, which produced immediate paralysis, and it was that unhappy event which led him into the investigation which has resulted in our knowledge of the irregularities of the fifth lumbar vertebra, especially the peculiarities in shape and form of its transverse processes and articular processes, some of which give rise to back pain in themselves and some of which undoubtedly predispose toward certain types of back strain.

Where some of these anomalous forms exist and injuries or strains occur in this area it will be a delicate point to decide whether such a patient should be entitled to compensation or whether he should suffer the possible results of his developmental peculiarities.

In my experience strains of the sacrolumbar area do not occur as frequently as those of the sacroiliac, and when they do occur it is practically always from lifts in the extreme flexed position. This is not surprising since, as shown by McKendrick, practically all of the flexion of the spine occurs in the lumbar area, and of this more than half occurs at the fifth lumbar, so that in every way it is liable to strain, and where some of these peculiarities of facet formations exist, it is not hard to see how they might be pulled past each other and caught, or the ligaments strained. Here again it is a question of determining between strain or injury of ligaments and joints or toxemia of muscles. In joint injury the bones are tender to pressure and sensitive to passive movement.

Personally I have seen 12 cases of spondylolisthesis. In only one case did it develop suddenly, and that in a case of injury at 7 years

of age, and the paralysis was so marked the patient did not walk until 20 years of age. All the other cases developed gradually, some with very slight symptoms, but usually with a history of accident or injury as a starting point.

Such cases demonstrate beyond doubt that this joint can be strained, that it can be disarticulated, and that this is probably seldom diagnosed in the beginning. I remember a case of lateral facet displacement which we were able to demonstrate fairly to our satisfaction by X ray. This was while in the hospital service under Doctor Painter of Boston. On the second attempt under anesthesia we succeeded in reducing it, or at least the symptoms of two years' duration disappeared. Another patient, referred by Doctor R., showed a similar lesion between the fourth and fifth lumbar, which had occurred five months previously. The patient said he had sat on his heels for a couple of hours fixing his car, and felt pain when he went to get up; when he went to crank the car he felt again a distinct pain as though something was going out of place, and since that he had had constant pain. Manipulation under anesthesia entirely relieved the symptoms, presumably by allowing the facets to assume their normal relationship.

It is on account of these fifth lumbar irregularities that I think all injuries in this area should be X rayed, even though many pictures will be of negative value, but it has been shown the presence of these irregularities complicate manipulative procedures.

In a recent paper by Doctor Sever, disability from this type of injury is shown to average six months, and he concludes this is from defective treatment. It is, of course, primarily, defective diagnosis because of which treatment is missed. I also find it extremely helpful to follow manipulative procedure with suitable forms of physiotherapy, such as radiant heat and massage, or some of the electrical modalities. We must always remember there is a mind as well as a body to treat and a firm control of the psychological element is necessary.

It is my hope in presenting this subject that these lesions may be more regularly recognized, that efforts at correct diagnosis and treatment may be stimulated and duration of disability lessened.

COMPENSATION CLAIMS OF ELDERLY MEN

BY HARLEY J. GUNDERSON, M. D., MINNEAPOLIS, MINN.

[Submitted but not read]

The compensation problem of the elderly man, the man who is past the prime of life and is taking on the industrial handicaps of his accumulating years, is one that vexes both physician and referee alike. Few men who have worked their entire lives at hard manual labor reach the age of 60 without definite and pronounced arterial changes, and such changes may occur even at a much earlier date.

So long as disability is due to injury or to an aggravation of a preexisting physical defect, the liability is clearly one for the employer. However, when a preexisting disease is aggravated or coexists for a space of time with a comparatively trivial injury which incapacitates him, the dividing line between the disability due to disease and the disability due to accident is difficult to determine.

If death of the patient months after the accident further complicates the case, the problem of determining the relationship of his accident to his death demands most careful scrutiny.

For the purpose of this paper a case of the Minnesota commission is used as a basis of discussion. A man aged 63 who had always worked at hard manual labor, received in March, 1922, an infection of his arm which resulted in a general phlebitis. Disability lasted from March to December, 1922, when he returned to work, but was unable to do heavy work because of lack of strength. He complained of dizziness, and in June laid off for nine days because of this dizziness. He again laid off in July for several days, and on July 23 he fell while assisting in the carrying of a wooden timber, the fall resulting in two fractured ribs. He was confined to his bed for a few days and was then up and about. The prognosis of the physician was good, the length of disability being estimated at three weeks. In September the patient made an automobile trip to Chicago, a distance of 400 miles, returning on September 25th. A physician was called on the 29th because he complained of recurrence of headaches and dizziness. The blood pressure was 188 systolic, 130 diastolic, temperature normal. On October 4th, the systolic pressure was 180 and on October 5th, 200. He died October 10th. The autopsy showed a subdural hemorrhage, the contributory cause of death being arteriosclerosis and general debility. The case was tried before the Minnesota commission, the contention of plaintiff's attorney being that the accident caused a general weakened condition, from which the injured never recovered. Stress was laid on the fact that it had increased his previous disability of phlebitis, and also on the blood-pressure readings, which had gradually increased during the last four days of his life.

It is not a matter of surprise that the mind of the layman is confused by the medical testimony in these cases, or that it is difficult for the medical man to draw a line of demarcation which is tangible to the layman between disability due to his accident and disability due to his senility. We agree that there was a preexisting sclerotic condition which placed this patient on the border line between industrial activity and senility. The point of divergence is at this place. Medical writers of repute are agreed that arteriosclerosis is not caused by trauma, and that if the arteriosclerosis is aggravated to such a point that death does result from the aggravation, the death would result at the point of greatest insult—that is, within a few hours or at the most a few days after the accident. If death does not occur during this limited time, then the traumatism may be disregarded as a contributory cause of death. It is my opinion that the physical rest which follows a traumatism is beneficial to his arterial condition rather than harmful. It is contended that the accident aggravated the phlebitis and that the phlebitis lowered the physical resistance to the advancing arteriosclerosis. Where death is due to arteriosclerosis too much stress is laid upon "lowering of resistance" and to "general debility." The cause of cerebral apoplexy is a diseased cardiovascular mechanism and it may burst as the result of trauma, but this bursting occurs immediately. Exciting causes such as sneezing, coughing, worry or grief are merely coincidental and not in the least producing or actuating causes. "Lowered resistance" and "general debility" are not producing or actuating causes.

They are brought up in medical legal cases and serve to cloud the issue, but they have no real pathological significance. When the diseased arterial wall has progressed to the point of rupture, it will rupture independent of all causes except in those cases of accident where the insult is so severe that the arterial tension is momentarily raised to the point where the artery will rupture, the first shock of insult being always the greatest.

In cases where infection has resulted from accident, the arteriosclerotic condition is increased when this infection becomes a general one. Such infection must be accompanied by fever and other symptoms of systemic infection. Phlebitis may be classed as a general infection, but in the case cited there was no evidence of temperature or chills and it can therefore be ruled out as a contributory cause of death.

Uremic symptoms may follow shock of accident in an arteriosclerotic patient because of the arteriosclerosis in the kidney, but this condition will also follow within a few days or weeks of the accident, and thereafter, if such symptoms do become apparent, they may be disregarded as a result of the accident.

The laboring man, aged 60, who has arrived at the border line between industrial activity and senility suffers a longer disability period due to an accident than a younger man who has received a similar injury. This is rightly recognized by compensation boards in awarding disability periods, but the board must scrutinize such cases with the greatest of care to the end not only that the workman receive his full compensation but that the employer be not unjustly penalized by reason of the age of the workman, as that would only result ultimately in discrimination by the employer against the old man. It is a fact that many men at the age of 60 or upwards do continue by reason of their environment to work after the period of time at which they should retire but for economic reasons are unable to do so. Such a man is honest in his contention and belief that disability due to injury at this time is due solely to his injury, whereas the fact is that it has merely brought to his attention a physical disability which has existed for a long time. The argument which is most strongly brought forward by the petitioner is that he has always been well and has been continuously engaged in the performance of manual labor up to the time of his accident. As opposed to this argument it can be said that men are dying to-day who have never died before.

CHAIRMAN, L. A. TARRELL, COMMISSIONER WISCONSIN INDUSTRIAL COMMISSION

The CHAIRMAN. John S. Bradway will now discuss the National Association of Legal Aid Organizations.

NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS

BY JOHN S. BRADWAY, SECRETARY NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS

It is a great pleasure to address you on the work of the National Association of Legal Aid Organizations, as it gives me an opportunity to speak on the general subject of the administration of justice.

The greatness of a nation is not measured by the extent of its wealth, whether in manufacturing or agriculture, or in trade or commerce, nor in its work of benevolence, its hospitals, its asylums, its many admirable foundations for the alleviation of the miseries of human life, great, admirable, and beneficent as all these are; it is to be measured in its approach to justice, for justice precedes all of these things and is an attribute of the Deity.

Both your organizations and those which I have the honor to represent are interested in this general problem of the administration of justice. It is fitting at a time like this that we take stock of ourselves and consider what justice is and how it is administered.

Pilate asked "What is truth?" In the same way we may well ask, What is justice? The best definition I have found is in the words of Judge Levine of Cleveland:

Experience, however, indicates to me that justice in the main is judgment based upon trial balances; that it is a bookkeeping proposition. You have the ledger with its debit page, credit page, and the balance. You can not procure a correct estimate of the business standing of a business institution by referring to one page alone, but by comparing the two and striking a trial balance you can form a correct estimate. In like manner when we render judgment over our fellows it must be based and founded on the trial balance. To get at the trial balance is often difficult.

Justice in the matters before us to-day is a question of what ought to be done for the employee who is injured in the performance of his duty. When we consider what ought to be done, we are inevitably drawn to consider what can be done under the present circumstances.

We are coming to realize that laws do not execute themselves. If we could live according to the golden rule there would be less need for administrative machinery in legal matters, but we are faced with the practical problem that the law must be workable. There are many agencies and kinds of machinery which have been built up for the purpose of making the law work, each making effective certain features of the administration of the law. The traditional method consists of the courts and the bar. There is no question but that a man injured in the course of his employment originally had a right at common law which might be enforced by means of lawyers and courts, and in the last analysis we may still find occasion to revert to these two fundamental agencies.

The economic and social conditions which produced the courts and the bar were largely those of a scattered population, largely homogeneous and self-supporting. As long as these economic and social conditions continued there was little demand for change, and, consequently little change in the traditional method of administering the law. Of late years, however, many impulses have combined to force upon us the conviction that in some cases a more specialized machinery is needed to give practical effect to justice. These conditions are, principally, the industrial revolution with its great increase in dangers of occupation, diseases of occupation, and kindred ills; the growth of our huge urban populations, where in the mass of the people the individual and his needs are lost sight of; and the growth of two classes of persons in the community far beyond the limits of their traditional boundaries—the poor man with a just claim, and the unscrupulous lawless individual who has invaded the rights of the poor man.

The poor man is handicapped in asserting his rights because of three things—delay in court procedure, court costs, which in many cases prove an almost insurmountable barrier to an approach to the court, and need for and expense of counsel.

Let me illustrate this by a case which I handled a couple of years ago when I was chief counsel of the Philadelphia Legal Aid Bureau. A workman had been killed. The evidence left some doubt as to whether or not he came within the provisions of the workman's compensation act in Pennsylvania. The family consisted of a wife and four children. They had only recently come to this country and could not speak English. Being in dire distress they were relieved by a social agency, which sent the case to us. It appeared that they had entered into a contingent fee agreement with a man purporting to be an attorney, who spoke their language. He told them that his business was to make them happy and wealthy, for which he asked the modest sum of 50 per cent of the amount recovered. Having thus placed them in a position where he alone controlled the possibility of a settlement, he promptly forgot the whole matter. Perhaps he had to leave town in a hurry; at any rate they saw him no more. Time dragged on. The statute provided that actions of this sort must be begun within a year. There was no one to warn these people of their rights or to advise them that application should be made.

Here was a situation where these people might have done something had they known how, but they did not know how. If they had gone to a lawyer's office they would probably have had to pay a fee, and they had no money for a fee. They should have gone to the Philadelphia office of the workmen's compensation board. It is easy enough for us, with our knowledge, to tell them what they should have done. For lack of legal advice they were losing their rights and would have to depend upon charity for their livelihood.

Court costs, which are a barrier in many cases, did not bother them because the law in Pennsylvania provided a specialized procedure without this expense. Delay in court procedure was not a factor in this case, because the workmen's compensation board had devised a specialized procedure which expedited the decision of such cases far beyond the procedure of the courts. But the need for counsel learned in the law was still present. It was necessary to determine the steps to be taken and to prove whether or not the particular case came within the terms of the statute.

This poor family labored under an almost fatal handicap. They had no money and could not secure the legal advice they needed. If there had been no industrial accident law in Pennsylvania their position would have been even worse.

The community awoke to the need for a remedy in such cases. It came to be recognized that the common law was unfair to injured workmen. Far more important than the substantive side of the law, however, were the difficulties in the administration of this law. A mere change in the substantive law would have been of little help unless the administration of that law was made inexpensive and speedy. To the poor man inexpensive procedure and speed in reaching a final adjustment of his case are of the greatest importance. It was as a result of this conviction in the minds of the com-

munity at large that there grew up the body of law establishing industrial accident commissions and prescribing the method of procedure to be employed by them; 43 States have now adopted the substantive law of workmen's compensation. These commissions, once created, proved most resourceful and proceeded to create remarkably efficient administrative machinery.

By insisting upon adequate reports they endeavored to check every accident that occurred. They also endeavored to see that every injured person was informed of his rights. Many cases were settled without the slightest controversy. Many cases were disposed of by conciliation, which smoothed out and adjusted apparent controversies. For the remaining cases which could not be disposed of by concilation they devised a method of trial.

From time immemorial the trial of a case has consisted of two parts: 1. The ascertainment of the true and correct facts of the case; and 2. The ascertainment and application to these facts of the proper rule of law.

The industrial accident commissions in the pursuit of their work have endeavored to solve both of these important aspects of the case. Facts in cases of this kind relate to the conditions of the accident and to the extent of the damage done to the injured man. Many industrial accident commissions have secured investigators who interview witnesses and ascertain the conditions of the accident itself. With regard to the damage to the injured man, they have secured the services of physicians upon whom they can rely for accurate testimony. Most of the commissions keep excellent statistical records of their work. All this makes for speed and inexpensive procedure. In practice, two of three great barriers which separate the poor man from justice have been surmounted—namely, delay and court costs.

There is, however, a further problem in connection with these contested cases. This arises from the need for a lawyer. Before the workmen's compensation act came into existence the privately paid lawyer was an essential factor in the conduct of personal-injury litigation. From this condition grew the contingent fee system. A case in point is that of Boyle *v.* Great Northern Ry. Co., 63 Fed. 539. Boyle sued to recover damages for a personal injury caused by negligence. The railroad moved that the plaintiff file a bond to cover costs. Boyle was a poor man and could not file the bond. The act of Congress of July 20, 1892 (27 Stat. 252), provided a procedure to waive court costs in case of the poverty of the plaintiff. Boyle therefore petitioned the court to be allowed to proceed as a poor person without payment of costs. It appeared that Boyle had entered into an agreement with his attorneys for a division of the proceeds of the case on a contingent fee basis. The court says:

> I think it does make a difference whether the plaintiff has made a contract with his counsel for their compensation. It makes this difference: that, after a contract has been made with counsel for a pecuniary interest in a lawsuit, the case is carried on partially for their benefit, and, if they are able to pay the expenses of the litigation, it is unjust for the court to allow the litigation to go on for their benefit without expense, on the pretense that the plaintiff is unable to pay.

And thus the injured man had to choose between the provisions of the act and the expenses incident to court costs.

Under workmen's compensation laws, two large classes of cases are removed from the group where the attorney is necessary. These are the cases where a settlement is made without any question at all and those where settlement is made as a result of conciliation. But where there is a controversy the lawyer is quite as necessary an adjunct to the proceeding before an industrial commission as he was in a court case. Investigators, doctors, and statistical records keep us informed of the facts. The law is constantly growing. In Pennsylvania there are published each year some 500 to 700 pages of reported decisions developing new phases of this law on border-line questions. It is staggering to think of what the extent of this law in the United States will be within the next 10 years. When the commissions began their work it was a virgin field. With clear judgment and intelligent action they have devised rules and regulations for their work.

Whereas in the beginning all such decisions were more or less without precedent, it has now become desirable and even essential that the limits of the field of operations be drawn with ever-increasing distinctness. But while this accumulation of law is necessary, it leaves the layman in the situation of needing a lawyer. The layman lays emphasis upon a quick, cheap method of getting help when he needs it. The problem of studying this mass of law is to a great extent beyond his experience, but it must be studied if his case is to be handled at all.

The need for the lawyer arises because there must be a search for the rules of law applicable to the ascertained state of facts. In a contested case the employer will invariably be represented by the best counsel obtainable. At the same time the injured man may either pay for an attorney to represent him or take the chance of losing his rights. You can not figure your trial balance of justice accurately unless the lawyer for the injured man is present.

This situation has received very serious consideration by the commissions. The first effort was directed at the practices which had grown up in connection with the fees charged by attorneys on the contingent basis. Statutory provisions supervising and curtailing the fees which attorneys might receive were inaugurated. The legislation was rigid; the result was unexpectedly harsh for the injured plaintiff. It drove the best attorneys away from such cases and thus automatically cut the injured man off from the possibility of getting proper lawyer's services. There was no proper substitute for the lawyer. If the accident commissions had taken the position that they were going to represent the injured man, prepare his case for him, and then let him present the case just prepared, the result would have been to cripple the usefulness of such a commission through lack of confidence by the community.

Some persons have an idea that the injured man needs no lawyer. Even if that be true in some cases, it is untrue in many others. The commissioners need to realize that the lawyer is an earnest advocate for his client. To make the advocate the judge of the case means to have a weak judge. To make the judge the advocate is to have a weak advocate. The commissions can not act in a dual capacity without somebody suffering.

Here again the commissions, through intimate knowledge of their own proceedings, are perfectly aware of the danger. The chairman

of the Pennsylvania Workmen's Compensation Board stated the problem explicitly:

> Now, what are we going to do with the lawyers? You can't keep them out. The employers, the insurance companies, the self-insurers, will employ the best attorneys. If you make it absolutely impossible for the claimants to offer such rewards to attorneys that they can not get legal talent to combat the legal talent on the other side, then you are going to affect very seriously the claimant's rights. And if your boards take up the side of the workmen and prepare the workmen's cases and let the workman present the case through his own lips that you prepared for him, and you decide your cases, you are soon going to cripple your own usefulness through lack of confidence by the community. Therefore you must accord the claimant some intelligent representation.

Some people are inclined to argue that we should do away with the lawyer entirely. Charles Warren, in his History of the American Bar, tells us of early statutes enacted abolishing the legal profession. It is clear that the practical conditions of the times were such as to override the statutory limitations and to require the existence of such a profession. Certainly it is now in existence. Few wealthy men would venture to engage in a legal contest without the assistance of the best legal talent available. In the same way it should be recognized that the poor man needs similar services. If a man can not afford to pay for a lawyer it is well not to deny him a lawyer, nor to say that he had no need for a lawyer. The facts are that he does need the lawyer. It therefore appears necessary that in a case of this kind the attorney be supplied in some way or other.

Various steps have been taken to supply the need. In Minnesota injured persons turn to the industrial commission for legal advice and assistance. Wyoming has authorized its county attorneys to give legal advice in such cases. Nebraska provides that the attorney's fees may be taxed as costs. Oregon provides that if an employee sues in tort against an employer insured under the compensation act the attorney general shall defend the employer and the expense shall be borne by the State accident fund. In Pennsylvania the workingmen's compensation board has included in its budget and received from the State $12,000 for the express purpose of retaining lawyers.

The problem, as I see it, with which the commissions are confronted here is that of getting the compensation into the hands of the person needing it without any unreasonable deductions for lawyers' fees or other costs, so that, as far as possible, he may get all that is coming to him. That practical problem is rather a difficult one to solve. A few actual cases will illustrate something of the difficulty involved. These cases were handled by myself a couple of years ago when I was chief counsel of the Philadelphia Legal Aid Bureau and they are familiar types of cases.

A man was killed under circumstances which left no doubt at all in anybody's mind that the family was entitled to compensation. The widow immediately placed her affairs in the hands of an attorney. The attorney took the matter in hand and had her sign an agreement for 50 per cent of the profits. As soon as he had the agreement in his possession he made a few telephone calls and then waited a week so as to lend a little dignity to the proceeding; then he called her to his office and said, "I have made the settlement." She was very much excited and said, "How much is it?" He named the figure—I have forgotten what it was; let us say $1,000. He said,

"We will go to the office and sign the papers and get everything fixed up."

They went to the office and signed the papers and he handed her a check for $1,000. When they got outside of the office it developed that the woman had no bank account; she had no way of cashing the check, so the lawyer very kindly said, "I will take you down to my bank and we will get it cashed." So they walked down the street. He identified her and she indorsed the check and passed it through the window to the paying teller.

The paying teller counted out ten $100 bills; the lawyer then picked up the ten $100 bills, counted off four of them and gave them to the woman and put the other six in his pocket. She remonstrated and said, "Where is my money?" He replied, "You do not understand. You agreed that I was to get half of it." She said, "Yes, but what about this other $100?" He answered, "That was what my expenses amounted to in connection with the proceeding."

There was a case where the board was doing its duty to the fullest and the woman, so far as she knew, was doing her duty to the fullest extent, but somewhere between the two there was a hitch, and the result was that the dependent, who was entitled to the money and should have received it, was done out of what was due her.

Let me give you another illustration. A man was killed in this country and his dependents were subsequently found in some little village in Poland. Friends over here were interested in the matter and retained a lawyer in Philadelphia. The people in Poland retained a lawyer. The result was that a lot of papers, affidavits, and translations traveled back and forth between the two, and finally an award was made. The lawyer in Philadelphia took out a reasonable amount for his compensation, and the lawyer in Poland took out another reasonable amount for his compensation; the balance went to the dependents.

Again the commission was doing its duty and the dependents were doing all they knew how to do, but somewhere between the two there was a hitch, and because of the hitch the money did not get directly and speedily into the hands of the people entitled to it.

The problem is to know how to handle such cases so that the money available for the dependents will get into their hands without these unreasonable and unnecessary deductions. Extensive efforts along this line have already been made. A recent article tells us that in New Mexico, Wyoming, and possibly in New York, it has been made a misdemeanor to receive a fee in such cases without the approval of the industrial accident commission. In Arizona, I understand, the fee is limited to 25 per cent of the award, and to exceed this limit is a misdemeanor and calls for disbarment. Ohio, I believe, has a similar limit on a sliding scale and also provides a maximum limit of $500 for fees.

A specialized machinery is thus being built up for industrial accident cases providing speed and inexpensiveness of procedure. Under the old system the facts had to be ascertained by an investigator paid by the litigant, the medical evidence had to be offered by a physician paid by the litigant, and, finally, the case had to be conducted by a lawyer paid by the litigant. If the litigant had not the wherewithal to pay he had to choose whether to forego the asser-

tion of his rights or to take his chances on a contingent-fee basis and thus lose a large share of the amount recovered.

In place of this arrangement we now have the facts investigated by an investigator without cost to the injured party, the medical evidence submitted by a doctor without cost to the injured party, and some effort made to supply a lawyer without cost to the injured party.

This problem of supplying legal advice to a poor man with a just cause without cost to himself is fundamentally the work of a legal aid organization. I submit that it is in this connection that legal aid organizations fit into the machinery for administering justice in industrial accident cases. Our organizations are rapidly taking care of the class of cases where there is a contest and a lawyer's services are needed and can not readily be secured by the litigant because of his poverty.

Nor is the extent of this service to be minimized. Legal aid work has grown beyond its cradle. In an unorganized way legal aid work was done in every law office in the United States from the time the first lawyer landed here. It was done because the individual members of the bar felt that upon them rested a public duty in addition to their private responsibility to their clients. The law is a profession, and one aspect of professional work is the obligation to act as a minister of justice.

The same economic and social conditions which called into being the industrial accident commissions and directed their operation along wise and efficient lines also brought to light the earliest legal aid society. Legal aid work began in New York City in the year 1876, at the instance of a group of justice-loving lawyers who anticipated the modern movement toward Americanization by desiring to protect the immigrant of that day from the host of swindlers and unscrupulous persons who were accustomed to take from him upon his arrival all of his worldly goods. A detailed statement of the growth of the work would be tedious, but it may be of interest to you to give a few figures as to the way in which it has grown:

NUMBER OF LEGAL AID ORGANIZATIONS, NUMBER OF CASES HANDLED, AND AMOUNT COLLECTED FOR CLIENTS IN SPECIFIED YEARS, 1876 TO 1922

Year	Number of organizations	Number of cases handled	Amount collected for clients
1876	1	212	$1,000
1890	3	9,316	47,000
1899	4	16,189	72,000
1909	14	48,212	136,000
1913	38	87,141	244,000
1916	41	117,201	340,000
1919	41	93,597	(1)
1922	66	125,205	520,000

[1] Record not available.

To-day there are over 100 organizations in the United States and Canada doing legal aid work. There are few of the larger cities in which some such organization has not found a foothold and maintained itself. In California, Massachusetts, Louisiana, Michigan,

Tennessee, Indiana, Wisconsin, Ohio, and many other States legal aid work is on a firm basis. It has the indorsement of the American Bar Association and of the State bar associations in New York, Connecticut, Pennsylvania, Michigan, and Illinois.

The service rendered by legal aid societies is an important service and it differs from other legal service in two particulars: 1. They handle an infinitely greater number of cases than the average private practitioner; e. g., in Philadelphia they handle about 13,000 cases a year; in New York, about 36,000; and in Chicago, about 16,000. 2. They do not send out any bills. They handle about 250 different kinds of legal problems for the poor man. I do not think they handle any problems having to do with corporations or income tax, but aside from that they cover pretty generally the field of the poor man before the law.

There is another development in the field which should be noted carefully. This has to do with the movement toward unity. As early as 1911 Mark Acheson, jr., of Pittsburgh, called a meeting of legal aid groups, and in the following year the National Alliance of Legal Aid Societies was formed. With the war the activities of this body stopped. For a time there were few here available for the work. The publication in 1919 of "Justice and the Poor," by Reginald Heber Smith, of the Boston bar, gave tremendous impetus to the work. Since then national conventions have been held in Philadelphia and in Cleveland. Ten or a dozen committees are actively engaged in considering such matters as office routine, the public-defender work in criminal cases, small loan and investment legislation, relation with social work, relation with the bar, new legal aid societies, and kindred subjects. The organization has been prominent in furthering an international legal aid conference which expects to meet at Geneva, July 30, 1924, at the instance of the League of Nations, and which will lay plans for an international convention and perhaps the formation of an international legal aid body.

Thus developing the work by the establishment of new organizations in cities where there are none and by establishing contact with allied groups in the community, these legal aid societies are striving to conduct in the most efficient manner these poor men's law offices as their services to the community.

They handle 250 different types of cases, among which are workmen's compensation matters. The Boston Legal Aid Society last year handled 124 cases involving workmen's compensation, the legal aid society in Philadelphia 232 such cases, and societies in other cities cases in proportion. I wish to suggest to you that the legal aid organizations may in this way supplement the service of your organizations to the community. Cooperation between compensation commissions and legal aid societies has already begun. Mr. Reginald Heber Smith, of Boston, who was for a time the chief counsel of the Legal Aid Society of Boston, told me a couple of months ago that the very first case handled by the Industrial Accident Board of Massachusetts was a case in which the legal aid society was asked to represent the claimant. It appeared that the woman had gone from one lawyer to another, and each lawyer had kindly

relieved her of a little of her money until she had practically nothing left. The industrial accident board then took the case into its own hands and asked the legal aid society if it would represent the woman. Mr. Smith told me that he was still guardian for the children in that case and was just completing the disbursement of the money that had come to him as the result of the award.

We need not discuss here the advantages which would accrue from having a lawyer who specialized in work of this kind available without cost to the litigant. We understand the desirability of efficiency and economy in concentrating in one office in each city the legal service needed for the poor, so that whether it be wage claims, landlord and tenant difficulties, installment contract problems, domestic trouble, or industrial accidents, the legal phases of the problem may be handled expeditiously and without expense by persons qualified to do the work. We recognize the benefits from having such lawyers independent of the tribunal which decides the cases.

But as a practical matter these considerations may well await a further study of the relationship between your organizations and those which I represent. To accomplish this situation and to establish contact between us, I would urge upon you the appointment of a committee to cooperate with a similar committee of the National Association of Legal Aid Organizations in devising ways and means whereby the legal services of the poor man's lawyer may be of assistance in supplementing the work of industrial accident commissions.

As I have said, we are both engaged in the administration of justice. The Constitution of the United States, in its preamble, says specifically:

> We, the people of the United States, in order to form a more perfect union, establish justice * * * do ordain and establish this Constitution for the United States of America.

One of the fundamentals of our government has been that the position of the poor man before the law should depend not upon the whim of an individual, not upon the amount of money in his purse, but solely and eternally on the justice of his cause. A committee of your organization cooperating with a similar committee of our organizations will be one more step upon the broad highway which leads to the temple of justice. Without the services of a lawyer the poor man is at a disadvantage before the law. Lyman Abbott has said: "If the time shall ever come when the doors of the temple of justice shall be opened only by a golden key, then, indeed, the seeds of anarchy will be sown."

It rests with us to see that this disaster does not come to pass through any omission on our part. You, as public officials, and we lawyers, as ministers of justice, have a public duty in this direction which can be performed only by seeing that in every case justice is done. Together we may, with an open mind as to details, meet this problem with a determination that no man in the community shall be above or below the law, and together we may do our part to see that equal protection of the law shall be a reality. Let us proceed to establish a means of auditing our accounts, both debits and credits, so that in every case we may strike that desired balance—justice.

DISCUSSION

Mr. ARCHER. In connection with the matter under consideration, without expressing any views of my own on the subject, I have been requested to offer the following resolution, which I readily do:

Resolved, That a committee of this association be appointed to meet with a similar committee of the National Association of Legal Aid Organizations to consider mutual problems and report at the next meeting of this association.

Mr. PARKS. I take great pleasure in seconding that motion. I have had a good deal to do with the Legal Aid Society in Massachusetts. It is an excellent organization. We can not do too much to encourage these societies in their work. They do their work for nothing.

The last case I had before I left home was a case in which a young lawyer got a very satisfactory settlement. When I asked him what his fee was—we regulate fees in Massachusetts, and a lawyer can not get a fee unless we say so; if he charges too much, we cut it down—he said, "It will be three dollars." That was his fee. These legal aid societies do not charge any fees; there is merely a nominal charge. They do excellent work. We can do no more than encourage them.

Mr. ARCHER. I might add that while it is a rare case in which the legal aid society practices before the commission in New York State, yet the legal aid society in New York is patronized by some of the most illustrious members of the bar, whose very names are hall marks of integrity and high professional standing.

Mr. KINGSTON. I listened with a very great deal of pleasure to the address of Mr. Bradway. I am sorry I did not hear his address before I made my remarks yesterday afternoon, for he has provided me with another very excellent point on the subject of the advantage of the State-fund type of administration. The compensation board, under a State fund, is the poor man's lawyer.

Such an abuse of the privileges of the compensation law as occurred in Massachusetts or Pennsylvania could not happen in State-fund administration as we see it in Ontario. I do not know what the case may be in other State-fund jurisdictions, but I am very glad indeed to have heard what Mr. Bradway had to say.

Mr. DUXBURY. In the State of Minnesota nothing of that kind could possibly happen. I do not imagine that it is possible in many States. I have heard a good many members of the association tell about the good points in their laws, and rather resent an inference that they did not have a perfect law, so that I hesitate somewhat to say anything with reference to the compensation law of the State of Minnesota, for fear that I might be understood as being in some degree bigoted with reference to the perfection of our law, I do not want to be so understood.

My notion about these conventions is that we ought to lay aside all feeling that we have the best law in the world, or that there are some things about our law that are better than everybody else's law, and listen, because I am certain that none of the laws are perfect and they can all be improved. It is no part of our duty to defend them as we may defend our religious faith, because they are not quite so sacred. I am happy to say, however, that the sort of thing

described by Mr. Bradway could not happen in Minnesota. Any contract of that character is absolutely void under the Minnesota law, and the fees which an attorney may receive for services which he renders in connection with the compensation claim are fixed and controlled entirely by the industrial commission. If the service is rendered before the referee, the fee is taken out of the compensation, lessening the amount of compensation which the claimant gets, but in proceedings on appeal to the commission or on appeal to the supreme court (because our appeals are directly from the commission to the supreme court), the commission or the supreme court may fix the attorney's fee, which is a part of the charge against the employer and insurance carrier.

I think it would be a good thing if this were done in case of service rendered before a referee, because there are a large number of cases where the services of a competent attorney are just as important as the services of a competent physician. If that sort of a regulation were made we would get better service from the legal profession, competent attorneys would take that class of cases, and that would probably deter these other fellows who have been described.

People frequently say that a lawyer should not have any connection whatever with claims for compensation; that if he does, it is a reflection upon the whole proceeding. I think that notion ought to be removed. There are legitimate disputes with reference to compensation rights which have to be determined in a judicial manner, and if employers, insurance carriers, and others are represented by legal talent, the other parties ought to have the privilege of the same character of representation. A method ought to be devised by which, under proper control, such lawyers can be remunerated for their services. It would be a good thing if it were so in cases where the services are necessary in order to enforce the claim.

There is no reason in the world why these men should not be compensated for their services. Lawyers do probably as much as any other class of professional men without hope of reward. But if they not only have no hope of reward but also expect to face a rebuff for being there, they will leave such service to fellows of the character already described.

Mr. DUFFY. I want to correct an unintentional mistake which occurred in the paper and which was a natural one for anyone not thoroughly familiar with our law.

The clause in our law which provides for the attorney's fee applies only to those cases in which an appeal is being taken from the decision of the commission to the courts, and the fee is fixed for the legal service rendered in the trial before the court. But the Industrial Commission of Ohio has no authority to fix the fee for any practice before the commission itself.

I am sorry I can not say, as Mr. Kingston can, that we have had no such cases. We have had some in Ohio, not very many, but we have had some, and I will give you just one illustration to show how difficult it is to control such cases.

We have a rule which provides that we will not give any of the vouchers or checks to attorneys, nor will we send them to the address of the attorney. We insist on sending them direct to the

claimants. There is a provision in that rule that if any deviation from the rule is thought proper it must be put up to the commission itself in each particular instance, and the department can not deviate from it without specific authority in the particular case.

Not long ago we had the case of a widow who happened to be living in Maryland, but whose husband had been killed in Ohio. When the case was disposed of and the award made, there was around $400 due for the first payment. The woman had secured an attorney in Maryland. He, in turn, had secured an attorney at Akron, Ohio, but neither one had appeared before the commission. In order to protect the widow's rights, our department sent a check to her at her address in Maryland. But the day that that award was made, this Akron attorney called up the department, made inquiry, and found out that the check was going out the next day. He went from Akron to that woman's house in Maryland, got the check, and took the entire amount—four hundred and some odd dollars—after getting the woman to indorse the check.

Probably we had no authority to do so, but as a means of emphasizing our disapproval of that action, we proceeded to disbar that lawyer from practice before the commission. We did not know whether or not we had authority to do that, but we did it anyhow, and the case stands that way at the present time.

The CHAIRMAN. In Wisconsin, we have many cases presented to the commission by the legal aid society. The commission refers cases to the legal aid society because it recognizes the fact that there are cases which require legal assistance. Occasionally we have a case where a widow is claiming a death benefit in which we think she should have legal assistance. We ask her if she has consulted the free legal aid society. We know the make-up of that organization; we know the attorneys who are representing it, and we refer claimants to the legal aid society. With regard to the regulation of attorneys' fees, we have a statute expressly providing the amount that attorneys may collect for service in enforcing compensation claims; also, the attorney who violates that provision of the statute is subject to disbarment from all practice as an attorney in the State, not only before the industrial commission, but before all courts. Frequently attorneys present a petition for permission to charge more.

Mr. PARKS. Is that statutory?

The CHAIRMAN. Yes. The statute provides that an attorney may not collect more than 10 per cent of the amount recovered, except upon approval of the industrial commission. In cases that require considerable work upon the part of the attorney we have allowed more than that. The petition for allowance of attorney's fees is made in the same way it would be in a probate court in probating an estate. If the service justifies an increased fee, the commission allows it.

Is there any further discussion?

Mr. WILLIAMS. We have a provision which I think is very excellent—the commission can regulate not only the fees of an attorney but also those of anyone else who undertakes to render service. We have more trouble with people who are not attorneys but who have

a slight familiarity perhaps with police court practices than we have with attorneys.

The CHAIRMAN. Our statute applies to such agents as well as to attorneys.

Mr. WILLIAMS. Our courts have intimated that anyone who takes more than we allow them will be disbarred, upon proper proceedings being brought. Also, in cities where I have conducted hearings, the leading lawyers there have told me that whenever there was a difficult or unusual legal question in a case in which a poor person was involved, they would be glad to offer their services without charge.

Mr. HORNER. I want to say that the organization which Mr. Bradway represents is doing a very excellent work in the State of Pennsylvania and has the cooperation and support of the department of labor and industry of our State. A number of cases have come to the attention of the bureau of workmen's compensation wherein injured workmen and dependents in fatal cases were deprived by unscrupulous attorneys of compensation which rightfully belonged to them. I know of several cases that were called to the attention of the bureau, in which we sent adjusters connected with the bureau to see the attorneys who represented the claimants, and I know of two instances where our adjusters, figuratively speaking, took those attorneys by the neck and made them pay over to the claimants some of the money which they had secured as compensation for the services which they claimed they had rendered.

Not so long ago the American consul in Poland notified the Department of State in Washington of a case where a widow residing in that country, who was awarded compensation, was apparently not receiving the compensation which had been awarded. The case was turned over to Ethelbert Stewart, Commissioner of the Bureau of Labor Statistics in Washington, and he at once communicated with our department, calling our attention to the case. When the letter was received by Doctor Meeker he turned it over to me for investigation. I knew something about the case because the Polish consul had previously complained about the excessive fee that he thought the attorney had charged in that case. It was a fatality case.

The attorney who represented the widow had her power of attorney to represent her at the hearing before a referee. It was questionable whether the case was a compensable one because the statute of limitations had expired; however, he did succeed in securing an award. If my memory serves me correctly, I think the award was somewhere in the neighborhood of $3,000. The widow complained that up to that time she had received only about $600 in compensation. So I communicated with the attorney in Philadelphia who represented her and asked him for a statement as to just what disposition had been made of the fund paid over to him by the insurance company. He sent me a statement showing exactly what had been done. In his letter he said that he had made an arrangement whereby he was to receive 50 per cent of the amount of the award in case compensation was awarded, but that he was satisfied with 30 per cent and had collected only 30 per cent. Then he outlined just how much he had received and how much had been paid for funeral expenses and other expenses incidental to burial. There

were one or two other items of expense which I did not understand and I wrote to him for additional information. He replied saying that the item to which I had referred represented a fee paid to foreign attorneys who had secured information for him, which otherwise he could not have gotten, in order to complete his case and secure an award, but that there was still $600 remaining to be paid over to the widow when the necessary steps had been taken to have guardians appointed for the minor children.

The unfortunate part in such an instance is that the department is powerless to act. Our law says that the board, upon petition filed, may fix the fee of an attorney, but when no petition is filed there is no way of regulating it.

In closing I want to say that so far as that subject is concerned, if the wishes of Doctor Meeker, the present secretary of the department of labor and industry, are carried out, the next legislature will amend our law to provide that referees and the board shall fix the fees in all cases.

[The motion that a committee of the I. A. I. A. B. C. be appointed to meet with a similar committee of the National Association of Legal Aid Organizations to consider mutual problems and report at the next meeting of this association was carried.]

ROUND-TABLE DISCUSSION OF ADMINISTRATIVE PROBLEMS

The CHAIRMAN. We come now to that part of the program which, in my experience in attending these conventions, has always proven to be the most interesting part—the round-table discussion of administrative problems. The first speaker is Mr. Horner, of Pennsylvania, who will talk to us on the "Payment of compensation to alien dependents residing abroad."

PAYMENT OF COMPENSATION TO ALIEN DEPENDENTS RESIDING ABROAD

BY WILLIAM H. HORNER, DIRECTOR PENNSYLVANIA BUREAU OF WORKMEN'S COMPENSATION

One of the most difficult problems confronted in the administration of the workmen's compensation law is the payment of compensation to alien dependents residing abroad. The law in the State of Pennsylvania fixes the compensation rate to alien dependent widows and children under 16 years of age, not residents of the United States, at two-thirds of the amount provided in each case for residents. Alien widowers, parents, brothers, and sisters not residents of the United States are not entitled to compensation.

According to Bulletins 272 and 332 of the United States Bureau of Labor Statistics, on "Workmen's compensation legislation of the United States and Canada," there are 14 States that pay compensation on a reduced scale to alien dependents residing abroad. In seven of these States—Delaware, Idaho, Kentucky, Maine, Montana, Utah (except for Canadian residents), and Washington—the compensation rate was one-half the amount paid to resident dependents. In two States (Colorado and Wyoming) the rate is one-third the

amount paid resident dependents. One State (Kansas) provides a maximum of $750, which is $50 in excess of one-half the minimum allowed resident dependents and dependents residing in Canada. In one State (Nevada) the rate is 60 per cent of the amount paid resident dependents. In one State (Pennsylvania) the rate is two-thirds the amount paid resident dependents. In two States—Georgia and Virginia (except for Canadian residents)—the maximum allowed to nonresident alien dependents is $1,000, the maximum payable to resident dependents in Virginia being $4,000.

As previously stated, only nonresident alien dependent widows and children under 16 years of age are recognized under the provisions of the Pennsylvania law. Lack of time has prevented me from making a study of the laws of other States on this point, and I am, therefore, treating the subject from the viewpoint of Pennsylvania's experience.

The constitutionality of the portion of the Pennsylvania law limiting compensation payments to nonresident alien dependent widows and children was attacked in the courts. The case was that of an Italian workman who was killed in a stone quarry. The unfortunate man left a father and mother residing in Italy, who were partially dependent upon their son, a single man. The referee disallowed the claim and the workmen's compensation board sustained the referee. The case was then appealed to the common pleas court, and the question of the constitutionality of the law was raised because of the treaty between the United States and Italy guaranteeing to the citizens or subjects of either country all the rights, privileges, and immunities enjoyed by the citizens or subjects of the other country. The court of common pleas of Dauphin County declared this portion of the act to be unconstitutional, and the case was then appealed to the superior court. The action of the lower court was reversed and an appeal was then taken to the supreme court of the State. Recently the supreme court handed down a decision sustaining the action of the superior court in declaring this portion of the act to be constitutional, and the right of the parents to receive compensation was, therefore, denied.

During the period of the World War there was an accumulation of claims in the State of Pennsylvania, and probably in every other jurisdiction, filed by the consular representatives of the countries in which these nonresident alien dependents reside. In many instances the information required for filing claims was not available and blanket claims were filed by the consular representatives, principally by the Royal Swedish vice consul, who had charge of Austro-Hungarian interests during the war.

The Custodian of Alien Property in Washington, D. C., became a party claimant in all cases where the dependents were residents of alien enemy territory. The situation was further complicated by the fact that in some cases claims were not filed within the statutory period, and in other instances the legality of claims filed was attacked. The question of filing claims within the statutory period eventually came before the workmen's compensation board in the State of Pennsylvania. The board, in an opinion written by Harry A. Mackey, former chairman, held that the statute of limitations could not run against the rights of the claimant as long as there

existed technically a state of war between the United States and the nations of which the claimants were residents and subjects. (Frederick *v.* Aetna-Connellsville Coke Co., C. P. No. 11408, A. No. 1783.)

Many of these cases are still pending in the State of Pennsylvania, although released by the Custodian of Alien Property in Washington, due to the fact that it has been extremely difficult for consular officers and representatives of the claimants in this country to secure competent evidence to prove their claims. Letters rogatory and cross-interrogatories have been secured in a number of cases and the claims disposed of in this way.

When awards are made, considerable difficulty is experienced in placing the compensation in the possession of these nonresident alien dependents. The insurance companies and employers, operating as self-insurers, require that proof be given at certain intervals that the dependents are still living and that the widow has not remarried. This requires time and much delay in compensation payments.

Numerous complaints have come to my attention with respect to the delay in compensation payments and the amount charged for professional services. Investigations have been made in a number of cases, which disclose that unscrupulous attorneys sometimes overcharge these nonresident alien dependents for services rendered, so the amount of an award is very materially reduced by the time the compensation reaches the dependents. Cases have been disclosed where the amount paid to the dependents was only about 50 per cent of the award. These are matters over which the compensation authorities seemingly have no control.

Matters might be facilitated if all compensation to nonresident alien dependents was paid in a lump sum to some reliable banking institution, designated by the compensation authorities, to be distributed to the dependents at such intervals as might be deemed expedient. There would, no doubt, be objection to this plan by the insurance companies and self-insurers because of the possibility of remarriage of the widow or death of the dependents. This objection could no doubt be overcome by having the American consular officers in the countries where the dependents reside furnish the banking institutions with whom compensation was deposited proper evidence of the status of the dependents. Any balance remaining in these funds because of remarriage or death, after the obligation has been fully discharged, could be returned to the insurance company or self-insurer.

Another plan would be to pay the compensation through the National Association of Legal Aid Organizations, societies of which have been established in many of the larger cities throughout the country and are rendering valuable services to aliens free of charge.

In conclusion, I might add that in the State of Pennsylvania the consular representatives in this country are notified of all fatal accidents reported in cases where aliens are involved and are subjects of the countries they represent. Assistance is also given these consular representatives in filing claims for compensation on behalf of the dependents.

DISCUSSION

The CHAIRMAN. Is there any discussion of this paper?

Mr. SCANLAN. Much has been said about representatives of foreign nations in this country. I would like to know from some of the commissioners present whether, where an alien workman was killed, they have had the experience of a representative of a foreign country insisting that he was entitled to file an application for adjustment in preference to the public administrator in the county where the man was killed. We have had that experience in Illinois, and I wonder if other commissioners had had similar experiences.

Mr. WILLIAMS. The Supreme Court of the United States has passed upon that.

The CHAIRMAN. Our statute provides that the consular agent may represent, and we have held that the public administrator has no rights whatever.

Mr. SCANLAN. The Illinois commission held that in the absence of such a law in the county where the man lived at the time he was killed, and where he had personal effects which would authorize the appointment of a public administrator, when the public administrator filed application for compensation on account of the death of the man, and the Mexican consul claimed that he was entitled to file the application because the deceased was an alien, the Mexican consul had no business interfering. We have nothing in our statute like that of which you speak.

One of the other troubles we have with representatives of foreign nations is on the question of charges and costs. For instance, you have a deposition taken in some foreign country and you want it translated to send to the consul of that country; they want $25 to translate it into English. We have overcome that difficulty by employing in our department persons who speak half a dozen languages and who can translate such things. We have had instances where $15, $20, and $25 were charged for translating such depositions into English.

Mr. KINGSTON. In Canada, while the consular representative is entitled to take charge of the assets of the deceased's estate, we hold that does not apply to compensation. Compensation is not an asset of the deceased's estate. It is something that belongs specifically to his widow or dependents. We get into communication with the widow or dependents, wherever they may be, and if any compensation is payable it is paid directly to them and neither through or to the consular representative. We take every possible care to see that compensation goes directly into the hands of the people entitled to it.

Mr. SCANLAN. We think it is our business to know when the compensation claim has reached the right party. When the public administrator secures the compensation (he is an officer of the court), he must report to the court to whom the money was paid. Knowing some of these consular representatives as we do, we doubted whether, if the compensation was paid over to them, it would be properly distributed. We thought we would take our chances on

that angle of it and find out definitely just how much power the consul had in our State.

Mr. HORNER. In Pennsylvania our suspicions were aroused, and the department asked the attorney general of the State for an opinion as to whether, under the provisions of our law, we had the authority to transmit payments through any other source than a consular agent. The opinion of the attorney general stated that we were compelled to comply with the law and transmit payments to the consular officer.

The CHAIRMAN. In Wisconsin we have a law directing that the consular agent or representative of the country where the dependent resides may be the legal representative in the enforcement of the claim for compensation. We have a further provision that in the payment of compensation we may direct him to furnish the commission with a bond to insure payment to the dependents, and it is our practice to require the consular agent to furnish a bond for payment of the money to the beneficiary.

Mr. WILLIAMS. In Rocco *v.* Thompson, if I remember the name of the case correctly (it was not a compensation case, because it was some 12 or 15 years before we had compensation laws), a similar question arose between an Italian consular agent and a public administrator, each claiming the right to administer and take possession of the property of the deceased. The case is interesting because the consular representative employed the famous Coutre Bros. to represent him, who claimed that treaty rights were involved. The Supreme Court, in dealing with that particular case, held that the rights of the public administrator were superior to those of the consular agent.

Mr. DUXBURY. I would like to inquire whether the law of Wisconsin provides that the consul is the proper representative of the foreign claimant.

The CHAIRMAN. I have the statute right here; I can read it for you.

Mr. DUXBURY. In addition to that, you require him to give a bond for the proper discharge of his duty?

The CHAIRMAN. Yes. When we enter our award directing the payment of compensation, we direct it to be paid to the consular agent for the use and benefit of the dependent, in installments or in a lump sum, and further provide that to insure payment he shall furnish bond by a bonding company authorized to transact business in the State of Wisconsin.

Mr. DUXBURY. It seems a little peculiar to me. If he takes that money in his capacity as consul, his obligation arises from the law of his own country with reference to his nationals. I do not see how you can enforce that bond. I think it is of doubtful efficiency.

The CHAIRMAN. I am not passing upon the legality of it. It is in our statute and we follow that practice.

Mr. ARCHER. On account of the size of the Port of New York, we have a great deal of business in this line.

I may say briefly that we have very pleasant relations in New York with the various consular agents, that we make use of them, that we notify them, as Mr. Horner says he does in Pennsylvania, of death cases in which the dependents are nationals of theirs, and they are represented before the commission by regular attorneys employed by them, who well understand the practices and the method of proving cases.

Mr. DUXBURY. Do you take the consul's receipt? In other words, what he does or how he accounts to the dependents is no concern of yours?

Mr. ARCHER. It is no legal concern of ours, but we have looked into the matter and tested the transmission of money, to our satisfaction. More than that, relatives of the deceased parties or friends from the same cities and Provinces abroad are usually present in court and receive notices of the proceedings and of the awards made, and of course they communicate this information to the parties abroad.

Mr. HORNER. In fairness to consular officers, I want to testify to the statement made by Mr. Archer. We have a few consular officers in the State of Pennsylvania and attorneys who represent them who are doing very excellent work, and who, I believe, are above suspicion so far as their actions are concerned, and the dependents they represent are receiving excellent service through them.

The CHAIRMAN. I can corroborate that statement as to our experience in Wisconsin. In all my experience I have never had occasion to doubt that the entire amount awarded by the commission, plus the cost of transferring it and handling it through their consular agent, eventually went to the dependents. We have never had any reason to suspect that other than that was the case.

Mr. DUXBURY. It is beyond doubt that that is done with the leading countries, but there are some countries which permit consular agents to charge certain fees for handling the case, and that sort of thing. That is partly the way the consulate is supported. My thought was whether or not we could say they should not do something which is provided for in the laws of their own country. If the laws of their country permit them to charge a certain fee for the handling of money or property of their nationals, I do not think we can interfere with it.

The CHAIRMAN. The next subject is, "What New York has done in improving the administration of the compensation law in 1923," by Richard J. Cullen.

WHAT NEW YORK HAS DONE IN IMPROVING THE ADMINISTRATION OF COMPENSATION LAW IN 1923

BY RICHARD J. CULLEN, DEPUTY COMMISSIONER NEW YORK DEPARTMENT OF LABOR

At the outset let me say that the title of this paper was not selected by me, but was suggested by Commissioner Stewart. Let me make haste also to assure you that while what I am about to say may appear in the nature of boasting of our achievements, I have no desire to have you carry away any such impression. We honestly feel

that in the last year and a half we have done much to improve the administration of the compensation law in New York State. This has been done by changes which we believe have resulted in improved service to workers and employers and the general public.

A few figures touching upon the administration of the workmen's compensation law in New York State may be of interest to you. The law was 10 years old on July 1st and in that 10 years more than $140,000,000 was paid out to injured workers and to dependents of those killed in industrial accidents. Compensation payments over the entire period have averaged about $14,000,000 a year, each year showing an increase, with the payments last year totaling approximately $17,000,000. I believe it is well to lay emphasis on the fact that these millions in compensation have been paid to claimants with very little reduction for lawyers' fees, because it is only in rare instances that lawyers are retained in workmen's compensation cases.

When the present administrative head, Commissioner Bernard L. Shientag, came into office early in February, 1923, there were many thousands of cases awaiting hearings. Correspondence was months behind and conditions generally were not good. This condition was due in the main to a reorganization of the department which took place about three years ago, at which time the appropriations of the department were arbitrarily reduced to a point where it could not properly discharge the duties imposed upon it by law.

At the request of the commissioner, an increased appropriation was granted to the department, with the result that we were able to reconstruct our quarters and increase the number of employees.

Workmen's compensation cases in New York State are heard by referees, of which there had been 11 in number. The number of referees was increased to 20.

The number of examiners, clerks, and hearing stenographers was also increased. The number of hearing rooms was increased from 8 to 15, and the number of points throughout the State at which hearings are held was also greatly increased, the aim of the present administration being to bring the hearings as close as possible to the injured workman and his employer. In New York City alone there are upward of 800 cases heard daily.

The manner of holding hearings has been improved. In New York City, where the bulk of the work is done, a special hearing room has been set aside for the hearing of final adjustment cases; that is, cases involving the loss of the whole or part of a member of the body. Another innovation by the administration which met with hearty commendation on all sides was the setting aside and equipment of a hearing room in New York City designated exclusively for women's cases. When it was found that about 200 hearings in cases involving injured woman workers were held in New York City every week, with little provision being made for the comfort of the claimants or the taking of their testimony in a suitable environment, arrangements were made to provide these woman claimants with a room of their own. Under the new arrangement women injured in industrial establishments are relieved of the embarrassment they formerly experienced when testifying as to their physical condition in a room filled with men.

Heretofore adjourned cases were heard by different referees, and it was not uncommon to have cases which had been adjourned three times heard by as many referees. This confusing method has been done away with. Now the same referee presides in a case from its inception to its final disposition regardless of the number of adjournments. One referee passes on all facial disfigurement cases. In this manner we are able to secure uniformity in dealing with such matters. This latter practice, of course, is not possible in districts where there is but one referee, who hears all cases. All noninsurance cases are heard by one referee. Death cases are now heard by two referees, one regularly assigned to New York City, the other looking after the rest of the State.

In the matter of all adjournments, it had been the practice theretofore, in addition to an announcement by the referee, to notify the employer, the carrier, and the claimant by mail of the date of each adjourned hearing. This is now done by means of a blank, which is filled out in triplicate by the calendar clerk, setting forth the time and place of the next hearing, what witnesses, if any, are to be produced, and such other information as may be necessary. These blanks are handed to the claimant and the carrier and a copy placed in the folder. By this method we not only make certain that the cases will be heard on the adjourned dates but eliminate a great amount of clerical work and typewriting and save considerable in postage. In such cases no further notice is given.

The present administration found in use what may be termed a general filing system, where all papers of all cases were received and placed in general files. This was not good practice, as before a case was finally prepared for hearing it had passed through too many hands and had moved from place to place in the general filing room, which made it difficult readily to locate a case when necessary. This has been remedied by the establishment of the unit system, which means, in our case, the dividing of the cases according to the alphabet into five units, each in charge of an examiner with a force of assistant examiners, clerks, and a stenographer. All papers pertaining to the same case are sent direct to the unit in which the case is filed. The case does not leave the unit until it is made up and ready to be placed on a calendar for hearing.

In this manner we have placed the responsibility for the proper filing of all cases on five persons, viz, the examiners in charge of the units. Papers find their way into the proper folder more readily and the location of the folder is known to the examiner at all times, enabling the person at the information desk to furnish reliable information without waste of time, the result being a great improvement over the general system of filing.

We found that final action on lump-sum applications required from two to four months' time. We also found that, due to this lapse of time or for some other reason, the agreement on which the lump-sum award was made was, in a considerable number of cases, not carried out; in other words, a claimant would seek a lump-sum award for the purpose of purchasing a business, entering into partnership, or for investment in some other manner calculated to increase his income, and upon investigation it would seem that the proposition was a sound one and an award would be made, but the deal would not be consummated and in a short time, due to the

dissipation of his funds, the claimant would be back seeking assistance.

This condition has been improved partly by the general speeding up, which insures final action within from two to four weeks, and principally for the reason that all lump-sum requests are now subjected to a searching investigation just prior to the hearing and award, and that the case is closed in the presence of the director of the bureau of workmen's compensation, which insures compliance with the conditions of the award and protects the claimant against fraud or other improper practice.

The number of medical examiners was increased from 4 to 11. In New York City, in addition to the chief medical examiner, we have six medical examiners, including one man who is a specialist in eye cases and one who specializes in neurology.

In New York City the department has always had its own medical examiners; that is, doctors in the service of the department giving their entire time to the work of examining claimants and passing upon the nature and extent of their disability. These doctors are not permitted to do any outside compensation work. In other parts of the State there was an entirely different practice. There the department had no medical examiners of its own. It designated physicians to make the examinations, who were paid on a fee basis for each examination by the various insurance carriers.

To harmonize the practice of up-State offices with that which existed in New York City, a medical examiner was appointed in each up-State district. One medical examiner in each up-State district can not examine all the cases in his district, because very often there are two sets of hearings in different parts of the district on the same day, in which case the old practice prevails and the examinations are made by a physician designated by the department but paid for by insurance carriers. As these designated physicians frequently do compensation work for the carriers, this latter system, as you will fully realize, is fundamentally unsound, and in practice has resulted in many complaints. This is said without intending any reflection on these physicians, who are men of ability and high character.

However, the practice of having departmental doctors devoting their entire time to compensation work has been for the betterment of the service, and we have recommended to the legislature that an appropriation be made permitting the appointment of additional medical examiners.

In all cities where the bureau of workmen's compensation has offices, we have provided modern sanitary examination rooms fitted with modern up-to-date instruments and appliances.

A word in detail of the New York City office will be of interest. In this office more than 125 medical and eye examinations are made daily. A special room for the examination of woman claimants was set aside, with a nurse in charge, and a special room for eye cases was provided.

In a larger room, devoted to the examination of male claimants, there are five commodious booths, each fitted with curtains, permitting the examination of five claimants at one time and insuring to each the privacy to which he is entitled. By the installation of a dictograph in each room and booth, the medical examiner is en-

abled to dictate his report to a stenographer located at a central point without leaving the side of the claimant. Many such reports are dictated while the claimant is on the examining table. This makes for speed with accuracy.

In the legislature of 1924 many bills were introduced amending the compensation law, not all of which had the approval of the industrial commissioner, and a great many of them failed to pass or receive the approval of the governor. There were, however, quite a few meritorious bills introduced at the request of the industrial commissioner which received the approval of the governor and became law. Of these, the most important are as follows:

Chapter 318, which reduces the noncompensated waiting period after an accident from 14 to 7 days.

Chapter 317, which increases the compensation for the loss of an eye from 128 to 160 weeks.

Chapter 320, which increases the compensation for the loss of a thumb from 60 to 75 weeks.

Chapter 319, which increases the amount of wages to be taken into consideration in computing death benefits from $125 to $150 a month.

Chapter 500, which provides for additional compensation for protracted temporary total disability in connection with permanent partial disability.

The State insurance fund had been limited in its operating expenses to 15 per cent of its gross premiums. To increase the efficiency of the fund, in an effort to make it the best carrier of workmen's compensation in the State, as well as the one which offers such insurance at the lowest rates, the expense ratio was, by the enactment of legislation, increased to 25 per cent.

At the close of the last fiscal year the expense ratio had increased only 3.8 per cent, or a total of 18.8 per cent for the year, while the business transacted had greatly increased and the general administration of the fund improved.

To advise employees what to do when injured at work and how to secure their rights under the compensation law 500,000 circulars describing in simple language the steps to be taken by injured workmen, printed in English and foreign languages, were distributed in industrial establishments throughout the State. To advise the general public, information concerning the operation of the law was frequently sent out over the radio.

When one considers that there are approximately 52 different insurance carriers doing a workmen's compensation business in the State of New York and over 430 individual self-insurers; that last year we received reports of 300,000 accidents, with from 4 to 20 papers in every case; that cases were on for hearing within two weeks of the receipt of the application of notice of stop payment; and that in most cases awards were paid within three days of the date of hearing at which the award was made, one gets an idea of the efficient manner in which the Workmen's Compensation Bureau of the New York State Department of Labor is functioning.

DISCUSSION

The CHAIRMAN. That is not a retail business, it is a wholesale business, they are doing over there. Is there any discussion on Mr. Cullen's paper?

Mr. PARKS. I am sure we are all very glad to hear of the progress Mr. Cullen is making. A man is not boasting about his State when he tells what they are doing. We can all learn something from what they are doing.

I jotted down one thing which I think we could well afford to follow in Massachusetts, and I am going to take it home with me. New York has the policy that one referee hears a case from its inception. A long disability case may come up a half dozen times. Unfortunately, a half dozen different commissioners may hear it. When you hear it you are confronted with what the other fellow did, and you feel that you must respect his opinions somewhat. You are associated with him every day, and you feel as though you must look at his opinion. It is there; if you overturn it and give an entirely different one, and rip it up the back a bit, you cause hard feelings.

That idea of having the same referee go through with the case is excellent. I have thought of it in connection with Massachusetts, but we have never changed our system. That is one thing I am going to take home with me.

Mr. CULLEN. I might say the principal reason we did that was because, where one referee heard the case and adjourned it and it came before the second referee, invariably the second referee in hearing it would ask to have the minutes written up. Because of that, we found that the hearing stenographers' room was getting overloaded. We have something like 25 or 30 hearing stenographers, but that is not a sufficient number. That is one of the reasons why we make one referee follow up a case.

Mr. HORNER. I might say the same situation exists in Pennsylvania. It works out very satisfactorily.

PRACTICAL ADMINISTRATION OF PERMANENT PARTIAL DISABILITY

The CHAIRMAN. The last subject is "Practical administration of permanent partial disability," to be discussed by someone from Wisconsin, and my name has been placed thereto. I have not prepared a paper and have had no correspondence with Mr. Stewart or the committee, so that I do not know what particular feature of the Wisconsin act they want brought out, but I assume they had reference to the recent amendment, adopted in 1923, in the State of Wisconsin.

Briefly, the amendment is this: We have increased the amount to be paid for total permanent disability so that a man 31 years of age may collect compensation at the rate of $18.20 a week, or the maximum under our law, whatever it may be (it happens to be $18.20 at the present time), for 900 weeks. For permanent partial disability compensation is allowed, depending upon what relationship the permanent partial disability bears to the total disability. We have inserted in the law a schedule which we designate "Major permanent partial injury schedule." In that schedule we allow a man for the loss of the use of his arm at the shoulder 50 per cent of the indemnity which he might collect for permanent total disability. I am not going to run through the major permanent schedule.

That law became effective in September, 1923, and of course we have had very little experience under it; we have not tabulated anything up to this time, so I can not tell you how it is working out. It has caused confusion. I am frank to say that we could not explain to adjusters and insurance men and self-insurers how they were to operate under this schedule. I did not draft the amendment; I had nothing to do with it. I do not exactly agree with the language of it, and I am not here defending it. I think the theory is fine and should be adopted; I think everything should be approximated to total permanent disability. Some of the language is involved and hard to understand.

The dissatisfaction on the part of the workman is because, while he may draw compensation for 900 weeks, in some cases it may be as low as 20 cents a week, and this results in a demand for lump-sum settlement. We are asked for approval of lump-sum settlements in practically every claim for permanent partial disability. What is going to develop as the claims come in I do not know.

Then we have what we call the lesser permanent disability schedules, which are substantially the same as our old schedule and provide that compensation shall be paid for so many weeks for finger amputations and thumb amputations.

That, briefly, is the amendment to the Wisconsin law. That is in accordance with the recommendation of this association, as I understand it. But because of the few cases which have been finally adjusted, we have no tabulated figures to give the association as to how it is operating. Compensation is being paid in accordance with the amendment. There has been no appeal from it; it is not being tried out in the courts. As I see it, the dissatisfaction with the amendment is because of stringing the compensation out over 900 weeks with a small weekly payment. Are there any questions?

DISCUSSION

Mr. WILLIAMS. I would like to ask a question for my own information. I would like to know if any of you have had a puzzle presented such as the following: Under our statute we make allowances for aggravation of a disease. In one case I was obliged to find from the evidence that a certain condition which made a man unable to work was due one-third to his employment and two-thirds to his disease. Questions have arisen since then as to whether we proportioned the surgical and medical care on that basis. The day before I left home I learned that that man had died, and I am wondering what we ought to give his widow.

The CHAIRMAN. Can anybody reply to Mr. William's question?

Mr. DUXBURY. I would like to ask, did that two-thirds kill him, or did the accident kill him?

Mr. PARKS. I wanted to ask a question in regard to your law. Is that sum of money you give the man fixed, regardless of whether he will be disabled that length of time?

The CHAIRMAN. Regardless. We go on the theory that a man who loses his arm at the shoulder is 50 per cent disabled.

Mr. PARKS. For the rest of his life?

The CHAIRMAN. Regardless of the fact——

Mr. MCSHANE. They fixed the time limit of 900 weeks for him to live.

Mr. PARKS. I do not like that system—I want to be frank about it. I feel that when the compensation act gets into that condition it is going back to the damage system—fixing a price on a man's injury. That was the way it was done under the old damage system, before we had a compensation act. Compensation acts were introduced to take care of a man during his disability.

The CHAIRMAN. I explained that this was a graduated scale, depending upon the age of the man.

Mr. PARKS. That is why I asked the question. I understood from your answer that, irrespective of whether he actually continued to be disabled, that scheduled compensation was awarded to him.

The CHAIRMAN. It is a graduated scale, dependent upon the age of the man.

Mr. PARKS. Irrespective of whether he goes back to his former employment or earning capacity, that compensation continues to be paid to him—is that the idea?

The CHAIRMAN. Occupation has no part in it whatever. When our law was first passed in 1911, it provided for compensation to the man for disability in the employment in which he had been engaged. We had a case of a shingle weaver who lost three fingers, and we had to hold that he was totally disabled because he was disabled in that employment. The next legislature amended the law.

Mr. PARKS. A man may lose his arm, he may lose an eye, he may lose a leg, and within three months after his injury he may be back at work, at his old rate of wages. There is no incentive to rehabilitate a man if he is going to be entitled to the amount of the award just the same.

The CHAIRMAN. Yes there is, in our State.

Mr. PARKS. I do not get it clearly.

The CHAIRMAN. We also passed a law which provides that a man who meets with an accident which disables him is entitled to maintenance during the time he is being rehabilitated, and he may collect $10 a week while he is training himself to take up some other work.

Mr. PARKS. You do pay a man if he goes back to his regular employment and earns his regular wages; so that though he is not disabled, and does not suffer any loss of wages due to that injury, he is a recipient of workmen's compensation benefits and continues to be. When you do that you are getting away from the original intention of the compensation act, which was to pay a man for the loss he sustains as a result of his injury. That is not according to the theory, in my opinion, of workmen's compensation.

Mr. ARCHER. Because a man comes back to work within a certain length of time at the same wages, it does not mean that he has the same ability to do work, and it does not follow at all that he will be able to engage in such a gainful occupation for the rest of his life. It is rather a commutation in time of an impairment of earning capacity. The incentive to put a man back to work at the same wages he was getting before he was hurt (whether or not he was

really able to earn that much in the open field of competition) would be very great, and it would not be in order to stop his compensation just because he was back at work.

The CHAIRMAN. The courts have said that the mere fact that a man goes back to work at the same wages he was earning when injured is not the true measure of the loss of earning ability sustained as a result of that injury.

Mr. ARCHER. The courts in New York State have held that we can not apply a vocational test at all, but that an occupational test must be applied. The courts have further held that if a man engages in business, not as a laboring man, but as an enterprising business man, and he reaps profits from that business, that may not be considered to the exclusion of his rights to compensation under the specific schedule, or under any other provision of the law, with one exception. In permanent total disability there is presumption of permanent total disability, but that presumption may be overcome by the facts, and if for a given length of time the workman can engage in a gainful occupation, but during that time, if he is not able to make as much wages as he was before he was hurt, he is paid on the basis of two-thirds of the difference between his old wage and his new.

The question of rehabilitation is an all-important question and much should be done to encourage it. New York has set aside $500 in each death case in which there are no dependents, of which there are about 300 a year, making $125,000 to $150,000 available for that purpose. It has established as a State function a rehabilitation bureau under the board of education.

The CHAIRMAN. Has that been tested in the courts?

Mr. ARCHER. Yes, it has been carried to the United States Supreme Court and held to be valid. New York goes further and provides that not only an injured workman but any crippled person on the streets of New York (man, boy or girl) may be taken up and given a certain amount of money for maintenance while he is being, not necessarily rehabilitated, but reeducated for a gainful occupation.

Mr. MCSHANE. May I ask the gentleman from New York a question? Do I understand that those who do not meet with an industrial mishap may participate in the fund which you build up?

Mr. ARCHER. No, it is a separate fund.

Mr. PARKS. Mr. Archer said he disagreed with me. I do not think he does; I do not think he understands just how we operate in Massachusetts. I did not say that when a man went back to work and earned his wages that he was all through. I was referring to your act. In Massachusetts a man may go back and earn his full wages; he may go back to his old job. Later on, a year or two, or three, or four years later, he can get partial compensation until he has received the entire amount allowed under the act in Massachusetts. So that if at any time he should suffer a loss in his earning capacity, if later on he should slow down, due to his injury, after he has earned his full wages, he is entitled to compensation again.

Mr. Archer says that the fact that he goes back and earns his full wages does not mean that he can continue to do so. If he does not

continue, he is entitled to compensation later on if he can prove that he suffered a loss.

Mr. KINGSTON. Can Mr. Parks tell us how many cases a year, approximately, he reopens and puts back on compensation again by reason of the fact that a man is slowed down in his ability to earn his usual wage?

Mr. PARKS. I can not give you the figures, but that is what we are there for.

Mr. KINGSTON. I should think you would be doing it nearly all the time.

Mr. PARKS. We are. When a man comes in and shows that he has suffered a loss in his earning capacity, he is entitled to partial compensation based upon two-thirds of the difference between his former wages and what he is now able to earn, not to exceed $16 per week.

Mr. DUXBURY. I would like to ask a question as a matter of information. If he sustains the loss of an arm and goes back to his job (which he can do with one arm) and receives the same wages, does he get nothing for the loss of that arm?

Mr. PARKS. He gets disability compensation while he is unable to do any work—total disability compensation, according to schedule. For the physical loss of the arm or the loss of the use of it (which is the same under our law) he is entitled to 50 additional weeks at $10 per week.

Mr. DUXBURY. That is for that permanent partial disability?

Mr. PARKS. That is not for that. I do not know what that was put in for. The permanent partial disability is in the future. We determine that as time goes on, the burden being upon him to show that he is suffering a permanent partial disability.

Mr. DUXBURY. If he is fortunate enough to go back to work at the same wages and he keeps on earning those wages, he does not receive that 50 weeks at all?

Mr. PARKS. Yes; he gets that 50 weeks independent of the disability.

Mr. DUXBURY. That is the principle I understood was in all laws; that is, the permanent partial disability provision.

Mr. PARKS. That is not permanent partial disability in Massachusetts.

Mr. DUXBURY. What do you call it?

Mr. PARKS. I always refer to it as a sort of bonus for the physical loss—the loss of a finger or the loss of an eye. They might just as well have put in the loss of a nose or an ear, but they did not. They put in fingers and toes and hands and eyes—I suppose because they are the things we work with.

Mr. DUXBURY. It is a sort of common-law measure of the damage fixed by statute.

Mr. PARKS. The reason it is $10 is because when the compensation act was first introduced, in 1912, $10 was the limit of compensation. We have progressed since then. Disability has gone up to

$16, but that specific compensation and extra compensation, unfortunately, has always stayed at $10 per week.

Mr. DUXBURY. There are some things in the Massachusetts law that I do not think are the best in the world.

Mr. PARKS. I agree with you.

The CHAIRMAN. Mr. Parks, how long may a man continue to draw this compensation for the loss of an arm?

Mr. PARKS. Independent of the extra specific compensation that I have referred to, up to $4,000; then it stops. He does not get 400 weeks of total disability.

Mr. KINGSTON. If he is actually totally disabled, he may get 400 weeks?

Mr. PARKS. No; your arithmetic is wrong. If he draws $16 a week, that is $800 a year; it would last only five years.

Mr. ARCHER. In a law like the New York law, the incentive lies in the fact that the claimant has the right to an unlimited medical service. Under that, he has his rehabilitation as a matter of justice. It does not require the incentive of some organization which will make money out of it.

Mr. DUFFY. I would like to recite very briefly two or three cases of permanent total disability we have had in which there was no question, strictly speaking, of rehabilitation. Yet the claimants went back to work at a higher rate of wages than they were getting prior to the injury. Notwithstanding that, our commission held that they were still permanent total disabilities and continued their compensation for the full amount.

In one instance a man lost both hands. More as a matter of charity than anything else, the employer gave him a job as foreman of a labor gang. In that instance, he paid him as much as he had been getting before his accident. That was taken up with the commission by the employer, who inquired whether or not, if he gave him such a position, it would affect the man's right to compensation; the employer did not want it to affect the man's right to compensation. We reasoned that probably in this particular case, at least, he being a young man not yet 30 years of age, the greatest suffering that would result from his injury would be the mental suffering which would follow because of the idleness he would be doomed to for the rest of his life unless he got some such position as the employer provided for him. We paid a lump sum of $10,000 in that case.

Another case was that of a man who became a permanent total disability because he lost the vision of both eyes. He was found on the street corner selling newspapers. Some busybody reported that he had an income. Well, we found that he happened to have a very good corner and was getting pretty nearly as much as he had been receiving prior to his injury. We reasoned that it occupied his mind, and that he got the business on that corner in a large measure because of sympathy on account of his condition. We are still paying compensation in that case.

We have, I should say, 10 or 12 such cases. Where there is a permanent total disability we urge the man to take up some occu-

pation, and unless there is a change in the physical factors upon which the compensation is based, we consider the case settled.

We had a broken-back case—at least, the doctor so reported the case. We paid compensation for about three years. Either this man had a miraculous recovery (because no operation was performed in this particular instance) or there was a mistake in original diagnosis. Anyway, in due time we found the man back at work. He admitted that he was able to work, and he is working to-day. In that case, we cut off the compensation.

Mr. HUBER. Here we are again. New York tells us what it is doing; Massachusetts tells us what it is doing. I might tell you what I am doing right along the line of paying compensation for partial disability and the like, but that is not what I am here for and that is not what you are here for. You are here to devise some means whereby you can do more for your employees at less expense.

In all this discussion, I have not gotten one inkling of anything that will allow me to pay less than what I am paying or that will give the employee more than he is receiving. That is what I am after. I want to attend these meetings as long as I stay with the Empire Co., and I can do it if I can take something home and show the company that I have learned something. I can read about what you are paying in your law pamphlets; I have them. Give me something so that I can go home and tell my company I have learned something.

Mr. MCSHANE. I would suggest that Mr. Huber, on behalf of the Empire Gas and Oil Co. of Oklahoma, take the contract of self-insurance with the Bell Telephone Co. and give its application. I think he can pay more there than he is paying under the laws of Oklahoma, or almost any of the other States.

Mr. PARKS. I have not yet discovered who the gentleman represents. I presume he represents some State.

The CHAIRMAN. No; Mr. Huber will tell you whom he represents.

Mr. PARKS. I would like to know.

Mr. HUBER. For the information of the gentleman from Massachusetts, the Oklahoma Industrial Board asked me to come along with it, but it happened that this time it could not come. I am sorry that Mr. Myers could not come, but cases were reopened which he had passed upon himself, and he had to stay to take care of them.

The CHAIRMAN. In order that we may have our records clear, will you state whom you represent at this meeting?

Mr. HUBER. I am here at this meeting because of the request of the board to come along with it, but I represent the Empire Gas & Fuel Co., or, as we call it, the Empire Companies, because it consists of 54 companies. I look after the personal injuries in the 54 companies; we carry our own insurance. The Empire Companies are a part of the city service of New York.

Mr. PARKS. You represent an employer of labor?

Mr. HUBER. Yes, I represent an employer of labor under your competitive insurance; we carry our own insurance.

Mr. PARKS. I merely wanted to know what your standing was.

The CHAIRMAN. Mr. Huber, I have been questioned as to whether or not you have a right to take part in this meeting.

Mr. HUBER. That is what I have been wondering all along.

The CHAIRMAN. That is the reason I asked you to state whom you were representing.

Mr. HUBER. I told Mr. McShane that I had no right to be here, except as a hearer, but I became so interested in this matter that I wanted to come back, and the only way I can come back is by taking something home so that I can show I learned something. Now it is up to you to give me something.

[Meeting adjourned.]

CHAIRMAN, H. R. WITTER, DIRECTOR OHIO DEPARTMENT OF INDUSTRIAL RELATIONS

The CHAIRMAN. We have an exceedingly interesting paper on "Method of rate making in Canadian Provinces," which has been prepared by T. Norman Dean, but as Mr. Dean has unfortunately been prevented from coming to the convention on account of an injury, his paper will be presented by Mr. Kingston.

METHOD OF RATE MAKING IN THE CANADIAN PROVINCES

BY T. NORMAN DEAN, STATISTICIAN ONTARIO WORKMEN'S COMPENSATION BOARD

[Read by George A. Kingston]

In six Canadian Provinces the compensation systems are similar, collective liability under a provincial workmen's compensation board. In Quebec, Prince Edward Island, and Saskatchewan, as well as in the Yukon and Northwest Territories, there is court administration of damage actions, and hence, such insurance as exists in these Provinces and Territories is that supplied by private insurance companies "contracting out" the liability of individual employers. In each of the six collective liability Provinces—Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, and Ontario—the liability to pay compensation rests upon the whole group of employers covered by the compensation act, the money being raised by assessment and collected and disbursed by the workmen's compensation board of the Province. As these six systems are very similar in operation and procedure, and almost identical as to principle, discussion hereafter is confined to the method of rate making used by the workmen's compensation board of Ontario.

Fundamentally, rate making in Ontario involves the collection of enough money each year to meet the obligations incurred during that year through the occurrence of compensable accidents plus a reasonable amount for expenses of administering the act, the obligation being leveled equitably over the employers under the compensation act.

For assessment and compensation purposes under the act, the industries covered are divided into 24 classes. Each class stands upon its own footing and carries its own burden, except that up to 1923 a very small general fund, 1 per cent per annum, known as the "disaster reserve," was set aside to assist in meeting any extraordinary call that might arise in any class. With the exception of this disaster reserve, the moneys collected are just what are considered necessary to take care of the accidents that have actually happened.

Separate accounts are kept of all assessments received and all compensation and medical aid awarded for each of these classes. Each of the 24 classes of industry is thus, in effect, a mutual insurance association of the employers in that class.

The rates for each class are fixed and the assessments made much in the same way as a municipality levies its taxes. They are governed by the requirements. The rates fixed for the year are intended to cover the burden for that year. At the beginning of the year each employer is required to furnish the board with an estimate of his probable pay roll for the year and he is assessed provisionally upon that estimate. At the end of the year the actual amount of pay roll is ascertained and the assessment is adjusted accordingly, the rate provisionally fixed being also altered where the accident experience shows this to be necessary.

The rates are fixed in accordance with the accident experience. The amount of compensation and medical aid and the amount of assessments in the class for the preceding year are ascertained, an estimate being made of the amount still remaining to be paid for accidents which, by reason of continuing disability or for lack of reports, have not been finally disposed of before the end of the year, allowance also being made for the difference between the estimates given by employers at the beginning of the year and the actual figures as ascertained and shown in their pay-roll statements at the end of the year. In this way the total expenditures and the total income of the class for the year are arrived at as nearly as possible, and the sufficiency or insufficiency of the rate charged determined.

If it is seen that the rate charged has produced sufficient money, or if the surplus or deficit is small, the rate will be maintained. If there is any considerable difference, it will be increased or decreased accordingly.

It is to be remembered always that any surplus to the credit of a class remains in the class funds, and this is also taken into consideration in fixing the rates.

All industries in the same class do not necessarily nor usually bear the same rate. The classes are subdivided into groups, and even within the groups the rates are different where this is shown to be justified. The experience is kept for the group as well as for the class. In fixing the rates, however, regard must always be had to the fact that each class is an insurance group and that all lines of industry in the class must share to some extent the good or ill fortune of the class as a whole. The rating for each separate line of industry can not be made to depend upon the experience in that particular line alone. This is especially the case where the total amount of the pay rolls in any line of industry is small. To charge that line of industry with its own cost might place a very excessive burden upon its employers for one year while perhaps relieving them almost wholly from assessment another year. This would destroy the underlying principle of collective liability or mutual insurance, which is the basis of the system.

Individual distinction between employers even in the same line of industry is made according to their accident experience by a system of merit rating. Where the accident cost exceeds or falls short of the amount of assessment by a stated percentage, a merit rating charge or a merit rating refund, within specified limits, is made accordingly. This is apart from and subsequent to the ordinary levy or adjustment of assessment, as the accident experience can not usually be ascertained until late in the following year.

It is obvious that in estimating compensation yet to be paid, some standards must be used and contingent reserves set up. The totality of all capitalized values of pensions awarded and contingent reserves is known actuarially as the "loss reserve." The loss reserve might be defined as that sum which, with incidental accretions of interest, is sufficient to mature every outstanding obligation, known and unknown, on account of all accidents which have occurred prior to the date for which the reserve is being calculated. It should contain two essential characteristics; it must be adequate and it must not be excessive. If it is not adequate the true purpose of the reserve is lost. If it be excessive the apparent costs will be exaggerated: the true cost rates will be obscured. Redundancy should not exceed a reasonable limit and the reserve should reflect with reasonable fidelity the true probability of future payments.

The following standards are used for calculating loss reserve in Ontario:

1. *Continuing disabilities.*—The addition of the sum actually paid for continuing disability and individual estimates for each likely case of permanent disability and death.
2. *Suspended mortality.*—No account taken.
3. *Outstanding accidents.*—One-sixth of the total compensation burden (for the first five years one-fifth).
4. *Disaster reserve.*—The difference between 1 per cent of the gross estimated assessments and 1 per cent of the assessments collected.
5. *Outstanding medical aid.*—The difference between 15 per cent of the total compensation (actual and estimated) and the actual medical aid paid.
6. *Merit rating.*—No account taken.
7. *Tables used for pensions:*

(*a*) Workmen's pension table—5 per cent interest per annum based on United States life table, 1910.

(*b*) Children's pension table—5 per cent based on United States life tables, 1910.

(*c*) Widows' pension table—5 per cent based on Dutch remarriage experience and United States life table, 1910, for mortality.

8. *Two-period accounting.*—Assuming the accuracy of the pension tables and their application, the Ontario method has brought rather close results. If allowance had been made for merit rating and for prior years overlapping, the margin of difference would have been very small indeed.

The CHAIRMAN. The next paper is, "Method of rate making in an exclusive State-fund State," by Mr. Duffy, chairman of the Ohio Industrial Commission.

METHOD OF RATE MAKING IN AN EXCLUSIVE STATE-FUND STATE

BY T. J. DUFFY, CHAIRMAN OHIO INDUSTRIAL COMMISSION

From an actuarial standpoint, a workmen's compensation law which provides for a State insurance fund as the exclusive insurance carrier furnishes the ideal condition for rate making. This is especially true where the law provides that the cost of administration shall be paid out of the general tax fund of the State, as is the cost of all other governmental functions, and not be deducted from the premiums paid into the State insurance fund.

The amount of the financial obligations of an exclusive State insurance fund is determined by the number of injuries and deaths that occur in the industries of the State and by the State legislature which fixes the rates of compensation to be paid to the victims of industrial accidents. Hence, the actuarial problem of an exclusive

State insurance fund is purely one of equitable distribution of losses. Factors which confront and embarrass insurance carriers under competitive conditions, such as selection of risks, premium rates of competitors, cost of administration, and other loadings do not appear among the problems of the administrators of State insurance funds.

The method of rate making employed under the Ohio State insurance fund is based upon the principle that each class of industry must bear the cost of its own industrial accidents.

The procedure is to ascertain after the end of each calendar year just what has been the total amount of the cost of compensation, medical treatment, and funeral expenses in each particular class of industry for that year. The full amount that the fund is possibly liable for in each claim for compensation is charged up against that year's premium receipts. For instance, $6,500 is charged up for each death claim where full dependency exists, and an amount sufficient to cover payments of compensation for the full period of life expectancy, based upon the mortality table, is charged up for all permanent total disability cases, etc. The results of these calculations are then included with the accident experience of each particular class of industry for the preceding four years. The average yearly cost of compensation, medical treatment, and funeral expenses for this five-year period is taken as the amount to be collected in premium from each particular class of industry for the coming year, providing the legislature has made no changes in the law that increase the obligations of the State fund. If the legislature has made such changes, allowance is made in the calculations to take care of the increased burden.

The rate for each particular class of industry is then fixed by setting up the cost of compensation, medical treatment, and funeral expenses against the pay-roll exposure of the class for the same period. This gives us what we call our basic or preferred rate. Changes in rates are effective on July 1 of each year and are based on accident experience up to within six months of this date.

This procedure is modified in the case of those classes whose accident experience and pay-roll exposure are so limited that it would be difficult if not practically impossible to observe insurance principles if each class were to be made to stand alone. The procedure with these classes is to group them together in what we call "schedules." Each class, however, retains its own identity within the schedule. Particular attention is given to seeing that each particular class is put into a schedule composed of classes to which it has some industrial relation; for instance, the metal schedule is composed only of metal industries, etc.

The rate-making method applied to these schedule groups is the same as that just outlined, except that in death cases 35 per cent of the death cost is charged against the class and 65 per cent is charged against the schedule; and in permanent total disability cases 20 per cent of the cost is charged against the class and 80 per cent against the schedule. In the case of all other injuries the full amount is charged against the class. The purpose of this modification is self-evident. It is for the mutual benefit of all classes in the schedule. The schedule acts as a shock absorber in cases of death and permanent total disability, and thereby gives reasonable stability to the premium rates and protects all the classes against excessive fluctuation in premium rates.

So far only classes and schedules have been dealt with. The procedure for rating the individual employer is as follows:

First, it should be said that under the Ohio method of merit rating, injuries have been defined in terms of money instead of in terms of numbers. The Ohio manual contains a basic allowance table which gives the basic allowance factor for each classification in the manual. This factor is determined in the following manner: The accident experience, pay-roll exposure, etc., of each class of industry for which the basic rates have been fixed, as already described, is taken and the cost of temporary total and permanent partial disability cases is separated from the cost of permanent total disability and death cases. The cost, per $100,000 of pay roll, of the temporary total and permanent partial disability cases produced by the class (this for the sake of brevity is called the compensation factor) is then ascertained, as is also the cost, per $100,000 of pay roll, of the permanent total disability and death cases produced by the class (this for the sake of brevity is called the death factor). The full amount of the compensation factor plus whatever percentage of the death factor the death factor is of a death award constitutes the basic allowance factor, or the amount which, under the Ohio merit-rating system, is considered the equivalent of 10 injuries.

A death is counted as the equivalent of 10 injuries and a permanent total disability as the equivalent of 15 injuries. The rate of the individual employer is based on a five-year accident experience. This gives the employer a chance to balance up his years of bad experience with his years of good experience.

If the employer's accident experience equals 10 injuries per $100,000 of pay roll, he pays the basic rate of premium of the class to which he belongs. According as his accident experience is greater or less than 10 injuries per $100,000 of pay roll, his premium rate is increased or decreased in accordance with the following schedule:

Risks paying premium of—	Group	Per cent per injury
Under $500	A	1
$500 and under $1,000	B	2
$1,000 and under $5,000	C	3
$5,000 and under $10,000	D	4
$10,000 and over	E	5

In no case can the increase or decrease in the premium rate of any individual risk exceed 10 times the per cent per injury above specified for the group to which the risk belongs.

The Ohio workmen's compensation law provides that the industrial commission shall set aside a portion of the premium paid into the State fund, such amount not to exceed 5 per cent of the premium, for a catastrophe reserve fund from which catastrophe losses are paid. The amount being set aside at present for this purpose is 2 per cent of the premium. The following, when occurring in any single accident, are considered as catastrophes:

	Premium-rate class
2 or more deaths	$0. 01–$2. 00
3 or more deaths	2. 01– 4. 00
4 or more deaths	4. 01– 6. 00
5 or more deaths	6. 01 and over.

Any permanent total disability accident involving an expectancy cost of $17,000 or more is defined as a catastrophe.

There are a number of details of the Ohio method of rate making that can not be covered within the time limit allowed for this paper, but this will give a general idea of the plan. The fact that the rates are based exclusively on accident data coming under the jurisdiction of the industrial commission and that it is not necessary to wait for data gathered from various sources makes it possible to make rates based upon accident experience brought up to within six months of the date that premium rates are effective. This permits the detection of any change in conditions and the making of adjustments to meet the same before any serious consequences result.

This method of rating employers according to accident experience is thought to be superior to the method of rating employers according to physical inspection of plants. There are elements in accident production that can not be controlled by physical inspection. But no matter what the factors are that enter into the production of accidents the result of them all is contained in the accident experience. Therefore, there are two important things that are more likely to be accomplished through the Ohio method than through the method of physical inspection; viz, a more equitable distribution of losses and a more earnest effort on the part of employers to prevent accidents. Physical inspection should not be eliminated; it should be continued as part of the educational plan for industrial safety, but not for the purpose of rate making.

The CHAIRMAN. The next paper is "Method of rate making of the New York State insurance fund," by Leonard W. Hatch, manager State Insurance Fund, New York Department of Labor, whose paper, as he has been unavoidably delayed, will be read by the secretary.

METHOD OF RATE MAKING OF THE NEW YORK STATE INSURANCE FUND

BY LEONARD W. HATCH, MANAGER NEW YORK STATE INSURANCE FUND

[Read by Charles E. Baldwin]

The New York State Insurance Fund establishes its rates for compensation insurance by taking the rates of the private companies and applying a uniform percentage reduction to all rates. In former years this reduction varied, having been successively 8⅓, 20, 14½, and 15 per cent. For the last four years it has been 15 per cent and is that at present.

The New York fund uses the same experience rating and schedule rating as the private companies.

The technical processes of formulating the basic rates and of developing and applying experience and schedule rating are performed for both the private companies and the State fund by the same agency, namely, the New York Compensation Inspection Rating Board, with cooperation also of the National Council on Workmen's Compensation Insurance.

In some cases the State fund has departed from the above general plan and made its own rates, where special circumstances or its own experience seemed to warrant such departures, as in some of its special groups where experience has shown justification for more favorable rates than the standard, or in some classes of risks

found to present greater than the normal hazards where higher than the standard rates have seemed necessary. But these cases have been so exceptional as not to require qualification of the above as the general practice.

The New York State fund has pursued this course as to rate making not as a requirement of law but by its own choice. Private companies are required by law to use the rates formulated by the rating board upon approval of same by the superintendent of insurance. On the other hand, the law gives the State fund independence as to its rates. To the extent that it has followed the rates and practice of private companies it has done so voluntarily.

The reasons for such a course as to rate making are, briefly, as follows:

In rates for compensation insurance there are, of course, two elements: one, the so-called "pure premiums" constituting the part of the rate required to pay "losses," i. e., the compensation and medical benefits to which injured employees are entitled under the law; the other, the "expense loading," which is the part which goes to the insurance carrier for its expense of doing the business, commissions, and profits. There are reasons for quite opposite courses for a competitive State fund in the matter of rate making according as one or the other of these elements is considered.

The part of the rates represented by pure premiums can hardly be regarded as a proper field for competitive differentiation between carriers. This part is what the schedule of benefits in the compensation law itself as interpreted by awards of referees, boards or courts, make necessary. Law and adjudication are the same and are impartial for all carriers. Essentially, pure premiums are a matter of fact, not of policy or practice of carriers. Competition in determining pure premiums might put in jeopardy the very security of the injured man's compensation, which is the primary reason for compensation insurance. There is therefore no reason in the nature of the case why a State fund and private companies should travel apart in establishing pure premiums.

On the other hand, there is sound reason why all carriers should combine in that process. Pure premiums are, of course, averages designed when applied uniformly, to produce a sufficient amount to pay total losses. They are determinable only by analysis of experience. Their correctness, by whatever agency or method determined, depends on the amount of experience on which they are based. By combining the experience of all carriers for a given State, the widest experience for that State becomes available. An even wider basis would be possible, of course, by combining different States. In general, therefore, soundest rates for any carrier are those based on pure premiums demonstrated by the experience of all carriers, and this is as true for a State fund as for a private company.

The foregoing assumes, of course, that the methods employed by the rating agency in analyzing experience to determine pure premiums are technically sound and impartially applied. In New York the State fund is a member of the rating board (and also of the national council) and is represented on its technical committees, so that it has itself a voice in the rate-making procedure sufficient to safeguard the interests of the fund on any such point.

Turning now to the element of expense loading in the rates, here a very different situation with very different controlling considerations, is presented. In contrast to the pure premium element, the expense loading is a field for competition between carriers and is to be determined in the last analysis by individual policy and experience. Here particularly it is both sound and desirable that a State fund should maintain complete independence and push competition with private companies. This is what the New York fund does by its rate differential, which may properly be regarded as a reduction in the expense-loading element of the rates. The expense loading in the manual rates of the private companies is a fixed proportion established by agreement of the companies, constituting a uniform addition to all pure premiums to make the full rate. The State fund, therefore, by its rate differential virtually reduces this expense loading by an amount equal to (at present) 15 per cent of the full rate.

It should be added that rate reduction is not the only method by which the New York State fund reduces the cost of compensation insurance. Payment of dividends, as well as initial rate reduction, is also employed for this purpose. Competition in cost of insurance among private companies is practically restricted to the dividend method. The freedom of the fund to employ both is important because, as between the two methods, rate reduction, always assuming that it be kept within the limits imposed by security of the insurance, is preferable from the employer's point of view as being earlier, more certain, and more definite, and is for similar reasons desirable from the point of view of the competitive problems of a State fund.

METHOD OF RATE MAKING IN PENNSYLVANIA

BY J. V. GOSLINE, OF THE PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY

[Submitted but not read]

At the inception of workmen's compensation in the United States, no reliable data were available for the making of insurance rates. In the absence of knowledge on this form of insurance, rates were largely a matter of guess or "underwriting judgment." With the accumulation of premiums and losses, however, and following a period of violent fluctuation in rates, together with the introduction of rate regulation in many States, more serious attention was given to this important subject.

This paper, therefore, is presented as a brief nontechnical outline of the compensation insurance rate-making method in Pennsylvania, which has resulted almost entirely through the scientific efforts of the late Dr. E. H. Downey, actuary of the Pennsylvania Insurance Department, from the effective date of the compensation act in this State (January 1, 1916) until his accidental death on July 9, 1922. It is hoped that some information of a general nature on competitive rate making may be of value to public officials charged with the responsibility of approving compensation insurance rates, or to those contemplating the introduction of legislation providing rate regulation in their respective States.

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The keystone of compensation insurance rate making is the risk or industry classification. One of the primary purposes of compensation insurance is the protection of the individual employer against exceptional losses. Since compensation insurance tends to distribute the cost of industrial accidents between employers and ultimately as a fixed charge in the price of the industrial product, it follows of necessity that the employer's business becomes the unit of insurance.

RISK CLASSIFICATION

The adoption of risk classifications for rate making in this State may be embodied in the following three requirements:

1. The risk classification must be broad enough to provide an adequate exposure of pay roll and losses.
2. Individual risks grouped under each classification must be reasonably homogeneous as respects hazard. By this it is intended that the establishments within a classification shall be reasonably similar not only in kind and degree of hazard, but also with respect to materials, equipment, processes, and products.
3. A risk classification must conform as far as possible to the business of the employer.

Industry classifications based upon occupations or products will afford many classifications, few of which will yield a sufficient exposure for rate making. Fundamentally the number of industries are comparatively few, certainly not more than two hundred in the whole civilized world. Aside, too, from inadequate exposure, a multiplicity of classifications serves no useful purpose other than to tempt employers and insurance solicitors into deliberate misclassification or other forms of discrimination for purely personal profit or advantage. Further, the hazards of a single employer's business will be characteristic of the industry classification, while the hazards between occupations are totally unlike. The carpenters, electricians, plumbers, and millwrights of a coal mine or a steel plant are exposed to the hazard of mining or steel making rather than the hazard of manufacturing or of the building trades.

In this day of diversified industry, it is difficult indeed to trace a great many products to a distinctive industry. The processes of molding, forging, stamping, and machining are necessary in the production of a printing press as in an automobile. Consider, too, our industrial efforts during the World War, when machine shops, rolling mills, bolt and nut plants, and the like were hurriedly converted into munition plants. To prepare a schedule of classifications based on a list of unrelated products or a directory of organized trade-unions for rate making purposes is to invite considerable diversity of opinion and eventual discriminations.

With a risk classification, then, which describes a distinctive industry and which is applicable to business establishments as a whole, the schedule of classifications is comparatively simple of application, both for uniform underwriting and competitive rate making.

Compensation insurance rates are derived from the statistical experience of each risk classification and are projected into the future upon the basis of past experience; that is, the rates are fixed for a period of one year in advance of the insurance year. The theory of this prospective rate making is that accident frequency and severity

within a single risk classification will be reasonably stable from year to year, which, however, is entirely dependent upon the breadth and homogeneity of the experience.

The experience required for rate making must not only be in sufficient volume of exposure, but must also cover a period of years in order to avoid, as far as possible, economic fluctuations from year to year. Insurance is fully recognized as a long-time proposition, whereby profits as well as losses are distributed over a considerable period. Then, too, accident frequency, as well as the cost of temporary or medical benefits, varies from year to year, so that the present basis of a five-year period has the advantages of distributing the insurance cost over a period ample for the expected industrial prosperity or depression.

Insurance carriers authorized to write compensation insurance are required to file uniform reports in detail, giving their loss experience as well as their pay roll and premiums. This material is carefully audited and tabulated by policy year of issue (year of insurance) and risk classifications. Necessary actuarial modifications of this experience are made for amendments to the compensation act and for the increased or decreased cost of temporary or medical benefits.

From this modified experience is calculated the "pure premium" or loss cost. The method employed is a division of losses by pay roll, and the result derived is an expression of rate per $100 of pay roll.

PURE PREMIUM

The "pure premium" or loss cost represents the expected incurred cost of work accidents within the risk classification and for the one year in which the rate is intended to cover. This incurred cost comprises not only payments made on account of claims arising during the experience per 100, but also the full reserve on such claims valued in accordance with the scale of benefits provided by law.

CATASTROPHE LOADING

Consideration is next given to a loading for the catastrophe hazard, which is essentially a part of the "pure premium." Few risk classifications furnish a sufficient volume of exposure for the determination of cost on catastrophe accidents. For the purposes of rate making, an accident which causes death or serious injury to two or more persons is considered a catastrophe, and the cost of same is spread over industry as a whole. A charge of 1 cent per $100 of pay roll is added to the risk classification "pure premium" as a provision for the cost of such disasters. Available statistics indicate this loading as amply sufficient.

EXPENSE LOADING

A further addition to the "pure premium" must necessarily be made for management expenses. The average expense ratio for stock companies throughout the United States is about 43 per cent of gross compensation premiums. In this State the expense loading

adopted at the last rate revision amounted to 40 per cent, distributed as follows:

	Per cent
Acquisition of business	17.5
Investigation and adjustment of claims	7.5
Inspection and accident prevention	2.0
Taxes and fees	2.5
Rating bureau	2.0
Home office	8.5
	40.0

Industrial hazard within a risk classification unquestionably varies between the occupational distribution of employees as well as equipment and processes. Some coal mines and manufacturing establishments purchase their electric power, while others generate their own. Many textile manufacturers dye and finish their own goods, yet many, too, sell the unfinished product. These differences are applicable to every industry, and any attempt to provide risk classifications for such variations would not only involve the rate-making procedure and confuse the statistical experience, but would prove almost impossible of application. In a competitive field, however, it is necessary to take account of such varying hazards. Since premium rates developed from the experience of the risk classification, which is the same rate or average rate, fail to cover this situation, an adjustment of the rate is made to the individual risk through two systems of risk rating, one known as "schedule rating" and the other "experience rating."

SCHEDULE RATING

The "schedule rating" of a risk consists in the application of charges and credits to the classification rate as a means of measuring the tangible hazard. This modification is based on physical conditions of the plant, which are ascertained by inspection.

"Schedule rating" also endeavors to promote the use of safety measures. Hazards which can be removed or prevented take a penalty in a fixed-rate charge for their mere presence. The guarding of gears, belts, and pulleys, as well as points of operation and hazardous machine parts, are all within the control of the employer. The "schedule rating" of a risk, in encouraging preventive measures, does to a great extent promote safety activity, thereby performing a distinct social service.

Effective July 1st of this year, an entirely new "schedule rating plan" was adopted in this State. The new schedule is the result of a very thorough statistical analysis of the tangible hazards for approximately 90 per cent of the manufacturing risk classifications. Its merits are, of course, to be proven by application, but its usefulness in the refinement of the classification rates and the promotion of industrial safety is anticipated because of the volume and dependability of the statistical experience.

EXPERIENCE RATING

Little, indeed, can be said of "experience rating." Its function is the modification of the classification rate in accordance with the individual experience of the employer. The need of a broad ex-

posure for a risk classification proves conclusively that the experience of an individual risk (unless the risk is of sufficient size as to be self-containing within its classification) is insufficient for rate making. A favorable or unfavorable experience is very often a matter of chance.

RATE ORGANIZATION

The rate-making machinery consists of an organization known as the Pennsylvania Compensation Rating and Inspection Bureau, comprising all compensation insurance carriers and under State supervision. Membership is compulsory of all insurance companies writing compensation insurance in the State, and its establishment mandatory in accordance with the insurance laws.

The functions of the rating bureau are briefly as follows:

1. To establish manual or risk classifications, underwriting rules, premium rates and schedule or merit rating plans for insurance of employers under the workmen's compensation act; to apply schedule or merit rating plans, to promulgate classifications and rates for individual risks, and to compile rates for such insurance on an equitable and impartial basis.
2. To compile statistics pertaining to workmen's compensation insurance for these purposes.
3. To inspect risks for the purpose of determining individual risk classifications and for the application of schedule or merit-rating plans in order to encourage employers to reduce the number and severity of accidents by adjusting premium rates to working conditions.
4. To receive copies of all policies or contracts of insurance against liability under the workmen's compensation act and all agreements pertaining thereto.
5. To furnish upon request to any employer or member, upon whose risk a compensation rate has been made, information as to such rates, including the methods of its computation.

The operation and management of the bureau is in the hands of a governing committee, which, like all other bureau committees, consists of seven members; three stock companies, two mutual associations or companies, the State workmen's insurance fund, and the insurance commissioner or his representative, who is also chairman.

Such a rating organization has proven eminently satisfactory. Not only has statistical experience of much value been accumulated and scientific methods of rate making adopted, but competition for compensation insurance has practically been restricted to salesmanship, service, and net cost.

RATE REGULATION AND SUPERVISION

The social value of compensation insurance involves not only equitable and impartial distribution of accident cost between risks, but more essentially the guaranteeing of deferred payments of compensation to the injured workmen and dependents. Compensation insurance regulation, therefore, is in the interest of both the employers and employees, and must be exercised rigorously and efficiently from a broad social viewpoint, in order that the public ends of workmen's compensation may be fully served. Any opposition

to the public regulation of competitive compensation insurance systems may be rightly termed an effort to defeat the purposes and aims of workmen's compensation.

A determination of reasonable and adequate rates by supervising authorities is a responsibility that must be supported by a self-containing system or risk classifications, full and complete statistical experience, together with the greatest possible cooperation between insurance carriers and the rating organization.

Competitive abuses of many forms can be stamped out only by absolute control of risk classifications, premium rates, schedule and experience rating plans, and loading for catastrophe and expenses.

Rate making of to-day with its many agencies and variety of conditions, evidences progressive achievement. The many problems confronting rate makers can be solved only by statistical determinations. Mathematical perfection is practically unattainable. In the methods just discussed, no attempt is made to reflect the current cost of compensation insurance for any industry, but rather to provide equitable rates between all insurers.

Simplification of rate-making procedure in competitive States is now rapidly being developed, not only to meet a persistent public demand, but also in an attempt to place the compensation insurance business upon a sound and stable basis. Increased activity on the part of compensation boards and commissioners as to rate determination will go a long way in affording greater satisfaction to all concerned.

DISCUSSION

Mr. KINGSTON. I would like to ask Mr. Duffy if on this 1st of July adjustment every year merit rating is done at the same time the ordinary rate to the industry is declared, or does merit rating come at another time of the year as a distinct operation?

Mr. DUFFY. Well, we fix all the rules at the same time. Of course, the individual risk comes within the operation of the change in the rule on the next expiration date. All rates and rules are effective each year on the 1st of July. If a risk expires on July 15th, the new rules are applied. If it does not expire until December 1st, they do not apply until then. Does that answer your question?

Mr. KINGSTON. I do not know that that is just what I have in mind. Perhaps I have not made myself clear.

You declare your rate on the 1st of July; you make your assessment on the 1st of July on the rate which you have found to be the rate for the industry; but merit rating is an individual matter. What I wish to get at is, suppose a rate for a certain industry is 1½ per cent, but the individual employer in that industry, by reason of a very satisfactory experience, is entitled at some time of the year to a merit-rating advantage, does he get that advantage at the time he is generally rated, or does he get that at some later period in the year?

Mr. DUFFY. It runs along as a regular thing, just like any other feature of the rating. For instance, on the 1st of July we ascertain for each class what amount we need, based upon an average of the last five years. That gives us the basic rate for the class. Then we

take the individual employers within their various classes, and we use the same experience or that part of their experience that was involved in this five years' tabulation for the class. Their rate is fixed on their own five years' experience.

Mr. KINGSTON. All done at the one time?

Mr. DUFFY. Yes.

Mr. KINGSTON. Just one other question. I am not sure I heard you correctly, but in describing what a catastrophe was, did I understand you to say that an accident involving a permanent total disability cost of $7,000——

Mr. DUFFY. $17,000 or more.

Mr. KINGSTON. Suppose there is one death case and one permanent total disability case, is there a sum of money which represents the cost—that is, a sum of money made up of the cost of a variety of types—a death case, a permanent total case, and a variety of other less serious accidents?

Mr. DUFFY. Yes; you see that is covered again in this basic factor allowance. Within the class we ascertain the cost of deaths and permanent total disabilities per hundred thousand dollars of pay roll. That cost of deaths and of permanent total disabilities per hundred thousand dollars of pay roll is the factor charged up to the individual risk.

Mr. KINGSTON. I am speaking at this particular moment of the catastrophe reserve, for the purpose of determining what a catastrophe is.

Mr. DUFFY. The catastrophe is practically separated from the rules of rating. The full cost of the catastrophe is paid out of the catastrophe reserve fund set aside for that purpose. Of course, the principal object, I take it, is to remove that from the actuarial problem because of its tendency to be such a disturbing element.

Mr. KINGSTON. No part of your catastrophe cost enters into your rate making?

Mr. DUFFY. No, because that comes out of this catastrophe fund which is set aside—2 per cent is taken out arbitrarily. That is required by State law. So that does not enter into the rate-making process.

Mr. TARRELL. Is that catastrophe fund a separate fund, one maintained separately from the other?

Mr. DUFFY. Separate as a bookkeeping proposition, and we might say a distinctly separate fund. Of course it is banked together and invested together.

Mr. TARRELL. Is it a continuing fund, maintained and added to each year?

Mr. DUFFY. Yes. We started out in the beginning at 10 per cent. That was reduced to 5 per cent. Now it is down to 2 per cent.

Mr. TARRELL. What is your premium collection for last year?

Mr. DUFFY. For last year (I am not sure that I have this correct) it was, in round figures, about $11,000,000.

Mr. TARRELL. Two per cent of that is set aside and added to the catastrophe fund for the year before?

Mr. DUFFY. Yes.

The CHAIRMAN. Is there any further discussion desired? If not, we will proceed to the next number, which will be the "Regulation of self-insurers," by Andrew F. McBride, commissioner Department of Labor of New Jersey.

REGULATION OF SELF-INSURERS

BY ANDREW F. M'BRIDE, COMMISSIONER OF LABOR OF NEW JERSEY

In undertaking to comply with the request to present a paper under the title of "Regulation of self-insurers" we do so with some hesitation, owing to the fact that the subject to be discussed is one with which the Workmen's Compensation Bureau of the New Jersey Department of Labor has no official relation, and therefore we have had no intimate experience with this question. In our State the legislature has deemed it wise to place all insurance matters under the jurisdiction of the department of banking and insurance, and that department has been charged with the administration of the workmen's compensation compulsory insurance law since its enactment. Hence we scarcely feel qualified to present the subject assigned us.

A study of the acts of the various States will show that, of the States having compulsory insurance laws with provision for self-insurance, 33 State laws (including Hawaii) either direct or permit the commission or board to require the self-insurer to deposit bonds or other security as surety for the payment of future claims. This provision is not a part of the insurance law of New Jersey, which specifies that an employer may carry his own risk, providing he can reasonably satisfy the commissioner of banking and insurance as to the permanency and financial standing of his business.

However, in spite of the restricted authority contained in the above, the commissioner of banking and insurance undertook, in the fall of 1923, to require the depositing of security based on percentage of the pay roll. His action in this respect provoked energetic dissension, and resulted in a number of conferences between the commissioner and representatives of large business interests. The outcome of this was a request for an opinion from the attorney general. The reply received was to the effect that, in the absence of statutory authority, deposits held by the commissioner of banking and insurance could not be retained in event of insolvency, but must be delivered to the receiver to become a part of the general assets. Since securities could not be held for the purpose for which collected, it was useless to require the deposit and the entire matter was dropped.

In New Jersey compensation claims are preferred ones to the same extent as a claim for unpaid wages. Unfortunately under a decision of our court of chancery, in the case of Steel & Iron Mongers (Inc.) *v.* Bonite Insulator Co. this preference is restricted to a claim for not more than two months' compensation, in accordance with section 83 of an act concerning corporations. This element of protection is therefore worthy of mention only to show its insufficiency.

As we see this problem, in the light of what other States have done, its solution lies in legislation providing for the depositing and

continual holding after insolvency of sufficient securities to cover every outstanding case to its conclusion, plus such other security, to cover the catastrophe hazard, as in the judgment of the commissioner of banking and insurance, is necessary safely to protect the employees of each self-insurer. The extent of this additional security should be determined by a close analysis of the financial condition of each applicant for the self-insurance privilege with respect to extent of the hazard of his operations.

As far as our experience in New Jersey is concerned, we are advised by our banking and insurance department that no injured employee or dependent has lost a single dollar because of insolvency of an employer granted the self-insurance privilege in this State. One might therefore conclude that the question under discussion is not a serious one. The importance of the matter, however, becomes more apparent when one takes into consideration that it is entirely possible for a single case to extend over a period of 40 or 50 years, and involve compensation to the amount of $40,000.

A review of the laws of the 33 States (including Hawaii) above mentioned shows that 22 provide for the granting of the self-insured privilege upon the furnishing of satisfactory proof of financial standing, with the added provision of empowering the administrative body to require the deposit of bond or other security. Four laws include the former provision but specifically compel the deposit of bonds or other security. Six laws make no mention of the filing of security. One State requires the deposit of surety bond or guaranty contract with some authorized surety or guaranty company.

To our way of thinking, this last method embodies the most workable and business-like plan of any in use. It would seem to relieve the board of much bother and responsibility without impairing the security, and places the securing of the self-insurance privilege on a business basis, the cost thereof to be worked out by the insuring company and the employer according to the nature of his occupational hazard. It virtually reduces the whole question to one of insurance of a modified form. Certainly the plan must be a sound one, for if an insurance company can be trusted to be responsible for the paying of the full compensation, as when compensation insurance is regularly carried, it can be trusted when only a portion of the obligation is to be met.

DISCUSSION

[A motion was made, seconded, and carried that flowers be sent to Mrs. Armstrong, wife of the president of the association, who was very ill, with an expression of hope for her immediate recovery, and that the bill be paid by the association.]

The CHAIRMAN. Our program calls for the discussion of the subject by H. M. Stanley, chairman of the Industrial Commission of Georgia.

Mr. STANLEY. In Georgia the industrial commission has absolute control of everything entering into the question except the actual making of insurance rates, which is done by the insurance commission. I would not criticise the New Jersey act, for I think it is a splendid act, but it seems to me that the commission should have authority to regulate self-insurers. I do not see how they could

manage very well without doing that. It becomes too risky a piece of business.

We think that self-insurers should be divided into three general classes. In the first class we would put all employers who are completely "sold" on the workmen's compensation act, and after very careful consideration decide to become self-insurers, thereby keeping in very close touch with their employees in dispensing compensation and effecting a saving in what the insurance companies call "acquisition cost."

In the second class we would put the employers who grudgingly accept the act, who are dilatory in making reports, and who have to be watched very carefully. We think that no regulation is too stringent for that class of employers.

In the third class we put municipalities and county governments, and we automatically give them the right to carry their own risk without requiring any bond or the deposit of any security.

We have declined to accept security because we have no safe and no adequate place to keep securities. Childs' Restaurant sent down $6,000 worth of Liberty bonds as a guaranty, and we promptly sent them back. We would not care to be the custodian of negotiable securities, and the security would have to be negotiable securities to be worth anything.

In this first class of self-insurers we have two large employers who have had great success in carrying their own risk. One of them, in the first two years and nine months of the workmen's compensation act paid out $99,000 in compensation, funeral benefits, and medical fees. The cost of administration was $22,000, making a total cost of $121,000. Had that employer insured, his premium would have been $189,000. That would have been the minimum rate, with all credits for good experience. Now that employer has had a very good result, and yet in a number of partial dependency cases compensation was paid when the board would not have demanded it. It is very liberal in that respect.

Another one of our large employers seemingly had a bad result, paying out $57,000 as against a minimum premium of $43,000, but that employer pays the total wage for six months following an injury and pays $1,500 more in funeral benefits than called for by our act. So it is not surprising, of course, that it actually paid out more money than it could have insured its liability for.

For the most part, our relations with the insurance carriers have been cordial. We have had to regulate several of them, and in one instance we had to ask the insurance commissioner to discontinue issuing licenses to a company, but it came around very promptly and has not been giving us any trouble since.

We have not felt that we wanted a State insurance fund but I must admit that I am almost convinced that it is a good plan, and we shall investigate that. Just what we will do in the future is problematical, but from the experience of Ohio and Canada and these other places it looks good. I do not, however, feel that we should go so far as to have an exclusive insurance fund in the State.

In Georgia, fortunately, the employers and employees are sold completely on the workmen's compensation act. We have absolutely no trouble with either class. When we have something which we

think should go into the law we simply call a meeting and thrash it all out, and it is presented to the general assembly and passed by both houses without any opposition.

Of course lawyers do not like the act very well, but they have not enough nerve to organize a fight against it.

The CHAIRMAN. Is there any further discussion desired?

Mr. WILLIAMS. A single suggestion occurs to me which might be helpful to some other jurisdiction. It is a thing which we have adopted with apparent satisfaction to everybody.

There are two classes of self-insurance that, in the early days of the act, gave us a little trouble. One class was that of the very large corporation doing a successful business in more than one State which did not give us too many of the details of the business for fear it might be considered a trust or something. The other class was that of the fellow who did not have quite adequate resources, so that we did not feel like passing him without some security.

A very ready way out of both of those difficulties, in order to protect all possible claimants, is this: Any lawyer can prepare a valid trust agreement in a very short time. I have done it a great many times and it takes only a few minutes. We have never permitted anybody to place in our hands any securities or any cash, but many times I have established a voluntary trust by which a prospective self-insurer would place in some bank or trust company either bonds or securities that were valuable, undoubtedly good, with a provision that he could not draw them out or have them drawn out except by order countersigned by the commissioner having jurisdiction. They remained there as a trust fund, the proceeds of which went to injured workmen or the dependents of killed workmen.

There was also a provision that if financial disaster overtook him the creditors could not get the securities. Where there are large sums lying separate that way they are not drawn on to pay current losses, but the self-insurers get the income from the bonds so that they are not really hampered very much. That works out very well.

There is another suggestion which I feel compelled to offer. I do not want my friend, Mr. McBride, to think it is any criticism on the course which he seems to approve. While I thoroughly believe in insurance by insurance carriers for compensation losses, it seems to me that surety bond or guaranty bond of the ordinary type is in the nature of an economic crime.

If you wish to insure your compensation losses with some company authorized to do business in the State, and you pay it a premium of $10,000, you have bought something. If you meet with a loss the insurance company has to pay it. It might cost at least half that sum to buy a surety bond, a guaranty bond, but then you have bought nothing. If you meet with a loss you have to pay it.

Mr. DUFFY. We have had considerable experience with that feature in our State. At one time we had about 2,000 self-insurers. At the present time there are less than 400. We started out with the security bond as the only form of security we would accept.

During the war, in the interest of patriotism, we modified that so that we would accept Liberty bonds.

We have had pretty much the same experience that Mr. Stanley mentions about the inconvenience. In fact, our State treasurer lost $10,000 worth of Liberty bonds that were put up as security in a self-insurance risk, and was compelled to make good. He did not have the proper facilities for keeping them because of the great amount of space taken up.

Another reason why we do not like Liberty bonds is the red tape which the Government imposes. For instance, the employer who puts up, we will say, $50,000 in Liberty bonds has to make an assignment to the industrial commission. At the same time the income on the Liberty bonds goes to the employer, but each year or each six months, when the interest is due, we are compelled to go through the formality of signing various documents. Strange to say, it seems they never do the same thing with the same form twice in succession. It has made us feel that we will never deviate again from the rule but will insist upon a surety bond.

We have, it seems to me, this advantage: The employer, in order to pay compensation direct, must apply to the industrial commission. That rests entirely with the industrial commission, the administrative body of the workmen's compensation law. The law provides that, notwithstanding what security he puts up, if in the opinion of the members of the commission it is necessary to cancel his authority in order to insure a proper administration of the law in his case, the commission has authority to do this and does do it. We do not have very much trouble with it for that reason.

Mr. HORNER. In the State of Pennsylvania at least 60 per cent of our employees are covered by self-insurance. We have practically the same experience as the State of New Jersey. Since the act went into effect in 1916 there has not been a single default of compensation payments on the part of a self-insurer. During that same period there were two insurance companies that failed. Our experience has been very satisfactory.

Just recently we completed a survey with reference to the number of contested claims and found that about 3 per cent of the cases covering self-insurers were contested before the referees, and that, so far as insurance companies were concerned, 4 per cent of the cases in which compensation was paid were contested before the referees. That has been our experience in Pennsylvania.

Mr. TARRELL. In determining whether or not permission shall be granted to carry the risk, I would like to ask what rule has been adopted by the different commissions—what amount do you require over and above the liabilities of the employer—how much assets in proportion to the number employed? Has any commission fixed a rule in arriving at whether or not an exemption shall be granted?

Mr. STANLEY. Our minimum bond is $5,000; it depends upon the pay roll as to how much greater the amount shall be. We have one self-insurer against whom we assessed a bond of $60,000, which we felt would be sufficient, even in the event of a catastrophe, especially in view of the fact that we can change the regulation every 60 days.

Mr. TARRELL. Is that $5,000 the minimum?

Mr. STANLEY. That is a minimum. We do not permit anyone, except municipalities and county governments, to become a self-insurer in Georgia, for a bond less than $5,000.

Mr. TARRELL. If a man had 1,000 employees you would permit him to carry his own risk with $5,000 of assets?

Mr. STANLEY. That is for the very smallest employer.

Mr. TARRELL. How do you increase it?

Mr. STANLEY. We figure what his premium would be if he had insured his liabilities. We require the bond to be about what the premium of the insurance carrier would have been.

Mr. TARRELL. Do you require him to set that aside as a reserve?

Mr. STANLEY. No; he gives us a surety bond for that.

Mr. ARCHER. It might be in order to put the method obtaining in New York upon record. There are about 430 self-insurers there, who became self-insurers upon permission granted by the industrial commission, upon application accompanied by a financial statement. It is wholly discretionary with the commissioner to grant or to withhold permission to do a self-insurance business.

If the permission is granted, a deposit of securities equal to a premium collection, and in no case less than $10,000, is required. Such securities are the same securities that may be purchased under the law of New York State by trust companies, which guarantees a high class of securities.

Such securities must be conveyed, or transferred, I should say, to the commissioner as owner in trust, an absolute transfer. Then as losses pyramid, additional securities must be deposited against these accumulated losses, thus maintaining the principle of holding the original security as the margin of security plus actual deposits against real losses. The commissioner, as such owner in trust, is in possession of more than $10,000,000 of securities.

Mr. KINGSTON. Do you turn the coupons over to the owner or do you cash the coupons and put them in your own account to the credit of the employer? I refer to the interest coupons.

Mr. ARCHER. They are collected by the commissioner, inasmuch as the transfer is made in his name, but they are paid back, as collected, to the owners of the bonds. Custody is had without expense to the employer.

BUSINESS MEETING

CHAIRMAN, F. W. ARMSTRONG, PRESIDENT I. A. I. A. B. C.

The CHAIRMAN. The first report is that of the nominating committee.

[The report of the committee on nominations and place of meeting was presented and adopted. The list of officers elected will be found on p. 169. Salt Lake City was chosen as the place of the next meeting.]

The CHAIRMAN. We will now have the report of the resolutions committee.

REPORT OF COMMITTEE ON RESOLUTIONS

Resolved, That this association express its most heartfelt thanks to the representatives of the medical profession who have presented to this convention so many splendid papers on the important and timely subjects assigned to them, and who have so ably assisted the convention in their discussions.

Our thanks are also due to the many others who have so ably presented papers and discussions, aiding in understanding the character and administration of workmen's compensation laws.

Resolved, That this association express its sincere appreciation of the splendid publicity given our convention by the press of Halifax in particular and newspapers and periodicals in general; be it

Further resolved, That these resolutions be spread upon the minutes of this association and that copies thereof be forwarded to the press. [Adopted.]

Inasmuch as numerous diseases following trauma have to be dealt with by the various accident boards and commissions of this association, and whereas up to the present time no authoritative work has been published bearing upon the etiological relation between trauma and the various known diseases which follow; therefore be it

Resolved, That a committee be appointed to consider the question of the preparation of a medical work bearing upon the etiological relation between trauma and the various known diseases.

Such a work to be written or compiled by recognized medical and surgical authorities in collaboration.

The chief purpose of such a work to be a comprehensive and adequate recognition of trauma as a causative factor in relation to all known disease or pathological conditions. [Adopted.]

Whereas in the death of Carl H. Hookstadt the International Association of Industrial Accident Boards and Commissions has lost a worthy member and a most zealous and capable student of the principles, methods, and experiences involved in the administration of workmen's compensation laws; and

Whereas we, as an association and as individuals, deeply regret the untimely death of Carl H. Hookstadt who, because of his exceptional knowledge of economic and industrial conditions and his lengthy and broad experience as an investigator and statistician of the United States Department of Labor Statistics, was perhaps better able than any other person to survey, analyze, and comment upon the factors involved in workmen's compensation problems in a way to be helpful to all those concerned with the administration of such laws: Therefore, be it

Resolved, That we, the delegates of the eleventh annual meeting of the International Association of Industrial Accident Boards and Commissions, do hereby record our deep regret that Carl H. Hookstadt has been taken from our midst, and do hereby express the irreparable loss we feel because of his passing away; and as a further indication of our sorrow and of the high esteem in which we held Carl H. Hookstadt, be it

Resolved, That this resolution be spread upon the minutes of this convention, a copy sent to the United States Commissioner of Labor Statistics, and a copy sent to the mother and family of our departed member. [Adopted.]

Whereas the eleventh annual convention of the International Association of Industrial Accident Boards and Commissions convened in Halifax, Nova Scotia, on the 26th instant, and whereas its delegates were formally welcomed in open session by Hon. E. H. Armstrong, Premier of the Province of Nova Scotia, and his worship, John Murphy, mayor of the city of Halifax, and

Whereas the formality thus extended has found happy expression and become a reality in the uniform courtesy and generous hospitality on the part of the inhabitants of this city and Province: Now, therefore, be it

Resolved, That the members of the association express to the good people of the city of Halifax and the Province of Nova Scotia their sincere appreciation of the courtesies extended and the hospitable treatment accorded during our sojourn in their midst; and be it further

Resolved, That this resolution be entered upon the minutes of this convention and published at length in its proceedings, and that copies be furnished by the secretary of the association to his worship, John Murphy, mayor of Halifax, and to Hon. E. H. Armstrong, Premier of the Province of Nova Scotia. [Adopted.]

[The following discussion occurred on the resolution relative to the death of Mr. Hookstadt:]

Mr. CHANEY. It has been a very gratifying thing to the colleagues of Mr. Hookstadt in the Bureau of Labor Statistics to see how seriously and sympathetically the members of this convention regard the work which he was able to do.

It does not seem to me that it is altogether because we recognize a keen intelligence or because we recognize wide familiarity with the problems of this organization, or because we recognize in him a man of high ideals that we have the feeling which has been expressed constantly in the course of this convention. I think it is rather that in addition to all these Carl Hookstadt was a thoroughly friendly man. That has been the expression which has come to me from the members of this convention.

Personally I was very closely associated with Mr. Hookstadt. We were dealing with different phases of the same problem. We were in constant consultation with each other as to the subject matter and the way in which it should be presented. And so as you pass these resolutions I want to emphasize in this way the deep sympathy with your ideas and purposes which prevails among those who were immediately associated with him.

I trust that as the work which he was undertaking with the representatives of the different State bureaus is brought again to your attention (the work which he was doing having now fallen to my charge) that you will receive the approach of the Bureau of Labor Statistics and the request which it will make of you for cooperation in the work it is trying to do as cordially and in as friendly a spirit and with as great willingness to serve the cause in which he was interested as you met Mr. Hookstadt himself.

As I look over the record which he made of the experiences of the last few months of his life I am greatly impressed with the cordiality and helpfulness with which the representatives of the different jurisdictions dealt with Mr. Hookstadt. I hope you will continue that cordial effort in the direction of cooperation between the United States Bureau and the different jurisdictions represented in this organization.

Mr. KINGSTON. I would suggest that in addition to sending a copy of that resolution to the mother of Mr. Hookstadt a copy be sent to the young lady to whom he was to be married. It may not be generally known that Mr. Hookstadt was to be married but the young lady to whom he was to be married was at his bedside when he died, and I think it would be well to send a copy of the resolution to her.

Mr. PARKS. I am very heartily in favor of this resolution and it is surely worthy of the man in whose memory it is prepared. May I suggest the revival of a very beautiful custom we have in the United States? Let me suggest that in addition to passing that resolution this convention stand for 30 seconds in silence in his memory. All that we can give the departed one is respect, and I make that suggestion to the convention.

The CHAIRMAN. The suggestion made by Mr. Parks is very timely and I would ask the members kindly to stand for 30 seconds in memory of Carl Hookstadt.

[The members arose and remained standing in silence for 30 seconds.

A motion was made, seconded, and carried that the thanks of the association and the personal love and affection of each member thereof be extended to Fred W. Armstrong and to V. J. Paton, both of the Nova Scotia Workmen's Compensation Board, for their kindness, courtesy, and hospitality.

The newly elected president, O. F. McShane, took the chair.

The auditing committee reported that while the financial statement of the secretary-treasurer is dated August 15, the statement is really only to August 11, as the bank book was balanced then, and that it had audited the accounts from September 15, 1923, to August 11, 1924, and found that they tallied exactly with the financial statement submitted by the secretary-treasurer. The report was adopted.

It was suggested by Mr. Gardiner that the executive committee should look into the matter of jurisdictions dropping out as members and then coming back into the organization by paying the dues of the year in which it rejoins, and present an amendment to the by-laws that such a jurisdiction should be required, on rejoining, to pay up the previous year's dues. The matter was referred to the executive committee for such action as seems consistent with the constitution and by-laws and the general conditions under which members are obtained.

The continuation of the custom as to payment of the honorarium of the secretary and of clerical and stenographic help for the secretary's office was authorized.

Meeting adjourned.]

APPENDIXES

APPENDIX A.—OFFICERS AND MEMBERS OF COMMITTEES FOR 1924–25

President, O. F. McShane, chairman Utah Industrial Commission.
Vice president, Frederic M. Williams, chairman Connecticut Board of Compensation Commissioners.
Secretary-treasurer, Ethelbert Stewart, United States Commissioner of Labor Statistics.

Executive Committee

O. F. McShane, Utah Industrial Commission.
Frederic M. Williams, Connecticut Board of Compensation Commissioners.
Ethelbert Stewart, United States Commissioner of Labor Statistics.
Fred W. Armstrong, Nova Scotia Workmen's Compensation Board.
W. H. Horner, Pennsylvania Department of Labor and Industry.
H. M. Stanley, Georgia Department of Commerce and Labor.
L. A. Tarrell, Wisconsin Industrial Commission.
H. G. Wilson, Manitoba Workmen's Compensation Board.
Ralph Young, Iowa Workmen's Compensation Service.

Committee on Statistics and Compensation Insurance Costs

Chairman, L. W. Hatch, New York Department of Labor.
Secretary, Ethelbert Stewart, United States Commissioner of Labor Statistics.
Charles E. Baldwin, Assistant Commissioner, United States Bureau of Labor Statistics.
Carl C. Beasor, Pennsylvania Department of Labor and Industry.
Charles A. Caine, Utah Industrial Commission.
E. I. Evans, Ohio Department of Industrial Relations.
N. Fletcher, Manitoba Workmen's Compensation Board.
O. A. Fried, Wisconsin Industrial Commission.
F. W. Harris, Washington Department of Labor and Industries.
Miss R. O. Harrison, Maryland State Industrial Accident Commission.
G. N. Livdahl, North Dakota Workmen's Compensation Bureau.
H. C. Myers, Oklahoma Industrial Commission.
J. A. Taylor, Massachusetts Industrial Accident Board.
Charles H. Verrill, United States Employees Compensation Commission.

Medical Committee

Chairman, Ralph T. Richards, M. D., Utah.
Vice chairman, Robert P. Bay, M. D., Maryland State Industrial Accident Commission.
Nelson M. Black, M. D., Wisconsin.
T. R. Fletcher, M. D., Ohio Department of Industrial Relations.
A. J. Fraser, M. D., Manitoba Workmen's Compensation Board.
Harley J. Gunderson, M. D., Minnesota Industrial Commission.
James J. Donohue, M. D., Connecticut Board of Compensation Commissioners.
Raphael Lewy, M. D., New York Department of Labor.
M. D. Morrison, M. D., Nova Scotia Workmen's Compensation Board.
F. H. Thompson, M. D., Oregon State Industrial Accident Commission.
Maurice Kahn, M. D., California.
Charles J. Rowan, M. D., Iowa.

Safety Committee

Chairman, John Roach, New Jersey Department of Labor.
L. W. Chaney, United States Bureau of Labor Statistics.
H. L. Hughes, Washington Department of Labor and Industries.
R. McA. Keown, Wisconsin Industrial Commission.
R. B. Morley, Ontario Workmen's Compensation Board.

APPENDIX B.—CONSTITUTION OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS

ARTICLE I

This organization shall be known as the International Association of Industrial Accident Boards and Commissions.

ARTICLE II.—*Objects*

SECTION 1. This association shall hold meetings once a year, or oftener, for the purpose of bringing together the officials charged with the duty of administering the workmen's compensation laws of the United States and Canada to consider, and, so far as possible, to agree on standardizing (*a*) ways of cutting down accidents; (*b*) medical, surgical, and hospital treatment for injured workers; (*c*) means for the reeducation of injured workmen and their restoration to industry; (*d*) methods of computing industrial accident and sickness insurance costs; (*e*) practices in administering compensation laws; (*f*) extensions and improvements in workmen's compensation legislation; and (*g*) reports and tabulations of industrial accidents and illnesses.

SEC. 2. The members of this association shall promptly inform the United States Bureau of Labor Statistics and the Department of Labor of Canada of any amendments to their compensation laws, changes in membership of their administrative bodies, and all matters having to do with industrial safety, industrial disabilities, and compensation, so that these changes and occurrences may be noted in the Monthly Labor Review of the United States Bureau of Labor Statistics and in the Canadian Labor Gazette.

ARTICLE III.—*Membership*

SECTION 1. Membership shall be of two grades—active and associate.

SEC. 2. *Active membership.*—Each State of the United States and each Province of Canada having a workmen's compensation law, the United States Employees' Compensation Commission, the United States Bureau of Labor Statistics, and the Department of Labor of Canada shall be entitled to active membership in this association. Only active members shall be entitled to vote through their duly accredited delegates in attendance on meetings. Any person who has occupied the office of president or secretary of the association shall be ex officio an honorary life member of the association with full privileges.

SEC. 3. *Associate membership.*—Any organization or individual actively interested in any phase of workmen's compensation or social insurance may be admitted to associate membership in this association by vote of the executive committee. Associate members shall be entitled to attend all meetings and participate in discussions, but shall have no vote either on resolutions or for the election of officers in the association.

ARTICLE IV.—*Representation*

SECTION 1. Each active member of this association shall have one vote.

SEC. 2. Each active member may send as many delegates to the annual meeting as it may think fit.

SEC. 3. Any person in attendance at conferences of this association shall be entitled to the privileges of the floor, subject to such rules as may be adopted by the association.

ARTICLE V.—*Annual dues*

SECTION 1. Each active member shall pay annual dues of $50, except the United States Employees' Compensation Commission, the United States Bureau of Labor Statistics, and the Department of Labor of Canada, which shall be exempt from the payment of annual dues: *Provided*, That the executive committee may, in its discretion, reduce the dues for active membership for those jurisdictions in which no appropriations are made available for such expenditures, making it necessary that the officials administering the law pay the annual dues out of their own pockets for the State.

SEC. 2. Associate members shall pay $10 per annum.

SEC. 3. Annual dues are payable any time after July 1, which date shall be the beginning of the fiscal year of the association. Dues must be paid before the annual meeting in order to entitle members to representation and the right to vote in the meeting.

ARTICLE VI.—*Meetings of the association*

SECTION 1. An annual meeting shall be held at a time to be designated by the association or by the executive committee. Special meetings may be called by the executive committee. Notices for special meetings must be sent out at least one month in advance of the date of said meetings.

SEC. 2. At all meetings of the association the majority vote cast by the active members present and voting shall govern, except as provided in Article X.

ARTICLE VII.—*Officers*

SECTION 1. Only officials having to do with the administration of a workmen's compensation law or bureau of labor may hold an office in this association, except as hereinafter provided.

SEC. 2. The association shall have a president, vice president, and secretary-treasurer.

SEC. 3. The president, vice president, and secretary-treasurer shall be elected at the annual meeting of the association and shall assume office at the last session of the annual meeting.

SEC. 4. If for any reason an officer of this association shall cease to be connected with any agency entitled to active membership before the expiration of his term, he may continue in office notwithstanding until the next annual meeting; but if for any reason a vacancy occurs in the office of president, the executive committee shall appoint his successor.

ARTICLE VIII.—*Executive committee*

SECTION 1. There shall be an executive committee of the association, which shall consist of the president, vice president, the retiring president, secretary-treasurer, and five other members elected by the association at the annual meeting.

SEC. 2. The duties of the executive committee shall be to formulate programs for all annual and other meetings and to make all needed arrangements for such meetings; to pass upon applications for associate membership; to fill all offices which may become vacant; and in general to conduct the affairs of the association during the intervals between meetings. The executive committee may also reconsider the decision of the last annual conference as to the next place of meeting and may change the place of meeting if it is deemed expedient.

ARTICLE IX.—*Quorum*

SECTION 1. The president or the vice president, the secretary-treasurer or his representative, and one other member of the executive committee shall constitute a quorum of that committee.

ARTICLE X.—*Amendments*

This constitution or any clause thereof may be repealed or amended at any regularly called meeting of the association. Notice of any such changes must be read in open meeting on the first day of the conference, and all changes of which notice shall have thus been given shall be referred to a special committee, which shall report thereon at the last business meeting of the conference. No change in the constitution shall be made except by a two-thirds vote of the members present and voting.

APPENDIX C.—LIST OF PERSONS WHO ATTENDED THE ELEVENTH ANNUAL MEETING OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS, HELD AT HALIFAX, N. S., AUGUST 26–28, 1924

CANADA

Manitoba

Dr. A. J. Fraser, chief medical officer Workmen's Compensation Board.
Herbert George Wilson, commissioner Workmen's Compensation Board.

New Brunswick

G. G. Corbet, M. D., chief medical officer Workmen's Compensation Board.
R. B. Irving, secretary Workmen's Compensation Board.
F. C. Robinson, vice chairman Workmen's Compensation Board.

Nova Scotia

E. H. Armstrong, Premier of Province of Nova Scotia.
F. W. Armstrong, vice chairman Workmen's Compensation Board.
T. B. Acker, M. D., Halifax, N. S.
W. H. Eager, M. D., Halifax, N. S.
M. L. Fraser, field officer, N. S. A. P. A.
R. V. Martin, auditor Workmen's Compensation Board.
W. E. McAlpine, Workmen's Compensation Board.
J. G. McDougall, M. D., Halifax, N. S.
John McKeagan, assessment officer Workmen's Compensation Board.
W. R. McNally, Workmen's Compensation Board.
N. M. Morrison, claims officer Workmen's Compensation Board.
Florence M. Morrison, Workmen's Compensation Board.
M. D. Morrison, M. D., chief medical officer Workmen's Compensation Board.
John Murphy, Mayor of City of Halifax.
V. J. Paton, chairman Workmen's Compensation Board.
F. E. Porter, Workmen's Compensation Board.
Philip Ring, inspector Workmen's Compensation Board.
Clara M. Smith, statistician Workmen's Compensation Board.
H. R. Thompson, secretary N. S. A. P. A.
R. J. Wilson, pension clerk Workmen's Compensation Board.

Ontario

George A. Kingston, commissioner Workmen's Compensation Board.

MEXICO

Lionel A. Forsyth, honorary consul of Mexico.

UNITED STATES

Connecticut

James J. Donohue, M. D., Board of Compensation Commissioners.
Charles H. Lane, attorney and adjuster Aetna Life Insurance Co., Hartford.
F. M. Williams, chairman Board of Compensation Commissioners.

Georgia

H. M. Stanley, chairman Industrial Commission.

Illinois

William M. Scanlan, chairman Industrial Commission.

Iowa

Ralph Young, deputy commissioner Workmen's Compensation Service.

Maine

Donald D. Garcelon, associate legal member Industrial Accident Commission.

Maryland

Robert P. Bay, M. D., chief medical examiner State Industrial Accident Commission.
A. E. Brown, secretary State Industrial Accident Commission.
Robert H. Carr, chairman State Industrial Accident Commission.
Miss Rowena O. Harrison, director of claims State Industrial Accident Commission.

Massachusetts

Edward Carr, attorney, Boston.
Joseph A. Parks, member Industrial Accident Board.

Michigan

Morton K. Averill, Dodge Bros., Detroit.
Thomas B. Gloster, commissioner Department of Labor and Industry.
H. F. Harper, Department of Labor and Industry.
Albert E. Meder, attorney, Michigan Manufacturers' Assn., Detroit.
John J. Scannel, secretary Michigan Federation of Labor, Investigating Commission of Workmen's Compensation, Detroit.

Minnesota

F. A. Duxbury, vice chairman Industrial Commission.
Mrs. F. A. Duxbury.
J. P. Gardiner, executive secretary Industrial Commission.

New Jersey

Andrew F. McBride, commissioner Department of Labor.
Mrs. Andrew F. McBride.

New York

William C. Archer, senior referee Department of Labor.
Richard J. Cullen, deputy commissioner Department of Labor.
Kathryn T. Cullen.
James E. Donahoe, director of compensation Department of Labor.
Margaret F. Donahoe.

North Carolina

M. L. Shipman, commissioner Department of Labor and Printing.

North Dakota

G. N. Livdahl, commissioner Workmen's Compensation Bureau.

Ohio

T. J. Duffy, chairman Industrial Commission.
H. R. Witter, director Department of Industrial Relations.

Oklahoma

I. K. Huber, adjuster Empire Cos., Bartlesville.

Pennsylvania

John S. Bradway, secretary National Association of Legal Aid Organizations, Philadelphia.
W. H. Horner, director Bureau of Workmen's Compensation, Department of Labor and Industry.

Utah

O. F. McShane, chairman Industrial Commission.

Wisconsin

Nelson M. Black, M. D., Milwaukee.
L. A. Tarrell, commissioner Industrial Commission.

Federal Government

Charles E. Baldwin, Assistant Commissioner United States Bureau of Labor Statistics.
Lucian W. Chaney, United States Bureau of Labor Statistics.