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. 406

WORKMEN'S INSURANCE AND COMPENSATION SERIES

PROCEEDINGS OF THE TWELFTH ANNUAL MEETING

OF THE

INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS

HELD AT SALT LAKE CITY, UTAH

AUGUST 17–20, 1925

APRIL, 1926

WASHINGTON
GOVERNMENT PRINTING OFFICE
1926

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, Nova Scotia	Fred W. Armstrong	Do.
12	Aug. 17–20, 1925	Salt Lake City, Utah	O. F. McShane	Do.

[1] Special meeting.

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WEDNESDAY, AUGUST 19—MORNING SESSION

WEDNESDAY, AUGUST 19—AFTERNOON SESSION

Chairman, Mrs. F. L. Roblin, chairman Oklahoma Industrial Commission.

Chairman, Fred M. Williams, chairman Connecticut Board of Compensation Commissioners.

THURSDAY, AUGUST 20—MORNING SESSION

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BULLETIN OF THE
U. S. BUREAU OF LABOR STATISTICS
No. 406 WASHINGTON APRIL, 1926

PROCEEDINGS OF THE TWELFTH ANNUAL MEETING OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS, SALT LAKE CITY, UTAH, AUGUST 17–20, 1925

MONDAY, AUGUST 17—MORNING SESSION

CHAIRMAN, O. F. M'SHANE, PRESIDENT I. A. I. A. B. C.

The twelfth annual meeting of the International Association of Industrial Accident Boards and Commissions was called to order by the president, Mr. O. F. McShane. Addresses of welcome were delivered by Hon. C. Clarence Neslen, mayor of Salt Lake City, and Hon. George H. Dern, governor of Utah, to which response was made by R. C. Norman, of the Georgia Industrial Commission. In the course of his address Governor Dern made the following remarks on the subject of workmen's compensation:

Governor DERN. The subject in which you are interested, workmen's compensation, is one in which I have been very much interested for quite a number of years. I used to have the management of a mining company which employed from 500 to 700 men, and one of my jobs was to act as a go-between between a hard-boiled adjuster and a man who had been injured, or a widow whose husband had been killed, and it was the most disagreeable work I was called upon to do. Of course my position with the company made it my duty to get the best settlement I could, but my sympathies always seemed to be with the other side. I recognized the injustice of the system under which we were operating and got no pleasure out of that part of my work.

In the course of time we commenced to hear about workmen's compensation. I do not remember just when that idea developed, but when I heard about it it immediately appealed to me. I made a careful and thorough study of it and became converted to the justice of that system. In 1915, when I was elected to the legislature, a workmen's compensation bill was introduced, but the State was apparently not quite ready for it, because the bill did not pass. A few years later the political party to which I belong came into power and, part of its program being the enactment of a workmen's compensation law, before the legislature convened party caucuses were held for the purpose of deciding upon the kind of bill to be introduced. A sharp difference of opinion developed as to whether we should have a workmen's compensation law embodying exclusive State insurance or one embodying optional features. It was finally decided in a party caucus that we should have a law giving the insurer the option of insuring in the State fund or with

a private carrier, or of carrying the insurance himself, if he could give proper security, and I was selected to draft a bill embodying those features. In that way it happened that I became the author of the Utah workmen's compensation law, although it was introduced as a committee measure. In subsequent sessions the law was considerably amended until it reached its present form.

Probably our workmen's compensation law is regarded as a fairly liberal one in its benefits and in its general terms, and I believe, generally speaking, the dual or triple options are working pretty well. A great many employers still prefer to insure with a private carrier rather than with the State fund, notwithstanding the fact that it costs them more than if they patronized the State fund.

I do not think that any State can claim that its law is the last word on a subject of this kind. Inevitably it is necessary to adopt certain arbitrary standards to start with, with the idea that as experience dictates changes shall be made and the law modified to fit the conditions better, and I assume that such will be the case with workmen's compensation legislation in this State and elsewhere. In this State we have apparently arrived at a stationary condition in our workmen's compensation law, for there has been no material change in it in the last four years. I am impressed with the fact that a thing that seemed to be radical at one time is regarded as very conservative at some other time. For example, in 1917, besides the workmen's compensation law, we enacted a public utilities law, and we thought we were very progressive. To-day a good many people think they are progressive because they want the public utilities law repealed. So the progressive of one day becomes the conservative of another day. We thought we were very progressive because we wanted a workmen's compensation law, but to-day such a law is taken as a matter of course, because it works and because it is right and just. Any measure that is based on simple justice, as the workmen's compensation law is, is bound to justify and vindicate itself as time goes on, so I do not think we should be afraid to strike out and stand for things based on simple justice between man and man.

I have felt for a long time that not only industrial accidents but also occupational diseases ought to be compensated. Nobody gets injured on purpose and nobody gets an occupational disease on purpose. I do not see any distinction between those two classes of injuries. They are both risks which are inherent in the industry, and the industry rather than the individual should bear the burden. We ought to make it plain that there is injustice in not extending the law to cover matters of that kind. You who are engaged in workmen's compensation administration are engaged in a work of justice and humanitarianism, a work of which you ought to be proud, and I honor you for the work you are doing in it. There are too many people who, when their own living is assured, are not particularly concerned with the welfare of their fellow beings. Indeed, in the last few years there seems to have been quite a reversion to a spirit of extreme individualism and it has become unfashionable to advocate anything in the way of social welfare. The fate of the child labor law is a case in point. There is no question that two or three years ago the country was overwhelmingly in favor of the child labor amendment, and yet on account of an intensive campaign of

propaganda, there was a revulsion of feeling and the amendment was very disastrously defeated. There seems to be a sentiment prevailing throughout the country now that everybody ought to look after himself, and welfare work seems to be more or less discredited. I do not think that can last, because I do not think the human being is built that way. A man must work to eat, and he should not be deprived of the bread that he earns through his work. The workmen's compensation law is a measure that will insure to him the fruits of his toil, and any measure of that kind is based on simple justice and is bound, as I said before, to vindicate itself and to commend itself to all fair-minded people.

ADDRESS OF THE PRESIDENT

BY O. F. M'SHANE, PRESIDENT I. A. I. A. B. C.

A new system of settlement between employees and employers of claims arising out of industrial accidents was introduced into Germany a little more than two score years ago. The system met with instant popular approval there and soon spread over Continental Europe and the British Isles, and thence to Canada and the United States. It is doubtful if any class of legislation within the history of man has taken such a firm grip upon the hearts of so great a number of people, spread with such rapidity, or met with such universal approval as has the system known as workmen's compensation insurance.

Even were it desirable, time would not permit of going into the history of the causes which led up to the introduction of this new plan. Suffice it to say that the harsh standards established by the common law were rejected and in their stead was reared a new code, more definite, more certain, more equitable, and less expensive—more definite in that the liabilities of the employer and the rights of the employee were fixed in advance; more certain in that the controversies incident to litigation under the old system were almost entirely eliminated; more equitable in that the burden is shared by the employee, the employer, and society; and less expensive for the reason that all claims under the new system can be settled, on the average, for considerably less than the amount of the filing fees under the old common-law practices.

I do not wish to be understood as conveying the idea that the burden of cost under the workmen's compensation system is borne by the three interested parties in equal proportions. As a matter of fact, the consumers of the products of labor's efforts pay the entire compensation costs, and the laboring men and their families (who constitute the greater part of the consuming public) as a matter of course pay the greater portion of said costs. It is quite true that the employer is called upon to advance the money, in the form of premiums, out of which compensation is paid, but it is also true that he adds his premium cost plus a profit thereon to the price of his wares and passes the burden on to the consumer.

There is also another angle from which to view compensation costs, and that is in connection with the statutory provision distributing the wage loss arising out of industrial injury. For example, the Utah law provides that the injured workman shall receive 60 per

cent of his average weekly wage, etc. This provision on its face gives the impression that the injured workman bears the burden of wage loss only to the extent of 40 per cent and that the employer bears the other 60 per cent. Nothing could be farther from the truth. For the law also provides for a maximum payment of $16 per week, which reverses the above distribution of burden, and only the very low wage earners receive the 60 per cent of the average weekly wage provided for. The Utah coal miner receives less than 35 per cent of his average weekly wage, and the underground metal miner not more than 45 per cent. It is conservative to state that in Utah the injured workman does not, on the average, receive over 40 per cent of his wage as compensation. An analysis of the provisions of other States on this point will indicate a similar condition. This digression is made for the purpose of lending support to a recommendation to be made later on.

FORMATION AND PURPOSES OF THE ASSOCIATION

In April, 1914, representatives of the States of Indiana, Iowa, Massachusetts, Michigan, Ohio, Washington, and Wisconsin met in Lansing, Mich., and formed the National (later the International) Association of Industrial Accident Boards and Commissions. Annual meetings have been held ever since. These States were blazing the trail in matters of compensation administration and by their action they hoped to establish an agency dedicated to the solution of the many new and perplexing problems with which they were confronted and for which there was no fund of experience upon which to draw.

One of the many difficulties encountered at the outset was lack of uniformity in laws. Thus an injury compensable in one State was not compensable in another; some States gave extraterritorial effect to their laws while others were silent on the question; different methods of procedure obtained; different agencies of administration were established; some laws were compulsory while others were elective; some laws were monopolistic and others competitive; the activities of some of the administrative bodies were confined entirely to compensation problems, while those of others covered not only compensation administration but also inspection service, sanitation, labor, and in fact every activity having to do with the life, health, safety, and welfare of employees.

It does not appear that the charter members of this association ever thought that a model compensation law with uniform provisions could or should be adopted by all the States. While they perhaps believed that uniformity could be approached, it is doubtful if they thought absolute uniformity possible or even desirable. It was recognized that conditions in the various jurisdictions varied perhaps as much as the laws.

Mr. Justice Brandeis, in his dissenting opinion in the case of New York Central Railroad Co. *v.* Winfield, 244 U. S. 147, expresses this view in the following language:

> There must, necessarily, be great diversity in the conditions of living and in the needs of the injured and his dependents, according to whether they reside in one or the other of our States and Territories so widely extended. In a large majority of instances they reside in the State in which the accident occurs.

Though the principle that compensation should be made, or relief given, is of universal application, the great diversity of conditions in the different sections of the United States may, in a wise application of the principle, call for differences between States in the amount and method of compensation, the periods in which the payment shall be made, and the methods and means by which the funds shall be distributed. The field of compensation for injuries appears to be one in which uniformity is not desirable or at least not essential to the public welfare.

This difficulty was overcome, however, and more and more attention is now given at our annual meetings to the matters set forth in the constitution of the association as the objects of its creation and upon which all could agree: (1) The reduction of accident frequency; (2) the standardization of medical treatment for injured workmen; (3) the standardization of means of reeducation and return to industry of injured workmen; (4) the standardization of methods of compiling accident and insurance costs; (5) the standardization of methods of administering compensation laws; (6) the extension and improvement of compensation laws; and (7) the standardization of reports and tabulations of industrial accidents and illness.

WORK ACCOMPLISHED BY THE ASSOCIATION

These activities embrace about everything pertaining to compensation laws and other matters incident thereto. It therefore seems proper that we should take stock of our accomplishments if we have any to our credit. We should inquire: Have we as an association been a useful factor in improving conditions in the field of endeavor to which we have assigned ourselves and dedicated our energies? Have we obtained results? If not, how shall we proceed in the future in order to obtain the desired ends?

The association now includes 34 active members (including 3 nonpaying members) and 4 associate members. In view of the fact that the annual dues of active members have been increased from $25 to $50, it is safe to conclude that the growth of the association has been due to the real service which it has rendered to those charged with administering the various workmen's compensation laws.

It is difficult to point to tangible results which can be attributed solely to the work of the association, but if the cause of many improvements that have taken place could be analyzed, its influence would be found to be a very large factor.

REDUCTION OF ACCIDENTS

The first object of the association is to cut down accidents. The importance of this undertaking is emphasized by the rather startling statement of the late and much-loved Carl Hookstadt, of the United States Bureau of Labor Statistics, who made a careful study of this question and concluded that the annual economic loss due to industrial accidents was approximately $1,040,000,000.

That Utah contributes her quota to this estimate is evidenced by the fact that for the seven years ending June 30, 1924, more than 75,000 industrial injury claims were handled, classified as follows: Permanent total disability, 19; death, 784; permanent partial disability, 1,003; and temporary disability, 75,383—at a total cost of

$5,587,987.69. This amount represents compensation costs alone and does not take into account the economic loss in man power due to 19 permanent disabilities, 784 deaths, and 762,738 eight-hour shifts lost on account of temporary injuries. Utah being a small State industrially, it will be readily seen that if our loss be projected in proper ratio to the Nation at large, the annual economic waste due to industrial accidents is astounding.

While specific responsibility in the field of accident prevention is assigned by a minority of laws, it is believed that through discussion and much airing of the importance of accident-prevention work the association has been the cause of a number of States broadening their laws to include this among the other duties of the compensation administration bodies.

STANDARDIZATION OF MEDICAL SERVICE

The second object is the standardization of medical, surgical, and hospital treatment for injured workmen. An analysis of recent legislation indicates that this object has gone forward to an encouraging degree. During the five-year period ending with 1924, 19 States liberalized their laws in this respect in amount, limits of time, or other aspects. This matter has been a prominent one in our annual conventions and it is reasonable to assume that the influence of these discussions has had considerable effect in bringing about this liberalization.

INDUSTRIAL REHABILITATION

Our third object—rehabilitation of injured workmen and their return to industry—is coming to be generally recognized as desirable, economic, and just. In 12 compensation States there is now separate provision for rehabilitation, while the compensation acts of seven States embody such a provision. The system of Federal cooperation has been accepted by 34 compensation States, this number including States having rehabilitation provisions in their compensation acts. The association is on record in several papers on the subject, as well as in formal resolution, as encouraging such procedure.

STANDARDIZATION OF COMPUTING COSTS

Standardization of methods of computing industrial accident and illness insurance costs is set out as our fourth object. As but few State laws cover sickness in any form, our activities have heretofore been directed almost entirely to the first item. The association is on record favoring compensation for all industrial injuries, whether accidents or diseases. Papers dealing with compensation costs have been given in our conventions, and the committee on statistics and compensation insurance costs has included this among its studies.

STANDARDIZATION OF ADMINISTRATIVE PRACTICE

The association's activities in relation to its fifth object—standardization of practices in administration of compensation laws—are expressed in the reports of our committee on forms and procedure. This is a matter wherein local conditions play an important part. In view of the frequent statements of various commissioners in our conventions that the methods in use in their particular State are best

suited to their peculiar conditions, it is doubtful if as much progress has been made here as in some of our other fields of endeavor.

IMPROVEMENT OF LEGISLATION

The next object deals with extension and improvement in compensation legislation and it is obvious that here results have been obtained. A chart covering the principal features of compensation laws was prepared by the United States Bureau of Labor Statistics in 1919 and revised in 1925. Comparison of the two charts shows that, in the interval, all the States except three had amended their laws and in two States new legislation had superseded the earlier laws. Among the outstanding changes that may be noted were the reduction of waiting time, increases in compensation benefits, and liberalization in regard to medical aid. There were also some extensions of inclusion or coverage, either by way of specific inclusion, or by lowering the number of workmen necessary for inclusion under the act. In 1920, 16 States provided for the payment of $12 or less as a maximum weekly amount; in 1925 no State had less than $12 as a maximum for temporary total disability, and only 6 had so low a standard; in 1925, 12 provided for a maximum of $18 or more as against 5 at the beginning of 1920. The waiting time is now less than 1 week in 8 jurisdictions, 1 week in 28, and more than 1 week in 10; in 1920 only 4 laws fixed a waiting period of less than 1 week while 20 provided for a longer period, 22 making 1 week the required waiting time. Two States in which insurance had not been required amended their laws so as to make it obligatory. Here again the question is impossible of determination as to what extent any one influence has been effective. Legislation is purely a matter for determination by the States, but there does seem to be fair ground for assuming that the constant interchange of opinion has contributed much to the progress which has been made.

STANDARDIZATION OF STATISTICS

Last, but not least, is the matter of standardizing reports and tabulations of accidents. The committee on statistics and compensation insurance costs has produced valuable reports along this line, including a comprehensive list of classifications and standard tables. It is in this field that the association has done one of its most conspicuous pieces of concrete and tangible work.

OTHER PROBLEMS

In addition to the subjects mentioned above there are many problems confronting the compensation administrators which must be solved, and through the annual conventions of the association the experience of those who have solved such problems can be placed within reach of those to whom they are new. Thus, payment of compensation to aliens, legal aid, back conditions, direct settlements, jurisdictional conflict, compensation for eye injuries, extraterritorial problems, hernia, methods of carrying insurance, lump-sum settlements, nervous conditions, merit rating, occupational diseases, preexisting disease, compensation for permanent disabilities, physical examinations, claim procedure, rates, remarriage of widows, reserves,

second injuries, and computation of wages, are some of the questions which puzzle even the old and seasoned administrator of a workmen's compensation law, to say nothing of the man who has just assumed office and has an entire new subject to master. These and many other questions have been discussed time and again at the conventions of the association, and a member can turn to the proceedings of the association and there find guidance through the experience of others who have solved similar problems. The proceedings of the association form a series of valuable reference books to those charged with the administration of the workmen's compensation laws.

While it is difficult to point to the specific effects of the association as a driving force behind the improvements which have taken place, it is absolutely certain that the organization has had a tremendous influence in an intangible way. And while it may not have effected complete standardization along any of the lines as set forth in its constitution, it is still working toward the end of improvement of all matters in the field of workmen's compensation.

CONCLUSION

In conclusion permit me to urge that the association reaffirm our former declaration on the following propositions:

(1) That the 34 compensation laws of the United States making accidental injury or fortuitous event a condition precedent to the payment of compensation be amended by striking out the words " accident or fortuitous event," as the case may be, and providing for compensation to all who sustain injuries arising out of or in the course of the employment. This would bring within the provisions of all compensation laws the miner afflicted with tuberculosis or the painter afflicted with lead poisoning who has given the best years of his life to the industry and wakes to a realization of the fact that he is an industrial wreck without either funds or claim upon his employer for compensation. Do not let the cry of added burden to industry deter you. Remember, the workingman, in the final analysis, pays the greater part of all compensation costs.

(2) That every State which has not done so already make complete provision for the rehabilitation and return to industry of injured workmen, not as a matter of sympathy but because of their economic value to society. Every State should provide an agency for this purpose. It should be properly organized and manned by people capable of observing critically the injured and placing him in the field of industry most suitable to his capabilities and most likely to draw forth his best efforts. Those in charge of such work should be experts fitted by natural endowment and by training in their line. They should also be secure in their tenure. Such an organization properly set up and adequately financed is the best investment a State can make, for by its activities consumers are turned into producers; receivers of alms become providers; beings bowed down by the weight of despair are lifted into the sunshine of hope; melancholy is dispelled by cheer. It is true that not all can be rehabilitated—some because of the nature of their injury, some because of their mental limitations, and some because of age; these, however, are questions for a skilled director to determine.

(3) That the weekly maximum be increased to $25 or any limitation thereof removed entirely.

(4) That all laws which do not now so provide be amended to provide for the social needs of the injured workman or his dependents in case of death.

(5) That all laws which do not already so provide be amended to provide for unlimited medical and hospital attention. This would be in accordance with the just determination of any case.

(6) That Federal legislation be secured giving effect to the compensation law of a jurisdiction in all cases of interstate injuries within that jurisdiction.

Crystallize into law these recommendations and you will have gone far to bring in an era of understanding and good will between employer and employee.

BUSINESS MEETING

After the roll call of States, the convention, at the suggestion of the secretary, Ethelbert Stewart, United States Commissioner of Labor Statistics, arose, in recognition of the fact that the Indiana Industrial Commission, after 10 years' solicitation, had become a member of the association.

The following committees were appointed:

Committee on nominations.—Fred M. Wilcox, Wisconsin, chairman; Leonard W. Hatch, New York; George A. Kingston, Ontario; Mrs. Faye L. Roblin, Oklahoma; H. R. Witter, Ohio; George L. Eppler, Maryland; R. C. Norman, Georgia.

Committee on resolutions.—F. A. Duxbury, Minnesota, chairman; Miss Rowena O. Harrison, Maryland; James J. Donohue, Connecticut; D. H. Bynum, Indiana; Andrew F. McBride, New Jersey; Richard H. Lansburgh, Pennsylvania; John A. McGilvray, California.

Auditing committee.—L. A. Tarrell, Wisconsin, chairman; H. C. Myers, Oklahoma; W. H. Horner, Pennsylvania; A. E. Brown, Maryland; Andrew F. McBride, New Jersey.

The report of the secretary-treasurer, covering the business of the past year, was then presented.

GENERAL REPORT OF THE SECRETARY-TREASURER

The International Association of Industrial Accident Boards and Commissions now includes 34 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).
Idaho Industrial Accident Board.
Illinois Industrial Commission.
Indiana Industrial Board.
Iowa Workmen's Compensation Service.
Kansas Public Service Commission.
Maine Industrial Accident Commission.
Maryland State Industrial Accident Commission.
Massachusetts Industrial Accident Board.
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.

During the year one member, the Michigan Department of Labor and Industary, dropped out of the association, and the Idaho Industrial Accident Board changed its membership from associate to active.

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:

Industrial Accident Prevention Associations, Toronto, Ontario.
Porto Rico Workmen's Relief Commission.
Republic Iron & Steel Co., Youngstown, Ohio.
Leifur Magnusson, American correspondent of the International Labor Office, Washington, D. C.

Leifur Magnusson has been admitted as an associate member since the last meeting.

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

At the Halifax convention it was ordered that the following papers read at that meeting be printed and distributed in advance of publication of the proceedings. This was done.

Compensation for Eye Injuries, by Dr. Nelson M. Black, Milwaukee, Wis; Etiology, Diagnosis, and Treatment of Back Pains, by Dr. T. B. Acker, orthopedic surgeon, Halifax, Nova Scotia; Hernia as a Workmen's Compensation Problem, by Dr. J. G. McDougall, F. A. C. S., of Halifax, Nova Scotia; Method of Rate Making in an Exclusive State-Fund State, by T. J. Duffy, chairman Industrial Commission of Ohio.

The Halifax convention passed resolutions calling for the following committees, and the persons named were appointed as members thereon:

Committee to work with a committee of the Ophthalmic Section of the American Medical Association for the purpose of working out a scale of compensation for eye injuries.—L. W. Hatch, New York, chairman; Charles H. Verrill, Washington, D. C.; Dr. Ralph T. Richards, Utah; Ethelbert Stewart, Washington, D. C. (ex officio member).

Committee to consider the question of the preparation of a medical work bearing upon the etiological relation between trauma and the various known diseases.—G. N. Livdahl, North Dakota, chairman; George A. Kingston, Ontario; Dr. Robert P. Bay, Maryland; Dr. James J. Donohue, Connecticut; Ethelbert Stewart, Washington, D. C. (ex officio member).

Committee to meet with a similar committee of the National Association of Legal Aid Organizations to consider mutual problems and report to this convention.—W. H. Horner, Pennsylvania, chairman; James E. Donahoe, New York; H. R. Witter, Ohio; Ethelbert Stewart, Washington, D. C. (ex officio member).

The above committees will report to this convention.

During the latter part of January the secretary was informed of the death of Mr. H. G. Wilson, of Manitoba, under very sad circumstances. This left

a vacancy on the executive committee, to which Mr. James A. Hamilton, of New York, was appointed.

On December 31, 1924, the term of office of former representatives of the association on the safety code correlating committee expired, and the following were appointed to serve until December 31, 1926:

Representatives.—Ethelbert Stewart, U. S. Bureau of Labor Statistics; Rowland H. Leveridge, Department of Labor of New Jersey; M. H. Christopherson, Department of Labor of New York; Richard H. Lansburgh, Department of Labor and Industry of Pennsylvania; Bolling H. Handy, Industrial Commission of Virginia.

Alternates.—G. N. Livdahl, Workmen's Compensation Bureau of North Dakota; Henry McColl, Industrial Commission of Minnesota; H. R. Witter, Department of Industrial Relations of Ohio; John Roach, Department of Labor of New Jersey; G. R. Yearsley, Industrial Commission of Utah.

The association was represented during the year on the sectional committees formulating the following safety codes:

Building exits.
Compressed-air machinery.
Conveyors and conveying machinery.
Electrical power control.
Elevators.
Exhaust systems.
Floor openings.
Forging industry.
Gas.
Machine tools.
Mechanical refrigeration.
National electrical code, revision.
National electrical safety code.
Rubber machinery.
Sanitation.
Textile.
Walkway surfaces.

The Bureau of Labor Statistics has published the following safety codes to date, in the formulation of which the association took part:

Bulletin No. 331. Code of lighting: Factories, mills, and other work places.
Bulletin No. 336. Safety code for the protection of industrial workers in foundries.
Bulletin No. 338. Safety code for the use, care, and protection of abrasive wheels.
Bulletin No. 351. Safety code for the construction, care, and use of ladders.
Bulletin No. 364. Safety code for mechanical power-transmission apparatus.
Bulletin No. 375. Safety code for laundry machinery and operations.
Bulletin No. 378. Safety code for woodworking plants.

Although a member of the association, the Industrial Accident Board of Honolulu, Hawaii, has never been able to send a delegate to any of the conventions. In response to an invitation to attend this meeting it stated that although unable at this time do so, it is very much interested and hopes to be able to send a delegate some time in the future.

Recognizing the value of the proceedings of the association as a guide in matters of compensation-law administration, the secretary during the past year has had prepared in his office an index to these proceedings. This has been published by the Bureau of Labor Statistics as Bulletin No. 395, and copies are available at the desk. It is thought that it will prove of much value to the administrators of the compensation laws.

The proceedings of the Halifax convention have been issued by the Bureau of Labor Statistics as its Bulletin No. 385, and copies are available for members who desire them at the headquarters here.

Respectfully submitted.

ETHELBERT STEWART,
Secretary-Treasurer.

JULY 31, 1925.

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FINANCIAL STATEMENT OF THE SECRETARY-TREASURER, AUGUST 11, 1924, TO JULY 31, 1925

BALANCE AND RECEIPTS

1924			
Aug.	11.	Balance (bank deposits, $1,023.96; Liberty bonds, $1,700; Canadian bonds, $500; unexpended postage and telegraph fund, $4.03)	$3,227.99
	12.	Oklahoma Industrial Commission, 1925 dues	50.00
		Connecticut Workmen's Compensation Commissioner, third district (Charles Kleiner), 1925 dues	10.00
		Nova Scotia Workmen's Compensation Board, 1925 dues (Canadian exchange deducted)	49.38
	14.	Connecticut Workmen's Compensation Commissioner, fourth district (E. T. Buckingham), 1925 dues	10.00
		Illinois Industrial Commission, 1925 dues	50.00
		Connecticut Workmen's Compensation Commissioner, fifth district (F. M. Williams), 1925 dues	10.00
	15.	Pennsylvania Department of Labor and Industry, 1925 dues	50.00
	25.	North Dakota Workmen's Compensation Bureau, 1925 dues	50.00
	27.	Montana Industrial Accident Board, 1925 dues	50.00
		New York Department of Labor, 1925 dues	50.00
Sept.	2.	Maine Industrial Accident Commission, 1925 dues	50.00
	3.	Utah Industrial Commission, 1925 dues	50.00
	15.	Interest on $500 Canadian bonds as of February and August, 1924	27.50
		Interest on $1,000 United States Liberty bond as of Oct. 15, 1923, and Apr. 15, 1924	42.50
	17.	Oregon Industrial Accident Commission, 1925 dues	50.00
	23.	Hawaii Industrial Accident Board, 1925 dues	50.00
Oct.	16.	Interest on Liberty bonds (2 at $100 each, and 1 at $500)	14.88
	25.	Porto Rico Workmen's Relief Commission, 1925 associate membership dues (exchange deducted)	9.50
		Washington Department of Labor and Industries, 1925 dues	50.00
Nov.	29.	New Jersey Department of Labor, 1925 dues	50.00
Dec.	9.	Virginia Industrial Commission, 1925 dues	50.00
1925			
Mar.	2.	Ontario Workmen's Compensation Board, 1925 dues (exchange deducted)	49.76
Apr.	16.	Interest on Liberty bonds (2 at $100 each, and 1 at $500)	14.87
	17.	Interest on $1,000 Liberty bond as of Oct. 15, 1924, and Apr. 15, 1925	42.50
		Interest on Canadian bonds, $500, as of February, 1925	13.75
	27.	Idaho Industrial Accident Board, 1925 associate membership dues	10.00
July	1.	Interest on bank account	19.94
	8.	Connecticut Workmen's Compensation Commissioner, third district (Charles Kleiner), 1926 dues	10.00
		Connecticut Workmen's Compensation Commissioner, first district (Leo J. Noonan), 1926 dues	10.00
	11.	Maryland Industrial Accident Commission, 1926 dues	50.00
	14.	Nevada Industrial Commission, 1926 dues	50.00
		Connecticut Workmen's Compensation Commissioner, fifth district (F. M. Williams), 1926 dues	10.00
	20.	Republic Iron and Steel Co., associate membership dues, 1926	10.00
		Kansas Public Service Commission, 1926 dues	50.00
		Leifur Magnusson, American correspondent of International Labor Office, associate membership dues, 1926	10.00
	23.	Iowa Workmen's Compensation Service, 1926 dues	50.00
	25.	Oklahoma Industrial Commission, 1926 dues	50.00

1924			
July	28.	Industrial Accident Prevention Association, 1926 dues (Canadian exchange deducted)	$9.88
	30.	Pennsylvania Department of Labor and Industry, 1926 dues	50.00
	31.	Unexpended postage and telegraph fund	8.77
			4,571.22

(Receipts for the year, $1,343.23.)

DISBURSEMENTS

1924			
Aug.	11.	Unexpected postage and telegraph fund	$4.03
	13.	Mason A. Winston, printing report secretary-treasurer, 1923–24	5.00
		Gibson Brothers (Inc.), printing 1,000 programs, 1923–24	35.00
Sept.	2.	Cash, postage and telegraph fund	5.00
		Gibson Brothers (Inc.), printing 400 letterheads	6.50
	4.	Clara Smith, stenographic services, eleventh annual convention	25.00
	12.	Nova Scotia Nursery, flowers for Mrs. F. W. Armstrong (resolution passed at eleventh annual convention)	15.00
	15.	Master Reporting Co., reporting eleventh annual convention, Aug. 26–28, Halifax, N. S	252.88
	25.	Maryland Casualty Co. (Clark & Clark), bonding of secretary-treasurer, Oct. 23, 1924, to Oct. 23, 1925	12.50
	30.	F. W. Armstrong, postage 1923–24, $6.12; telegrams, $3.20	9.32
Oct.	13.	Cash, postage and telegraph fund	5.00
	24.	Ethelbert Stewart, partial payment, honorarium 1923–24	175.00
		Glenn L. Tibbott, partial payment stenographic and clerical services 1924–25	75.00
		Eva M. Taylor, as above	75.00
Nov.	4.	Gibson Brothers (Inc.), printing 2,000 letterheads (reprint); 1,000 envelopes; 500 second sheets	47.25
		Postage and telegraph fund	5.00
1925			
May	6.	Eva M. Taylor, partial payment stenographic and clerical services 1924–25	35.00
	27.	Ethelbert Stewart, balance honorarium 1924–25	125.00
June	5.	Postage and telegraph fund	10.00
		Glenn L. Tibbott, balance stenographic and clerical services, 1924–25	75.00
		Eva M. Taylor, as above	35.00
			1,032.48
July	31.	Balance (bank deposits, $1,329.97; Liberty bonds, $1,700; Canadian bonds, $500; unexpended postage and telegraph fund, $8.77)	3,538.74
			4,571.22

BILLS RECEIVABLE

Connecticut Board of Compensation Commissioners, second and fourth districts	$20.00
Georgia Industrial Commission	50.00
Hawaii Industrial Accident Boards	50.00
Idaho Industrial Accident Board	50.00
Illinois Industrial Commission	50.00
Maine Industrial Accident Commission	50.00
Massachusetts Industrial Accident Board	50.00
Minnesota Industrial Commission	50.00
Montana Industrial Accident Board	50.00
New Jersey Department of Labor	50.00

New York Department of Labor	$50.00
North Dakota Workmen's Compensation Bureau	50.00
Ohio Industrial Commission	50.00
Oregon State Industrial Accident Commission	50.00
Utah Industrial Commission	50.00
Virginia Industrial Commission	50.00
Washington Department of Labor and Industries	50.00
West Virginia State Compensation Commissioner	50.00
Wisconsin Industrial Commission	50.00
Wyoming Workmen's Compensation Department	50.00
Manitoba Workmen's Compensation Board	50.00
New Brunswick Workmen's Compensation Board	50.00
Nova Scotia Workmen's Compensation Board	50.00
Ontario Workmen's Compensation Board	50.00
Porto Rico's Workmen's Relief Commission	10.00
	1,180.00
Balance, consisting of bank deposits, Liberty and Canadian bonds, unexpended postage and telegraph fund	3,538.74
	4,718.74
Bills payable—Gibson Bros. (Inc.), printing programs	35.00
	4,683.74

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. 1852-6, inclusive, at $100 each	500
	2,200

Respectfully submitted.

ETHELBERT STEWART,
Secretary-Treasurer.

JULY 31, 1925.

The general report of the secretary-treasurer was, on motion duly made, seconded, and carried, accepted and placed on file, and the financial statement was referred to the auditing committee after the secretary-treasurer had explained that since the date of the report—July 31, 1925—nearly all of the bills receivable, representing unpaid dues of the States, had been paid, so that the amount on hand at the time of the convention, including bonds, was $4,683.74.

Meeting adjourned.

CHAIRMAN, O. F. M'SHANE, PRESIDENT I. A. I. A. B. C.

The CHAIRMAN. Before we begin with our regular program, our secretary-treasurer, Mr. Stewart, has something to say.

Mr. STEWART. The secretary's report this morning was technically, legally, strictly true. It was so true that it was not quite the truth—I think you statisticians will understand that. The report said that California had withdrawn from the association. Technically that is true, but as a matter of fact the new commissioner of California sent me his personal check for $50. California's dues are paid. Of course you understand that when California withdrew, it did so with extreme regret, and you also know how much this association regretted to lose California, as it has, perhaps, been more helpful to the association than any other one State.

The governor, I understand, is entirely in favor of California coming back into the organization, but it has one of those commissions (which some of the other States also have) which objects to money being spent for travel outside the State. So far as the secretary's report is concerned, I had to say that California had withdrawn from the association, but I have not the slightest doubt that within 60 days it will be back in the association.

I reported that Michigan had withdrawn from the association, which is true. One of the largest manufacturers in the State came to me to-day and wanted to know why Michigan had withdrawn from the association, and I told him it had withdrawn, not because it wanted to, but because some commission had forbidden the expenditure of money outside of the State. The remarks that he made were right in line with my ideas; I do not know where he went to school, but he said it in the same kind of words I would have used. He said that when he returned he was going to call on the governor; so I do not believe Michigan is permanently out of the organization.

Rhode Island is technically not a member of the association. It has a delegate here, however, with credentials from the governor, and probably within 60 days Rhode Island will be a member of the association. So the secretary's report, while telling the truth, drew a very much darker picture of the year's work than is actually true. I would like to have you call on Mr. Dunn, from Rhode Island, to tell us just what the situation is there.

Mr. DUNN. I came here at the instance of the Governor of Rhode Island, who is very much interested in the subject of workmen's compensation. While we have no State fund which would permit affiliation of our State with this organization, the governor is heartily in sympathy with the work of the organization, and sent me here to make a survey of its work and to report to him on my re-

turn. This morning I spoke to Mr. Stewart about the matter, asking him just what the purpose of the organization was, and Mr. Stewart said that he would be glad to have me explain my mission here.

I am here to make a survey in the interest of the State of Rhode Island. From what I heard this morning, I can frankly say that I believe Rhode Island will become an active member of the International Association of Industrial Accident Boards and Commissions. I can assure this organization that upon my return I will report immediately to the governor and urge that Rhode Island affiliate officially with this association, and I am sure that that will be done.

[A motion was made, seconded, and carried that the president's address be published by the secretary in pamphlet form for distribution to the members.]

CHAIRMAN, D. H. BYNUM, CHAIRMAN INDIANA INDUSTRIAL BOARD

The CHAIRMAN. Some fun has been poked at Indiana for ignoring this body for 10 years. I hold no brief for what has gone before or for the persons who have preceded me, but we now feel that we want the benefit of the experience of men who have been investigating these matters longer, men of broader vision, and men from States which not only have given wider scope to workmen's compensation but also have expended greater sums than the State of Indiana. In other words, I am here to learn and to carry back what I can to our board. If we have not the best compensation law, we want the best administration under it that we can possibly have.

Not from my experience in compensation matters, because that has been brief, but from my experience in governmental affairs I would like to sound a note of warning. The courts and compensation boards have followed the rule that the compensation law is to be liberally administered and liberally construed, but I notice a tendency of the legislatures, when asked by compensation boards for increased compensation and increased powers, to back away from it, and I am wondering what that means.

The statement has been made that under compensation there is a burden on the small employer. This burden really results from the fact that it costs the small employer more to produce than it does his larger competitor. Consequently, when you add the insurance premium to his work he can not pass it all on to the consumer as can the big manufacturer and employer but has to assume a certain amount of it. Therefore I disagree with that statement in part.

In regard to increases in compensation, I think in some States, possibly my own, the compensation may be too low, but (I am putting this in the form of a question, and I wish you would think it over) has not compensation changed to rehabilitation? We can not compensate a man for the loss of an eye or even of a finger. We started out with the idea of compensation, but has it not in the last 10 years changed to that of rehabilitation? Now, if the idea is that of rehabilitation, should not the amount of compensatory benefits be brought to some happy medium? I do not know what—if it is too large, it will encourage malingering and bring criticism upon the boards by legislatures and also restricted legislation; if it is too small, there will be suffering.

The first address to-day is along this line, "Follow-up and investigation of results of compensation awards." From a follow up of awards we should find out about what the compensation should be, that happy medium we all want. It will be different in different localities, of course, where standards of living are different and where costs are different, but at least we will get an insight that will guide us at home.

[A motion was made, seconded, and carried that the privileges of the floor be extended to Mr. McGilvray, of California, and Mr. Dunn, of Rhode Island.]

The CHAIRMAN. This follow-up of awards is a question of going into the homes to see whether an adequate amount has been provided. I know of no one better to talk upon this question than Miss R. O. Harrison, of the Industrial Accident Board of Maryland.

FOLLOW-UP AND INVESTIGATION OF RESULTS OF COMPENSATION AWARDS

BY ROWENA O. HARRISON, DIRECTOR OF CLAIM DIVISION OF MARYLAND STATE INDUSTRIAL ACCIDENT COMMISSION

The various boards and commissions are not following up, to any satisfactory extent, the awards that are passed by them to see whether events prove each award to be the proper award in the case.

Almost every State has made some small investigation of results of compensation awards, but I do not believe that any State, with the possible exception of Massachusetts, has a distinct or established follow-up system.

How can we know as to the effectiveness of our efforts if we do not occasionally take a retrospective view and weigh the results of our past acts and endeavors? It can not be gainsaid that it would be profitable, if not helpful, to have a clear and definite comprehension as to whether or not the awards made are the most helpful to the particular party or parties in whose behalf they are made, and this can be determined only by a proper and effective follow-up system. In many cases it may be all right to drop the case after the final receipt, but, on the other hand, in many instances some sort of a follow-up system might result in a real benefit. Some commissions have followed up in a small way the results of the granting of lump-sum awards, and the outcome of their investigations is a warning to all administrative boards to grant few, very few, lump sums. Last year the committee on forms and procedure for compensation administration recommended to this association that very few lump sums be granted. This recommendation was made largely because of the results of investigations into the granting of lump sums. From the information as to lump sums gained from these slight investigations, it would seem that no argument should be required to convince those interested in the administration of this work that follow-up investigations should be made with regard to other awards as well.

Again, a follow-up system would probably enable the commissions to prevent malingering. This is now a problem that the insurer must guard against and endeavor to overcome, whereas the commission should take some part in watching over the case after the

award has been passed and terminate or continue its payments, as the facts may warrant. It will then be more efficiently administering its law. The insurance carriers will not be imposed upon. For instance, I know of a case where a man had made an average weekly wage of $15.18, and his compensation was $10.12, while he got from little 10-cent-a-week policies and one or two other sources about $8.50, making altogether $18.62 a week during his disability, or $3.44 more than he received in actual wages prior to the injury. The doctor was also getting fees for unnecessary attendance. How far would a case like this go if it were not checked up or followed up by commission or insurer after the award was passed, and is it the insurer's duty alone to follow up the case?

As a preliminary to the preparation of this paper inquiries were made as to what is being done by the various States in the matter under discussion. The replies showed great interest, but also divulged the fact that practically nothing is being done in this line, with the exception, however, of Massachusetts, which State seems to be making a serious effort to establish a workable and practicable follow-up system generally.

Massachusetts has a consistent follow-up system on lump-sum settlements, chiefly for the purpose of keeping members advised of the danger in permitting employees in all but border-line cases, where the burden of proof has not been sustained by them, to accept lump-sum settlements. As to widows, that State has an unwritten rule not to approve lump-sum settlements even though the greatest possible pressure is exerted to compel the approval of such payments. That State makes one exception, namely, where the widow is, for example, an Italian or a member of some other alien race and the board is satisfied that she can take her little group of children back to her native land and invest it in an estate which will provide for her and them for the rest of their lives, or in the case of children particularly until they can support themselves. Such lump sums, probably not more than one or two a year, go through under proper safeguards.

In other cases Massachusetts has a consistent follow-up through mail inquiry and visits from a staff of six inspectors. Every amputation case is followed up, by mail or through a visit from an inspector, to see that all rights due under the statute have been safeguarded. No suspicious case involving amputation of any portion of fingers, toes, hands, or feet, nor any case involving reduction of vision, is allowed to be filed until routine precautions are taken. Every back case involving strain or injury to the back is similarly followed up. Every case involving future rights of young and inexperienced workmen is followed up, usually by a visit from an inspector. Mail investigation is made only in the most trivial of these cases. All cases in which there is even a suspicion that compensation may be due, or in which full compensation has not been paid, are investigated and steps taken to get them into a hearing stage, if, upon notification, insurers fail to pay in accordance with the statute. In all cases under investigation steps are taken to write to employers, employees, and insurers—to the first named, to get information first hand about return to work; to employees, to verify facts; to insurers, for medical reports. Inspectors get into per-

sonal touch with the parties and upon their reports further steps are taken, such as arranging for impartial reports, requesting insurers to make the payments indicated on the basis of reports made, and arranging for hearings when necessary.

Another letter in reply to my inquiry stated that while check-ups may bring to the attention of a board errors in judgment or in method of making awards they do not rectify the mistakes that have been made. A check-up after the award is passed will in a good many cases enable the commissions to rectify any mistakes; but the real purpose is that the commissions may profit by experience in the results of their work, and that better judgment may be used in future cases, and that the method of making awards may be continually improved.

Some States plead insufficient funds. The majority of commissions have investigators, auditors, or employees who travel, and it seems to me that a start at least toward following up awards could be made through these individuals at a very low cost.

The whole subject of follow-up is important, not from the standpoint of or with a view to extending paternalism, but solely with the view that the various boards can be assured that full and complete justice is being accorded, under the present method, to all concerned—no doubt important enough to warrant the appointing of a committee to consider it or work out a plan for a definite follow-up system for all boards and commissions having charge of the enforcement and administration of workmen's compensation statutes.

DISCUSSION

The CHAIRMAN. I am impressed with the talk that Miss Harrison has just given us, especially in the light of a case which was brought to my attention just before I left. I had approved a lump-sum agreement for an elderly man, thinking that a man who had attained the years he had would safeguard his money. He wanted to buy a little home. He was to get something like $1,600. A lawyer in the town wrote to me the results of this lump-sum settlement. At the first real-estate men tried to unload property with a bad title on him, and when a good title was insisted upon they finally sold him a piece of property with a good title and it was put in the joint names of himself and wife. Then the automobile men got busy, but they could not handle the joint piece of property very well, so they had the old man and his wife convey to a third party, who then conveyed back to the husband, and the husband, an injured man, then mortgaged the home for an automobile. Five months later he could not pay a two-dollar electric-light bill that he owed. Indiana has no follow-up, but something will have to be done there.

The president stated that 34 States had a waiting period of a week. Indiana has that waiting period; consequently, the first compensation payment time is on the fifteenth day. It has been a struggle to get payment on that day. The larger insurance carriers live pretty well up to that, but the smaller and cut-rate insurance carriers do not. Just what to do about that, I hardly know, but I hope that L. W. Hatch of New York can tell us.

Mr. HATCH. On the first of January the waiting period under the New York compensation law was reduced from 14 to 7 days. From

the point of view of the administration of the compensation law, that meant a good-sized additional job as before that there were as high as 70,000 to 75,000 compensated cases out of 375,000 reported accidents. The reduction in the waiting period has produced a tremendous increase in volume of work, for which the legislature provided very substantial additional appropriations, but the actual pressure of which in practical work began to come only in the spring and is just now beginning to reach full effect. There was some delay in knowledge of the reduction of the waiting period, etc.

This added work will explain why Commissioner Hamilton, who on January 1 became the new head of the department, felt that he should stand by the job this summer. At the same time I can voice for him his interest in this association, which takes the practical form of this discussion of the question of follow-up of compensation payments embodied in the following paper.

FOLLOW-UP OF PROMPTNESS OF COMPENSATION PAYMENT

BY JAMES A. HAMILTON, INDUSTRIAL COMMISSIONER OF THE STATE OF NEW YORK

[Read by L. W. Hatch]

How far should the State go under a workmen's compensation law to see that injured employees receive promptly the compensation benefits to which the law entitles them? That is the general question with which this paper has to deal. This is a question of compensation administration but by way of preliminary to the consideration of it from that point of view it will be well to recall what the fundamental purpose of a compensation law is. It is always useful in consideration of any question relating to administration to start with a reminder of what the goal of the particular kind of administration is. So let us start by recalling what a compensation law intends to do, which is, of course, the goal and measure of what our administrative methods must achieve.

It would seem to be fairly axiomatic to say that the purpose of a workmen's compensation law is to pay compensation to injured workmen for part of the financial loss which they suffer when injured at work. It may seem almost superfluous to state the point, particularly before such a body as this whose members are daily associated with such laws. But the foundation truth that compensation laws are to help injured workmen, because perhaps of its very simplicity and familiarity, is not always kept uppermost in discussing compensation problems, owing apparently to the secondary effect of such laws upon other interests than that of the victim of accidental injury himself, which interests sometimes seem to overshadow the primary interest of the workmen under the law.

In providing financial relief in the emergency of accidental injury the basic motive of a compensation law is in no degree one of favor but that of justice. It is because in the long run social justice is served by a compensation law that society has been willing to lift a part of the financial loss from the shoulders of wage earners to those of the employer in the first instance, and ultimately from his to its own shoulders. This principle of justice takes specific form in the schedule of benefits by which the law defines, in the different classes of disabilities occasioned by accidents, what part of the

money loss shall be shifted from injured wage earners to society. Herein is the cue to the first administrative problem presented by a compensation law. First of all, an industrial accident board or commission has on hand the determination of how much, if any, compensation each injured workman is entitled to under the law. The proper performance of this quasi judicial function constitutes undoubtedly the primary duty which the administration of a compensation law has to undertake.

But is that all the duty of such an administration if the benefits intended by the law are to be fully realized? Let us recall at this point a bit of history at the genesis of compensation legislation, because it will afford a clue to the answer to this question.

Most of you will, no doubt, recall that one of the serious indictments against the principle of negligence as a rule for determining division of loss in industrial accidents between employers and employees under the old employers' liability laws (which, along with others, led to the substitution of compensation statutes for those old laws) was the delays which were involved in determining negligence by the court procedure involved in that old system. It took so long—frequently years—to get a suit for damages to final decision that even if the injured employee recovered the very delay had partly defeated the benefit of the damages recovered. The saying that "justice delayed is ofttimes justice denied" is peculiarly applicable in the case of accidental injuries to wage earners. It was not only for greater justice but also for prompter justice that compensation laws were substituted for liability laws.

In the light of this definition of the purpose of compensation laws it seems to me clear that the administration of a compensation law, if it realizes fully the fundamental intent of such a statute to afford relief to injured workmen and to afford it promptly, must go a step beyond equitable determination of claims to the matter of prompt payment of awards when made, or of compensation in advance of awards. In other words, the State must not only determine what the injured employee is entitled to but also see that he actually gets, and gets promptly, what is due him.

The question with which this paper commenced was "How far" should the State go in this direction? If I have established the proposition that on general principles the State administration of a compensation law must extend to the matter of prompt compensation payment the original question has been answered in a general way. The State must go far enough to insure prompt payments, is the logical answer from the point of view of general considerations.

But before a body such as this, which is daily grappling with the details of administration, trying to find out just how the things that should be done may best be done, I should fall short of proper contribution to the forum for dissecting and comparing experiences on our various administrative problems which this convention offers if I did not go on to consider the specific means for follow-up of compensation payment. To do this it seems to me that it would be most appropriate, perhaps, to submit to you an outline of how the matter is handled in New York State, where a great deal of thought has been given to it and where for the largest compensation

jurisdiction in the country there has been wrought out of much experience a pretty well developed system of dealing with the problem. In doing this it will perhaps best conduce to helpful discussion to center attention on one aspect of the subject alone, and so I will set forth only the New York method with respect to the main element in prompt payment of compensation, namely, prompt beginning of payments, leaving out of account on this occasion other items which have a bearing on the general subject, such as prompt reports of accidents, prompt adjudications, continuing promptness in successive installments of compensation, etc.

The New York method as to prompt first payments has four general features: (1) Legal limits of time prescribed by law for compensation payments; (2) penalties prescribed by law for nonconformity with those limits; (3) compulsory reporting to the department of time of payment; and (4) systematic check up of time of payment. Without attempting to cover all the details, let me explain the chief points of each of these.

1. *The limits prescribed by law.*—Under our statute if a case is not "controverted," that is, "if the employer or insurance carrier does not controvert the injured workman's right to compensation," payment of compensation must begin within 18 days of the beginning of disability. As there is a seven-day waiting period in New York this means that the first payment in uncontroverted cases is required to be made within four days after the first week's compensation is due. If a case is controverted, upon the making of an award, payment must be made within 10 days thereof. If a case is appealed after award, however, such appeal operates to suspend payment pending a decision.

2. *Penalties prescribed by law.*—If an employer or insurance carrier in New York fails to make a compensation payment within 18 days after it becomes due, he is required to pay to the injured workman or his dependents an additional 10 per cent of the amount then due. Such a penalty, it will be seen, has two advantages—it virtually fines the employer, and it reimburses the injured workman for the delay in receipt of his compensation. In addition to imposing penalties for failure in promptness of payment, the New York law confers power on the industrial commissioner to require an employer or insurance carrier to make a deposit with him "to secure the prompt and convenient payment" of compensation, out of which he may himself make payments to the claimant.

3. *Compulsory report of payment.*—After prescription of a legal time limit backed by penalties for nonobservance, the next step to make compensation payment prompt is obviously some means to check up observance of the law. This step the New York statute also takes by requiring that employers or insurance carriers must immediately report to the industrial commissioner when compensation payment has begun, or must within the time limit set by law for first payment file notice of controversy giving the reason why compensation is not being paid.

4. *Systematic check-up of time of payment.*—It is obvious, of course, that any requirement of law, even when backed by penalties and supported by compulsory reporting of compliance, will not automatically be complied with by everybody. Of those upon

whom the law lays a duty, those who are fair-minded and reasonable may largely be depended upon to obey the law when they understand it. But there are always with us those less scrupulous who, when it is to their interest, will ignore or evade such duties. So that always there must be a check-up by the State to insure compliance. In such a matter as compensation payment, where so great a number of individual cases and parties in interest scattered throughout the territory of an entire State have to be dealt with, it is especially necessary that a watchful follow-up shall be prosecuted in a systematic manner. Accordingly, New York State now takes also the final step in this matter, that of systematically tabulating dates and time of compensation payments in all cases with reference to their conformity to the legal limits prescribed by the law. In other words, the process of statistical analysis, akin to the operation analysis method now so widely applied in modern business, is being applied to this compensation administrative problem.

While I say that it is now being applied in New York, this is as a matter of fact a development of the present year. The department had previously considered the method and even tentatively planned for it, but owing to lack of necessary resources had been unable to undertake it before in full fashion. On the occasion of a legislative inquiry into the general question of delays in compensation payment last January the department recommended to the special committee making that investigation that additional help to make it possible be provided as one means of promoting prompt payment, and this recommendation was favorably acted upon by the committee. As a result New York is now rounding out its system as above outlined by inclusion of this fourth essential feature for insuring early payment of compensation following industrial accidents.

In this interstate conference of compensation administrators it is especially fitting that I should note that in the development of this fourth feature New York has paid to the State of Wisconsin that sincerest compliment of imitation. So far as I am aware, Wisconsin was the pioneer along this line. Also, unless I am mistaken, Wisconsin and New York are so far the only States to carry out the idea in a comprehensive and systematic way. But I am sure Wisconsin will join New York in commending the method to other jurisdictions as a worth-while aid in securing to injured employees the full measure of benefit intended by a compensation law which includes not only just awards, but also prompt payments.

While paying my respects in this way to the sister State of Wisconsin, I feel bound to say in fairness to the Empire State in which I have the honor to serve that to the best of my information New York is really going considerably farther in the development of this fourth feature than does Wisconsin. If I am mistaken in this I shall be glad to have the matter corrected. New York's current analysis of operations includes data as to promptness of accident reporting, promptness of adjudications, etc., as well as prompt first payments. The New York statute has requirements bearing on those indirect or incidental elements in prompt compensation, as well as the matter of payment, and our operation analysis is de-

signed to afford as full a measure of the entire compensation process as is practicable. I believe this wider application of the same method may well be commended to other States also.

I shall not undertake to set out here the details of our methods of analysis as to payments, but before closing I wish to bring out one further important point, namely, the practical use of such an analysis to get results with employers and insurance carriers.

It is notoriously difficult successfully to prosecute a violation of a law in which the point at issue is whether or not an act was performed within a certain time limit. The necessary proof of dates is impossible or hard to get. That is conspicuously the case in such a matter as compensation payments. But it happens with respect to these that a peculiarly effective pressure can be brought to bear through publicity. In competition between insurance carriers, who in a State like New York pay most of the compensation, they now make a great deal of "service" features which are offered to employers and one such feature which now more than ever, as employers are giving more and more attention to personnel problems, is being emphasized, is handling of claims in such a way as to promote good industrial relations. To make good on that feature of service means, of course, prompt compensation payment. The carriers therefore have a business interest in good standing on that point. In addition, of course, they can not ignore the force of public opinion generally, which is naturally for prompt relief of injured workmen. This situation puts in the hands of a State department administering a compensation law a powerful means of pressure through publicity of comparative records of carriers as to prompt payments. That is just the weapon which the operating analysis above referred to affords. Let me give you an interesting illustration of how effective it may be. It happens that this is drawn from Wisconsin experience where the method has been tried out. Lest the representatives of that State here may think I am stealing their thunder, let me say that this evidence was brought to light in New York, and I am not sure how much of it is known in Wisconsin, so I feel free to use it for illustration.

Among the witnesses at a hearing last winter in connection with the investigation in New York, above referred to, of the subject of prompt compensation payment was a high official of one of the larger casualty insurance companies writing compensation insurance. He was asked what the experience of his company had been with respect to the Wisconsin method of making up the scores of different carriers as to promptness of payments. His reply was most interesting. It was in substance that when he received the first notice of how his company stood in comparison with others he found it was not very far up on the list. Accordingly, he sent notice to the company's Milwaukee office that the standing was not satisfactory to the company and that those responsible for such matters in Wisconsin must see that their record was improved. This was done, with the result that its standing soon rose and was being maintained where the company was willing to have it seen in comparison with that of other companies. In general, he added, he believed that such a method of follow-up of payments was a good thing for all concerned.

Is not that kind of experience "proof of the pudding in the eating," showing that this method of systematic check-up and publicity is no theoretical statistical proposition but an effective practical method of securing to injured employees the benefits of promptness in compensation payments?

DISCUSSION

The CHAIRMAN. Mr. Wilcox, of Wisconsin, will open the discussion of the two papers just read.

Mr. WILCOX. Miss Harrison sounds a well-warranted warning to all compensation administrators of the necessity of more careful follow-up. We ought to know whether our awards are just or otherwise, and we can know that with real certainty only by going back into the history of a case, seeing the person, and finding out just what the disability has proven to be and whether or not the amount of compensation received was what it ought to have been.

Wisconsin, perhaps, is a bit more given to lump-sum awards than Maryland or Massachusetts, and sometimes, perhaps rightly so, we may be criticized as being too liberal in that respect.

I take very sharp exception to the idea that lump-sum awards are not a practical thing, and I would hate to have Wisconsin have the reputation of granting no widow a lump-sum death benefit unless she was an Italian woman who was going back to her native country. We grant many, many of these awards. A few weeks ago the general manager and superintendent of the Fiske Rubber Co., in supervising the construction of its new building, fell off the roof and was instantly killed. He was a man of means, and left a widow and two children in good financial circumstances. I think it is petty to pay her $18.20 a week over a period of six or more years. The commission, not only on its own notion but with the advice, approval, and encouragement of the Travelers Insurance Co. commuted that death benefit to a lump sum and paid it to her.

We advise lump-sum payments in many cases, but always under the right supervision. If the widow is able to maintain herself out of her income, the efforts of her family, and the interest on the investment of the lump-sum benefit, we are glad to make her death benefit payable in a lump sum and to give her an opportunity to invest it. That money is paid to some bank or trust company of her own choosing and invested by that bank or trust company with her advice. We supervise the nature of the securities; that is to say, they must be first mortgage real estate securities or Government or municipal bonds. Those securities are required to remain with the trust company during the period that her benefit would otherwise have been payable to her and are not to be withdrawn except by consent of the commission. The interest, however, is to be paid to her as it accrues. That is what we generally do with the larger lump-sum payments.

The Wisconsin act gives full authority for that sort of a thing, and we apply the same procedure in the case of the more serious disabilities.

Our new law not only takes account of the wage and the period of disability—the extent of the disability—but, following California,

makes it possible for us to encourage people to get back to work and to learn early what the disability really is.

This question of payments I commend, as Mr. Hatch did, to those States who have not thus far undertaken to make a study of it. The Wisconsin act provides for the first payment to be made on the fifteenth day after the accident. We have the week waiting period, and unless the disability actually extends to or beyond the twenty-second day there is no payment for this first week. On the twenty-second day we are supposed to go back and pay for the first week. In that connection, I want to suggest a bill changing that waiting-period provision which we have worked out in Wisconsin and propose to present to the next session of the legislature. It is to the effect that all compensation payments shall start on the eighth day after the man leaves work as the result of the accident; provided, however, that if there is reason to believe that the injury has not caused any permanent disability, or temporary disability extending to or beyond the twenty-second day, compensation for the first week may be withheld until the fifteenth day. That will mean that liability attaches in all our schedule injuries immediately and we may start paying. That will, I think, lend a lot of encouragement to employees and insurers generally to get ready to make payments, and they will simply seek out the less serious injuries and withhold the payments on them until the fifteenth day. I wish you also would think that over.

We made our first study just after Illinois had made a study of promptness of payments. Illinois made what I think, and I guess it thinks so now, was a mistake in publishing to the world only the standing of each insurance company in the matter of compensation payments; a lot of its information was misinformation and presented some companies in a light which they did not deserve, and so created a lot of dissatisfaction.

Our first tabulation of experience was made in code form. In publishing it we gave the experience of the individual companies, but it was published by number. We gave to each individual insurer the standing of his own company, so that he knew which one of those experiences he saw in the tabulation was his own. Then this instance Mr. Hamilton spoke of came up. I know the exact circumstances, because I had that conference with the insurance company. The Hartford representative of this company came on to Wisconsin with the Wisconsin manager, and said the company could not occupy that position in compensation payments, it must have a better record and it was up to the company to make it. I found that the company was requiring the employer to secure from the injured man a receipt for the compensation in advance, and that this was largely responsible for this insurance company's situation. If you investigate in your own State, I think you will find that many of your companies are getting that receipt in advance. That is very unfair practice. There is no more reason why an insurance company can not trust an injured man than there is that the injured man should be asked to trust the insurance company to see that this deal is carried out. So we have encouraged our insurance companies, if they want a receipt, to issue a check with the receipt attached, so that when the man signs

for his money he gets his draft; the detachable receipt they may use for their files or for filing with the commission as they see fit.

In our first classification of this experience—that for the first half of 1921—we found that 1.5 per cent of all compensation payments by insurance companies were made in less than one week, whereas the self-insurers paid only 0.7 per cent of their claims. Of course the law did not require them to make these payments then, but you can see how small a percentage they started with.

The experience also showed that the insurance companies paid 16.5 per cent and the self-insurers 14 per cent of their claims in less than two weeks, and these claims were not due, you see, until the fifteenth day.

In the next group fall the payments that were due, and we found that in that year 41.2 per cent of the payments by insurance companies were actually made during the third week, while 38.7 per cent of the payments by the self-insured employers were made in the same time.

During the period from 1921 up to the second half of 1924, insurance companies raised their percentage of payments made in less than two weeks from 16.5 to 38.3, and the self-insured employers raised theirs from 14 to 22.2. The payments in less than three weeks, which were the valid obligations, insurance companies raised from 41.2 per cent to 66.9 per cent, and self-insurers from 38.7 per cent to 59.6 per cent. During the second half of 1923 the insurance companies reached the high point of 69.9 per cent in their payment of claims within the required time. That is perhaps an outstanding record in the country. In the last half of 1924 we got to the point where the insurance companies paid 78.5 per cent of their claims in less than four weeks and the self-insurers paid 78.3 per cent.

Lest there be some misunderstanding about these figures with regard to self-insured employers, I wish to explain that in our earlier tabulation of the self-insured employers' experience we had grouped the State, counties, towns, cities, and villages, a large percentage of which are self-insurers. They do not insure with insurance companies, and it is our experience, and I am quite sure it is your experience, that they are the worst of tailenders. The public is the last to meet its obligations—the county perhaps worst of all—and it is necessary for us to group them by themselves in order to make them see their own shortcomings.

In our tabulations as to insurance companies, as mutuals and stock companies are always contending as to which is giving the better service, we have tabulated our domestic mutuals, our foreign mutuals, and our stock insurance companies separately, and they run along a pretty even pace.

The CHAIRMAN. How did you get your figures on the experience as to time of payment, Mr. Wilcox?

Mr. WILCOX. We require the insurer or the employer to send us a report of the date when a payment was made, and if payment was not made on the date required by law, we require him to show the reason for the delay. We have the same provision Mr. Hatch spoke of as being in the New York law, by which we can add a 10 per

cent increase to the compensation for unfair delay in making the payment.

There are many reasons why payments can not be made strictly on time in all cases. Many a time an employee refuses to take his compensation, or he may be, as it would be here in Utah in your mines, far away from you and it is hard to get the information and the money to him. So there is a lot to be taken into account, and for that reason I urge upon all of you, if you do come to the time when you publish such statistics, that you play the game fairly with your employer and your insurer by not publishing their names, because they want to cooperate with you, they want to give you their best, and they want to meet this requirement. If they are not making a real effort to do it, you have the information upon which you may act. We have just discussed with our commission the advisability of sending out notices to employers and insurers that we will publish the names of those companies which do not make their first payments by the end of one week after the initial payment is due. Maybe we will not do it, but that is what we are talking about at the present time.

The CHAIRMAN. In your State, does the dependency of a widow cease upon her remarriage?

Mr. WILCOX. It does not. Those States which do not suspend compensation payments or which suspend them in part on the widow's remarriage must of necessity keep away from this idea of lump-summing the payments. Wisconsin has nothing of that sort. If a wife loses her husband, she gets her benefit, equal to four years' earnings of her deceased husband.

Mr. MCSHANE. And in Wisconsin the more husbands she loses, the more money she makes?

Mr. WILCOX. A woman has always lost something by the loss of a devoted, hard-working husband.

Mr. EPPLER. In the case of a widow without dependents, what is your position on lump sum?

Mr. WILCOX. A widow without dependents?

Mr. EPPLER. Yes; just a lone widow. Does the compensation cease with her death?

Mr. WILCOX. No, it does not. On her death it goes to her administrators in a lump. In the granting of lump-sum payments, we always take into account the number of children she has and what her prospects are for supporting that family before we allow the lump-sum payment. Just her announcement to us that she will be able to make a go of it herself always causes an inquiry as to whether her income is sufficient to take care of her budget expense.

Mr. KINGSTON. You would grant a lump sum to a widow with no children?

Mr. WILCOX. We would, but still under those restrictions.

Mr. EPPLER. Then, you have a string on it, do you not?

Mr. WILCOX. Yes.

Mr. EPPLER. That is not our idea of a lump sum. We think that when you give a lump sum you give a lump sum.

Mr. WILCOX. For the reassurance of the people who are combating this problem let me suggest to you that you write into your law a provision giving you absolute control of the determination of how this money shall be paid. Under the law in Wisconsin the control of the commission is absolute; the method of payment of the amount coming to any person is with the commission, which may pay it to a trust company in a lump, in partial payments, or in any way it sees fit.

Mr. KINGSTON. Do you ever give it, out and out?

Mr. WILCOX. We gave it, out and out, in a lump sum, to the wife of this superintendent of the Fiske Rubber Co. We often do it if the beneficiaries are women of means, have business experience, and have plenty with which to take care of themselves.

Mr. MCSHANE. If you want to get about the last word in lump-sum settlements, in opposition to the Wisconsin idea, read in the proceedings of the Baltimore convention a paper by Ethelbert Stewart on "Lump-sum settlements."

Mr. INGRAM. In awarding lump sums to the widow and the dependents, would you make the award for the dependents to the widow as guardian for the children?

Mr. WILCOX. It all goes to her; no part of the benefits, so far as the liability of the employer or the insurer is concerned, goes to the children. It all goes to the widow, with one exception, and that is where the children are children of a former marriage; then, of course, you have to apportion the death benefit. In Wisconsin we have a State fund built up out of contributions by those employers who have deaths of employees without dependents, or with partial dependents only, of a maximum of a thousand dollars in each case, and out of this fund benefits are paid to the children in death cases, as follows: One full annual wage of the deceased to a child under 1 year of age, fourteen-fifteenths of the annual wage to a child between 1 and 2 years, and so on, the child between 14 and 15 getting one-fifteenth of the annual wage. That comes out of the State fund, so these children are protected individually.

Miss HARRISON. Mr. Wilcox, you stated that the widow drew interest on that lump sum. Do you discount the lump sum in the beginning? Our law provides that in all commutations of indemnity the amount is to be discounted at the rate of 3 per cent per annum, compounded annually, but then, of course, her investments net her 5, 5½, or 6 per cent.

Mr. INGRAM. We have a provision for the payment of compensation to the widow until death or remarriage and two years' compensation on remarriage. Of course, you could not figure any lump sum for a widow under those circumstances, because you certainly can not use the expectancy-of-life figure on anything like that.

Mr. WILCOX. Those States, of course, have a different problem.

The CHAIRMAN. In Maryland the dependency ceases upon remarriage, does it not?

Miss HARRISON. It does.

Mr. EPPLER. And on the death of the widow.

Mr. WILCOX. Of course, that must always be taken into account. It is a different matter.

The CHAIRMAN. Christopher M. Dunn, commissioner of the Department of Labor of Rhode Island, is the next to discuss these papers.

Mr. DUNN. The Rhode Island law is a peculiar law and very imperfect in many phases. Under it contested claims go to the superior court. The department of labor is an office of record, and has general supervision over the filing and approving of workmen's compensation agreements, yet it was given only half a job when given the approval of compensation agreements but no right to enforce that approval.

Agreements are drawn in workmen's compensation cases in our State and sent to the commissioner of labor for his approval. He examines the agreement, and if it meets with the spirit of the law approves it, but in the case of dispute that approval is enforceable only by a justice of the superior court.

Rhode Island is one of the three States in the Union which has a very small death compensation—$3,000 is our maximum. That does not seem much for a human life. When our law was enacted in 1912 (it became operative October 1, 1912) the legislature valued a human life at a maximum of $3,000. We all know the value of a dollar in the year 1912 and the value of a dollar to-day, and yet there have been no changes made in our compensation for death. When our law was first drawn the maximum weekly compensation for total disability was $10. By continued agitation it has been raised to $16, and our present weekly minimum is $7. While the compensation for death is a maximum of $3,000, it can run down to anything—down even to 90 cents a week for partial dependents.

The commissioner and deputy commissioner of labor are usually considered the administrators of the workmen's compensation act. We have very little authority with reference to enforcement, but we are able to effect many good settlements through mediation. We suggest that different claims be settled, and in a just cause we never hesitate to use a threat—we believe it is proper, we believe that it is justice to poor unfortunates who can not help themselves—and urge the claimant to file a petition in the superior court, and many times we succeed by saying we will appear in court in defense of the claimant.

Rhode Island wants to learn. At the last session of our legislature I suggested many amendments to our workmen's compensation act. One was a graduated death benefit—for a widow with no children, a widow with one or two children, and a widow with three or more children—putting it on a graduated basis. We were able to pass that bill through the senate, but when it came to the house for concurrent action—it was the last thing upon the calendar—on the very last day (our legislative session is supposed to be 60 days, yet we ran into 63 days), and after a 24-hour continuous session some one moved to adjourn sine die, and we were unable to have any amendments passed.

We have no follow-up. It would shock some of you if I were to mention the amount provided by law for the operation of our department. The great State of Ohio, I see by reports, appropriates half

a million, and my sister State of Massachusetts possibly $350,000, and yet we of Rhode Island are compelled to administer our workmen's compensation law upon an annual appropriation of $5,000. That does not provide for the salary of the commissioner or deputy commissioner, but that is all we are allowed each year to carry out the work of our workmen's compensation act.

We are vitally interested in the amendment of our law. Our governor is vitally interested in the subject of workmen's compensation. He said to me just before I left home, "I hope that you will come back with some good ideas. We need them." I said, "Well, Governor, I will do everything I can; I will at least bring back some ideas of what other States do." He said, "We need them; I want that law amended in the next legislature, and it will be done or something else will not be done."

As I told you to-day, in my opinion it is the intent of the governor that our State should be represented in this organization. He wants our State to be in line with other States. He wants adequate compensation. He wants the people of our State treated as the people in other States are treated.

Rhode Island has 80,000 people working in textile mills, 25,000 people in jewelry factories, 20,000 people in the machine industry, and approximately 18,000 people in the rubber industry. We are a very large manufacturing State, considering the size of our population, and the governor is vitally interested in adequate compensation for persons receiving personal injury arising out of and during the course of their employment.

I did not come here with any set purpose of entering into the discussion, but wanted to let you know the conditions we have to contend with in Rhode Island. I am very much interested in the subject and I hope to go back with many good ideas. I want to extend my sincere thanks to this organization for granting me the right to sit in this session without first having become a member.

Mr. STEWART. I do not want you to get frightened; I am not going to discuss the lump-sum settlement question. You all know exactly where I stand on that. I think you ought to abolish the whole business. Mr. Wilcox recommended that you have your law amended so that in case of a lump-sum settlement you have a string tied to it. I recommend that you have a provision put in your law that absolutely no lump sum shall be granted under any condition or circumstance whatsoever. But as I have said, I promised you I would not discuss the lump-sum settlement.

It has come to the attention of your secretary that certain universities have recommended follow-up of the work of compensation commissions as a subject for research work upon which to base a thesis to be submitted for a Ph. D. degree, in some instances a M. A. degree. The State University of Ohio has had a student on this work for two or three years. The State University of Wisconsin has put a student on this subject within the last year.

It occurs to me that these studies could be made very instructive to the members of this association, but in order that they shall be instructive there should be very close cooperation between the association and the universities and students engaged in this work. The trouble so far has been that the students handle too few cases and

go into a lot of detail that is of no interest to the members of this association. If follow-up work is to be done by outside parties and this work is to be connected up in any way with the activities of compensation commissions, the follow-up should be along such lines only as can be related directly to the compensation commissions' responsibility. So far as this work has gone, my impression of it is that all semblance of forest will be lost in the multitude of trees and that the investigators will likewise be lost.

However, it raises a question as to whether or not this association should form a permanent committee to draft a satisfactory typical and topical outline for a follow-up study and then be the official channel through which State universities and university students desiring to take up this line of work can communicate officially with the association.

Mr. EPPLER. In Maryland we have been very unfortunate with lump sums. We have not perhaps as much of a follow-up system as some of the other States have, and perhaps only the bad results reach us, but all the people we have set up in chicken farms have failed. Of all these various lump-sum propositions there seems to be so many that do not work out.

To my mind it does not seem sensible to hand over to a widow with no business experience an amount of money in cash; it does not seem fair to her. Yet, I think our secretary perhaps has struck the real note, and that is the follow-up system, not of lump sums—I am not so much worried about lump sums; in fact, I do not like them, I agree with the secretary on that—but of compensation awards.

Mr. KINGSTON. As one of those who have been attending the conventions somewhat longer than most of the others, I want to welcome our good friend from Rhode Island. We have been trying to get Rhode Island in for a long time, and at last it has come in.

I did not hear all of Miss Harrison's paper, but I understand the substance of it is a recommendation of rather intense activity on the part of compensation boards in the matter of follow-up of compensation—follow-up to ascertain whether or not the compensation is serving its purpose. Possibly, incidentally that will be to ascertain whether or not the compensation which is paid is adequate. That, of course, is a matter for legislation, but perhaps the boards, as a result of some such follow-up investigation, might be able to offer some advice to their respective legislatures.

That follow-up idea is long overdue. None of us has done as much of it as we could or as we would have liked to do. Perhaps the reason may be that the appropriation is not large enough. That is not so with us, because we have all the appropriation we want, inasmuch as we spend the money that we need out of the accident fund. But the trouble has been to find the time in which to do this follow-up work among the multitude of duties that devolve upon the administering boards and the staff workers. There has not been the time—at least, we have thought that other things were more important than following up claims, but I see now, and I think our board is coming to see, that we should devote some attention to following up claims—not that we give lump sums, because we do not, but rather to see whether or not the pensions that we

give are adequate and are spent in a way that does credit to the beneficiaries.

As to lump sums, I have spoken before on that and I think the convention, for the most part, has been in favor of the ideas expressed by our secretary, Brother Stewart. The principle of these compensation laws is against the payment of lump-sum settlements, except in minor cases. In most of the State laws, even minor cases are paid, I understand, not by lump sums, but by a shorter number of weeks. With us in Ontario provision is specifically made in the law that in all cases where the compensation is rated as less than 10 per cent the board may pay in lump sums. That means, of course, in all the digit injuries and injuries involving the payment of perhaps less than a thousand dollars, and a few odd cases where it is less than 10 per cent. By reason of large wages and in the case of comparatively young men the amount of a 10 per cent disability will be considerably over a thousand dollars, but in the great majority of our lists of 10 per cent cases it means a lump sum of considerably less than a thousand dollars, so it is not regarded as a serious matter. But under no consideration would we think of allowing a widow a lump sum in settlement for the death of her husband; in fact, we are not permitted. The law, in the first instance, provided a $20 monthly pension for life; that has since been increased to $40. In addition to that there is a payment of $10 a month for each child, so you can conceive the possibility of the pension amounting to $110 a month, if a widow has seven children under 16 years of age.

The capitalized value of our maximum pension represents a charge of something like $22,000 as the largest sum you can conceive of being paid under our law. That, of course, is not paid except in the form of a pension, but it is a capitalized sum that is immediately set aside in our pension reserve account to provide for the future payments in those cases. Under no consideration would a widow receive anything more than that $40 per month for herself until she remarries, and $10 a month for each child until that child becomes 16 years of age. If the widow remarries, there are two years' pension payable to her—that is, $960—in lump sum.

Mr. Hatch refers to the importance of follow-up in connection with the promptness of payments. I suppose I will be accused again by our insurance friends—I mean our publishing insurance friends—of uttering propaganda in favor of exclusive State insurance, but—and my friend Clark from Ohio will appreciate what I say—we have no such troubles regarding the prompt payment of claims in State insurance jurisdictions. I said a year ago that if you want anything done quickly, you must do it yourself. That is pretty true with workmen's compensation payments, and in those jurisdictions where the compensation board is charged not only with the administration of the law—that is, ascertaining and determining what is proper compensation—but also with the collection of the fund with which to pay and the actual payment, it simplifies that question of promptness.

With us, with 55,000 claims a year—of course, there are not payments in respect to all of them—our payments are made actually somewhere between 24 and 48 hours after the paper is filed. We

have had our statistician gather that information, and that is the record of the board. It has been improved somewhat during the last year over that of the previous year, the payment being made only a little over 24 hours following the receipt of the final paper. Understand, we have to have our employer's report, our doctor's report on the case, and the man's report. As soon as those three reports are in, taking all of the cases by and large, the check is issued and it is on the way to the workman within somewhere between 24 and 48 hours after those papers are filed.

Mr. DUXBURY. Do you have any statistics with reference to the time which it takes from the date of the injury to the date of your payment?

Mr. KINGSTON. I have not got that.

Mr. DUXBURY. That is the basis on which Mr. Wilcox spoke, and that is an entirely different basis, you understand. You give us your results from the time when the papers are completed which show the basis of the claim, without any reference to when the accident happened.

Mr. KINGSTON. From the nature of things that must be so with us. The responsibility of putting in the papers is, first, upon the employer, and, second, upon the workman.

Mr. DUXBURY. With us the payment commences with regard to the date of the disability without any proceedings whatever. The compensation is due and is paid; it is due, just the same as wages are due, at the first due date of wages, and in a very large number of instances instead of getting their wages the men get their compensation; the adjudication of the rights may take place any time after that.

Mr. KINGSTON. I was coming to that in a moment. The moment we learn that an accident has happened (and we take notice in every sort of way; we take notice of an accident even from a newspaper) we send Form 6, which is our workmen's form, and along with that Form 8, which is the doctor's form. That goes immediately when we hear of an accident. The employers are supposed to have a supply of their forms in hand, and the law provides that they shall report the accident within three days of its happening. Of course, it sometimes does happen that there is delay in getting the full reports to us, but there is no responsibility on the part of the board in connection with that. All we can say is that as soon as the reports are in hand there is the greatest possible expedition in getting the check to the workman.

Speaking of the waiting period, I am glad my friend Wilcox is urging the cutting down of that waiting period. I think he has a long way to go yet before he has gone the distance he should go. My idea is not that there should be no waiting period—I believe in a short waiting period—but rather that it should be an absolute waiting period. In Ontario we have a three-day waiting period, but it is conditional. If the disability lasts seven days, we go back and pay from the beginning. I think there is room for improvement. If I had the making of the law, my idea would be to make it an absolute three-day waiting period. I suppose we have all noticed that there is a certain amount of petty malingering. If a man is

disabled six days, he is going to be disabled seven days. We recognize that is a condition of human nature. There is petty malingering going on in every jurisdiction with reference to that type of case, I have no doubt, but if you had an absolute waiting period of three days and compensation began on the fourth day there would be none of that.

I am glad to see throughout all of the jurisdictions in these later years a tendency to shorten the waiting period; when the disability lasts for a certain length of time, if you do not have an absolute waiting period, the next best thing is to go back to the beginning. I do hope something will be accomplished by the various jurisdictions by way of follow-up to ascertain whether or not the compensation which is being paid is adequate and if it is fulfilling the purpose for which it was intended.

Doctor McBRIDE. New Jersey has had a very unhappy experience in lump-sum settlements. In New Jersey nobody can receive a lump-sum settlement without the most rigid investigation. The act provides that no lump-sum settlement shall be made unless it can be conclusively proven that it is for the best interests of the person involved. I do not think any State in the Union has a more rigid investigation than New Jersey. I oppose lump-sum settlements unless it can be conclusively proven they are to the best interest of the persons whose interests are at stake. Our experience has shown that 75 per cent of all lump-sum settlements have been wasted, practically totally wasted. We have not made a complete investigation, but that is our experience. We now start our investigator out just as soon as the application is made. After he has made a complete and thorough investigation—the questionnaire is most extensive; every phase of the question is gone over in detail—his report is sent to the secretary of our commission. The matter then comes before our compensation board, and all the parties involved are invited to that hearing. We may recommend it or recommend it in part, but it must be conclusively shown to be to the best interest of the claimant. Our investigation is very complete and very thorough.

We are instituting the follow-up system in all compensation payments. Of course that is a tremendous task. I say all; that is, all the important ones, not the minor ones where not much is involved. I think it is a system that should be inaugurated and followed up by every State and every Province having a compensation law.

The CHAIRMAN. Have you had a follow-up, Doctor McBride, as to whether the amount of compensation is adequate, and also as to whether it has been judiciously used by the workman's family and the workman?

Doctor McBRIDE. Not a very extensive one. We are beginning that now. We have had some follow-up.

The CHAIRMAN. But you have no figures to give at this time?

Doctor McBRIDE. That has been inaugurated only recently.

Mr. HORNER. I believe that an efficient follow-up system is an important factor in the successful administration of any workmen's compensation law. For the past several years Pennsylvania has had a follow-up system somewhat similar to the system followed in Massachusetts and explained by Miss Harrison. We follow up not only

compensation cases but accident reports as well. We make it a point to see that the injured workman is advised of his rights before the statutory period expires. If necessary, he is assisted in filing a claim, and in many of those cases the adjusters who are connected with the bureau of workmen's compensation represent the claimant at the hearing before the referees.

We also follow up all our open compensable cases from time to time. Of course more important cases, such as permanent injury cases, where compensation is payable for a definite period of time—the loss of a hand or the loss of a finger or a thumb—we check very carefully to see that the injured workman receives the full benefit of the compensation law, and in many instances we have required either the employer, if he is a self-insurer, or the insurance company to enter into a supplemental agreement to provide for compensation for a longer period of time because of that permanent injury. In these cases as well as in the accident cases if necessary, our adjusters assist the claimant in filing a claim and then represent his interests before the referees.

Several years ago we made a study to determine whether employers operating as self-insurers and insurance companies were making compensation payments promptly. As a result of that study some of our insurance companies became very much exercised because their record did not show up so well, and to-day it is not an unusual thing for the bureau of workmen's compensation to receive a letter from an insurance carrier stating that compensation payment in a certain case has been delayed because the employee refused to sign the company's compensation agreement. There has been a tendency to cut down the period and to enter into those agreements and file them with the bureau of workmen's compensation as promptly as possible.

In Pennsylvania possibly 60 per cent of our employees are covered by self-insurance, and I want to say that we have met with better success in securing medical and hospital service beyond the statutory period on the part of the self-insurers than we have from the insurance carriers. Recently a very complete and exhaustive investigation was made in permanent total injury cases, in which, under the Pennsylvania law, compensation is payable for 500 weeks. We have cases of that type in which the compensation payments will terminate shortly. I recall one case especially where a workman, a man of middle age, had lost both eyes. He was given the benefits of our bureau of rehabilitation and was educated so that he could go into some factory (I believe it was a broom manufacturing concern), where he earned a few dollars in addition to his compensation. When this investigation was made, the investigator asked this man what he proposed to do when his compensation payments ceased, and he said he supposed it would be a street corner and a tin cup for him. When the report was received by the bureau we immediately communicated with the employer, who was a self-insurer, sent him a copy of this report, and also called attention to this situation, with the result that that employer decided to continue compensation payments as long as the man lived. That shows what these investigations, this follow-up work, result in.

I can not give you any report with respect to lump-sum settlements. About five years ago an investigation of such cases was made in Pennsylvania, but, as I recall, possibly 60 per cent of those cases turned out to be satisfactory. I repeat again that I think the follow-up system is one of the important factors in the administration of a compensation law.

Mr. CLARK. With reference to the follow-up system, I can understand how that might be a serious question in some jurisdictions—more serious than with us. I was surprised to hear the gentleman from Pennsylvania say that 60 per cent of the employers were self-insured.

Mr. HORNER. I said employees.

Mr. CLARK. I misunderstood you. In Ohio we have 35,000 men paying into the fund direct; we have 400 self-insurers, so we do not have very many people to follow up. Where there is any question on the report of our own medical department, and our physicians say, "This man will be disabled for so many weeks or so many months," the award is paid to that time, with an order for medical reexamination. Consequently, our physicians are in close touch with the cases. I can see how malingering might be lessened in our State by a follow-up system somewhat closer than we have, but it was not that that I wish to talk about.

I have been much amazed, and while I hesitate to take issue with the two veterans of this convention—Brother Kingston and Brother Stewart—on the question of lump sums, I can not understand in what atmosphere they, as well as a number of the other gentlemen here, have been. I can not quite see why in Pennsylvania only 60 per cent of lump-sum cases prove satisfactory. Why, in Ohio we count the lump sum the most beautiful blooming flower on the plant, and it has proven so. We have gotten more favorable publicity, more commendation from both employers and employees, through the practice of allowing lump sums than through any other practice in the administration of the law in our State.

There are thousands of women whose husbands died more than six years ago living under their own roofs in Ohio to-day who would be subjects of charity in their communities except for that practice by the Ohio commission. I do not know why there seems to be so much trouble about it.

Mr. KINGSTON. On the $40 pension?

Mr. CLARK. We do not give them $40 pensions. Of course, if we pensioned them like Ontario does they would be at the mercy of their landlords. I can cite hundreds of cases—I am sorry that the director here did not bring along some of the records on that subject—where a woman has been put into a $1,600 bungalow, an $1,800 bungalow, or a $2,000 cottage, and her weekly compensation reduction did not amount to the rent she had previously paid to some landlord who did not half keep up the house because there was no man there to fight for his rights. What is the difference if a widow has her compensation reduced and yet has as much cash left at the end of every few weeks from the commission as she would have if she took the other fraction of that cash and handed it over to some landlord? It seems to me that is for the benefit of the widow. You will get

into trouble right away if you go to Ohio and begin to oppose the buying of homes for widows and their children.

We take precautions that some of the other gentlemen do not take. We buy no home for a widow until our own man has examined the title, reported it favorably, examined the family, talked with the neighbors, talked with the widow, made an appraisal of her ability, examined the children, and reported to us how soon this child will earn and how soon that one will earn, and we follow his advice in most cases as to whether or not to give the lump sum. It may be safely said that not 5 per cent of all the lump sums made in Ohio prove bad or disastrous or not to the eventual benefit of the children. When the eight-year period has run out, instead of a claimant like that referred to by the gentleman from Pennsylvania, the widow has a home and her children are joint owners with her. Under our law she does not take the title; her children are jointly interested with her. The deed is made to her and to her as trustee for her children, or in some cases it is made to her and to the children, naming them. The condition is always put in the deed that no mortgage can be put upon that property and no transfer made of that property within the period covered by the death award, which is eight years in our State, without the consent of the commission, and the result is that we are constantly bettering that woman's condition by helping her to sell the property and buy one better fitted to her condition. I am rather proud of the fact that in the last eight years I have gotten to be quite a real estate man and have helped a lot of widows make money on their transactions, because it is provided in the deed that we can do that if we wish and that she can not sell unless we consent. So I do not know what sort of atmosphere you fellows have been working in that you can not somehow or other work out a proposition that not only is safe but also puts the woman on the dignified plane of being a home owner. It gives her a place where she does not have to creep to anybody. That is the part about the lump sum that I like.

I do not think they give any lump sums in Rhode Island. The idea of paying for the death of a man at $3,000, as they do! The idea of valuing a human life at what you would a race horse! Why, down in Ohio we give $6,500 and are kicking ourselves because it is not higher than that.

I could not let this attack on what in Ohio is the finest thing we do go unchallenged, and if you folks can not get the system of lump sums worked out in a way that will make you happy and give you fine publicity, come over to Ohio and we will clear the hearing room some morning and show you a system that is 100 per cent. Once in a while we have a settlement that does not turn out well, but that is also sometimes the case with the fellow who did not get his money through workmen's compensation.

Miss HARRISON. I believe that the majority of lump sums are asked for in good faith; they are granted and paid in good faith, but last year I noticed particularly the lump sums that were granted to employees to go into business. Yes; they went into business, generally a business in which they had no experience whatever, and they spent their money. They were failing all the time, losing what they had. They borrowed to keep the

business going with the hope that they would catch up and get on their feet, and finally, when they found they could not, not only had they lost the lump sum but they were in the hole and owed money.

You have to watch the widows. For instance I know of a case in Maryland where we had an application for a lump sum by a widow who had a child. We could have gone ahead and allowed the lump sum. It would have been all right, but the commission saw fit to deny it, and the next thing we heard, the widow had remarried. In Maryland if she has a child and remarries she gets the money just the same. Then we received news that the child was being mistreated—the orphans' court has appointed a guardian now. If our commission had granted a lump sum in that case, it could not have done a thing. As it is, we have the power under the law to apportion that compensation and allow so much to the widow and so much to the guardian for the child until the end of the compensation period.

Mr. Kingston recommended a three-day waiting period. In Maryland the law was amended in 1920 and the waiting period was reduced from two weeks to three days, and it is proving satisfactory. When we do allow lump sums in Maryland, business is business, and we allow the same discount to the insurer that he would get in interest if he had that money. If I might make a suggestion to this association, if it sees fit to appoint a committee to follow up the awards I would suggest that it appoint as members of that committee Mr. Grandfield, of Massachusetts, and Mr. Horner, of Pennsylvania.

Mr. McGILVRAY. In California we believe in lump-sum settlements. In fact, we believe in them so much that we devote a considerable part of our time to the adjustment of lump sums. We believe them to be a step ahead in the way of rehabilitation. I have not heard that phase of it spoken of here, but we have found that in many cases we can materially assist the man who is trying to help himself by giving him a little bit of money—more than he ever had in his life, perhaps—and then help him use that money in a good way. In that we have the full cooperation of other departments of the State; for instance, the real estate commission, which works with us in ascertaining whether or not reliable firms are handling the real estate transactions; it even goes so far as to handle personal property transactions in the conveyance of business properties. We work in connection with the rehabilitation department, which is not under our immediate supervision, and various other divisions, and just in passing I might say that we have drawn very heavily on the other States for material to assist us in our work, having people with the commission from Wisconsin, Maryland, Ohio, Iowa, and some of the other Eastern States.

We are a State-fund State. We are hoping that we are going to be an exclusive-State-fund State at no far distant date. We are working on follow up through our State fund, an indirect method because we can not pursue it directly, and working through and giving the publicity to the fund we find that it is making the insurance companies a little more anxious to get their payments out more rapidly and there is great competition for business. In fact, as I

left California the insurance trust case was rising on the horizon. I do not know what the insurance companies are going to do, but anyway they are getting busy, and that always means that we are making progress.

The question as to how far the State should go in this matter interests me. That is a very hard question to answer in a gathering of this kind, because each State, I presume, has its own problems. In our State it is not feasible at this time for the State, through this department, to undertake the follow-up system. We would not get to first base if we tried it that way, and other States may find the same difficulty. I think we all agree, though, that in order to make the compensation system workable to its fullest extent we should have a follow-up system.

I want to say in regard to Canada, and particularly Ontario, that I think you have an admirable system. If we, in California, pensioned our people to the extent that you do, we certainly would not have to grant lump-sum settlements. I think that in your community, in your particular locality, you really do not need lump-sum settlements. In our State we do, because the payments cease in four years and after that time the people who have been receiving compensation become subjects of charity, except in cases of 70 per cent disability or more, where life pensions have been granted. Taking it all in all, with my experience and my observation of the experience of those who preceded me, I am for lump-sum settlements.

Mr. DUXBURY. We seem to have a variety of ideas as to what is meant by follow-up. The discussion indicates that some think it means lump-sum settlements, some think it means the question of whether or not the award was adequate, and some others think it means whether or not payments were being made promptly. For that reason I think that the suggestion of the secretary-treasurer was, as usual, very wise, that a committee be appointed and that we get a definition of what we mean by "follow up."

Listening to the discussions, I find that in Minnesota we do considerable follow-up in certain particulars, although there is a particular character of follow-up which we do not do as well as we should. Our follow-up of lump-sum settlements has not been systematized and regular. We have no grounds for conclusion as to whether or not our lump-sum settlements have been 75 per cent wise and 25 per cent foolish, or the reverse. We know that there have been some of them that we do not want anybody to know about, because we are not proud of them. The suggestion of our president is good that if you are interested in what is dangerous about lump-sum settlements the best thing to do is to get hold of the paper which was read by the secretary-treasurer on lump-sum settlements at the Baltimore meeting of this association. There you will get the extreme view on the other side.

I have heard both sides of this discussion for some time, and the result, so far as I am personally concerned, is that I am what they call "hard boiled" on lump-sum settlements. I am not from Missouri, but they will have to show me. If I am going to make any mistakes, I would rather make them on the side of denying lump-sum settlements, because most of the beneficiaries of compensation

are people without business experience; that is generally the case. A great many of them are like the old lady who once consulted me about her embarrassments. She told me that her husband had died and that she had several children, and she said, "We had plenty of money, you know, but, goodness knows, it didn't last long." Now, the story is all in that. There are a lot of people who have plenty of money, but they spend it. They have plenty of money as long as it lasts, but, goodness knows, it won't last long.

Of course, a wise and experienced commission like that in Ohio, which appoints itself a business guardian for widows and probably makes wise investments for those widows in such a way that the property can not be gotten away from them, can be proud of what it has done and ought to be commended, but that is only one of a very few instances. There are those chicken farms and all sorts of things where the beneficiaries want lump-sum payments. There is one case which I will consider favorably. If the person owns his own home, but has a mortgage on it and the payment on that mortgage is coming due, I will consider a lump-sum payment to take care of that mortgage installment, but it must be paid directly to the person holding the mortgage. So many times the person will think that the mortgage can run a little longer and will buy a talking machine or a Ford automobile; that is probably what you will find he has bought, unless you see to it that the order directing a lump-sum settlement specifies the particular purpose for which it is made.

I do not quite agree with Mr. Stewart's conclusion that in no case whatever should a lump-sum settlement be made, because in many cases it should be. We have sometimes allowed a lump-sum settlement for the purpose of buying a home. When we do that, we have the title examined and the thing thoroughly looked up, and take every precaution.

Mr. STEWART. One of the things President McShane left out of his paper has come up in this discussion, and that is the anxiety of the insurance companies to have quick settlements, and so on and so forth. One of the first things the association did was to put Carl Hookstadt on the question of promptness of payment, and it was that report on promptness of payment which put the insurance companies on the map as to seeing who would be prompt and who would not be prompt. All this godliness about prompt payment is the result of the exposure that came through the investigation of Carl Hookstadt, which was recommended by this association.

I want to answer just in a minute the gentleman from Ohio. Of course, you have to define what you mean by lump-sum settlements. To buy and sell real estate for a widow for eight years is not a lump-sum settlement. Let us understand what we mean by lump-sum settlements. Most of the cases of out-and-out lump-sum settlements are illustrated by a story I heard this morning. A fellow had an automobile. It was patched in every place where it could be patched. The top was off; the thing was just able to run and that was all, and across the back of it was written, "If I can pay one more installment, she's mine."

Mr. WILCOX. I do not want to lose sight of the suggestion of the secretary for a committee of this organization actually to determine what sort of studies ought to be made in these universities. As Mr.

Stewart said, Wisconsin is now engaged in such a study; a student for a Ph. D. degree is studying this very problem of the lump summing of money to widows and those who have serious accidents, and I have had to bother the various jurisdictions for information, for which I want to express thanks here. We are trying as hard as we can to direct this student's investigation so as to make it serviceable first to Wisconsin. We told her that we wanted to make use of the information she got in prevailing upon the legislature that it was necessary for Wisconsin to have some high-type individual devote his entire time to this matter of following up the cases after a couple of years and determining what lump sums ought to be granted. We told her further that she must, through the department, make available for distribution to the various jurisdictions administering compensation a copy of her thesis. I know how difficult, because of conflicting laws, it is to make a study that will be an advantage to all unless it is well worked out in advance. You will have applications from your universities right away, as you may be sure that they know what is being done in Ohio and in Wisconsin. Somebody in your State will be asking for your help and your permission to go ahead and survey your work and interrogate these people who have been injured. You will have to give him a letter of introduction to these families, encourage them to give the desired information, and you ought to know before you have to meet the problem just what the study ought to be. It is a delicate thing to limit the students' investigation, because you do not want to be criticized as having edited it, or so to restrain it that it will not really show the facts. As a matter of fact, I want her to show the bad spots in the Wisconsin administration, because I feel certain that they are there, and if I know where they are I can prevail upon the legislature to give me sufficient appropriation to carry on that work.

The CHAIRMAN. The chair has attempted to sit here as a one-man jury, unbiased, and waiting for information. I do not believe, to use a legal expression, the defense shows that there has been any effective follow-up system among any of the States or in Canada as represented here.

Mr. WILCOX. The United States Women's Bureau did make a study in some of the States of injuries to women, the purpose being to determine how fairly men dealt with women's disabilities.

The CHAIRMAN. That is limited in its scope?

Mr. WILCOX. Yes; to women who have been injured in industry. There was a study made in some of the States, one in Wisconsin, and I do not know just where else.

The CHAIRMAN. I hope that the secretary-treasurer will make a motion for a committee along the lines he suggested.

Mr. WALNUT. In Pennsylvania we have recently had a limited investigation. We investigated first the permanent total disabilities over a period of years; then in the county of Philadelphia we investigated our commutations, going back for a period of about four years. We have undertaken to follow up the commutations which have since been made.

Mr. Horner referred to the percentage of successful cases and of unsuccessful cases; the first may be right, but judging from the

reports we have received it is a very difficult matter to determine the percentage of unsuccessful cases. We have, first of all, the group of cases in which a foreigner who has been pretty seriously injured wants to go back to his own country. It may be for his practical benefit to go back or it may not be, but here is a man who is not much good in this country and who wants to get back home, and the only way for him to get back is for you to commute enough money so he can go back. It seems to me not only a reasonable, practical thing, but the humanitarian thing, to give him enough money so that he can get back to his home and family on the other side. That constitutes a very considerable percentage of our commutation cases.

Then we have another group who ask for money for the payment of debts. That, I think, is as difficult a group of cases to handle as any. They probably need two or three hundred dollars and they make the plea, "We can not live on $12 a week," which sounds reasonable. When a widow says, "I owe money for my rent; if you don't give me the money, I go out to-morrow," or "I am buying my furniture on the installment plan; I started to buy it before my husband was killed; I am three months behind, and if you don't give me the money to pay for it they will take it away and I will have no furniture for myself and my children," it is very difficult for the commission to turn down that plea, which we find is really made in good faith, so frequently we do commute for the payment of debts. It is a very unfortunate thing to be called upon to do, but those are the facts you face, and often as a practical matter you feel you must do it.

Then, of course, we have another group who want money to buy homes and pay off mortgages, and looking back over the last five or six years, if the commission had refused to give it, it would have done a great injustice to many of the claimants, because there has been almost a perpendicular rise in the value of real estate in the past six or seven years; in fact, it goes back even earlier than 1918. Most of these people we have started off with homes had been thrown out by reason of the landlord's requirement that they move in order that he might sell. We secured them homes which they purchased and owned and the price of which has practically doubled in the last six years, so I think we have nothing to complain about on those commutations.

The particular commutations that I think we have been most at fault in are those in which the claimants have gone into business. The mortality among the businesses we have started has been rather high, but where a man is getting compensation for the loss of a hand which will run over a period of a few years and he takes that money and goes into business, if the business supports him for a few years, even though he does then lose it, he is really no worse off than if he had not put the money into it. The compensation would have terminated anyhow, and he had a good gambler's chance of winning. So we often grant money for business purposes as well as the other, although, as I said before, I think they are the most treacherous of all commutations.

Mr. McSHANE. In the matter of lump sums, I know that in Utah we have made too many; we have made some mistakes. I believe that the question of lump-sum settlement is one of each case standing on its own merits, that each case should be thoroughly investigated, and then we should do the thing that all the facts and circumstances indicate.

[The president announced that T. Henry Walnut, of Pennsylvania, would serve on the resolutions committee instead of Richard H. Lansburgh. He also referred to the resolutions committee the suggestion of Mr. Stewart that a permanent committee be appointed to draft a satisfactory typical and topical outline for a follow-up study and to cooperate with State universities and university students desiring to take up this line of work.]

Mr. McSHANE. I want to call your attention to a resolution passed at the Halifax convention. I will read it, because I tried to make the thought of that resolution the central part or the heart of the program here for this association. I believe it is important.

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 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.

This was unanimously adoped, and I have read it for the purpose of calling your attention to the medical section, which convenes tomorrow morning. You will observe by referring to your program that the subjects relate and hark back to this resolution.

[Meeting adjourned.]

TUESDAY, AUGUST 18—MORNING SESSION

CHAIRMAN, RALPH T. RICHARDS, M. D., OF SALT LAKE CITY

MEDICAL PROBLEMS

The CHAIRMAN. The first paper will be "The relation of trauma to cancer and tuberculosis," by Dr. Joseph E. Tyree, of Salt Lake City.

THE RELATION OF TRAUMA TO CANCER AND TUBERCULOSIS

BY JOSEPH E. TYREE, M. D., OF SALT LAKE CITY

For a long time it has been the habit of clinicians and pathologists to speak of the actual or exciting causes of a disease and the remote or predisposing causes. To take an example outside of our subject, we know that the cause of typhoid fever is the typhoid bacillus, but there are many factors that predispose or render the patient liable to contract this disease—age, for instance—the disease is much more common between 15 and 35 years; and season of the year—it is much more prevalent in spring and autumn. Again, take diabetes; here the predisposing factors are much better defined than the actual ones. Very fat people and members of the Jewish race are particularly liable to contract this malady. Among the causative factors actually or remotely concerned in the inception of disease, trauma—injury—holds a prominent and ancient place. When one reviews the gropings of the human mind after knowledge he is always struck with the grotesque and bizarre linking of cause and effect that has at one time or another been used to explain natural phenomena. If one peruses the writings of Plutarch, particularly his commentaries, the above statement is wonderfully illustrated. The human mind at his time was very active in asking questions and the explanations were peculiar in the extreme. About nine-tenths, at least, of the conclusions come to by philosophers of his day in the explanation of scientific facts are now thought to be faulty and puerile.

In the realm of medicine no one factor has held a more prominent position as a causative agent for almost any ailment than injury. It has always been and at the present time still is very easy to ascribe the onset of any set of symptoms to a preceding injury. Physicians have had not a little to do with fostering this idea; particularly in the day when our profession knew very little about the fundamentals of disease it was very easy to pan off on to a preceding injury or a series of injuries the causation of almost any obscure condition affecting the patient.

It is rather pathetic to read the speculations of some of our not very ancient professional brethren concerning the real mode of onset of some of our simple diseases. Everything from insanity clear

on down the line has been ascribed to injury. The doctor is now and always has been asked questions by his patients and their friends which, either through his ignorance or the general lack of knowledge, are hard to answer and, of course, every self-respecting physician likes to satisfy the curiosity of his patients. To ascribe almost any condition to a series of injuries has frequently been the last resort of the harassed physician and seems usually to satisfy the mind of the anxious patient.

The relationship between a cancer and preceding irritation or injury has been fairly well established for 1,000 years. Just what a cancer really is and just exactly why it happens we do not yet really know. To put the thing rather simply, a cancer is the rioting of a group of cells or of small bits of tissue which has reverted to the original embryonal type. Some rather recent work done at the Rockefeller Institute in this country, and independently by gentlemen in London, seems to show that the cancer cell is a sick cell rather than simply a young one and that its abnormal activity is due, maybe, to the presence of a minute microorganism acting upon this already sick cell. This minute organism causes these apparently sick embryonal cells to grow inordinately and to disport themselves in an unseemly, wanton manner. It is as if some microcosmic fountain of youth had bathed these cells, rejuvenated them, and that they had gone wild with the joy of living, roamed around and multiplied, obeying no laws and knowing no bounds. This is, in simple language, a picture of cancer behavior.

There are two distinct general types of cancer—sarcoma and carcinoma. A sarcoma usually develops in the tissues covered by the skin and mucous membrane. In some of the cancers of this type there is a very definite preceding history of a single more or less mild blow or fall; particularly is this history obtainable in cases of sarcoma of the bone.

Every surgeon or pathologist who has written on the etiology of bone sarcoma during the past hundred years has ascribed a prominent part in the inception of this condition to preceding injury. What the injury really does is probably this: In the course of repair of any injury there is a reversion to primitive type of cells such as are seen in the embryo. These cells, of course, are always endowed with the property of growing, more so than an adult cell. If now with a set of young cells endowed with the ability to grow there is introduced this probable actuating element in the form of the microorganism above referred to, we have all of the factors necessary to cause a sarcoma.

Carcinomata are cancers arising in the skin and mucous membrane. Here the predisposing injury is usually not a single one but a series of long-continued mild or severe irritations. Carcinoma of the tongue develops in a mouth with decayed, ragged teeth or at the site of a syphilitic ulcer of the tongue. Carcinoma of the lip develops probably more frequently in the man who has for many years smoked a pipe and at the site of the irritation of the pipe stem. Cancer of the breast is a hundred times more common in women than men and much more frequently occurs in women who have nursed a number of children or whose breasts have been subjected to preceding inflammatory conditions or injury. Cancer of the uterus is

practically always seen in women who have had lacerations and chronic inflammation of the outlet of this organ. Carcinomata of the skin, as far as I know, never arise except at the site of a chronically irritated, benign, preceding lesion. A wart, a mole, or a little ulcer from which the crust is frequently scraped is usually the place where skin carcinomata originates. Carcinoma of the alimentary tract is practically always located at those areas where the contents are mechanically arrested by the narrowness of the tube or where chronic irritants can most favorably act. A preceding benign ulceration is, in the minds of most men, a frequent antecedent of the malignant change.

An interesting thing about the whole problem of the relation of injury to cancer is that one very seldom sees either a sarcoma or a carcinoma arise at the site of a severe injury. I have never seen a sarcoma arise at the site of a fracture. I have never seen a cancer arising at the site of an incised or a lacerated wound of a mucous membrane, however extensive or severe. The important thing to know is that in the case of sarcoma it is the single, mild injury; in the case of carcinoma it is the continued small injury or irritation which seems to predispose the setting up of the wild, morbid process.

Tuberculosis in one form or another is one of the most widespread of diseases. A generation ago the German pathologists, who had done more autopsies than any other set of men in the world, were almost prepared to say that every adult showed signs some place in his body of an active or healed tuberculosis lesion. This does not mean, of course, that most people die of tuberculosis or that a great majority of people are seriously incapacitated by this disease. For our purpose to-day it has, however, this very important bearing—an unknown number of people, but unquestionably a very large number, harbor within their bodies foci of tuberculosis in a quiescent form.

The fundamental pathology of tuberculosis is the tubercle. This is, in simple language, a kernel, in the center of which are groups of tubercle bacilli lying in a nest of young connective tissue and other cells and surrounded by a limiting capsule of scar tissue. Now when anything disturbs the tubercle these bacilli can be let loose to enter the blood or lymph stream and thereby wander to other places in the body. Usually when tubercle bacilli are so loosened from their resting places the great majority of them are destroyed by the defense forces of the body and do no harm. If, however, such migrating organisms run across a place favorable for their growth and where the blood stream has been so slowed down that they can stop they may set up at this site another colony of tubercles. Such, in plain language, is our present idea of the spread of tuberculosis from one place in the body to another. Now a very favorable state or condition for the lodgment of wandering tubercle bacilli, or any other organisms for that matter, is a mild injury; that is, an injury just severe enough to cause some extravasation of blood into the tissues, the presence of a certain number of injured cells in the vicinity, and the stoppage of blood in a certain number of small blood vessels. That tuberculosis of the bone and joints is frequently, if not usually, brought about by the lodgment of tubercle bacilli in an already tuberculous patient at the site of a mild injury seems to be rather firmly established in the minds of most clinicians and pathologists.

Tuberculosis of the lungs can probably also be more or less disseminated by a severe blow on the chest which causes the partial disintegration of an old tuberculous focus. It is needless to say that any injury to an old tuberculous focus has a great tendency to scatter the tubercle bacilli which are there present. This has happened occasionally, I am sorry to say, during our operative or manipulative treatment of tuberculous disease. I have recently had this case for example. A small boy with a rapidly progressing tuberculosis of the ankle was brought to me. The diagnosis was very obscure, since tuberculosis of the ankle is a rare disease in this country. We decided to incise the wound to be sure of its nature. On finding that it was tuberculous, I removed the tuberculous bone and closed the wound. The boy rapidly developed the disease in a generalized form and died within a month.

A recent decision of one of our supreme courts (Maryland) is as follows: "When disease or infection is so set in motion or aggravated by an injury that disabilities result which would not otherwise have occurred, such disabilities are to be treated as the result of injury." We have had a similar ruling from the supreme court of our own State.

In the light of the above judicial sentiment and considering the few remarks which I have made about the origin of cancer and tuberculosis, it is rather evident that where either cancer or tuberculosis develops at the site of and following an injury or series of injuries these diseases must be looked upon as being set in motion or aggravated by the trauma.

The CHAIRMAN. The discussion of this paper will be deferred to the end of the morning program. The second paper is "Chronic infectious hypertrophic arthritis of the spine and its relation to industrial accidents," by Dr. J. C. Landenberger, of Salt Lake City.

CHRONIC INFECTIOUS HYPERTROPHIC ARTHRITIS OF THE SPINE AND ITS RELATION TO INDUSTRIAL ACCIDENTS

BY J. C. LANDENBERGER, M. D., OF SALT LAKE CITY

The subject of my paper is "Chronic infectious hypertrophic arthritis of the spine and its relation to industrial accidents." In the literature on this subject many synonyms appear, such as spondylitis; chronic spondylitis; chronic infectious spondylitis; chronic hypertrophic spondylitis; spondylitis deformans; spondylarthritis deformans; arthritis deformans; arthritis of the spine; hypertrophic arthritis of the spine; atrophic arthritis; degenerative arthritis; osteoarthritis of the spine; rheumatoid arthritis of the spine; Bechterews disease.

The selection of the name, "chronic infectious hypertrophic arthritis of the spine," was made because it suggests the etiology and pathology of the disease as the medical profession of to-day decrees.

The term "arthritis" (arthro—a joint) is used in preference to spondylitis (spondyl—a vertebra) because the subject matter deals with the inflammation of the joints of the spine, which condition is very commonly associated with joint disease elsewhere in the body, whereas the word "spondylitis" does not carry in itself any suggestion of other pathology.

For more complete elucidation of the subject, it might be well to take up arthritis in general. Arthritis is an inflammation of a joint. When occurring in a single joint it is spoken of as monarthritis; when two or more joints are involved, as polyarthritis.

When the inflammation sets in rather abruptly, associated with fever, quickly reaching its maximum intensity and with an early end result, it is designated as acute arthritis. Should the inflammation come on insidiously, not associated with much, if any, fever, of particularly slow progression and with a late end result, it is called chronic arthritis.

According to its etiology it is sometimes spoken of as gouty arthritis, infectious arthritis, rheumatoid arthritis, traumatic arthritis. And depending upon its pathology the classification may be degenerative or hypertrophic arthritis, proliferative or atrophic arthritis, and arthritis deformans.

Etiology: For some time sporadic opinions have here and there appeared as to the infectious nature of chronic arthritis in general. However, it is only during the past 10 to 12 years that study and research work have at last developed definite and satisfactory principles to guide us in this matter. In days gone by, because of the absence of such definite and satisfactory principles, traumatism was blamed for an extremely large percentage of many disabling joint conditions which we are now rapidly learning to be actual disease and in no way resulting from trauma, though often so stated by the applicant to the industrial board to gain compensation.

None of these joint conditions have been more flagrantly presented before industrial commissions and courts than chronic infectious hypertrophic arthritis of the spine.

During the last decade many scientific workers have thoroughly investigated the subject of the etiology of chronic arthritis in general, reaching the unanimous conclusion that focal infection is the important factor.

As expressed by Albee, "The great importance of focal infection as an etiological factor in joint disease has been repeatedly emphasized in the past few years." And he is so impressed with the infectious character of these chronic arthrites that he classifies them all under the caption "Chronic infectious arthritis," and states that they are "probably secondary to some local septic process elsewhere in the body."

Taylor, of Baltimore, says that "A chronic focus of infection anywhere in the body may lead to joint involvement."

Tubby, of London, speaking of arthritis of the spine, as far back as 1912, stated that, "If the patient shows definite signs of the disease elsewhere there is no difficulty about the etiology."

Brilliant work on the etiology of arthritis in general has been accomplished by Rosenow, Murphy, Frank Billings, Hastings, Poynton and Paine, Smith, Rosenau, Anderson, Victor Vaughan, Nichols, and Richardson, and many others, with the result that the theory that joint disturbances are secondary to focal infections is dependably established.

By a focal infection is meant, "any circumscribed area of tissue which is inoculated with pathogenic bacteria." Any focus of suppuration is a focal infection. Study and experience have taught us that the most common sites of focal infection are about the teeth, tonsils, sinuses, ear, mastoid, and seminal vesicles and prostate, the less common sites being the intestinal tract with its appendix and gall bladder; genito-urinary tract, covering cystitis, pyelitis, urethritis and in the female metritis and salpingitis; the respiratory tract, as bronchitis, bronchiectasis, empyema, and lung abscess.

Medical opinions are now practically unanimous in maintaining the belief that a suppurating focus anywhere may produce arthritis. So that in these enlightened days the appearance of an arthritis is the cue to the physician to examine his patient thoroughly for some focus of infection. These are in many instances hidden or apparently quiescent and at times may be especially difficult to discover.

However, when, in one's experience, the extraction of a diseased tooth quickly relieves pain in a couple of elbow joints, or the removal of old infected tonsils promptly cures a long-continued polyarthritis, the practitioner of medicine becomes convinced of the correctness of the view that a focal infection may readily cause arthritis. And all medical men agree on this proposition to-day.

In discussing the etiology of arthritis some mention must be made of trauma, but this part of the subject should, in my judgment, be discussed with great care and explicit rhetoric so that there can be no misunderstanding.

Far too many verdicts have already been allowed for cases of chronic infectious arthritis which were designated in the court room as traumatic arthritis, when, in my opinion, the traumatic part was an absolute nonentity.

You will agree that it is a very significant situation when doctors who are engaged largely in industrial practice always obtain a history of injury with every case of chronic arthritis which they may see, while those doctors who have little or no industrial practice never obtain a history of injury with their cases of arthritis, and yet they may have as many, or more, cases of arthritis as the industrial surgeon.

In the event of a wound of a joint, a gunshot wound, an explosion wound, a stab wound, or any other kind of a wound where bacteria may be directly carried into the joint, infection ensue and arthritis develop, we may all fairly and properly call this a traumatic arthritis. Or in the event of a severe contusion of a joint, with or without a wound, and with or without a fracture, such as might occur from the kick of a horse or from being run over by a heavy vehicle or struck by a heavy moving object, and followed by a definite arthritis in the joint involved, we would all fairly and properly agree that this was a traumatic arthritis. However, in such cases as these there is never any dispute for the simple reason that trauma has left its mark which is visible.

In distinct contrast to such cases comes an industrial worker with a painful joint and the history of an injury a month previously. The injury was not severe enough to cause him to stop his work, and there are no visible or other signs of an injury, but his teeth and gums are literally rotten. The condition of the joint is not acute but is that of a chronic infectious arthritis with slow progression and is possibly associated with involvement of other joints.

How can we fairly and properly speak of such a case as this as traumatic arthritis? And yet the industrial boards and courts are granting favorable verdicts in just such cases.

The sense of corporation liability for injury, with its monetary remuneration, together with compensation laws which pay indemnity for injury, present a lure to the industrial worker which it is difficult for him to resist. And this is undoubtedly the reason why cases of chronic infectious arthritis in industrial workers are always connected with the history of an injury, whereas the same pathological conditions occurring in individuals in other positions in life seldom or never are accompanied by a history of injury, and so far as the relative incidence of the occurrence of chronic arthritis in industrial workers is concerned we have no information that they are attacked with any more frequency than other people, even in spite of the fact that they are more exposed to traumatisms.

Traumatic arthritis is a comparatively rare condition and when it does occur it is a monarthritis and an acute arthritis.

Now, as to the pathology of chronic infectious arthritis, and by this we mean the study of the diseased tissues, the changes that occur in the tissues, etc.

Returning to the theory of focal infection as playing the dominant rôle in the causation of chronic arthritis, it must be considered that the infectious agent or its toxines may be carried from their original source to the joint involved either through the blood or lymph streams. That they make their way usually through the blood stream and lodge in the joint or tissues about the joint is the common and accepted theory of the manner of dissemination. Thus

any joint, large or small, may become affected. The distribution is usually polyarticular.

The spinal condition may occur independently of any other joint involvement, or it may be associated with one or more joint disturbances. It may be limited to a few vertebræ or include the whole spine. The joints most commonly involved are the fingers, hip, knee, spine, elbow, and feet. It is a disease chiefly of middle life and old age.

Following lodgment of the infectious embolus or toxine the type and extent of the disease in the joint will, of course, depend upon the age of the individual, the general vital resistance, the local resistance, and the degree of virulence of the offending agent.

According to Nichols and Richardson there are two pathological types of chronic infectious arthritis, namely, the proliferative or atrophic type and the degenerative or hypertrophic type.

In the proliferative or atrophic type is seen a proliferation of the synovial membrane, disintegration and dissolution of the articular cartilages, atrophy of the bone and an absence of bony formation about the joint. In the degenerative or hypertrophic type is seen a softening and erosion of the cartilage, with hypertrophy of the bone in and about the joint.

As to chronic arthritis in general, its nomenclature, etiology, and pathology, this short discussion will at least picture to you the fundamental principles. Having thus taken up the matter of general arthritis for the express purpose of giving you a basic knowledge of the subject, the following remarks will be confined strictly to the title of this paper, namely, " Chronic infectious hypertrophic arthritis of the spine."

At the outset and speaking generally, it may be said that so far as etiology and pathology are concerned there is no essential difference in chronic arthritis of the spine and chronic arthritis of any other joint, so that the previous remarks of general arthritis apply more or less equally as well to the spine.

It must be remembered, however, that between every vertebra is situated a fibrocartilaginous disk called the intervertebral disk. Your imagination will readily suggest that these disks may be placed there for the purpose of relieving shocks and jars to that part of the skeleton which supports and protects most of the vital organs and, secondarily, they add thereby a protection to the joint from injury.

Furthermore, you are seriously reminded that the joints of the spine are not as superficial and vulnerable as are the joints of the extremities. As Kidner aptly says, "All the joints of the spine are subject to various forms of disease which affect joints elsewhere."

By chronic infectious hypertrophic arthritis of the spine we mean that it is a chronic arthritis of the spine of slow progression, caused by an infectious agent and showing hypertrophic changes, which latter, by some authorities, is spoken of as a deposit of calcium salts, rather than a true growth of bone.

The study of these hypertrophic changes in the spine has made wonderful progress in late years, due to the observations with the X ray. Röntgenologists have had the advantage of observing the spine, secondarily, during special studies of any or all of the thoracic or abdominal organs, so that a vast number of spinal columns have

thereby been closely studied although the complaint of the patient had no reference to the spine nor was a picture of the spine the original purpose.

Through this wonderful opportunity the röntgenologists are able to give us very dependable and indisputable facts in relation to the spine, and it is probably appropriate at this time to take up the X-ray study of the vertebral column.

Arial W. George and D. Leonard, of Boston, who during the past 11 years have acted as impartial physicians to the Industrial Accident Board of the State of Massachusetts, have made a very exhaustive study of the spine, including over 10,000 cases—normal and abnormal. In view of such voluminous experience, it would seem ridiculous to controvert their opinions.

They "found very early in this study that theoretical diagnoses which were not based upon known facts, or facts that were not easily demonstrable by the X ray, led into difficulties; and they early realized the absolute necessity of giving opinions based on the X-ray studies which were accurate and which could be proven and substantiated by facts and which were not theoretical."

They emphasize the importance of recognition of congenital variations, that these conditions as they appear in the X ray may be entirely segregated from injury. They stress the importance of chronological, occupational, and postural changes. "Vertebræ change in appearance just as other parts of the human anatomy may change; just as an individual grows older in general appearance, so do the vertebræ."

The laboring man who has done heavy lifting and pushing of heavy objects throughout the period of his working life, who is muscular and of large physique, will in almost every instance have changes which differ from the individual who has occupied a desk position or led a sedentary life. There will be structural changes in the spine such as varying degrees of scoliosis, and due to this structural scoliosis there will be found changes of individual bodies or of all the bodies. More important perhaps is the fact that with these changes will also be found hypertrophic changes on the margins of the vertebræ. These changes are many times confused with the changes due to injury or disease.

To them, "the most important phase of the entire subject is to understand and recognize the above changes." They say that "invariably individuals over 40 years of age are going to show hypertrophic changes to a greater or less extent," and they wish to emphasize that such changes can be proven as not the result of one alleged injury.

It is their opinion that such hypertrophic changes "have no importance whatsoever as indicating the result of an injury," and that they are as "natural to this type of individual as any of the various changes due to age."

One must always be on guard for these changes and consider them normal in relation to the age, occupation, and posture of the individual.

In speaking of arthritis they say that "the changes which appear as the end result are so much within the normal limits that they prefer to speak of these changes as hypertrophic changes and eliminate the word arthritis."

Unless they find morphological changes of the body or parts of the body which indicate tearing, fracture of a portion of the body or parts of a vertebra, they do not consider these hypertrophic changes the result of injury.

W. H. Wallace, of New York, thinks the exostoses are probably calcified fragments of the ligaments and believes that this condition of the spine is much more frequent than most of us have been led to suppose. He quotes Silver as having 86 cases all following acute infections, and that it is probably a definite disease and terminates in many cases by spontaneous cure.

Howard Doub, of the Henry Ford Hospital, of Detroit, in a large number of cases of infectious arthritis of the spine, has found roughening of the crest of the ilium and partial calcification of the iliolumbar ligaments. It is his opinion that this is another manifestation of infectious hypertrophic arthritis of the spine.

The majority of his cases of this condition have shown evidences of infectious arthritis varying from slight spur formation to those showing calcification of all the ligaments of the spine.

Henry K. Pancoast, of Philadelphia, states that "It must be borne in mind that hypertrophic changes, when found as they are in spines of individuals of advancing years, are not strictly pathological."

You now have a general outline of the subject matter of this paper, which has been gone into carefully though briefly. The basic etiology and pathology and the röntgenology of the subject have been taken up, together with the comparative study of chronic arthritis in general.

Going now into these subdivisions separately and from the viewpoint of facts, and taking up the röntgenology first, it must be apparent to you just what X-ray authorities think of chronic arthritis of the spine. They have all seen so many hypertrophic spines in people without injury that they will not tolerate that the condition be in any way attributed to trauma unless there are definite traumatic signs. Furthermore, the condition of hypertrophy, or calcification of the ligaments, is observed by them so frequently that they are even disposed to believe that it is a result of age and occupation and not even connected with disease.

There is plenty of evidence that focal infections may produce hardening of the arteries, calcification of the ligaments, hypertrophy of joints, and in many other ways bring about premature old age, so that from this point of view one might classify senility as being the chronological result of focal infections.

At any rate the hypertrophy shown in cases giving history of trauma is in no way different from that shown in cases without trauma.

With no reason for believing that focal infections might produce hypertrophies of all the other joints and exempt the spine, and having convincing evidence that focal infections do produce hypertrophy in other joints, it must be logical to assume that focal infections can similarly affect the spinal joints. Therefore, it must be reasonably considered that although age and occupation may be a factor in the production of hypertrophy of the spine, yet in all probability focal infection plays the most important part.

To sum up the röntgenologists' opinions on this matter, especially in its connection with trauma, the quotation, already referred to, from George and Leonard most reasonably meets the situation, namely:

Unless one finds morphological changes of the body or parts of the body, which indicate tearing, fracture of a portion of the body or parts of a vertebra, these hypertrophic changes should not be considered the result of injury.

In discussing the subject of chronic infectious hypertrophic arthritis of the spine from the etiologic and pathologic points of view, and in its relation to trauma, several things should stand out before you quite plainly, namely:

1. The common accepted theory that focal infections are the important factors in the causation of chronic arthritis.
2. That the spinal joints are subject to this affection as well and as frequently as other joints.
3. That age and occupation enter into its development.
4. That it is observed extremely frequently in people who have not had an injury.
5. That it is very frequently associated with joint disturbances elsewhere in the body; in other words, it is very often only a part of an outbreak of general joint disturbance.
6. That chronic infectious hypertrophic arthritis of the spine is essentially and fundamentally a disease and not an injury.

These facts, in the light of our present knowledge, are indisputable.

In recapitulation, considering the etiologic, pathologic, and X-ray findings, it may safely be stated that chronic infectious hypertrophic arthritis of the spine is a chronic pathological condition of the spine of slow progress, resulting from age and focal infections, associated with calcification of the spinal ligaments or bony exostoses, and should not be considered as due to or aggravated by injury unless definite objective evidences of trauma exist.

The CHAIRMAN. The third paper. "Trauma and its results from an administrative point of view," is to be given by Dr. James J. Donohue, of Connecticut.

TRAUMA AND ITS RESULTS FROM AN ADMINISTRATIVE POINT OF VIEW

BY JAMES J. DONOHUE, M. D., F. A. C. S., MEMBER CONNECTICUT BOARD OF COMPENSATION COMMISSIONERS

In discussing the results of trauma from the viewpoint of those intrusted with the duties of administering compensation laws, the impressions made upon such officials are many and varied. The things to be attained under these laws, in the order of their merit, are: First, prevention of the accident; second, restoration of the injured employee; and third, compensation for his disability. Time prevents going into matters specifically or in detail, and the best that can be done is to indulge in generalities on the subject which has been assigned.

Compensation laws, like all others, are made for the purpose of remedying apparent evils of society, and also for the purpose of lifting humanity into a higher scale, so that the sufferer, whether he be claimant or dependent, may be relieved of the burdens which naturally result from industrial accidents.

After 12 years' experience in administering the compensation act in Connecticut, I find in general that the amount of good which has accrued to the toiling masses through compensation legislation can not be measured, with any degree of fairness, by the amount of dollars and cents which have been expended in compensating injured employees. This sort of legislation has a broader significance. It has shown that there has been an honest attempt, demonstrated in a practical way, to disprove the saying of the Highland Bard that, "Man's inhumanity to man makes countless thousands mourn." For practical and beneficial legislation it is difficult to conceive of any which has done more to alleviate human suffering than compensation laws, and while we are far from the millennium, so far as perfection in operation is concerned, we have a right to make a very satisfactory report of progress up to the present time.

In attempting to deal out justice to injured men, there is probably no situation more difficult to handle than that of the man who comes in with no visible physical injury, but who is suffering from subjective symptoms, which are always difficult definitely to diagnose. In such cases we need to exercise all the patience and judgment with which we are endowed in order to see that justice is done to both sides.

However, it is not the prerogative of the commissioner to be liberal with other people's money, as was suggested to me by Governor Baldwin when I received my appointment to the first compensation commission of Connecticut some 12 years ago; rather, it is our duty to handle all situations in a spirit of liberality, giving the injured man the benefit of all reasonable doubt.

Many of us, I feel sure, when we see a man coming in for about the tenth time and claiming a back strain, wish that our prehistoric

ancestors in their progress of evolution had handed down to us an anatomical structure devoid of any vertebræ whatever; in other words, when the spineless vertebrate presents himself, we often wish that heredity had dealt differently with the human race anatomically, and so might have eliminated many of the claims for back strain. We have heard of railway spine, which, in the past, was the bugbear of the railroad companies. To-day we have the sacroiliac strain and the lumbar muscle strain, both of which are among the most fertile sources of contention when it comes to disability disputes. To cull the oats from the chaff is the duty and work of no novice, and many times the chaff has a mighty good sprinkling of oats mixed in with it. In some of these cases it is well-nigh impossible, by any diagnostic method existing at the present time, to measure pain, imaginary or real, and many things have to be taken into consideration in arriving at a conclusion.

Oftentimes the man with a back strain, though he may not be a malingerer, still lacks that stamina and self-confidence which are necessary to send him forward and shake off the imaginary pain magnified by his self-consciousness and self-sympathy. The medical man with the strongest hypnotic power and the one with the greatest ability to send home a suggestion will be the most useful in making a cure of what, in the hands of a man lacking in these qualities, will often result in a confirmed neurotic. One of the most difficult problems, if not the most difficult, which we are called upon to deal with is the neurotic.

The neurotic is the result of a variety of causative conditions. He may be produced by a rather trifling injury when he has the nervous system which is a fertile soil for the production of this condition. Too much time for the injured man to think about himself after a very trifling injury is very detrimental to the man himself and also to his employer, and if employers would show more cooperation in assisting to get such men back to work quickly it would do more than any medical treatment that could possibly be instituted for the cure of this condition. The payment of a few dollars in compensation is a mighty small consideration compared with the quicker recovery of the injured man, and this can best be done by the strongest kind of cooperation between employer, insurer, and employee. Just as quickly as an injured man is able to get around and do work of any kind, even though it may be far from the work which he was doing at the time of injury, the employer should furnish him employment; and by so doing, even though he puts this man to work at a time when he can not earn what he actually pays him, it will redound to his advantage by reducing his experience rate, and it will also prevent the employee from becoming a neurotic, which is always a possibility in certain types of individuals.

There are employers, unfortunately, who do not show the right spirit toward the compensation laws and injured workmen. They seem to take the attitude, "Oh, well, I am insured; talk to the insurance company; I paid my premium, let them pay for it." This is absolutely the wrong spirit, as indirectly in the end it costs them thousands of dollars. A worker restored is an asset to the employer, to himself, and to the community. An idle workman is a liability. Many days of idleness and many dollars might be saved to the em-

ployee and to the employer, respectively, if there were a more judicious expenditure of a small amount of money in assisting the injured man to get back to work in the way which I have suggested.

Neurotics are also produced many times by the injured workmen getting into the hands of nerve specialists, who treat them more for the pecuniary reward which they may themselves receive for such treatment than with any real desire to cure their patients and get them back to work. Unnecessary and prolonged disabilities are oftentimes produced by poor medical treatment or medical treatment received at the hands of would-be neurologists. When the patient gets into the hands of a neurologist of this type there is so much red tape in the diagnosis and in the various examinations to which he is subjected that it tends to exaggerate in the mind of the injured man the condition from which he thinks he is suffering, and he revolves it in his mind sufficiently long for it to become to him a pronounced fact, and he thus becomes a confirmed nervous wreck. I have seen many of such cases, and in my opinion if they had never seen a nerve specialist they would have been very much better off and would have resumed work much more promptly. All of this forces me to conclude that if we have to deal with a neurologist, the best that can possibly be secured is the one to select, and be sure to select a man who is so busy that he will want to get his patients off his hands quickly and back to work and not have them as constant visitors to his office or any other place of treatment.

When you are really confronted with such a situation as this and medical means fail, the cure which will probably result in the greatest number of recoveries and in the quickest return to work is the one most used in European countries, namely, the payment of a lump sum. This clears the mind of the injured man of all pending litigation, and when he is assured that such a lump sum is a final and complete settlement of his case, he almost always forgets his injury and attendant mental troubles and goes back to work.

In this connection I might add also that when lawyers get hold of a man of this type another stumbling block is thrown in the way of his recovery, for the legal profession as well as the medical can claim its share in the production of neurotics.

My observation leads me to feel that people coming from southern European climates—that is, the warm countries—are the ones who are the most spineless and who have the biggest idea of the size of their injuries, magnifying a trifling ailment out of all proportion to the injury actually received, shouting with pain if you look at them, and going into hysterics if you attempt to bend or exercise an injured member in an attempt justly to estimate the amount of specific injury. They are the ones who are apt to make the strongest claims on the slightest provocation, and if there is such a thing as overdoing it, I would say that this is the element which needs our closest attention. I have likewise noticed that the people from the colder climates are far less of a neurotic type, and in fact it seems to me that that tendency is almost entirely absent in most of the cases coming from the hardier climates. The emotional types come from the warmer countries, and I believe it is because they come from countries having a paternal government. My own experi-

ence has been that those who come from the countries where the government is the most paternal are the ones with whom I have had the most difficulty in dealing, and they are by far the most unreasonable in their claims.

Great injury can be done an injured man by giving him too much sympathy. While we always sympathize (for we must if we are human) with the employee who is injured, and he of course is entitled to our first consideration and to the full extent of anything to which he may be entitled, still great harm can be done him by giving him worthless sympathy. What he needs is bracing up and manful support rather than sympathy which makes a weakling out of him. I am speaking now from a medical standpoint, and the men on our boards and commissions, medical and otherwise, who will take this attitude toward injured workmen can serve the State, the Nation, and the employee far better than by any other attitude which they can assume. We recognize that no injury which a workman gets can improve him. We recognize that to break a leg or an arm does not help that member, but for all intents and purposes, in the multitudinous injuries which are being received every day by employees, the recoveries are such that we could almost place them in a 100 per cent class so far as useful restoration to society and to the employees themselves are concerned. And while we recognize that suggestions will not support a broken limb, after it is supported and properly reduced and immobilized and recovery made, good wholesome and supporting advice is what the patient needs and not sympathy.

One of the most detrimental things we have to contend with in disposing of the claims of a man entitled to compensation for injury is the feature of overinsurance. In some of these cases it is a difficult proposition to get the man back to work if he carries a health and accident policy, together with a benefit insurance from his working organization or some fraternal organization. In such cases the man can make more money in idleness than he can by resuming work, and this naturally greatly increases the incentive to prolong disability. It is not the easiest thing in the world to disprove disabilities which depend largely on subjective symptoms, for medicine is not an exact science by any means.

Neither is it well to have the maximum amount of weekly compensation increased by our legislatures without giving due consideration to the question of raising the minimum as well. I think the question of the maximum has been played too strongly, while the minimum has been pretty well forgotten. My own feeling is that it would not be a bad idea to raise the minimum amount of weekly compensation in almost every State in the Union, while the maximum is more nearly able to take care of itself.

The policy tried by some employers of examining all employees seeking employment has, of course, been brought about in an effort on the part of employers to eliminate the defectives, but that is almost an impossibility. When a claim can be made and based entirely upon the far-reaching words, "contributing cause," it impresses me that almost anything can come within the scope of compensation laws to-day, so long as the incident occurs within the

scope of the employment. Some who have conducted this system of examinations in their factories feel they are able to take the selective men and eliminate the defectives, and by this means reduce their compensation costs. Were it not for the fact that it throws a great many men out of employment, men oftentimes more skilled in their special lines than those who may be hired to take their places because of their physical fitness, such a series of examinations might be useful in bringing to the attention of workmen certain conditions from which they may be suffering, so that proper steps might be taken by them for the correction of ailments and conditions which otherwise might not be made known to them until such diseases or conditions become acute and result in disability to work. Some of the large insurance companies to-day allow their policyholders to have physical examinations made at the company's expense for the purpose of enabling them to check up on their physical condition and rectify weaknesses or defects found to exist, so that this course must unquestionably be a means of preventing illness and disability to a certain extent, because the large insurance companies are doing it not alone from a humanitarian standpoint but because it is a cold-blooded business proposition.

Since the passage of compensation laws the number and variety of diseases and conditions attributed to injury or trauma has become legion. The authors of textbooks written even a short time ago must necessarily completely rewrite or revise their books when it comes to the question of etiology. It often raises doubt in the mind of a medical man whether or not the question of causation has not been vastly overdone in the interest of proving or substantiating claims for compensation.

Another fact that the results of trauma has brought to our attention is that hospitalization can not be too good, nor medical and surgical services too good, and in every case there should be no limit placed by State acts on the quantity as well as the quality of these services. I note with considerable satisfaction that at the present time most of the States are rapidly coming to that conclusion, and I am sure, from the trend of legislation, that it will not be long before every State with workmen's compensation acts not only will pay the weekly compensation to which injured workmen are entitled but also will grant them unlimited medical, surgical, and hospital services.

To summarize briefly, the subjects which have afforded the greatest sources of possible conflict of opinion are such as hernia; specific loss of vision; occupational diseases, due either to injury or to latent conditions; conflicting reports and testimony of examining physicians and surgeons; and the question as to who should have the selection of the medical attendant, the employee or the employer. While there are many others, these are the most common sources of trouble with which administrators of the compensation laws are confronted. But while these specific factors cause many disputes, they are rapidly becoming adjusted so that they are less fertile sources of controversy than they were a few years ago. It is impossible for any compensation law, any more than any other law, to be so shaped that it will operate automatically, but I believe th[illegible] compensation laws arrive at justice in a more direct and simple way than the old

complicated system of common law, and while they are not perfect we believe we have made a closer approach to that state in aiding injured workmen than any other system which has yet been devised.

In closing I might say that the best way to alleviate the results of trauma is to give the injured workman full and unlimited medical, surgical, and hospital services. Do not encourage the fellow who seeks a few dollars' compensation to the detriment of his own physical and mental well-being when he ought to be working and rehabilitating himself. In this respect I agree with Doctor Albee, who said that the best way to rehabilitate an injured man and to bring about his recovery (and that is the chief aim of all compensation laws) is to get him into a proper state of mind and have him resume work as quickly as possible, and then we will be rendering the greatest service to the employee, who is our first consideration, and to society in general.

The CHAIRMAN. The fourth and last paper this morning is "Phosphorus necrosis of the jaw," by Dr. Robert P. Bay, of the State Industrial Accident Commission of Maryland.

Doctor BAY. In Maryland we have had several cases of phosphorus poisoning which have caused quite a little notoriety. We had one case in which the lower court decided that it did not come under the compensation commission, but this decision was later reversed by the court of appeals. I will read you just one paragraph, which I believe covers the subject:

> The phosphorus poisoning of the girl was contracted in the course of and arising out of a hazardous employment, at a particular place and within a known and definite particular period of time.

That was enough for the court of appeals to rule that it was an accident and did come under the accident commission.

PHOSPHORUS NECROSIS OF THE JAW

BY ROBERT P. BAY, M. D., CHIEF MEDICAL EXAMINER, MARYLAND STATE INDUSTRIAL ACCIDENT COMMISSION

In presenting this short paper, it is my desire not to convey any new ideas, but chiefly to refresh your memory with certain well-known facts which we feel to be of special interest. Phosphorus necrosis of the jaw, occurring mostly in the manufacture of matches, has been described by writers in other countries. Its occurrence was first observed by Lorinser, of Vienna, who published a paper upon the subject in 1845, recording cases which occurred as early as 1839. In 1846 Doctor Wilks, of London, published a paper upon the subject in Guy's Hospital Report. Later on cases were reported by both English and continental surgeons between 1862 and 1865. Cases were reported at this time in which the entire lower jaw, or portions of it, were removed by Drs. William Hunt and C. S. Boker, of Philadelphia, and one notable case by Dr. J. C. Hutchison, of Brooklyn, in which the entire upper jaw, with the malar bone, was excised. There has been considerable literature written on the subject, and all textbooks on surgery contain a rather full account of the disease.

According to some writers, phosphorus necrosis of the jaw is due to the constant exposure of the periosteum of the upper or lower jaw to the phosphorus vapors. Others say that phosphorus poison is not a local condition of the jaw but is a systemic disease affecting the whole skeletal system, with predilection for the jawbones. Marshall states, however, that there seems to be no fact in pathology better established than that the disease is the result of local poisoning produced through some break in the continuity of the structure of the mouth which permits the poisonous fumes to come in contact with the periosteum. Most writers say that five years is the average time before the first symptoms of phosphorus necrosis become manifest. However, the symptoms may make their appearance a few months after the patient engages in his work or they may not appear for 10 to 15 years or more. Many workers who have given up their positions and taken some other work showed evidence of the disease later on in life.

The preexisting condition seems to be morbid state of the periosteum, which under an exciting cause readily inflames. The exciting causes are found in the teeth—a carious tooth with the pulp exposed, which structure by some of its tissues is continuous with the peridental and perialveolar membranes, and tartar accumulations may give rise to an irritated and sensitive condition of the borders of the reflected periosteum. It is a matter of observation that the periostitis, which develops in connection with other causes, with the exception possibly of syphilis and mercurial poisoning, is in many cases of a local character, whereas that which precedes phos-

phorus necrosis is, as a rule, general, passing rapidly, unless interfered with, to involvement of the entire bone.

Phosphorus necrosis presents anatomically all the typical changes leading to the death of the part en masse. The process is more rapid than ordinary necrosis. After the specific inflammation is excited in the periosteum there is formed laminated layers of new bone which envelope the jaw, stopping at the borders of the alveolar process in front and behind, but completely surrounding the angle, ramus, and processes. Osteophytes form both upon the outer surface of the bone and within its substance. The affected bones undergo a process of drying, or sclerosis, on account of interference with their nutrition by the newly formed structure. The bone may become rarefied, due to reabsorption of the osteophytes. Thus the bone may become very dry, thin, and brittle. The periosteum peels easily. Suppuration finally sets in, due to some infection carried down into the deeper structures by way of a pulpless tooth. The suppurative process spreads until it may involve the entire bone. In 75 per cent of the cases there is complete necrosis of the bone; in the remainder the necrosis is partial. The pus burrows its way between the bone surface and its periosteum, and escapes, usually through a sinus in the neighborhood of the lateral or first molar tooth. The muscles attach themselves to the periosteum covering the new bone and are lifted off, as it were, with that membrane. The sequestrum is inclosed by this newly formed bone. The mandible is affected more than the maxilla—5 to 3 according to Hirt, and 9 to 1 according to Thiersch. Out of 16 cases Mears reported 11 in the lower jaw and 5 in the upper jaw. In 3 cases both upper and lower jaw were affected.

Symptoms of phosphorus necrosis differ from those of ordinary necrosis mainly in intensity. The odontalgia, which is one of the early symptoms, is at first intermittent but in time becomes continuous. It is also more diffuse, from the first involving the entire bone. Swelling and tenderness are found in the regions of the alveolar processes. A tooth or teeth may be removed, but the pain does not cease. Very soon suppurative periostitis manifests itself in the perialveolar and peridental membranes, causing the teeth to become loose and pus to exude from the alveoli. The inflammation quickly extends, involving the structures of the gums and detaching them so as to expose the alveolar border. The surrounding soft parts swell, become tender, pus and saliva dribble over the inflamed lower lip, and there is an odor like garlic. The face becomes swollen, reaching to the lower lip, and mild inflammatory symptoms are present over the skin of the face, resembling erysipelas. The jaws become partially ankylosed. Numerous small abscesses may form on the jaw margin. The gingiva is separated from the teeth, the bone is denuded of its periosteum and is covered with a greenish yellow putrid material. Large sequestra of bone may be expelled, occasionally the whole mandible may be cast off. The process lasts from a few months to a few years, the average duration being three years. When the inflammation reaches the condyle of the lower jaw great pain is experienced in the ear of the affected side. The occlusion of the jaws, which before may have been partial, now becomes complete. The interference with the ingestion of proper food, owing

to the condition of the mouth, the suffering endured by the patient associated with the constant presence in the mouth and the swallowing of the offensive discharges from the dead bone, all combine to deteriorate in a marked degree the general health of the patient. If the maxilla is involved, necrosis is more dangerous than in the mandible, because meningitis or brain abscess may ensue. Unless proper remedial measures are resorted to death may ensue from exhaustion, or, in very severe cases, from gangrene of the overlying soft structures.

Prevention of the disease consists of thorough ventilation of the rooms in which the phosphorus is handled, cleanliness of the factories, with the proper care and treatment of the teeth of the operators, and teaching them habits of personal cleanliness. Factory employees should not eat or drink in their workrooms, and by attention to their hands and to their finger nails should avoid carrying any phosphorus into their mouths. Where proper precautions are observed phosphorus necrosis is rarely seen. Experience has proven the value of turpentine in neutralizing the toxic effects of the phosphorus fumes. Wide-mouthed bottles containing this agent are worn strapped around the neck and resting on the chest ready for the inhalation of the vapor.

Treatment may be divided into three stages—primary, intermediate, and secondary. The primary stage may be described as that in which the periosteum in its morbid condition manifests the results of beginning irritation. The workmen rarely present themselves for treatment in this stage. Pain in the bone of a diffuse character, intermittent in occurrence, with the sensation of protrusion of the teeth, soreness in the gums, with hemorrhagic transudations during mastication, or upon the use of a toothpick, are the chief symptoms present in this stage. If the teeth are examined tartar may be found collected around the gum margins, while a softened condition of these structures, with a discoloration of a purplish hue, may be present. The teeth should be carefully looked at and those that are too far gone should be extracted. Tartar should be carefully and thoroughly removed. Astringent solutions such as alcohol, tincture of myrrh, etc., should be used to bath the teeth. Constitutional treatment should consist in the administration of anodyne remedies to relieve the pain and soothe the general system. In the stage which is designated as intermediate, in which the inflammation of the periosteum is well established, the plan of treatment should be such as to arrest, as far as possible, the inflammatory action and thus limit the destruction of bone. Free incision of the periosteum to the bone should be employed, using internal and external remedies to assist in combating the inflammation. Effort to arrest the progress of the disease in this stage is usually without avail, the condition seeming to resist any successful interference. When the inflammation has passed to the suppurative stage and the death of the bone accomplished, the treatment should be as follows: Cleanse the mouth with warm water, after which dilute solutions of carbolic acid, iodine, or $KMnO_4$ should be applied around the exposed bone with a syringe to disinfect the parts and remove the collection of pus. A layer of iodoform gauze should be packed around the exposed bone to receive the secretions and pre-

vent as far as possible their escape into the mouth and mixture with the food. If sinuses are formed they should be cleansed by injections of medicated solutions and dressings be put on. Use no poultices or warm applications in this stage, as it simply increases purulent formation, produces sinuses, and consequent disfigurement.

Many surgeons still believe that we should wait until the sequestrum has formed before interfering surgically. It was discovered, however, that many patients do not survive long enough for the sequestrum to form, so early resection has been practiced lately, the excision of the bone being carried into the healthy bone tissue as far as possible. Even though the early resection is done, the disease may still go on, and in the end deformity may be greater than if complete sequestration had been waited for. If early resection is done, it should be done subperiosteally and in the intraoral route. This will be found practical in nearly all instances. The process of regeneration of the removed bone, where the periosteum is in healthy condition, continues for a long time after the operation. Even the maxilla may regenerate, though not as completely nor as perfectly as the mandible. Should complete necrosis of the mandible occur, the sequestrum should be permitted to remain so as to prevent recession of the chin. This forms a framework about which new bone may develop, and thereby the contour of the face is preserved. When sufficient lamina and new bone have developed, the sequestrum is removed through the mouth, care being taken not to fracture the new bone. When the disease has invaded the condyloid and caronoid processes of the lower jaw, the disarticulation is easily affected after incision of the structures in front of the ramus. It may be well sometimes, when the entire jaw is involved, to remove only half of the lower jaw at a time, and then later on, in about eight weeks, to remove the other half. When the sequestrum has been removed, iodoform should be packed between the two lamina of new bone, and each time the amount of gauze should be lessened so as to permit approximation and consolidation of the bone plated. After removal of the sequestrum in the lower jaw a bandage should be applied so as to support the new jaw. After removal of same in upper jaw, the same form of dressing should be used until the cavity is closed by the fibrous tissue which forms, as a rule, in place of bone. If the sequestrum is expelled before new bone forms, a prosthesis should be employed. Along with this surgical treatment preparations of iron and quinine, concentrated food, open air, and other hygienic surroundings should form an important part of treatment.

In conclusion, the cases occurring in Maryland have all developed in one plant. They had been exposed for from one month to three years before the symptoms occurred, and the original symptoms were all local and not constitutional. In every case necrosis developed following some open lesion, such as a bad tooth or a cavity, the result of an extracted tooth. I believe that certain precautions should be used to prevent the direct introduction of phosphorus into the tissues, such as inspection of the mouth and nose, with special care of the teeth, which should be cleansed before and after eating. The signs at present posted around the plant apply to the swallowing of this poison rather than to the inoculation. I also believe that operation should be performed at once and the diseased bone

removed and the cavity drained. Needless to say the patient should not be allowed to come into contact with phosphorus until he is entirely healed. The process as a rule is very gradual, due to the slow action of the phosphorus fumes and the quantity which attacks the exposed bone.

Treatment of the disease in the primary stage is efficient and prevents its progress. In the intermediate and secondary stages the treatment lies within the judgment of the individual surgeon as to whether conservative or radical measures should be employed.

[On motion duly made, seconded, and carried the privileges of the floor were extended to Walter H. Monroe, of Alabama, although Alabama is not a member of the association.]

DISCUSSION

The CHAIRMAN. These papers are open for general discussion. At the conclusion of the general discussion the readers of the papers will be called on to close the discussion. As Doctor Bay's paper is to be discussed this evening, the discussion will be on the first three papers read.

Doctor MCBRIDE. I would like to ask Doctor Bay whether or not in the cases of phosphorus poisoning occurring in his State, and with which he is familiar, blood examinations were made; and if so, what the blood pictures showed?

Doctor BAY. Unfortunately, these cases occurred in a small town where the hospital facilities were not sufficiently great, and my connection with them was simply in consultation. A blood picture was made in two of them, however, but it did not show anything but secondary anemia. The culture was not made. The leucocyte count, if I remember correctly, in the highest was 12,000, with mild secondary anemia.

The CHAIRMAN. Inasmuch as Doctor Bay will not be here this evening, are there any questions that you wish to ask him at this time before we go on with the general discussion?

Mr. WILCOX. I would like to ask Doctor Bay the nature of the industry in which these cases occur. I do not care to have the name of the industry.

Doctor BAY. Mr. Stewart, who is down for discussion of this subject, will cover that much more thoroughly in his discussion than I am capable of doing.

Mr. STEWART. I recognize my incompetency to discuss the papers that have been read this morning from the viewpoint of the gentlemen who read them. I understand the meaning of only about one word out of five that has been used in the papers, and all I want to do is to call attention in a general way to the medical aspect of compensation work as it has revealed itself in the meetings of this association.

Year after year we sit through the medical sessions of the conventions hearing the workingmen denounced as frauds—not universally, it is true, perhaps not even in a majority of the papers read, though I think it would figure more than a majority, particularly when hernia or back strain comes up for discussion. Of course we all know

that back and spine troubles are our greatest difficulties. They are the things upon which we most need information and enlightenment from the doctors, but do we not need to be schooled in broad, general principles, particularly in the matter of back strain?

I am neither a scientist nor a physician, but let us assume, what most of us who have studied the matter at all believe to be true, that man is a man by virtue of the fact that in some distant past the creature from which he has grown learned to stand on its hind legs, thus freeing its arms, so that instead of trying to butt with its head it could throw stones at its enemy or at the animal it needed for food but could not otherwise catch or kill. This freeing of its hands was the beginning of its use of the bow and arrow, and of all those other methods of attack and defense which differentiate man from other forms of life.

With the use of the hind legs for standing and the freer use of the hands began the development of an entirely artificial animal, by virtue of which the back became his weakest part. By the use of his hands, guided by his brain, man developed from an inferior and inconsequential part of the animal world to that position about which he spends most of his time nowadays bragging, and in the process put a strain on his back. If that is true, and I think the more we study it the more we will believe it is true, there is a natural weakness in the spine, not because of our work but because we are men, and I wonder if, after all and particularly in these special studies of individual cases, we ought not to consider that an artificial animal in an artificial job, in an artificial world which he has created with his hands, guided by his brain, and at the expense of his back may not produce a condition of the spine which is largely, if not entirely, the result of his occupation—of the posture he must assume during his working hours.

The real difficulty, as I see it, is that the physician studies an abstract condition as it exists in an individual case at the time he makes his examination. He finds a condition that could and in many cases does develop by reason of age, and with which occupation seems to have nothing to do.

We give all the glory of this artificial thing we are and the artificial things we do to the brain and the hand, while the fact that the bony conformation of the spine has been trying to adjust itself to a new position has been given no recognition. Everything upon this globe which has been built by human hands, guided by human brains, is at the expense of the human back. To begin with, the very fact that we are bipeds throws all the bodily strain, or most of it, upon the back. We go into the mines and quarries, and with bent, cramped, distorted backs we free the ores, the marble, and the granite, from which later on, wrought by the hands or by machinery built by human hands and tools constructed by human hands, are erected the buildings and the statuary which we call our wealth. The hand, guided by the brain, constructs the tools to make the machinery, and builds the machinery that creates and distributes our billions of dollars of wealth. We can do these things because we stand erect, but we stand erect at the expense of the back. Let us not forget that every dollar of wealth, everything of joy or of artificial beauty, comes from the toil of the hands and the pain of the back.

The story and pictures of Atlas bearing the world upon his back is to the workingman not mythology, but truth. Crouched upon his knees, his head erect, his hands free, his face writhing, he shows the awful anguish of bearing the world upon his back. Not only that, but if it is true, and we believe it is, that man began to be a man—as we understand the term "man"—when he first learned to stand on his hind legs and free his hands, then consider what he has done to himself at the expense of his back.

The marrow of the human spine must build and maintain a brain five times the size of that with which it started. From a general stature of two and a half feet man has grown to a race size, particularly among the Nordic races, of twice that stature, and nowhere to-day, except among the Pygmies of Africa, are there creatures which we would be willing to call men who are anywhere near the size man started with, and all this at the expense of the back. I grant you all you may say—that there are no outward evidences; that there are no bruises, no lesions; that "all the symptoms are subjective"; that only his face writhes, only his nerves twitch, and that "these symptoms may be easily simulated by anyone."

There is not a day but that thousands of men appear before State compensation commissions asking for medical aid or money compensation for back strain. The physicians are called in and two or three hundred out of every thousand such men are turned away as frauds. I do not believe they are frauds.

A condition arises which may not be the result of a single blow, an immediate accident, but in which there is a continuous, an unnatural, abnormal hammering, blow upon blow, upon that point that ought to have rest. Is not that a situation growing out of the man's occupation? Is it not a condition which, while common to all, is made infinitely worse by a man having to work in a coal mine, especially a thin-seam mine, by a man having to shove a wheelbarrow loaded to the limit, for 8 or 10 hours a day? Do not these occupations produce a condition of the spine at 35 or 40 years of age that would not ordinarily have arisen before 60 or 70 years, and were not the compensation laws designed originally and intended to take some cognizance of this very fact? Some of these claimants may, of course, be frauds.

I am past 68 years old and I do not remember a day nor an hour when I did not have the backache. But, you say, that was not the result of trauma. I grant you that, except the trauma that comes to every back because of the fact that we stand upon our hind legs; but suppose I was a hod carrier or a ditch digger, would not the greater pain be the result of occupation?

Certainly with all the billions upon billions of wealth the hands have created we can afford to be reasonably liberal when the shouts of pain come up from the back which sustains it all. Somehow or other, it seems to me some of the doctors do not quite get the view of the compensation laws which I have been forced to take as I have studied the whole situation.

Mr. CLARK. The reading of these papers has brought to my mind something I had very forcibly impressed upon me at San Francisco, namely, the lack in our commissions of an accumulation of medical knowledge. We as commissioners know that three-fourths of all

the problems we have to meet are legal or medical and much more medical than legal. We also know, and some of us have learned by experience that only the best physicians are of much help to us. We are hindered and hampered more by physicians than from any other source I think, and at the same time we are helped more from that same source than from any other.

In our departments we publish bulletins (at least, we do in Ohio, and I presume most of the jurisdictions do the same) giving the decisions of the commissioner. Some of them are written up in great detail, and some of them are short, but I have never yet seen any separate volumes devoted to medical questions, all of which are live questions, and mean so much to the medical departments we maintain.

In our department we have seven or eight physicians, who have their suites of rooms and their clerical forces and their reviewers and all the equipment we can give them to reach medical conclusions for our assistance, and yet when the report of this convention or this association is published, it will probably be sent to the commissioners. In it will be all the discussions of all the subjects that have been discussed at this meeting. What could be of more value to our commission than to have the marvelous papers which have been read here this morning taken into our medical departments, with instructions that each one of our physicians make a careful study of such papers. They would be glad to do it, because there has not been a paper read this morning that has not dealt with one of the most live and most difficult questions we have to consider. Our doctors do not get that discussion from the outside; they do not have the value of such papers as the one read here on back injuries, a subject which has troubled commissioners more than any other, and the ones on traumatism, in which there is more fraud perpetrated than in any other branch of compensation administration.

What this association is for, I take it, is to get information and assistance to those administering the law. I should like to have these papers printed so that I can take them in to our physicians and say, "If you are not interested enough to make a careful study of that little volume containing the medical part of the program at Salt Lake City, you ought not to be in this department." I would like to be in a position to say that to every physician I have in my department.

I am connected with three or four national conventions and have a bushel basket full of annual reports that I have merely scanned, because I am not interested in the bulk of the matter after it is in print, but I would be intensely interested as a commissioner, and my physicians I am certain would be much more interested, if the medical part of this program could be printed in a separate volume for the benefit of the medical departments of our commissions.

Mr. STEWART. I want to say that it seems to me to be asking a good deal, in view of the fight that the Bureau of Labor Statistics has to get an appropriation to print anything at all, to ask us to separate these subjects and get out separate bulletins on each. If the physicians of the compensation commissions do not know what is in these proceedings, they have not taken sufficient interest to find out. We can not go on increasing our printing expense, which

is borne by the Bureau of Labor Statistics alone, in this manner. We supply as many copies of these proceedings as are requested.

Mr. McSHANE. I want to call attention to the resolution of the Halifax convention dealing with medical problems—the problems which were made the heart of this convention and given expression in the splendid papers you have heard here. We have called the attention of the various physicians and surgeons with whom we have come in contact to the reports of our proceedings, and we will be glad to furnish copies to any who inquire. All you have to do is to apply to the secretary-treasurer and they will be furnished. We have an index, and you can send and get what bulletins you please.

Mr. KINGSTON. With reference to what Mr. Stewart has said and the importance of the matter that we hear at these conventions, I wish to say how much I have appreciated, during these past 10 years of attending these conventions, getting the stuff across that we hear. I have gone to the trouble of taking the proceedings of these last 11 years and binding them in two separate volumes, and have prepared an analytical index of my own (it was done before this printed index came out), so that I am now in a position when at home to refer in an instant to discussions such as we have had this morning that have occurred at the conventions during the past years. I commend that to the commissioners here; I am sure you will find it a very helpful plan.

I wish to ask a question of Doctor Landenberger with reference to sacroiliac cases. We have a large number of back cases and some of them come to us diagnosed as sacroiliac trouble. That is the term; possibly that does not mean a great deal, or the doctor in saying that does not know exactly what he means to convey, but at all events it is suggested that this man has sacroiliac trouble. The X ray may be negative so far as any disturbance of the joints is concerned, but the pain is in the region of the sacroiliac joint, and so it comes to us as a sacroiliac trouble.

I wonder if the doctor, in referring to infective diseases of the spine, had also in mind that a large number of these troubles which come to us diagnosed as sacroiliac-joint troubles are probably infective diseases of that joint as well. In other words, Doctor, do the remarks which you have made regarding spine troubles apply with equal strength to the sacroiliac joints?

Mr. BROWN. Referring to the matter of the publication of these papers, I realize the wisdom of the suggestion of Brother Stewart concerning the publication of them in our proceedings. On the other hand, considering the suggestion made by Mr. Clark, of Ohio, that each particular profession has its particular literature, I wonder if we could not prevail upon these able physicians who have given us such excellent papers to have these papers appear in the medical journals which circulate among the physicians who ought to have such papers. My idea is to get them into the hands of the doctors who will not, perhaps, get them from our proceedings. Might not that answer the question?

Doctor BAY. It does not seem to me that the last suggestion is quite feasible. The papers read here are put in the simplest form

for both the layman and the physician, and they probably would not be accepted as highly scientific medical papers.

What Mr. Stewart has said is very true, I believe, in so far as the men connected with accident commissions and boards are concerned. I do feel, however, that each doctor presenting papers here should have a certain number of these reprints for himself to send to the physicians in his State and in other States doing that line of work. In that way it may help at least to spread the gospel of this industrial surgery. That is the only way I can see to meet the situation in a practical way.

Mr. STEWART. Within reasonable limits we can handle the reprint situation. I believe the Halifax convention asked that two or three or possibly four of the medical papers be printed separately and sent out. After your report is in type ready to print, the expense of taking out a few pages and printing two or three thousand extra copies is not great, and within limits I am perfectly willing to do it, and do do it right along.

Mr. WALNUT. The first question I want to ask of Doctor Tyree in reference to cancer is how he would apply his information on the subject to a typical case; for example, the case of a woman who has cancer of the breast, and who, before the board, attributes it to a fall of some sort and a blow, followed by a bruise, with subsequent pain, and an ultimate diagnosis of cancer of the breast. I would like to know what period of time he thinks should elapse between the date of the alleged injury and the development of the cancer, and what emphasis he would put upon the various phases of her story. In the same way, I would appreciate learning the emphasis he would put upon the development of tuberculosis from an injury. For example, take a young man in his twenties who meets with an accident in a coal mine, due to an explosion, and the obvious injuries are to his leg and his arm, but he also testifies that he had pain in his chest. He is disabled about four weeks, then goes back to work, and within six months has developed a case of tuberculosis.

Then as to the question of back injuries we have case after case, of course, of back injuries in which doctors testify on both sides, those on one side attributing the condition entirely to the man's physical condition and some infection and those on the other side saying, "Yes; that is probably true; but the particular strain or twist that the man was subjected to and which he alleges to have been the source of his trouble had an exciting effect upon the pre-existing conditions." Under our statute we sometimes grant compensation. As I understood Doctor Landenberger, he would not attribute any importance at all, or very little, to the exciting cause of this aggravation.

Then, in connection with Doctor Donohue's paper, we have cases of men who have been injured—probably a spinal injury or some other rather severe injury—and never go back to work again. We have them examined fully and completely by physicians. I had a case of a man who has not been at work for three or four years. I brought him from the western end of the State, where he had been examined by many doctors, to the eastern end, where they did nothing at all about him. We had him in a hospital under examination, and the doctors reported negatively on any possible obvious

disability. Yet the man has not worked for three or four years, and so far as I know has not since gone back to work. That man had been a good workman for maybe 20 years. Is that a compensable disability? That is a question that has frequently occurred to me.

Those three questions are the kind of questions we face and, I presume, the kind of questions that other board members also face.

The CHAIRMAN. If there is further discussion we will be glad to hear it. If not, we will call upon the readers of the paper to conclude the program. Doctor Tyree.

Doctor TYREE. I realized when I had finished my paper that I had not said all I wanted to say or could say on this subject.

In answer to the gentleman's questions about cancer of the breast and its relationship to injury, I have, in my experience as a surgeon, seen quite a few times that very condition which he mentioned, and the answer to it is this: The woman gets a blow on her breast and a short time afterwards, or maybe immediately afterwards, she discovers that she has a lump in her breast. She goes to her doctor and he makes his diagnosis. For the sake of argument we will say it is a cancer, and that she is operated on and either gets well or dies from it. Then it comes up as a compensable case. We all know that people have many benign lesions or even beginning or far-advanced cancers of one sort or the other which are more or less painless. Many times, for instance, we have had patients in our office with far-advanced carcinoma of the stomach or of the large intestines, which we saw were inoperable. Just so with the case in question. The woman may have either a benign tumor or a carcinoma in the breast. An injury which she received may either just call attention to the fact of this trouble, or it may, as I noted in my paper, set up the really wild character of this formerly benign tumor and cause it to become carcinomatous.

One has to go into the history of such a case as that very carefully to know, and sometimes it is indeterminable. A patient you have never seen before comes to you a week or 10 days after a blow on the breast and gives evidence of the trauma already there. If the tumor is then a carcinoma you can be very sure that it was a carcinoma before she was hurt. If she does not come to you for, say, three, four, or six months after she had this injury and then the tumor is a carcinoma, you can not say which one of three things this woman had before she was hurt—a perfectly normal breast, a breast with a benign tumor in it, or one with a beginning carcinoma. It would be impossible really to say in that case.

That is one of the things to which I tried to draw attention in my paper. Sometimes we are up against insoluble propositions in these cases of injury, particularly in those which come to us a long time after the injury is done.

In the case of tuberculosis, it is a rather common story too—not so much in our part of the country as in parts where there is more tuberculosis of the joints—to have a man who is more or less below par receive an injury to his knee and then after three or four weeks, or maybe a longer time than that, develop tuberculosis in that knee. It is beyond any doubt that this man was tubercular before he received his injury.

Mr. WALNUT. In the particular case I had in mind, the man had tuberculosis of the brain; would you connect that with any trauma?

Doctor TYREE. Well, it is a pretty hard thing to say. Tuberculosis primarily in the body is certainly not a traumatic disease, but that tuberculosis almost anywhere in the body, even tuberculosis of the lungs, can be lighted up by the scattering of the tubercle bacilli from their insistent situations we must all admit.

That subject has been rather widely discussed by Doctor Morehead, of New York City, who has written a large volume on traumatic surgery, which ought to be in the hands of the physicians attached to all of your offices. He cites a case or two which has come under his observation that looks very much like a spreading of tuberculosis in the lungs by an injury.

As I indicated in my paper, I should think that in order to start tuberculosis of the lungs from injuries, such injuries would always have to be injuries of the chest, but that there is always some tuberculous focus in the body before there is a lighting up of acute tuberculosis following a trauma is, I think, indisputable. Tuberculosis does not follow an injury without an already existing tuberculous state.

There is just one other thing I would like to say. I have been writing and talking about sacroiliac troubles now for quite a long time, and I see a lot of such cases. I am pretty sure in my own mind that the majority of the sacroiliac cases, as I see the non-industrial, are traumatic, and I want to say that the X-ray picture of the sacroiliac slip, or sacroiliac subluxation as it is called, is almost worthless from a diagnostic standpoint. The sacroiliac joint is the poorest joint in the body. Instead of it being the arch that it should be, apparently, as our friend on the right [Mr. Stewart] here explained, when man assumed the upright position his sacroiliac joint was the big thing that suffered. It is the joint which joins the spine to the pelvis. Formerly it was jointed at right angles. Now it is supposed to fit into the upright procedure, and the sacroiliac joint, instead of being the arch that we find in architecture, is just the reverse; it is an inverted arch and the sacroiliac joint is held rigid by the ligaments which grow over it and not at all by its construction, and it is subject, I think, to as much trauma as any other joint in the body. I think that the great majority of the people that I see complaining of sacroiliac troubles have their troubles brought on by injury, and I think that because of the great success which I have had in treating those cases by the system of manipulating them. There is no question but what there is inflammatory trouble of the sacroiliac joint.

Doctor LANDENBERGER. In regard to Mr. Kingston's question relative to sacroiliac injuries and diseases, I was given as a title to my paper in your program, "Trauma as a causative factor or aggravating factor in diseases of the spine." This was such an extensive subject that, of course, justice could not be done it in 20 or 30 minutes, and so I changed that title to "Chronic infectious hypertrophic arthritis of the spine," giving only a monograph. I did not mean to take up the subject of the sacroiliac joint in it.

Doctor Tyree has given you a discussion on the sacroiliac joint. In the reading of articles for the preparation of my paper, Mr. Kingston, I ran across a very clever X-ray article on sacroiliac joint disturbances which I will be glad to give you before you go. The author, who has taken many pictures of sacroiliac joints, has come to the conclusion that the slip or the separation, so-called, of the sacroiliac joints is a myth, that it does not exist. In his X-ray picture he can apparently produce at will, by direction of his X ray, the condition that we all read of as a separation or a slip.

Relative to the question as to the hypertrophic rigidity of the lower spine and involvement thereby of the sacroiliac joints, I do not think there is any question that the hypertrophic condition of the spine, when it goes on to a complete rigidity, not only involves the bone, the vertebra, but also includes a calcification of the ligaments all about the spinal column. Those ligaments run over to the sacroiliac joints, and I think the sacroiliac joints may easily be involved.

Mr. Walnut's question is as to the exciting or aggravating effect of trauma upon a chronic infectious hypertrophic arthritis of the spine. I did not have so very much time in which to prepare my paper, but I did a great deal of reading for it and I have had a lot of experience with bone accidents and so forth. The ordinary man who sustains a sprain to the back from lifting, or a contusion of the back from a blow upon the back, and who has no definite signs of trauma recovers from that acute condition in a month or two or three.

I do not want to be unfair to the workman, but nevertheless it constantly occurs with us that the man who has trouble with his back and complains of a traumatism is, 99 times out of 100, an industrial worker, and if he is an industrial worker, 99 times out of 100 when he comes to a physician with back trouble he connects it with the history of an injury. I do not know just why that is, but I think it is because of the lure of the compensation, the insurance and the continuation of pay. The workman in this country has a mighty hard time to get along, no matter what his occupation may be he is making only enough to support his family, and when he lays off because of injury or illness, and especially illness, he gets no compensation and he wants it.

There is no question in my mind but that the industrial worker does give a history very much more frequently, a hundred times more frequently, in connection with back trouble when there is no injury, than other people do.

Mr. WALNUT. Do you think it possible, Doctor, than an injury can be an exciting cause?

Doctor LANDENBERGER. If the injury is an exciting cause, if the examination of the particular case of chronic infectious hypertrophic arthritis of the spine with the history of an injury shows in any possible way a connection with traumatism different from the fellow who has the exact condition of the spine without the history of an injury, then I say he ought to receive compensation. If the man who gives the history of an injury has no different pathological findings or X ray findings than the man who does not have the history of an injury, and you do not find that the man who gives the his-

tory of an injury has any traumatic signs or evidence, I do not believe he is entitled to compensation under traumatism.

Doctor DONOHUE. I think the question which the gentleman from Pennsylvania asked was whether or not a neurosis traceable to trauma would be classified as a compensable condition or injury. Is that the point?

Mr. WALNUT. That was the point.

Doctor DONOHUE. As to our State, I can answer that briefly by saying, "Yes." Of course a trauma that causes a neurosis is unquestionably compensable.

Mr. MCSHANE. I should like to see hands from all the States where that is the law, where it is clearly and definitely established. [Seven hands were raised.]

Mr. WALNUT. Let us understand just what is meant by the question.

Doctor DONOHUE. Maybe I do not get what you are after.

Mr. WALNUT. In one place you have a man who has worked 20 years; he gets hurt and is knocked out for maybe a year from some injury or other. He does not then go back to work, but insists he has had trouble in his back or trouble somewhere. The doctor, however, can find no reason for it and says he is a malingerer. He has had a history of 20 years of industry and then he quits and says he can not work any more. The doctor says that is an attitude of mind and not physical, but is that attitude of mind a compensable matter?

Doctor DONOHUE. I should say that that is a question of fact and then a question of diagnosis on the part of the medical man. If you believe the medical men whom you are employing, there is no question about it at all; that is not a compensable condition. In that connection I might cite an instance I ran up against, as practical lessons are probably the most useful. I had a man of that type who received what he claimed to be a strain; he was from the southern European countries which I spoke about in my paper. Every time that man came into my office he would tell me he could not work, that his back was no good. I tried to offer suggestions to him to see if he would not go to work. He would say, "No good; can't do anything." That is all I could get out of him. I was not satisfied. I sent him to the best orthopedic man and he found no pathology. I also sent him to a neurologist, a nerve specialist—a psychiatrist, I should call it—and he said the man was disabled. I was not very well satisfied with the diagnosis; I thought the man ought to work. He continued that performance for two years, dropping into the office probably once or twice in two weeks. I got so disgusted with him that I said to him, "Now, my friend, I think you have gone far enough. There is nothing the matter with your back; you are in a condition where I think you ought to be working, and I am going to see that your compensation is ended if you do not go to work within the next two weeks."

Because of that strong suggestion made by me to him, that man went to work within the next two weeks and has worked continuously for five years and there has been no trouble with him.

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I think false sympathy is the poorest thing that can be given an injured employee. Muscular soreness should not stop a man from working. A muscular pain in the back should not prevent a man from working. I think that there are none of us 100 per cent perfect. I quite sympathize with Brother Stewart's ideas on our prehistoric ancestors and the way we have evolved, but I am afraid he feels that we doctors are inclined to be hardhearted toward the fellow who is hurt. That is far from the fact. The doctor will go farther than anybody else to compensate the fellow who is actually injured, but he will resist attempts of the fellow who thinks he is injured and does not want to go to work to draw compensation, because that man is no good to his fellow workmen; he has a bad effect upon the rest of his fellow employees. Those fellow employees will come and tell you that he is putting it over on you. After you have watched these men for a dozen years, you find that there are quite a few of them who put it over on the commissioner.

The tendency of the lay commissioner is to be very sympathetic. It is natural; we should be and we want to be; we want to give the fellow who is hurt everything; but I tell you it is false sympathy to be giving him money when he ought to be working. I find very few of us who do not have lame backs; I have one myself, but I should not like to sit down and loaf with it, and I find it not to the best interest of the fellow with that lame back to keep those muscles stiff. Such men can walk around the streets and do everything else they want to, but when you ask some of them to go to work they say, "I can't work, I am no good." I think if you give them a strong suggestion it will help. I am a little inclined to favor mental science; I think mental therapeutics pretty valuable at times, and if it is given in the right dose and to the right case, it does a lot more good than erroneous payments of compensation.

Mr. McGILVRAY. Out in California we have a new trouble to us; probably it is an old trouble with a new name, but inasmuch as you have been discussing neurosis, I want to bring this to your attention. We are troubled mainly out there with what we have designated physician's neurosis—a fellow goes around to half a dozen doctors and when he gets through he doesn't know anything about it at all.

[Meeting adjourned.]

TUESDAY, AUGUST 18—EVENING SESSION

CHAIRMAN, ANDREW F. McBRIDE, M. D., COMMISSIONER NEW JERSEY DEPARTMENT OF LABOR

MEDICAL PROBLEMS (concluded)

The CHAIRMAN. The first order of business to-night will be the report of the committee on preparation of a medical work bearing on the etiological relation between trauma and the various known diseases, by G. N. Livdahl. Mr. Baldwin will read this report.

COMMITTEE ON PREPARATION OF MEDICAL WORK BEARING ON THE ETIOLOGICAL RELATION BETWEEN TRAUMA AND THE VARIOUS KNOWN DISEASES

BY G. N. LIVDAHL, COMMISSIONER NORTH DAKOTA WORKMEN'S COMPENSATION BUREAU

[Read by Charles E. Baldwin]

At the eleventh annual convention of the International Association of Industrial Accident Boards and Commissions, held at Halifax, Nova Scotia, August, 1924, the following resolution was 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 disease or pathological conditions.

The executive committee appointed the following members to serve on said committee: G. N. Livdahl, Bismarck, N. Dak., chairman; George A. Kingston, Toronto, Ontario; Dr. Robert P. Bay, Baltimore, Md.; Dr. James J. Donohue, Norwich, Conn.; Ethelbert Stewart, Washington, D. C.

This committee has not held any meeting, but has conducted its work wholly by correspondence. The chairman first addressed to each member of the committee a letter stating the proposition quite fully and asking numerous questions covering various phases of the matter, asking every member to give them serious study and investigation, and then to write the chairman fully in reply. The replies received were then compiled and forwarded to all the members, thus giving all the benefit of the information given by the others. The members were again requested to forward to the chairman their comments and to make their suggestions for a report to the association.

Your committee therefore submits the following for your consideration and approval:

1. While at present there does not exist any medical work dealing directly with the question under consideration (at least not complying with the resolution adopted by the association nor supplying the information that would be the most practical for those administering compensation laws), there are, however, a few recognized works closely approaching the subject and which may be used to great benefit. In order to make the contemplated work the most useful and practical, it should no doubt be in the form of a compendium or a work of an abridged character, something which might be used as a quick and ready reference.

2. Such a work would entail a tremendous amount of labor, of research, and preparation and would have to be produced by some one purely out of love for the cause. The committee can not suggest any such person, and it is hardly possible that the association can draft any capable persons into such work.

3. While the committee can not in advance calculate the amount, the cost of producing and publishing such a work would no doubt be of considerable magnitude and far beyond the reach of the association's present treasury. The possibility of the sale of such a work is so very limited as to make the returns from this source practically negligible.

4. The medical journals of this country have already published valuable articles on various phases of the subject here under consideration, but it is possible that they might secure still more of such material if their attention was called to it. If this was done it would soon be possible for someone, whether attached to any of these journals or not, to produce a compendium as herein contemplated and recommended.

5. It is possible that if the attention of the American Medical Association was brought to this particular question more general interest would attach to it, more direct statistics might be obtained and compiled, and more papers on the subject be produced.

6. It is recommended that the medical committee of this association be given this question for its careful consideration and report to the 1926 convention; that nothing further be done in the matter until such a report is received; and that this temporary committee be discharged.

Respectfully submitted.

G. N. LIVDAHL, *Chairman*,
GEORGE A. KINGSTON,
ROBERT P. BAY,
JAMES J. DONOHUE,
ETHELBERT STEWART,
Committee.

[A motion was made, seconded, and carried that the report be accepted and the committee discharged, and that the subject be turned over to the medical committee to handle.]

The CHAIRMAN. We will now have the report of the committee on compensation for eye injuries, by the chairman, Mr. Hatch, of New York.

REPORT OF COMMITTEE ON COMPENSATION FOR EYE INJURIES

BY L. W. HATCH, DIRECTOR OF THE BUREAU OF STATISTICS AND INFORMATION, NEW YORK DEPARTMENT OF LABOR

This committee was appointed subsequent to the last convention. I shall present its report in an informal fashion, because, as you will see, it finally seemed to the committee that its problem was only one of getting the facts straight as to just where this association already stood and stands now with regard to the subject which came up at Halifax and was referred to the committee.

The matter which was referred to this special committee for consideration was a suggestion at the close of Doctor Black's report presented at Halifax. His report presented a careful plan, from the medical point of view, for measuring the extent of loss of industrial visual efficiency in the case of eye injuries. Doctor Black suggested that if his report for the special committee of the Ophthalmic Section of the American Medical Association should be adopted, it would be a wise thing to consider in connection with its application the factors of age and occupation in the case of permanent eye injuries. To consider and report on this suggestion was the purpose of this committee.

When this special committee began to look into the matter, it seemed to its members pretty clear that Doctor Black had overlooked the fact that this association had previously considered the matter of age and the occupation factor in its standard schedule for permanent disabilities. No doubt that was due to the fact that no one had had occasion to bring the matter to Doctor Black's attention or to the attention of his committee.

If you will recall, the committee on statistics of this association presented a preliminary report at the Baltimore convention, and then a final report at the St. Paul convention, on a permanent disability schedule of benefits. In that report the committee took account of both age and occupation factors, and the recommendation of the committee was that an age variation factor should be employed in a standard permanent disability schedule, and a schedule with such a factor was presented. As far as the occupation factor was concerned, the committee reported that it was not prepared with the resources at its command, nor with the available material that could be found, to work up such a schedule. The committee therefore recommended that the occupation factor should be left out of the standard schedule for permanent disabilities, but that there should be in each State discretionary authority to take account of that factor in the case of any permanent injury where the occupation factor introduced a peculiar and exceptional effect. That is, in cases where it proved to be an exceptionally serious item in the extent of the injury, the accident board or commission should have authority to consider such cases on their merits as they came up and vary awards from the standard schedule accordingly.

That report of the committee on statistics was adopted by this association at the St. Paul convention. Comparing the report of that committee and Doctor Black's suggestion, you will see that Doctor Black was proposing that something should be done in the case of eye injuries which had previously been quite thoroughly con-

sidered and decided with reference to all permanent injuries, including eye injuries.

Now, with a little thought, I think you will all agree that there is no reason why the occupation factor should be considered in eye injuries any more than in other permanent injuries of which you can easily think. For example, the loss of a man's right hand may have a more serious effect in throwing him out of an occupation than the loss of one eye; that would clearly be the case with a common laborer.

So our report is that age and occupation factors have already been provided for in the association's standard schedule for permanent disabilities, and that we see no reason why they require any different treatment from the point of view of eye injuries alone. Our recommendation is that this situation be reported to Doctor Black, together with the suggestion to his committee that it is not necessary for the completion of their schedule and for its application and use by the various jurisdictions to introduce into it age and occupation factors. In other words, the task of that committee will be complete when it makes final report on its schedule for measuring loss of visual efficiency in eye injuries.

That is the committee report as formulated up to 10 minutes ago. Since the session began, I have had handed to me a copy of the final report of Doctor Black's committee. This is designated as the final report of the committee on compensation for eye injuries of the Section of Ophthalmology of the American Medical Association. This report has been accepted and adopted by the Section of Ophthalmology and has also been accepted and adopted by the legislative body of the American Medical Association. In other words, they have gone on and completed the big, constructive job which their committee had to do.

With this report before it, this association has something of very large and important significance to consider. In a letter addressed to Commissioner Tarrell, Doctor Black says, "I hope you will be able to obtain favorable comment on this report, and, if possible, have the committee on eye compensation of this association accept and adopt same."

This report has been in the hands of the chairman of this special committee about 15 minutes. We can hardly recommend its adoption offhand, although my personal impression of the work of that committee has been very favorable indeed.

Probably the best thing to do with this report is to refer it to a committee for consideration and report at the next meeting. It certainly is too big and important a thing, and the whole subject is too complex and technical for any quick action.

DISCUSSION

Mr. STEWART. How long is that report?

Mr. HATCH. It is eight 8-point-type pages, with tables and diagrams that are very complicated.

Mr. STEWART. It is apparent that that can not be digested at this convention so that we can act intelligently upon it. I wonder if there would be any objection on the part of Doctor Black to hav-

ing that put into our proceedings, so that we can have the matter handled by our next convention.

Mr. HATCH. I imagine there can be no objection to that.

[The report referred to is as follows:]

APPRAISAL OF LOSS OF VISUAL EFFICIENCY—STANDARD METHOD APPROVED BY THE HOUSE OF DELEGATES OF THE AMERICAN MEDICAL ASSOCIATION, MAY 26, 1925

REPORT OF COMMITTEE ON COMPENSATION FOR EYE INJURIES

The committee on compensation for eye injuries was appointed by the Section on Ophthalmology of the American Medical Association in 1919. It has submitted several reports. These have been accepted but not adopted, as more time was deemed necessary for further research. Herewith we submit a final report based on the results of our investigations, both experimental and clinical.

SCOPE

The aim of the committee is to establish a method of determining the loss of visual efficiency of a person who has suffered any degree of impairment of vision as the result of occupational disease or injury. Such loss is to be the basis on which the amount of compensation shall be determined.

SECTION I. COMPENSATION BASED ON THE VISUAL EFFICIENCY OF THE INDIVIDUAL

Compensation for loss of vision should be that proportional part of the compensation provided by law for total permanent disability which expresses the percentage loss of visual efficiency of the individual in pursuing a gainful occupation.

Total permanent disability of both eyes is identical with total permanent disability of the individual.

It will be noted that this method of determining compensation makes unnecessary the separate provisions for computing compensation for disability of one eye and for disability of both eyes.

At present the compensation laws of most States contain provisions that base awards on disability of one eye only, and some statutes provide separate schedules for one eye and for both eyes. In the interest of uniformity, definiteness, and justice it is urged that compensation statutes be so changed that awards for ocular disability shall be based on the percentage of permanent disability only.

SECTION II. THREE PRIMARY AND COORDINATE FACTORS OF VISION

There are three elements of vision, each of which has an interdependent and coordinate relation to full visual efficiency. These coordinate factors are (*a*) acuteness of vision (central visual acuity); (*b*) field of vision, and (*c*) muscle function. Although these factors do not possess an equal degree of importance, no act of vision is perfect without the coordinate action of all.

Other functions, though secondary and dependent, are recognized as important, such as depth perception, stereoscopic vision, fusion sense, color perception, adaptation to light and dark, and accommodation. These functions are inherently dependent on the status of the three coordinating functions of vision, and they also depend on central nervous function.

SECTION III. MAXIMUM AND MINIMUM LIMITS OF THE PRIMARY COORDINATE FACTORS OF VISION

In order to determine the various degrees of visual efficiency, (A) normal or maximum, and (B) minimum limits for each coordinate function must be established; i. e., the 100 per cent point and the 0 per cent point.

A. *Maximum limits.*—The maximum efficiency for each of these is established by existing and accepted standards.

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[1] The report of the committee was unanimously adopted by the Section on Ophthalmology.

(*a*) Central visual acuity: The ability to recognize letters or character which subtend an angle of 5 minutes, each unit part of which subtends a 1 minute angle, is accepted as standard. Therefore, a 20/20 Snellen is employed as the maximum acuity of central vision, or 100 per cent acuity.

(*b*) Field vision: A visual field having an area which extends from the point of fixation outward 65°, down and out 65°, down 55°, down and in 45°, inward 45°, in and up 45°, upward 45°, and up and out 55° is accepted as 100 per cent industrial visual field efficiency.

(*c*) Muscle function: A maximum normal muscle function is present when there is absence of diplopia in all parts of the field of binocular fixation.

B. *Minimum limits.*—The minimum limit, or the 0 per cent of the coordinate functions of vision, is established at that degree of deficiency which reduces vision to a state of uselessness.

(*a*) Central visual acuity: The minimum limit of this function is established as the loss of light perception, light perception being *qualitative* vision. The practical minimum limit of *quantitative* visual acuity is established as the ability to distinguish form. Experience, experiment, and authoritative opinion show 20/200 Snellen as 80 per cent loss of visual efficiency, 20/380 as 96 per cent loss, and 20/800 as 99.9 per cent loss. Table 1 and Chart 1 show the percentage loss of visual efficiency corresponding to the Snellen notations for distant and for near vision, for the measurable range of quantitative visual acuity.

(*b*) Field vision: The minimum limit for this function is established as a concentric central contraction of the visual field to 5°. This degree of contraction of the visual field reduces the visual efficiency to zero.

TABLE 1.—PERCENTAGE LOSS OF VISUAL EFFICIENCY CORRESPONDING TO THE SNELLEN NOTATIONS FOR DISTANT AND FOR NEAR VISION FOR THE MEASURABLE RANGE OF QUANTITATIVE VISUAL ACUITY

Snellen notation for distance	Snellen notation for near	Percentage of visual efficiency	Percentage loss of vision
20/20	14/14	100.0	0.0
20/25	14/17.5	95.7	4.3
20/30	14/21	91.5	8.5
20/35	14/24.5	87.5	12.5
20/40	14/28	83.6	16.4
20/45	14/31.5	80.0	20.0
20/50	14/35	76.5	23.5
20/60	14/42	69.9	30.1
20/70	14/49	64.0	36.0
20/80	14/56	58.5	41.5
20/90	14/63	53.4	46.6
20/100	14/70	48.9	51.1
20/120	14/84	40.9	59.1
20/140	14/98	34.2	65.8
20/160	14/112	28.6	71.4
20/180	14/126	23.9	76.1
20/200	14/140	20.0	80.0
20/220	14/154	16.7	83.3
20/240	14/168	14.0	86.0
20/260	14/182	11.7	88.3
20/280	14/196	9.7	90.3
20/300	14/210	8.2	91.8
20/320	14/224	6.8	93.2
20/340	14/238	5.7	94.3
20/360	14/252	4.8	95.2
20/380	14/266	4.0	96.0
20/400	14/280	3.3	96.7
20/450	14/315	2.1	97.9
20/500	14/350	1.4	98.6
20/600	14/420	0.6	99.4
20/700	14/490	0.3	99.7
20/800	14/560	0.1	99.9

(*c*) Muscle function: The minimum limit for this function is established by the presence of diplopia in all parts of the motor field. This condition constitutes zero visual efficiency.

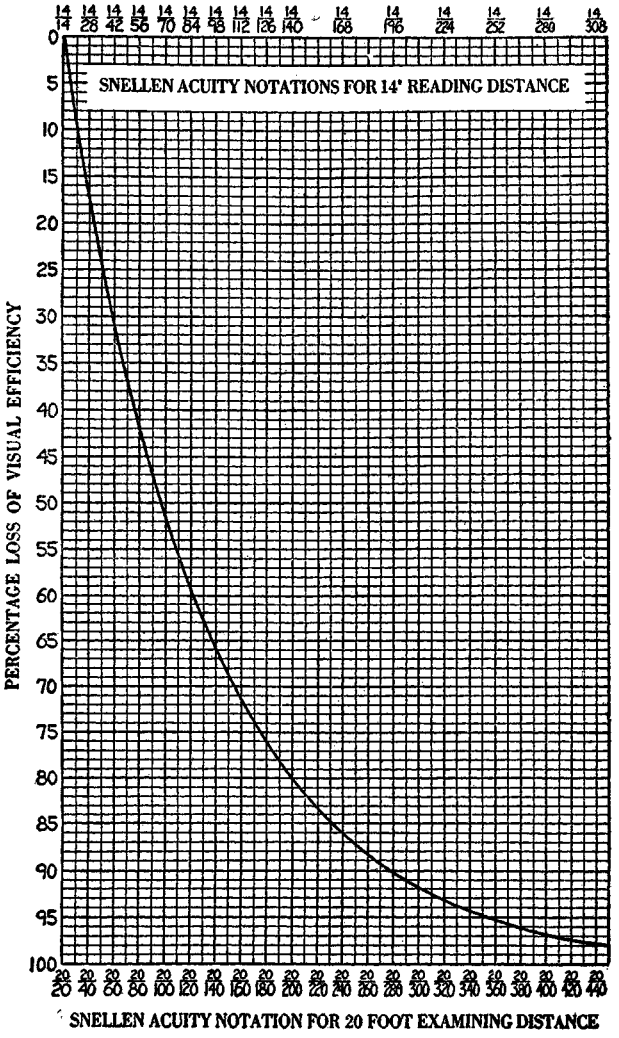
SECTION IV. MEASUREMENT OF COORDINATE FACTORS AND THE COMPUTATION OF THEIR PARTIAL LOSS

A. *Central visual acuity.*—Visual acuity shall be measured both for distance and for near, using the Snellen notation, each eye being measured separately.

Central visual acuity for distance shall be measured at a test distance of 20 feet. Central visual acuity for near shall be measured at a test distance of 14 inches.

The quantity that determines the visual acuity efficiency of one eye shall be the result of the weighted values assigned to these two measurements for distance and for near. A onefold value is given to the former and a twofold

CHART 1.—PERCENTAGE LOSS OF VISUAL EFFICIENCY CORRESPONDING TO THE SNELLEN NOTATIONS FOR DISTANT AND FOR NEAR VISION, FOR THE MEASURABLE RANGE OF QUANTITATIVE VISUAL ACUITY



value to the latter. Thus, if the visual efficiency for near is 40 per cent and the visual efficiency for distance is 70 per cent, the central visual acuity efficiency for the eye in question would be:

$$\frac{(40 \times 2) + (70 \times 1)}{3} = \frac{80 + 70}{3} = \frac{150}{3} = 50$$

or a 50 per cent visual acuity efficiency.

The best central visual acuity obtainable *with correcting glasses* shall be used in determining the degree of visual efficiency.

If there exists a difference of more than 4 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 4 diopters spherical difference from the fellow eye shall be the acuity on which subsequent rating is to be computed for this injured eye.

The Snellen test letters or characters as published by the committee and designated "Industrial vision test charts" subtend a 5-minute angle, and their component parts a 1-minute angle. These test letters are to be used at an examining distance of 20 feet for distant vision and 14 inches for near vision from the patient. The illumination is to be not less than 3-foot candles, nor more than 10-foot candles on the surface of the chart.

Table 1 and Chart 1 show the visual acuity and the percentage of loss of efficiency, both for distance and for near, for partial loss between 100 per cent and zero vision for one eye.

B. *Field vision.*—The extent of the field of vision shall be determined by the use of the usual perimetric test methods, a white target being employed which subtends a 1° angle under illumination of not less than 3-foot candles, and the result plotted on the industrial visual field chart.

The amount of radial contraction in the eight principal meridians shall be determined. The sum of these eight, divided by 420 (the sum of the eight principal radii of the industrial visual field) will give the *visual field efficiency of one eye in per cent.*

C. *Muscle function.*—Muscle function shall be measured in all parts of the motor field, recognized methods being used for testing.

Diplopia may involve the field of binocular fixation entirely or partially. When diplopia is present, this shall be platted on the industrial motor field chart. This chart is divided into 20 rectangles, 4 by 5° in size. The partial loss to muscle function due to diplopia is that proportional area which shows diplopia as indicated on the platted chart compared with the entire motor field area (Table 2 and Chart 4).

When diplopia involves the entire motor field, causing an irremediable diplopia, the loss in coordinate visual efficiency is equal to the loss of use of one eye; and when the diplopia is partial, the loss in visual efficiency shall be proportional and based on the efficiency factor value of one eye.

SECTION V. INDUSTRIAL VISUAL EFFICIENCY OF ONE EYE

The industrial visual efficiency of one eye is determined by obtaining the product of the computed coordinate efficiency values of central visual acuity, of field vision, and of muscle function. Thus, if central visual acuity efficiency is 40 per cent, visual field efficiency is 81 per cent, and the muscle function efficiency is 100 per cent, the resultant visual efficiency of the eye will be $0.40 \times 0.81 \times 1.00 = 32.4$ per cent. Should diplopia be present in part of the motor field so that the motor efficiency is reduced 50 per cent, the visual efficiency would be $0.40 \times 0.81 \times 0.50 = 16.2$ per cent.

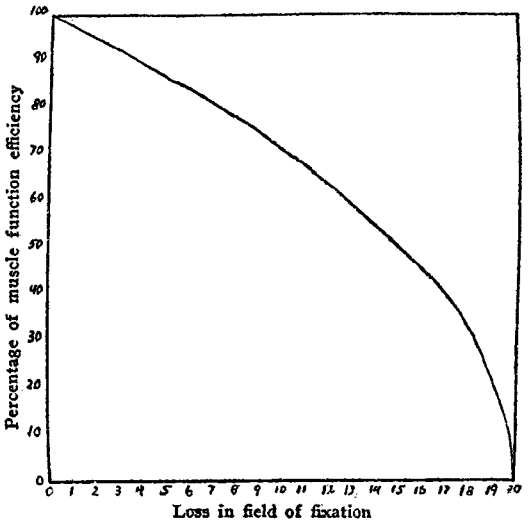
TABLE 2.—LOSS IN MUSCLE FUNCTION

	Motor field efficiency		Motor field efficiency
	Per cent		*Per cent*
No loss equals	100	11/20 equals	67
1/20 equals	98	12/20 equals	63
2/20 equals	95	13/20 equals	59
3/20 equals	92	14/20 equals	55
4/20 equals	89	15/20 equals	50
5/20 equals	87	16/20 equals	45
6/20 equals	84	17/20 equals	39
7/20 equals	81	18/20 equals	32
8/20 equals	77	19/20 equals	22
9/20 equals	74	20/20 equals	0
10/20 equals	71		

SECTION VI. INDUSTRIAL VISUAL EFFICIENCY OF THE INDIVIDUAL

It is a fact well established by common experience 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. Hence the necessity for a weighted average. The researches of the committee show rating of the individual in substantial agreement with the consensus of technical judgment, such judgment being based on actual reproduction, comparison, and relative evaluation of various specific conditions of visual efficiency.

CHART 2.—CURVE FOR LOSS OF EFFICIENCY IN DIPLOPIA



The industrial efficiency of the individual is computed as follows: To the percentage figure which has been determined as the industrial visual efficiency of the *less* efficient of the two eyes, 3 times the percentage figure that has been determined similarly for the *more* efficient eye is added, and the result is divided by 4. The quotient will be the percentage figure that expresses the *industrial visual efficiency of the individual.* Thus, if the individual efficiency rating of the injured eye is 40 per cent and that of the fellow eye is 100 per cent the visual efficiency of the individual will be found by the following formula:

$$\frac{(40\times1)+(100\times3)}{4} = \frac{340}{4} = 85 \text{ per cent.}$$

Individual industrial efficiency, and compensation should be 15 per cent of the amount awarded for total permanent disability.

SECTION VII. TYPES OF OCULAR INJURY NOT INCLUDED IN THE DISTURBANCE OF THE COORDINATE FACTORS

Certain types of ocular disturbance are not included in the foregoing computations and these 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 accommodation, of color vision, of adaptation to light and dark, metamorphopsia, entropion, ectropion, lagophthalmos, epiphora, and muscle disturbances not included under diplopia. For such disabilities additional compensation shall be awarded, but in no case shall such additional award make the total compensation for loss in industrial visual efficiency greater than that provided by law for total permanent disability.

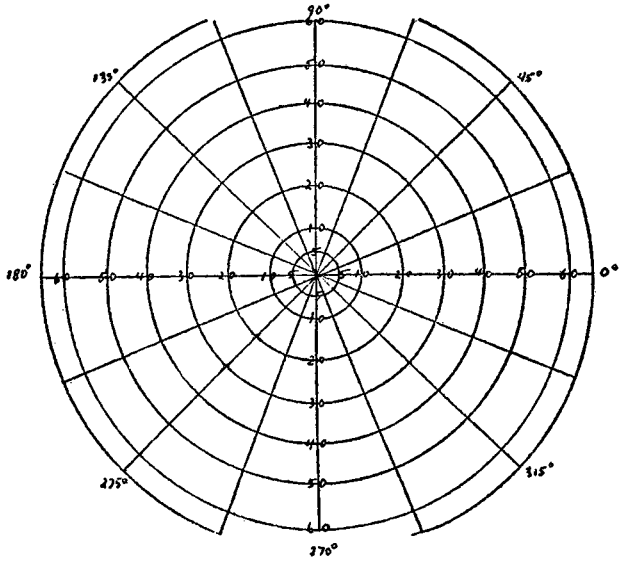
Compensation for loss in industrial visual efficiency, as provided for above, does not include compensation for any cosmetic defect, for mental or physical suffering, for cost of medical attention, or for time lost from gainful occupation during the period of treatment previous to final computation of compensation as provided for below. Additional compensation should be awarded for the various losses here enumerated when not specifically provided for by statute.

SECTION VIII. REGULATIONS FOR COMPUTING COMPENSATION

Compensation shall not be computed until all adequate and reasonable operations and treatment known to medical science have been attempted to correct

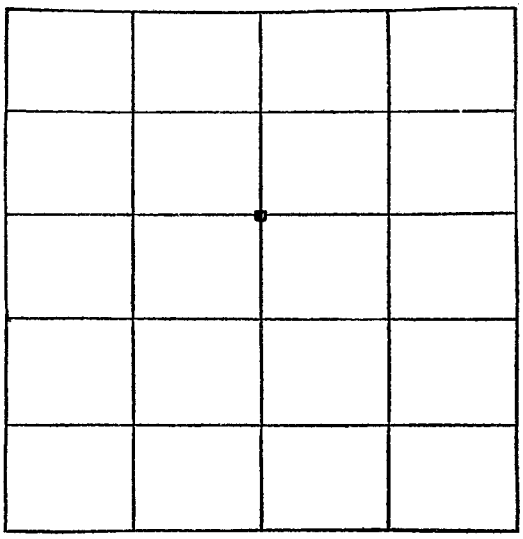
the defect. Further, before there shall be made the final examination on which compensation is to be computed, at least 3 months shall have elapsed after the last trace of visible inflammation has disappeared, except in cases

CHART 3.—INDUSTRIAL VISUAL FIELD CHART



of disturbance of extrinsic ocular muscles, optic nerve atrophy, sympathetic ophthalmia, and traumatic cataract; in such cases, at least 12 months and preferably not more than 16 months shall intervene before the examination shall be made on which final compensation is to be computed.

CHART 4.—INDUSTRIAL MOTOR FIELD CHART



In cases of additional loss in visual efficiency, when it is known that there was present a preexisting subnormal vision, compensation shall be based on the loss incurred as a result of eye injury or occupational condition specifically responsible for the additional loss. In case there exists no record or no adequate and positive evidence of preexisting subnormal vision, it shall be assumed that the visual efficiency prior to any injury was 100 per cent.

NELSON M. BLACK.
ALBERT C. SNELL.
JAMES PATTON.
HARRY S. GRADLE.

Mr. TARRELL. Doctor Black has been working on this proposition for the last 10 years, and he is very anxious to have some action taken by this association. I move that this matter be referred to the medical committee to report later on in the session as to what it thinks advisable.

Doctor DONOHUE. That is a pretty complicated report. I must confess that I do not feel capable of digesting it, and I am satisfied that there is nobody here, except some medical men and specialists who can comprehend it. I think if you are going to pass that on to any committee of this body, you can act just as intelligently right now as you can by waiting longer. If you will refer it to the medical committee, or any other committee you see fit, to report on at the next meeting, by that time those on the committee will have plenty of time to look the report over, and I want to tell you they will have to study it pretty carefully to comprehend it.

Mr. KINGSTON. I was going to suggest that possibly it might be well to refer this matter temporarily to a special committee, with the suggestion to that committee that it make a recommendation, say, day after to-morrow, as to what action should be taken. My feeling is, as Doctor Donohue has said, that the thing to do at this convention is to refer the matter to a special committee or to the medical committee, to bring in a special report at the next convention. If it can be referred to-night to a special committee, which might be asked to bring in a resolution on Thursday morning as to what should be done with the report, either present or deferred action, I will make such a motion.

Mr. TARRELL. That was the intention of my motion. I did not mean that the committee should report at this evening's session, but at some time during this convention—Thursday, probably—with its recommendation as to what should be done. If the committee is unable to agree, well and good; let it make such recommendation as it sees fit.

[The motion was seconded.]

Mr. STEWART. Remember, Doctor Black is a member of the medical committee of this association.

The CHAIRMAN. The motion is that this matter be referred to the medical committee to report back to this convention as to what action should be taken.

Mr. KINGSTON. One important member of the medical committee has gone.

Mr. HATCH. I agree with Doctor Donohue that this is a very meaty document and a highly technical one. I do not believe that we can consider anything here except how the report shall be considered and acted upon by this association. I am against voting on it at this convention; I would not vote on it.

The CHAIRMAN. I do not think it is anybody's intention to have it voted on at this session. The committee is to study it and then report back as to what action should be taken. I think it will go over until next year.

Mr. HATCH. I am in favor of that motion with that understanding.

[The motion was carried.]

The CHAIRMAN. First on the program this evening is discussion of Doctor Bay's paper, Mr. Kingston being the first one up.

Mr. KINGSTON. My idea was that I was to discuss the report of the committee on eye injuries. Perhaps in order to get it into the record there is just one feature that I might mention. I did not

feel myself capable of going into that report technically. In the first place, I had nothing except the paper presented by Doctor Black at the Halifax convention on which to base any consideration, and that as you will remember was rather technical.

What our various boards and commissions are doing and how we are treating eye injuries have been discussed at the various meetings, so I need not go into that. Nearly all of you have your schedule of so many weeks that you pay for the loss of an eye. The problem that presents itself is how much shall we pay for partial loss of vision, and that is the great purpose intended to be served by this paper.

In considering the subject of Doctor Black's report, "Compensation for eye injuries, a résumé of work done by committee on compensation for ocular injuries, Ophthalmic Section, American Medical Association," I realized the difficulty a layman faces in dealing with such a highly technical subject. I felt that unless I could say something of practical value, it were better not to say anything. I decided, therefore, to consult my good friend, Doctor Trebilcock, an eye specialist of high standing in our city (Toronto). Reference to a paper on eye injuries by Doctor Trebilcock in the report of the proceedings of the Toronto convention in 1919 will be found of much interest even though it is six years since it was given.

Doctor Trebilcock is the referee to whom many of our difficult eye cases are submitted for examination and report. He did not have time to make an exhaustive study of the report, but he gave me a short statement relative to one paragraph which I think might be incorporated in the proceedings of the convention, as follows:

Doctor TREBILCOCK (in statement to Mr. Kingston). Referring to the paragraph on the second page of the report (page 69 of Bulletin No. 385 of the United States Bureau of Labor Statistics) headed, "Value of important but nonessential factors of vision," Doctor Black limits this paragraph to cases where the diplopia is irremediable; he might have omitted the limiting clause "unless, as in many instances, the individual learns to suppress the vision of the deviating eye," because if the individual learns to suppress the image in the deviating eye the diplopia disappears and becomes remediable or absent; in either case it is then beside the question. This does not mean that the eyes again have parallel axes, but annoyance disappears, and it becomes safe again to leave both eyes uncovered.

He then suggests that he, with a majority of the committee, would set the compensation at a lesser sum than would be paid if the vision of the eye were completely lost. If full consideration be given to this particular phase of the question, I consider there is reason for thinking that the economic disturbance associated with an incurable diplopia is often greater than it would be if the sight of one eye were entirely lost, and that the deserved compensation should be correspondingly higher instead of lower.

Loss of vision in one eye resulting from an injury which does not disfigure the globe, or does so only in a slight degree, is as we all know not always a hindrance of much degree from the earn-

ing standpoint; indeed, occasionally, after a variable period of time (sufficient for certain readjustments to be made by the workman) it is really no hindrance at all; and in a narrow sense all compensation might then be cut off until such time as the remaining eye, for any cause whatsoever, suffers a loss of visual acuity.

Even if the injured eye be so badly damaged that it come to eneucleation, the artificial eye may be so accurately matched and fitted that the remarks in the last paragraph would apply.

Surely such a man is left in a happier state of mind and altogether better fitted to approach his daily toil than one who has an incurable double vision, and is compelled to wear some kind of obscurator or to keep one eye closed all the rest of his natural life. His mental annoyance is to be permanent, and who will say that the effect upon his ability for work may not be noticeable to himself as well as to his employer and be reflected in his earnings.

Yet when his check is cut below that of his companion who perchance carries a sightless eye following a traumatic detachment of the retina (also irremediable), his chagrin is supposed to be appeased by the assurance that his deflected eye may be at some future date a priceless asset to him. I am sure he will be unconvinced by the argument, and be inclined to reply as any bachelor, absolutely without kith or kin or friend, might reply to an insurance agent who would take premiums from him every remaining year of his life to purchase a policy payable at death.

Perhaps Doctor Black would say that this contingency is well taken care of in the following paragraph (page 74 of Bulletin No. 385 of the United States Bureau of Labor Statistics):

> 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.

Still it might be better if the statement regarding such cases were not made so baldly that it had to be modified by a sort of codicil appended afterward.

No one recognizes more than myself how impossible it is perfectly to solve these questions by a set of formulæ; neither can I, as an eye surgeon, look forward with pleasure to a day ever coming when this may be done. The new problem presented by each new case is what keeps our work from becoming humdrum, stimulates a flagging interest, and keeps the doctor not only happy in his work but perennially young.

The CHAIRMAN. The first name on the program to discuss the paper read by Doctor Bay this morning is Dr. Arthur L. Murray of the United States Bureau of Mines, Salt Lake City, Utah.

Doctor MURRAY. Before proceeding with the discussion, I would like to pay tribute to the excellent paper presented by Doctor Bay. I think all who heard it this morning will agree with me that he presented his subject in the most interesting and instructive manner. In fact, he covered the ground of phosphorus poisoning so well that I hardly find it necessary to extend my observations to find sufficient material for discussion.

Phosphorus, or compounds of phosphorus, is employed in a number of industries, viz, the making and using of acetylene; the making of bone black; the making of certain kinds of brass; the making of ferrosilicon, especially in certain steel manufacturing; the making of fertilizers; the making of fireworks; the making of certain acetic acids; phosphate mills; the making of phosphor bronze; the making of phosphor compounds; extraction of phosphorus; the making of red phosphorus.

Fortunately, in most of these industries the compounds of phosphorus used or the conditions under which phosphorus is used and handled give rise to very slight opportunity for poisoning. The principal sources of phosphorus poisoning are white phosphorus and its fumes and phosphoretic hydrogen.

Time will not permit my going into the details of the relative dangers of phosphorus poisoning of the several industries before mentioned, so I will dwell upon those most likely to contribute industrial cases.

The making of matches with white phosphorus was, until July 1, 1913, a fertile source of phosphorus poisoning in the United States as well as abroad. The literature bearing on industrial medicine prior to that date was rich in references to cases of phosphorus poisoning among match-factory workers. Intensive investigations conducted about this time led Congress to pass an act, effective July 1, 1913, placing a prohibitory tax on all matches made from white phosphorus, and further forbidding importation or exportation of such matches after January 1, 1913, and January 1, 1924, respectively.

The heavy penalties for violation attached to this enactment, $5,000, or imprisonment for three years, together with the prohibitive tax on production, had the desired effect of eliminating white phosphorus from the match industry. Since the above accomplishment, writers on industrial diseases seem to have forgotten that there is such a thing as phosphorus poisoning.

Passing on to the other industries where phosphorus poisoning may occur, we may consider reduction works where phosphorus is produced in an elemental state from the mineral phosphates. This process, although dealing with white phosphorus, a very poisonous substance, is carried on in such a manner that there is relatively no danger; the phosphorus is collected under water and therefore is not subject to volitation or fumes. Phosphor bronze is an alloy of tin and copper with a small amount of phosphorus, not more than three per cent, and usually less. It is usually made in hearths that are well ventilated and in a semiopen condition, and very seldom are the fumes from the phosphorus really dangerous to the workmen.

The use of ferrosilicon, which contains phosphorus, in the making of steel, very much like phosphor bronze, is of very little danger to the workmen. The fumes are carried off so that they are dispensed with in the air and the dangers to the men are relatively negligible.

As to the manufacture and use of acetylene, we have in acetylene the calcium carbide when it is acted upon by water, and a small amount of phosphorated hydrogen given off. If large amounts of acetylene are burned in confined spaces, it is possible the content of

the atmosphere may be great enough to effect poisoning, but as acetylene requires a fair amount of oxygen it is usually burned in the open. It is burned in our miners' lamps, it is true. There the amount of ventilation is sufficient to prevent poisoning.

The manufacture of bone black is another source of phosphorus poisoning. In this country bone black is manufactured only to a limited extent, and then under hygienic conditions which almost preclude phosphorus poisoning.

Coming to the question of fireworks, to my mind, from what information I could gather from the literature available, fireworks are probably the chief source of phosphorus poisoning to-day. During recent years there has developed an increasing use of white phosphorus in the manufacture of certain types of pyrotechnics. In reviewing the more recent literature, one is struck not only by the references to the fireworks industry as being a very likely field for phosphorus poisoning, but also by the fact that most of the cases cited are found to be of employees in such factories. I am sorry Doctor Bay is not here to-night; I think he might elucidate those cases that he mentioned to-day, but he stated to me that in the past two years five authentic cases of phosphorus poisoning have come to his attention from fireworks manufacturing plants located in the State of Maryland. Miss Lillian Erskine, of the New Jersey Department of Health, has called attention to the fact that in her State a case of the use of white phosphorus has been found in a fireworks plant, causing exposure of men and girls to the fumes of phosphorus and direct contact with the paste.

From my knowledge of the use of phosphorus in industry, it strikes me that the greatest danger of such poisoning presented to-day is in the manufacture of certain types of pyrotechnics—those in which phosphorus must be used are small in proportion to those manufactured. The nonphosphorus type of fireworks is the small sparklers which children are now permitted to use in a great many cities on the Fourth of July.

I appreciate that the exposure to phosphorus in fireworks manufacture is comparatively small to that which was present prior to the prohibitive act of Congress as to the match industry. Such being the fact, it occurs to me that an investigation of all fireworks manufacturing plants should be instituted, and if the use of white phosphorus in quantities and under conditions exposing workers to phosphorus poisoning is found, steps should be taken to secure an enactment by Congress similar to that made as to the use of white phosphorus in the manufacture of matches. Fireworks are by no means an essential commodity, and as such an enactment would affect but a few types of pyrotechnics, I see no reason why an enactment covering the use of white phosphorus in the manufacture of fireworks should meet very much opposition.

Your organization can accomplish a great and most lasting good in fathering a movement absolutely to prevent phosphorus poisoning among employees of fireworks manufacturing plants; much more could be accomplished in this way than by paying for years compensation for disabilities arising out of such poisoning.

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The CHAIRMAN. Mr. Stewart is also down to discuss Doctor Bay paper.

Mr. STEWART. It is certainly not my intention to discuss either the medical or the legal aspects of Doctor Bay's paper. As far as the legal aspects are concerned, we find not only the courts of various States, but very often the courts within the same State on both sides of the proposition, and this is exactly what happened in the Francks case. Catherine Francks was given a judgment under the old liability law of $22,500. The Court of Appeals of Maryland ruled that phosphorus necrosis was an accidental, personal injury compensable under the workmen's compensation act, or, if it was not, the members of the compensation commission ought to be good, kindly, Christian people and make it so. Catherine Francks found that the courts decided that the compensation commission had no power to grant compensation for occupational diseases.

In Virginia, Roxana Fultz found that the courts of Virginia held that phosphorus necrosis was an occupational disease and that the law of Virginia did not provide for any compensation for occupational diseases. In Pennsylvania, Gladfelter got up against the same thing.

The difficulty in trying to guess which shell the pea is under is that the operatives have become so skilled that they slip the pea between their fingers and you are beaten before you start to guess. The fact of the matter is that the pea is not under either shell. For that reason, of course, we are all trying to make the compensation laws as broad as possible, and to take everything out from under the old liability law that we reasonably can.

The thing in Doctor Bay's paper which disturbs me most is that of practically limiting the field of occupational diseases to the single question as to how the poison enters the system. I am not at all sure that in every case of phossy jaw which was found by the Bureau of Labor Statistics in its investigation, the phosphorus had entered through a decayed tooth or as the result of a recently extracted tooth. My impression is that there were cases where these conditions were not shown, though I frankly concede that probably 99 per cent of the cases of phossy jaw were preceded by a condition of bad teeth. Cases of phosphorus necrosis in the fingers and hands were, I believe, generally speaking, preceded by a cut which permitted the phosphorus to secure access to the bone.

The startling thing to me about this paper is that it brings up a new factor, that is to say, the mode of entrance of poison into the body, and makes it the deciding one in occupational diseases.

I believe every country in the world which specifically names occupational diseases in its workmen's compensation act names phosphorus. Every State in the Union which has an occupational disease clause in its laws and specifically names the occupational diseases names phosphorus. The same may be said of anthrax, but in anthrax, as in phosphorus necrosis, there must be an abrasion of the skin before the anthrax germ can proceed with its deadly work. There must be a cut, a sore, or a bruise which gives the germ immediate access to the blood; it does not burrow through healthy skin tissues. Yet every country and State having a specific occupational disease law names anthrax. I have not taken time to go through the whole list of recognized industrial poisons to determine

whether others than the two here named fall into this same category, though my impression is that it will be found that radium necrosis acts in the same way.

We must not forget, however, that in the case of both phosphorus and radium it is not only necrosis with which the workers are affected. Anemia of an incurable and deadly type is often more frequent in both phosphorus and radium plants than is necrosis, and to produce this effect no defective teeth or abraded skin are necessary. The Bureau of Labor Statistics is carrying on at this time two investigations. One is of phosphorus poisoning in the manufacture of a certain type of fireworks, such as the spit devil, devil-on-the-walk, son-of-a-gun, etc. Not only are we finding cases of necrosis as severe as were ever found in match factories, but we are finding anemic conditions which, according to my recollection, were not studied in the investigation of the match industry at all.

When I took the figures from our record for the report to-day we had found 14 cases of phosphorus necrosis, some of them very, very bad cases, and we had found 2 deaths. Since this record was made another death has, I think, been reported. The investigation so far has covered four States, and I may say that we have secured in advance of our report a practical agreement from the manufacturers to stop making this class of fireworks.

We have not yet secured such an agreement from the rat-poison manufacturers, although I think it is very clear that a substitute for phosphorus is readily obtainable. The Department of Agriculture, which is probably more interested in rat poisoning than any other of the Government departments, has come out very strongly against the use of phosphorus in the manufacture of such poisons.

In the investigation of radium necrosis and other occupational diseases in connection with luminous paints the investigation has already covered five States. We have found 13 cases of necrosis of the jaw and 1 of the toes. There are numerous cases of anemia in violent form, several deaths, and recently the death of the superintendent of the plant under circumstances showing it to be due unmistakably to occupational conditions.

I can urge only that this association be very cautious how it handles the subject of the method of entrance into the body as a test of industrial poisons or occupational diseases arising therefrom.

The CHAIRMAN. You have heard the very able discussion offered by Doctor Murray and Mr. Stewart on this subject. The meeting is now open for general discussion.

Mr. WILLIAMS. I have nothing to suggest about phosphorus poisoning specifically, but I would like to suggest to the members of this convention that personally I have found a good deal of assistance in my work from the book of Kober & Hayhurst on Industrial Health. I do not mean it is a perfect book—a perfect book hardly exists—but it is the best book on the subject. All the articles were not written by the authors, but they are all written by specialists. There is an interesting article there by Dr. Alice Hamilton on phosphorus poisoning. Those of you who are interested in the general question of industrial hazards would, I feel sure, be well pleased if you purchased a copy of this book. It is really a second edition of an older book written by Kober & Hayhurst.

Mr. EPPLER. The Francks case in Maryland was more or less a shock to all of us who have made any study of occupational diseases. Our law provides for accidental personal injury. It has always been my impression and the impression of the Maryland commission that phosphorus poisoning was an occupational disease.

As Mr. Stewart has so well stated in his paper, the suit of this young girl, who had been working in a fireworks factory, was brought under the old common law on the theory that it was not covered by the Maryland compensation statute, but that on account of the negligence of the employer she still had her right at common law, and on that basis the case was tried. The jury rendered a verdict of $22,500.

It is thought more or less among the lawyers in Maryland (with all due respect to our court of appeals) that the court of appeals felt that was rather a large verdict under the circumstances. There was nothing technically or legally wrong in the trial of the case. It seems that the evidence was properly admitted and that the case was in every way properly and legally presented to the court.

I have here the official opinion in that case, and what that case decides, as far as we can get at it in Maryland, is that phosphorus poisoning is no longer an occupational disease, although in one sentence or so of the opinion, to which I think our secretary referred, it does make a statement as to the entrance of the poison. That is the only place in the opinion where I can find anything along that line, but there are several other places to which I would like to call your attention:

If, therefore, a disease is not a customary or natural result of the profession or industry per se, but is the consequence of some extrinsic condition or independent agency, the disease or injury can not be imputed to the occupation or industry, and is in no accurate sense an occupation or industry disease. In this case the occupation of the girl as an employee in a department of a manufactory of fireworks was simply a condition of her injury whose cause was the definite negligence charged against the employer. The most that is warranted to be inferred from the allegations of fact in the declaration is that the phosphorus poisoning alleged was the gradual result of the negligence of the employer. As this negligence was a breach of duty to her, it was not to be foreseen or expected by the worker.

Then further on in this opinion our court of appeals attempts to define what is the meaning of accidental personal injury in the immediate statute.

It was by chance that employer did not use due care, and by chance that the vapor of phosphorus was where its noxious foreign particles could be inhaled by the girl. It was by chance that the inspired air carried these particles into her system, sickening her and causing a necrosis of the jaw after fortuitously finding a lesion.

That is the point I think Mr. Stewart particularly dwells on, but farther on our court of appeals makes this statement:

The injury thus inflicted upon her body was accidental by every test of the word, and its accidental nature is not lost by calling the consequential results a disease.

There was a succession or series of accidental injuries culminating in the same consequential results. The introduction of phosphorus into the human body is none the less accidental if through the medium of a pimple point, an unsound tooth, a scratch, or a lesion, or of ingestion or inbreathing.

As I read this opinion, our court of appeals has done this much: It has legislated phosphorus poisoning out of the class of occu-

pational disease into the class of personal accidental injury; I can not see any other way you can construe that. It does seem to say, however, that there must be the unforeseen element.

Just at present we have a case in Maryland that is giving us a great deal of trouble. Something has developed there known as benzol poisoning. We have had two or three very serious cases among girls working in can factories. The following case was presented to us just last week, before I came away. A girl who had been working in a factory that had the proper ventilation, all the up-to-date equipment to carry off the poisonous fumes, left that factory and went to another where the equipment for ventilation was not so up to date and worked under conditions where she would naturally inhale these fumes. The poor girl did inhale them and subsequently died.

As a commissioner of Maryland I feel that that case of benzol poisoning is pretty nearly the same as phosphorus poisoning. When I come to cast my vote I am going to say I do not see much difference between benzol poisoning and phosphorus poisoning. It looks to me as if our court of appeals has more or less legislated phosphorus poisoning out of occupational disease into accidental injury, and I for one am willing to go ahead on the benzol proposition and legislate that out also.

In a little talk with Mr. Stewart along that line the other day, he said this was the opening wedge; it showed the tendency and the drift of our court of appeals. I can not see any reason at all why ordinary occupational disease such as this phosphorus and benzol poisoning should not come under our statute. Some of the lawyers of Maryland think that the court of appeals felt that this verdict was a little too large for this girl and so started out with the idea that it had to find some way to get rid of this verdict; it put the cart before the horse, perhaps.

I do not say I am willing to stand on the opinion because the Court of Appeals of Maryland in taking that position on phosphorus poisoning mentions not only the jaw but also, as I read to you, a pimple or scratch, which could be on the hand, foot, or any part of the body, as I see it. Therefore I say that the court of appeals has done this much to help our statute: It has told us that phosphorus poisoning is a personal accidental injury.

Mr. CLARK. What occupational disease is left under that decision?

Mr. EPPLER. That decision says that phosphorus poisoning is not; all the others I suppose are. I cited the benzol case merely to show my feelings in the matter.

Mr. STEWART. Let us get down to brass tacks as to what that court of appeals did. This Catherine Francks, being told that there was no occupational-disease clause in the Maryland law, which is true, went to court under the liability law. In the trial court she got a decision of $22,500. What the court of appeals did was to say this was not an occupational disease; and if it was not, that the compensation commission ought to be good and put this girl under the compensation law of Maryland whether or not her case was covered by the law, and therefore it reversed the decision of the court below and threw the girl onto the mercy of the compensation commission again.

Mr. TARRELL. How much did she collect as compensation?

Mr. STEWART. Hold on. She does what the court of appeals says, comes to the compensation commission for compensation, and then the court says, "Why, that is not covered under your law." In other words, they simply juggle the girl out of any possibility of getting anything. It is true that the court of appeals told the compensation commission it ought to be good when it knew it could not be good. Suppose the compensation commission had given Catherine Francks compensation under the law, and the employer had appealed—gone up to this same court of appeals; there was only one thing it could do, and that was to say that occupational diseases were not covered under that law and she could not be paid. That girl was simply juggled out of any possibility of getting a cent.

Mr. EPPLER. I can not go quite that far, because as a matter of fact, the case is still standing in the court of appeals. It has not come to the compensation commission. This decision has been rendered. As I read this decision, the court of appeals—the highest court, the supreme court, of our State—has never definitely said that in this case this girl did suffer a personal accidental injury covered by the compensation law of Maryland.

I will leave that opinion with Mr. Stewart or with any of you gentlemen to read. As one of the members of the Maryland commission, I feel that my duty under that decision is to say that phosphorus poisoning is not an occupational disease, but a personal accidental injury.

Mr. STEWART. And when you do, there will be an appeal from your decision and you will find that the court of appeals can not read into your law what the legislature did not put there.

Mr. EPPLER. If that be so, then it puts our commission in this position, that we can go to our legislature in 1927 and put the matter frankly and squarely up to them. I for one am willing to do that, and I want to do that, as far as I can, with occupational disease.

Mr. DUXBURY. You have not done that?

Mr. EPPLER. I was willing to do it. We got up a schedule; we got up a list of occupational diseases that should be included. I looked over the list. I come from a section where there are 4,000 coal miners; when I read down the list I found they had left out miner's asthma and I said, "If you don't put that it, nothing goes," and they dropped the whole proposition.

Mr. HATCH. I am not at all sure, from New York's experience, that it may not prove to be possible to give that girl compensation under that decision, and when the matter comes up to the court of appeals it will hold that it was an accidental injury. In the State of New York anthrax was compensated as an accidental injury before anthrax was ever mentioned in the compensation law as a compensable occupational disease, and several other diseases have been compensated under conditions which the court held made them accidental injuries within the usual sense of the term. So there is a big possibility of compensating occupational diseases as industrial accidents, aside from compensating them under what the courts may hold to be occupational disease.

Mr. DUXBURY. In our experience we have had many instances where we could compensate such diseases as industrial accidents; afterwards, when the law was revised in 1921, those same things were denominated occupational diseases, but it did not make any difference as to whether we called them occupational diseases or industrial accidents; they were entitled to compensation just the same. Of course, there are many circumstances where acquiring an occupational disease probably would not come under the definition in the compensation laws of accidental injury, but if they do not want to call it an occupational disease, why it is an accidental injury—if you do not get them coming, you will get them going.

Mr. GLEASON. The Doctor covered just what I was going to say. There is benzol poisoning, copper poisoning, brass poisoning, and poisoning from gilt on Christmas cards—in fact, I had two of those cases a month before I came away. All of them come under the act.

Mr. WILCOX. Your law uses the word "injury" and does not use the word "accident"?

Mr. GLEASON. Yes.

Mr. WALNUT. We have that distinction in Pennsylvania, and as I understand that opinion, it would be somewhat in line with the opinions we have in Pennsylvania, and I presume in a good many other States—where the disease or the condition arises from a particular event, occurring in the course of employment, it is compensable as an accident. It may be a disease that arises in this way, for instance. If a man contracts a disease through breathing gas in a garage over a period of a month, under our decisions that is not compensable, but if he can relate that disease to the breathing of the gas on a particular date, then it is compensable. As I gather from this opinion, the court related the phosphorus poisoning in this case to a particular event, and therefore it was an accident. If it had been something that had gradually accumulated over a period of months it might not be considered an accident.

The CHAIRMAN. It is just the opposite.

Mr. WALNUT. We compensate anthrax just as they do in New York.

Mr. HATCH. Our law says "accidental injury," and yet a lot of those cases are compensated as accidental injuries. Do not any of you get the impression that I am not for covering occupational diseases as such in compensation laws. I am; I am for putting all occupational diseases arising out of the employment under the compensation system.

Mr. RYAN. The labor element of Nevada tried to get an occupational disease law passed by the legislature. It failed. The employers of the State objected, and as a compromise the legislature passed a law that the Industrial Commission of Nevada make a survey of occupational disease in Nevada and report at the next session of the legislature two years hence. We came here to get all the information we could upon occupational diseases. The Nevada law says that an injured workman shall receive compensation for accident by injury arising out of and in the course of employment. Different States have it "by injury," but our State says that it has to be an accident.

The principal occupational disease which we have in Nevada is, I think, pneumonoconiosis; that is what the doctors call it but we call it, in simple terms, miner's consumption. Seventy-five per cent of the premiums paid into the Nevada Industrial Commission come from the mining industry. We are the fifth largest State in the Union in area, but we have over a square mile for every inhabitant in the State, as we have a population of only 75,000 people.

We came here to get all the information we can on occupational diseases. Of course you gentlemen come from the States of the East, which have large industries which we do not have in Nevada. In all the books we have read we have not seen anything about miner's consumption as an occupational disease. If we can get any information from this intelligent body, it will be welcomed by the Nevada Industrial Commission.

Mr. STEWART. If the gentleman will write to me after I get back to Washington, I will send him all the evidence he needs on the question of miner's asthma.

Mr. WILCOX. I think a few words will clarify the situation with regard to this. It is the general holding of commissions and of courts that where the thing that causes the disease is a single germ or a sudden onset, then it may be compensated as an accident under compensation laws which provide covering for accidental injuries, and because of that we compensate for anthrax, for carbon monoxide poisoning, for typhoid fever, possibly for phosphorus poisoning in a case like that of which Mr. Eppler speaks, and for some other types of injuries; but it is my understanding that we always hang to that one thing, that the onset of the disease must come from some single instance, which distinguishes it from the pneumonoconiosis the Nevada member here speaks of, which is a disability coming from frequent and continuous insults to the system.

Mr. WILLIAMS. I will read two or three sentences from the Connecticut law which may possibly assist my friend from Nevada. When our statute was first passed we did not put "accident" into it, but our courts did, and at the next session of the legislature some of us drew up two or three little simple phrases which are now in the act. One of them says, "If an injury arises out of and in the course of the employment, it shall be no bar to a claim for compensation that it can not be traced to a definite occurrence which can be located in point of time and place."

Then we put another little sentence in our definition section. "The word 'injury' as the same is used in said chapter shall be construed to include any disease which is due to causes peculiar to the occupation and which is not of a contagious, communicable, or mental nature."

Mr. INGRAM. We have been struggling with this subject for the last eight years in the State of Nevada, and if we could take out of our law the word "accident" we would have all the law we wanted. That is all we need. By the way, Mr. Stewart, for your information, the Bureau of Mines has made a careful investigation of pneumonoconiosis in Tonopah, which is our largest section subject to this disease. We have been unable to get the figures from this bureau, and if you can get them for us or give us the results of this

general survey, that will be very helpful to the commission in getting this survey in shape.

Mr. McSHANE. Ask Doctor Murray; he will get them for you.

Mr. WILCOX. I have a copy of the Wisconsin compensation act in my hand and there are four lines that cover every injury that grows out of occupation.

Mr. McGILVRAY. Why not use the California law, Mr. Wilcox?

The CHAIRMAN. We have had a very free and open discussion on this very important question, and have had some very excellent papers on it. We have all been enlightened and I hope something may result from this free discussion. I hope we will get a clarification of the various acts where clarification is needed.

Mr. WILCOX. In that connection, may I suggest that Doctor Angel, of the American Association for Labor Legislation, is now preparing for distribution among the States a form of an amendment to the present laws which will have the effect of covering this type of injury. I know he is on that work at the present time.

The CHAIRMAN. The next paper was to have been presented by Dr. Ralph Lewy, of New York, but as he is not here, the subject, "Preexisting disease—Its relation to workmen's compensation," will be presented by R. E. Wenzel.

PREEXISTING DISEASE—ITS RELATION TO WORKMEN'S COMPENSATION

BY R. E. WENZEL, COMMISSIONER NORTH DAKOTA WORKMEN'S COMPENSATION BUREAU

This subject has been placed under the general heading of "Medical problems," hence it might reasonably be expected that it would be treated, in the first instance, from the medical standpoint and by a representative of that profession. That was the original program. The enforced change of person to present the subject for your consideration has made it impossible to accommodate in that regard. First consideration of the subject must now be from the layman's or administrator's standpoint, except as such consideration may and must enter the field of my profession, the law.

As I deem it of some importance to make reference to legal phases of the subject, permit me, as a starting point, to quote from one of our recognized legal encyclopedias, to wit:

> Acceleration of a diseased bodily condition may constitute a personal injury, and an injury may be by accident, although it would not have been sustained by a perfectly healthy individual.—Corpus Juris Pamphlet on Workmen's Compensation, p. 69.

Attached to this paper you will find a review of a number of cases, decided by courts of last resort, supporting this general statement of the law on this particular subject. In that review I have given the citation, a brief statement of the facts, and a short summary of the decision of the court. I shall not burden you with a recital of these cases, but shall refer to them, as occasion may require, to support the conclusions that have forced themselves upon me in the practical work of administering compensation legislation.

If it is the law that a person whose intemperate habits have so weakened his powers of resistance that the shock of receiving a

broken leg brings on delirium tremens and death (158 N. W. 1027, Michigan), or that a person who has a constitutional disease known as syphilis, and as the result of what is commonly known as a minor injury suffers a shock sufficient to bring on paralysis and insanity (111 N. E. 786, Massachusetts), or that a person who was previously suffering from an acute impairment of the heart, and through the medium of just ordinary exertion is disabled and subsequently dies (108 N. E. 361, Massachusetts)—is entitled to compensation, then it becomes a matter of immediate and considerable concern to every bureau or commission having in charge the administration of a workmen's compensation law. It becomes a matter of sufficient concern, to my mind, that the bureau or commission may well ask itself the question, "Are the practical results of the application of this rule of law fair to all the parties concerned?" And if the answer should be in the negative, then, it appears, another question would immediately become pertinent, viz: "What can we, individually and collectively, do or suggest that will tend toward practical results that are fair to all the parties concerned?"

My legal experience and research directs the statement that this is the law, notwithstanding the fact that a number of jurisdictions have inclined toward a contrary view. The trend of the great majority of legal decisions is toward a very broad construction of the terms "personal injury" and "injury by accident." And it is not very difficult to understand how the courts, which had long had before them the words "tort," "negligence," "fault," "wrong," "damages," etc., in connection with cases of personal injury, came to apply those same words, with their legal connotations and constructions, inferences and interpretations, to the problems that arose out of an entirely new method of dealing with these cases of personal injury; and once having applied them, or more particularly having applied the theories about them, they became precedent, and having become precedent the old theories in new and strange settings became more susceptible to growth and development than to any possible change. But if it is now the law, should it not be uniformly accepted as such and as uniformly followed?

Right there my practical experience as an administrator of workmen's compensation legislation, together with a sense of what I should modestly identify as discernment and discrimination, enters a protest. It enters a protest sufficiently strong to cause me to deliberate, ponder over, and then carefully weigh the various answers which might be made to my first question. Yes, it enters a rather vigorous protest, and finally insists that my answer should be that the application of this rule of law is not fair, at least in a great many instances; and it goes over the records that have received my personal consideration and points out specific cases to substantiate the correctness of the answer.

It points, for example, to the case of a man who presented a claim for compensation because of an injury to his back—one of those "didn't-amount-to-much," "just-a-kink-in-the-back," "slipped-on-a-banana-peel" cases—and apparently it was just that; for in 10 days or so the claimant was back to work as usual. A thorough examination and an X ray at the time of the first treatment by his physician

revealed the fact that this man had a chronic arthritis, with partial destruction of one of the lumbar vertebræ. This the physician reported, together with the information that it was in no wise related to the injury. The man went back to his work, that of a clerk and handy man in a combination butcher shop and grocery store. About a year later he showed up in the hospital, with every indication pointing to an extended disability. Supposing, as has not yet developed, that some simple act of lifting or straining brought on the collapse the second time, unbiased consideration of the matter raises the question at least, "Is it fair to charge the occupation with the cost of the disability now in waiting?"

It points again to the case of a man who was injured about 22 years ago, and 2 years later was taken to a hospital for a bone operation on the leg. Released from the hospital (and this was prior to the day of compensation laws in this country), he continued to work, doing as much as any ordinary man over a period of years, experiencing only the inconvenience of having a periodic discharge three or four times a year from the outside and upper part of the injured leg. A year or so ago the man received a slight blow on the inside of the same leg—a blow that he described as very slight, leaving no mark or abrasion and causing no stoppage of work for weeks afterwards. But the blow did light up the tubercular infection that was only smoldering before, and in three months from the time of his second injury his was a case of permanent partial disability; and, so, again, the question presents itself, "Is it fair to charge the occupation in which he was last engaged with the full cost of this disability?"

It directs attention, once more, to the case of a man whose foot slipped on some cinders or was caught in some way, so that his knee was wrenched. In any event, the incident was of such a character that when the claimant came to report the matter two weeks later he could not tell just what had happened, when it happened, or exactly where it happened; and 99 out of 100 persons brought into personal physical contact with the same kind and type of occurrence would have paid no attention to it whatsoever. But again the presence of a preexisting disease overthrew all the calculations and technical skill of several experts in medicine and surgery, bringing as a final result almost complete destruction of the hip joint, and hospital, medical, and pension expenditures of more than $10,000, together with a renewal of the query, "Is it fair to charge all of this to the industry and to the individual employer concerned?"

It brings to mind a group of similar cases, one of which will undoubtedly include report of the death of the injured person before the close of the present year.

It brings to mind as a final illustration the case of a man who suffered a fracture of the forearm, an injury that, according to our own records, ordinarily represents a charge of $250 to $300 placed against the occupation and the employer involved. But union refused to take place at the point of fracture, not even the sign of a callus appearing until the expiration of more than 14 months after injury, during which time two or three open-bone operations had to be performed. It was not the nature of the occupation, nor its peculiar hazards, nor the character of the injury, nor any lack of skill on the part of the surgeons, but the presence of syphilis in the

body of the claimant that resulted in a charge of around $3,60(against the industry and the individual employer involved. Anc so, again, the question, "Is that fair?"

Workmen's compensation legislation has eliminated the element of "fault" from every case of injury in the course of employment. It holds liable every occupation covered by the law, through the individual employer, for the accidental injuries inflicted upon the people employed in such occupation. That is the proper responsibility of the occupation. This may not represent the full responsibility, for there is considerable sound argument for the extension of that responsibility so as to include occupational diseases. There does not appear to me to be anything of fairness, however, in the contention that the logical sequence of the course of reasoning that worked out the compensation insurance plan contemplated or contemplates burdening a particular occupation or individual with the cost of alleviating or relieving entirely those afflicted with other and common human ills and ailments, just because those afflicted with them happen to be employed by an individual engaged in business in that occupation. If it should be conceded, even, that society as a whole should assume that burden, then society as a whole should bear the financial cost, not a particular individual known as an employer or a particular occupation known as one coming within the terms of a compensation act.

But suppose that we all agree that a negative answer should be given to the question, and that we are here in complete agreement along that line. This body of representatives is then confronted with the more difficult task of answering the other question, "What can we, individually and collectively, do or suggest that will tend toward practical results that are fair and equitable to all the parties concerned?"

Before attempting to make my suggestion for your consideration, permit me to refer to one or two of the decisions hereinafter summarized.

The Supreme Court of Illinois, for instance, in Springfield Coal Mining Co. *v.* Industrial Commission, 132 N. E. 752, said this:

> If there is a preexisting disease, the employee is entitled for all the consequences attributable to the injury in the acceleration or aggravation of the disease, but he can recover compensation only to the extent and in the proportion in which the preexisting disease is increased or aggravated. Under these rules the previous condition of the applicant was a material circumstance to be considered in ascertaining whether his condition of total and permanent disability resulted from the accident or from the disease, and if from both, the proportion in which the accident contributed.

That decision was handed down in 1921, and it is rather difficult for a frontier lawyer to tell just to what extent the Supreme Court of Illinois now accepts that statement as precedent; but it represents, so far as I am able to find, one of the first attempts—if not the first—to give consideration to the practical difficulties and inequities involved in a strict adherence to the general rule laid down in Corpus Juris Pamphlet on Workmen's Compensation, and hereinbefore quoted.

The Supreme Court of Minnesota, in Hogan *v.* Twin City Amusement Trust Estate, 193 N. W. 122, although confronted with the opportunity to express itself on the subject in 1923, failed to accept

that opportunity, much less to embrace it, remanding the case to the Minnesota Industrial Commission on procedural grounds.

The Supreme Court of Utah, in a case almost identical with the one cited from our own records, Pinyon Queen Mining Co. *v.* Industrial Commission, 204 Pac. 323, presented as a reason for its failure to follow the California decisions the fact that California had dealt with the matter through legislation that was controlling. The court quoted from the California statute as follows:

> The term "injury" as used in this act shall include any injury or disease arising out of the employment. In case of aggravation of any disease existing prior to such injury the compensation shall be allowed only for such proportion of the disability due to the aggravation of such prior disease as may reasonably be attributable to the injury.

It would appear to be a reasonable conclusion to say that the remedy for the solution of the difficulties or inequities that confront the bureaus and commissions in the administration of compensation legislation by reason of the preexisting disease question must come through the medium of rules by such bureaus or commissions, where they have the power, and elsewhere through legislative amendment or enactment.

The judicial interpretation of Illinois and the legislative enactment of California constitute what appears to me to be the correct basis for handling these preexisting disease cases. Just how many representatives at this convention are in accord with that opinion I have no means of knowing, as yet. If a reasonably large majority is found to share that opinion, then I would suggest that the time for some definite action looking toward the acceptance of this new rule and the adaptation of practice to it is in order. If opinion on the subject is fairly well divided, or the majority shares the contrary view, then I would suggest that the subject is of such importance, at least, that a further survey and study should be made during the coming year by a special committee, such committee to report its findings and recommendations to the next annual meeting.

It is with no hesitancy that I assume that most of those present have had far more experience with preexisting disease cases than we have had in North Dakota; and that by reason thereof they are in position to discuss the matter more constructively and more intelligently. It is with the view, therefore, of bringing the informational value of that experience to this gathering through discussion, and not with the view of anticipating your concurrence in my opinions and conclusions, that I have framed a resolution for the consideration and action of this convention whenever the same may be deemed to be in order. The resolution is as follows:

> Whereas it is one of the aims of the International Association of Industrial Accident Boards and Commissions to bring about equity and uniformity in the administration of workmen's compensation legislation; and
>
> Whereas it is the opinion of the representatives of ——— industrial accident boards and commissions from —— Provinces of the Dominion of Canada and —— States of the United States assembled at this, the twelfth annual meeting of said association, held in this year 1925 in the city of Salt Lake City, Utah, that equitable administration of such workmen's compensation legislation will be furthered by and through the uniform adoption and adaptation of the following basis for the handling of preexisting disease cases arising in the course of industrial employment, to wit:
>
> That in case of aggravation of any disease existing prior to such injury the compensation shall be allowed only for such proportion of the disability due to

the aggravation of such prior disease as may reasonably be attributable to the injury; and

Whereas it is the further opinion of such representatives that it may reasonably be expected that definite and proper expression and publication of such opinion will hasten the uniform adoption and adaptation of such basis for the handling of preexisting disease cases: Now, therefore, be it

Resolved, That the various industrial accident boards and commissions of the Provinces of Canada and the States of the United States be, and they hereby are, urged to accept, adopt, and adapt the foregoing basis in the handling of preexisting disease cases; that the same be done as speedily as possible through the adoption and publication of rules by such bureaus or commissions, wherever they possess the power; and that wherever such power is not now possessed such bureaus, boards, or commissions sponsor the necessary legislative amendments to make this resolution effective. Be it further

Resolved, That due and proper publicity be given the passage of this resolution.

REVIEW OF DECISIONS

1. *Miami Coal Co.* v. *Luce, 131 N. E. 824 (Ind.).*

FACTS.—In this case the workman was a miner, 48 years of age, in good health; he had worked almost every day for 25 years, and was engaged in firing shots in the mine, being injured as the result of an explosion. The doctor described the condition as showing scalp wounds and several fractures as well as burns. He was unconscious and delirious when examined. When the inquest was held, however, the coroner determined that the man died from mechanical obstruction of the bowels. Another doctor testified that there was no evidence of any abdominal injury to account for the obstruction, and that he died from the obstruction and independent of injuries which he had received.

DECISION.—It was the duty of the members of the board to bring to bear their experience and knowledge, and to exercise their reasoning powers, and, moreover, it is sufficient if there be a causal connection between the injury and death. The injury need not be the sole cause.

2. *Indian Creek Coal & Mining Co.* v. *Calvert, 119 N. E. 519 (Ind.).*

FACTS.—A miner, working regularly when the mine was running, and at the blacksmith's trade and as a section hand on the railroad when the mine was not running, and who was known to his friends as a strong, healthy man, not having required the services of a physician, but occasionally indulging in intoxicating liquors excessively, and complaining that his side hurt when he coughed, was working in a room in the mine with his son. The two went into another room and attempted to push a car over a slight grade, but found it too heavy. Two other men were then called, and after pushing the car over the grade, the first two continued to move the car down grade into their own room. One of the men who was called to assist testified that the deceased was talking and "cutting up" the same as usual, but after they pushed the car onto the switch he was heard to remark, "Oh, my side." This was before the deceased and his son pushed the car down grade into room 12, and commenced to load it. While loading, the deceased suddenly called out, "Oh," and when asked what was the matter, he said, "I don't know." The son helped him around the corner of the car, laid him down on the slack pile, and gave him a drink of water. The son then went for help. When he returned his father was lying on the slack pile holding his hand over his heart. He was taken to the company's office, where he died two hours later. An autospy disclosed a rupture of the aorta on the right side, about 2 inches below the arch, and that a diseased condition existed at the point of rupture. The cause for this was given as chronic alcoholism or tubercular focus, probably the latter; and with this condition existing any exertion or excitement making the heart beat more rapidly might produce a rupture.

DECISION.—Assuming that the decedent was afflicted with a fatal malady which was certain to result in his decease sooner or later, and that such malady was the cause of decedent's death, these facts alone are not sufficient to defeat the claim. As there was an injury, and it concurred with the ailment in hastening the latter to a fatal termination, the right to an award exists. The court adopted the definition of an accident as being any unlooked for mishap or untoward event not expected or designed, and under and in accordance with that definition held the injury to be an accident arising out of the employment.

3. *Hogan* v. *Twin City Amusement Trust Estate, 193 N. W. 122 (Minn.)*

FACTS.—Claimant, while carrying a bundle of music rolls down a stairway fell and injured herself. She laid off the second day after this, returned to work, and then laid off from time to time during the next month a total of several days. About the third week after the injury a physician was consulted. His finding was that she was suffering from inflammation of the Fallopian tubes, inflammation of the right ovary, and a small fibroid tumor. Medical experts disagreed as to whether or not the fall aggravated the previous acute condition of the claimant. The referee allowed the claim, but the industrial commission reversed that decision.

DECISION.—Even though the accident would have caused no injury to a perfectly normal person, it is a well-known principle that "an actual aggravation of an existing infirmity by an accident occurring in the course of employment is compensable." The case was merely remanded to the commission, however, as the determination of issues of fact were held to be for the commission. The case was really disposed of by the court on the question of whether or not the commission had applied a too stringent rule of proof in requiring the claim to be established by "clear and satisfactory evidence"; it held that the commission had done so, and laid down the rule that only a preponderance of the evidence was necessary to establish a causal relation between an injury and a subsequent ailment.

4. *Jones Foundry & Machine Co.* v. *Industrial Commission, 135 N. E. 754 (Ill.)*

FACTS.—The claimant was working in a foundry and had been engaged in such work for a period of 12 years. He was 39 years old, a steady worker, but addicted to the excessive use of intoxicating liquors. He had had delirium tremens. He had arterial sclerosis and high blood pressure. On November 1, 1917, he was carrying molten metal and pouring it into flasks. The molten metal was carried by two men in a ladle weighing about 65 pounds when empty and 175 pounds when filled. The temperature of the room was 80°, while the weather outside was cold enough to require an overcoat. A few minutes after claimant was last seen at work, he was found standing leaning against a flask, apparently unconscious. He was taken to a hospital, and in April following was found to be insane. A physician, in answer to a hypothetical question, testified that heavy exertion in a heated atmosphere might contribute toward the occurrence of a cerebral hemorrhage in a man whose condition was that of the claimant; that it might cause a hemorrhage and paralysis; and that a hemorrhage which produces paralysis might interfere with his mental condition. He further testified that the high tension and excessive exertion in a heated room would have a tendency to raise the blood pressure, and when the blood pressure reaches a certain point some of the blood vessels of the body would give way, causing hemorrhage; and that heavy drinking would make a man more susceptible to just what occurred. It was also found that the claimant had had a similar attack during the previous year, which disabled him for about two weeks.

DECISION.—It is true that an injury of a similar character might have happened by reason of moderate exertion in a moderate temperature, or that he might have received a similar stroke in the absence of any exertion at all while sitting in his home or lying in his bed, and the result perhaps would have been the same. He might have suffered this stroke in the same way if he had stayed at home and not worked at all that day, but he did not, and he did suffer this stroke as a combined result of the disease and his work. It was therefore the result of an accidental injury.

5. *Peoria Railway Terminal Co.* v. *Industrial Board, 116 N. E. 651 (Ill.).*

FACTS.—A fireman, working for the plaintiff, was firing a switch engine, and while so doing fell from the engine, death resulting. The deceased had been, during his lifetime, a machinist, a concrete construction foreman, a switchman, and a fireman. His last employment had existed for only one day prior to his death. It was his first trip over the particular road covered. There were four persons in the cab. The deceased was last seen by any of his companions engaged in firing while the switch engine was going between 8 and 12 miles an hour. The roadbed was practically level. As soon as the deceased's absence was discovered, the engine was run back, and the fireman was found on the side of the embankment, which at that point was about 12 feet high. Some scalp wounds were found on the back of his head. An autopsy was held under the direction of the coroner, and it was found that the deceased died from hemorrhage of the brain, but whether caused by the fracture the

physician could not say. A portion of the brain was found to be soft, and the hemorrhage was from the soft portion. It was testified also that the fall could not have produced the condition found, but that the cause was syphilis, which was indicated by scars on other parts of the body. It was also testified that the exercise of shoveling could cause blood pressure and might result in the ruptured blood vessel.

DECISION.—The burden rests upon the claimant to show by competent testimony that he was injured in the course of employment, and such proof must be based on something more than a mere guess. Such proof, however, may be circumstantial evidence. If the facts proved give rise to conflicting inferences of equal degrees of probability, so that the point between them is a mere matter of conjecture, then the applicant fails to prove his case; but where the known facts are not equally competent, where there is ground for comparing and balancing probabilities at their respective values, and where the more probable conclusion is that for which the applicant contends, an inference in his favor is justified.

Even where a workman dies from a preexisting disease, if the disease is aggravated or accelerated under circumstances which can be said to be accidental, his death results from injury by accident. We think it is clear that the conclusion necessarily follows that death was accelerated by the fall from the engine, and therefore the injury resulted from an accident. The proximate cause of death was the fall from the engine and not the disease. This inference, from the facts, is more reasonable than any other inference that can fairly be drawn therefrom.

6. *Springfield Coal Mining Co.* v. *Industrial Commission, 132 N. E. 752 (Ill.).*

FACTS.—The applicant was 50 years old and before the accident had worked on a farm and for four or five months prior to the accident had worked in this coal mine. He had always been able to do such work, and testified that he had never had any kind of heart trouble nor internal trouble before this injury; that at the time of the accident he did not think that he was hurt and went back to his work, but not being able to get his work done he was sent home in a buggy; that the doctor bandaged him, and that he had been under the care of that doctor and another since his injury; that his heart ached; that his head felt as if it were going to burst; that his heart felt filled up and heavy. The doctor who treated him at the time of his injury and bandaged him, and also treated him at different times afterwards, testified that claimant was suffering from myocarditis, an organic disease of the heart, caused by infection and degeneration of the heart muscles; that the disease is never the result of an outside injury or force applied to the body; that he had examined the applicant twice after the injury and found him in a bad condition, weak and emaciated, but that there were no results from the injury which could possibly have caused myocarditis; and that he had a temporary disability only from the injury. The claimant was injured while he was getting out of an empty car, when the mule started up and caught him between two cars, he being caught in the region of the left lower ribs. Another doctor who treated claimant testified to the injury and that the squeezing which claimant had between the cars could have aggravated the condition which was already there, but that the heart condition or disease was present before the time of the injury.

DECISION.—An employee is entitled to compensation for every accidental injury suffered in the course of his employment. That is the measure and the limit of his right. If the injury is the proximate cause of the incapacity, the previous physical condition is unimportant, and he may recover for his permanent incapacity which results from the accident, independent of preexisting disease. If there is a preexisting disease, the employee is entitled for all the consequences attributable to the injury in the acceleration or aggravation of the disease, but he can recover compensation only to the extent and in the proportion in which the preexisting disease is increased or aggravated. Under these rules the previous condition of the applicant was a material circumstance to be considered in ascertaining whether his condition of total and permanent disability resulted from the accident or from the disease, and if from both, the proportion in which the accident contributed.

7. *Pinyon Queen Mining Co.* v. *Industrial Commission, 204 Pac. 323 (Utah).*

FACTS.—Claimant was a miner, and while engaged in his regular work injured his arm. At the time of this accident, and for some time prior, he had

been afflicted with an organic disease, but it had not interfered with his working; that unaccompanied by the disease the applicant would have recovered from his accident within six weeks; that by reason of the failure to treat the disease the disability continued for a considerably longer period; and that as soon as the doctors began treating the disease the arm trouble cleared up.

DECISION.—The court quotes the Corpus Juris Pamphlet on Workmen's Compensation (p. 69, sec. 59) as follows: "Acceleration of the diseased body condition may constitute a personal injury, and an injury may be by accident although it would not have been sustained by a perfectly healthy individual." So death may be regarded as having been caused by an injury although there was a diseased condition prior to the injury without which death would not have ensued, and partial or total incapacity may spring from and be attributable to the injury where undeveloped and dangerous physical conditions are set in motion producing such a result as well as where there is a dislocation or dismemberment or internal organic change capable of being exactly located. The court stated that California had a different rule, and, in explanation thereof, quoted from the California statute as follows: "The term 'injury' as used in this act shall include any injury or disease arising out of the employment. In case of aggravation of any disease existing prior to such injury the compensation shall be allowed only for such proportion of the disability due to the aggravation of such prior disease as may reasonably be attributable to the injury."

8. *Tintic Milling Co.* v. *Industrial Commission, 206 Pac. 278 (Utah).*

FACTS.—The applicant was assisting in putting a "pug-head" in the flue that carries fumes from the roaster. At the time the roasters were not entirely dead, and were throwing off fumes. Claimant was gassed, causing bronchial irritation, followed by nausea and vomiting. He became ill, but continued work for several days. The irritation kept up and about six weeks later a hemorrhage resulted from the lungs. Two months after that an examination of the sputum showed active tuberculosis. It was testified that the gassing was either the direct cause of the tuberculosis or lighted up a dormant condition which existed previously; that he was wearing a respirator at the time and when he first entered the flue gases were so dangerous that he had to wait about 30 minutes. There was also evidence that the claimant, prior to the date of the alleged injury, was afflicted with pulmonary tuberculosis and that the occurrence of January, 1921 (the date of the injury) might have accelerated or aggravated the disease.

DECISION.—There is ample evidence in the record to sustain the findings of the commission either that the injury was caused by the occurrence of January 17, 1921, or that said occurrence lighted up a dormant condition which previously existed. The disease of pulmonary tuberculosis, with which claimant was afflicted, would not seriously interfere with his regular employment, for it appears that during the year previous the claimant worked 356 eight-hour shifts out of a possible 384, but that within five days after this occurrence he was unable to work, and continued to be disabled. We have already stated that under our statute no compensation can be allowed for a disease except where the disease is a result of an accident. The word "accident" refers to the cause of the injury and it is here used in the ordinary and popular sense as denoting an unlooked for mishap or an untoward event which is not expected or designed by the workman himself. As a physiological injury, as a result of the work he is engaged in, an unusual effect of a known cause, a casualty, it implies that there was an external act or occurrence which caused the injury or death. It contemplates an event not within human foresight and expectation. If the injury is incurred gradually in the course of the employment and there is not any specific event or occurrence known as the starting point, it is held to be an occupational disease and not an injury.

[The resolution proposed by Mr. Wenzel in his paper was, on motion duly made, seconded, and carried, referred to the resolutions committee for its recommendation, with the provision that "full, free, and intelligent discussion" be had when the committee reports on said resolution. Meeting adjourned.]

73891°—26——8

CHAIRMAN, MRS. F. L. ROBLIN, CHAIRMAN OKLAHOMA INDUSTRIAL COMMISSION

The CHAIRMAN. This association has given me and my State much valuable information. The Legislature of Oklahoma knows all about the workings of this association, and is so well pleased with what you have done that it has made a special appropriation for the dues to this association and the expenses of the commissioner in attending.

The subject to be discussed in the first two papers I confess I know nothing about. Oklahoma is the only State which has a compensation law that does not provide death benefits. Fearing that some of you may not know the reason, I want to say that at the time the constitution was drawn, the members of the convention, feeling that some of the States were attempting to limit the amount recoverable for death, provided specifically in our constitution that no amount could be fixed, no limit could be placed, on the recovery for death. The 1921 session of the legislature passed a resolution to submit to the people of Oklahoma an amendment to this section. Unfortunately, when it was submitted it was at a time when there were two very unpopular measures to be submitted and all three were lost.

We need all the valuable information we will get this morning on this remarriage table, because one of these days we are going to cover death in Oklahoma.

At the St. Paul convention last year, it appears, this association realized that the Dutch remarriage table, which is in most general use, did not truly represent American conditions and a committee was appointed to compile material for a remarriage table based on the American experience. We shall have the pleasure now of listening to the report of the committee on statistics and compensation insurance costs on American Remarriage Table, by the chairman, L. W. Hatch, of the Department of Labor of New York.

REPORT OF COMMITTEE ON STATISTICS AND COMPENSATION INSURANCE COSTS ON AMERICAN REMARRIAGE TABLE

BY L. W. HATCH, DIRECTOR BUREAU OF STATISTICS AND INFORMATION, NEW YORK DEPARTMENT OF LABOR

The assignment of this matter to the committee on statistics and compensation insurance costs grew out of a consideration of the subject at the St. Paul convention.

I am going to indicate how the committee became active on the matter this year, by reading part of a letter of the secretary-treasurer to me last January, bringing up the subject. He makes some characteristic, pungent comments on the situation. This is from Commissioner Stewart, January, 1925:

> Ever since the International Association of Industrial Accident Boards and Commissions was organized, little shots of steam have been thrown off from

various boilers of various sizes in the conventions on the subject of the remarriage of widows.

At the St. Paul convention the matter was taken up seriously. I have circularized the various State commissions and with one or two exceptions have gotten less than nothing from them.

I believe you will agree with me that the Dutch remarriage table was never worth a "cuss" even on its face, and its applications to the American conditions are a little less than absurd.

I am writing to ask you if in your judgment the committee on statistics and compensation insurance ought not to go into the subject of remarriage of widows in such a way as ultimately to develop a table that will be worth something.

That started the ball rolling.

I am sorry that the committee is not prepared to report a full and final plan for the preparation of American statistics of remarriage which might form the basis for an American table in the course of time. I can, however, report progress, and that is what this report is, a report of progress and some indication of where the thing now stands with the committee.

This progress report will really cover what the chairman of the committee has undertaken to do in preparation for submission of something concrete to the whole committee, so please understand that I am reporting only preliminary work of the chairman toward getting down to something concrete and constructive in this line.

It happened that the assignment of this matter to this committee occurred just about the time we had started in New York to make a tabulation of New York experience—that is, to collate the data preparatory to putting it in the form of a table. In New York we now have 11 years' experience under unlimited death benefits with 2 years' compensation in case of remarriage, and we are in a position where the records should be fairly complete on the subject.

I thought the best thing that I could do as chairman of the committee would be to go ahead and work some distance into our New York handling of the problem and then take the matter up with the committee in the light of the experience we had gained in New York. We have not yet completed the New York tabulation. We have collated the data for the entire 11 years and are now about ready to put it in the form of a table. Here are some of the points we have developed so far in this work:

What you have to find out about each case is a fairly simple matter. Briefly enumerated, what you have to dig out of your records, if you are going to tabulate your remarriage experience, includes, first, a case number for identification, then the date of death of the injured employee, the date of birth of the widow, the date of her death if she has died, the date of remarriage of the widow if she has remarried, the date of any commutation of compensation which might have occurred, the date of any other withdrawal of the widow from the usual status, and then the date of observation—that is, the date when the data are compiled. It is just a series of dates, all of which ought to be normally in the records if your law is like the New York law, and it simply requires clerical work to bring them together.

When you have gotten this material together, however, and you set out to prepare a table by which to test the data in the Dutch remarriage table, which we are using now in this country and which,

as has been indicated, everybody is suspicious of, the thing is not quite so simple.

Mr. McSHANE. Mr. Hatch, can you give to the convention the date of the compilation of the Dutch remarriage table?

Mr. HATCH. I do not believe I can. Mr. Leslie, do you know what the date of that table is?

Mr. LESLIE. I do not, Mr. Hatch, offhand.

Mr. HATCH. It is an old table.

Mr. McSHANE. Social practices change; if nothing else, that is why it is not very valuable.

Mr. HATCH. As to the validity of the Dutch table, it is, of course, Dutch and not American experience. It is experience running back a good many years and it is not experience under a compensation law. However, this matter was like a great many others in the compensation laws of this country. When we started out we had to take what was available and do the best we could with it. So the American laws (that is, those like the New York law) provided that in computing present values in death cases the Dutch remarriage table should be used; although we now find that was a pretty poor basis, we do not want to be too critical of what was done at that time. It was all that could be done. But now our problem is to accumulate American experience, having found from various bits of evidence that have been developed that the Dutch table does not reflect American conditions. Pennsylvania has, for example, compiled some data which rather jar the Dutch table, and the United States Employees' Compensation Commission has also compiled some remarriage data which tend in the same direction.

We will have to continue a long time under compensation laws before we will get a thoroughly dependable basis for an American table, but it is a question whether, if we had all the American experience that might be compiled right now, so that Commissioner Stewart, for example, could put it together in the form of a national table, we might not be pretty nearly ready to do business with that as safely as we are doing it with the Dutch table. That is a pretty technical matter and when we get some actual data we can tell a lot better about it than we can now. Commissioner Stewart has tried to get some data and reports he got less than nothing from most jurisdictions.

Going on to the technical matter of tabulation, my report is here still more one of progress only. I think, however, that we are on the road in our New York tabulation, as we are going to use a form that is a little different from any other that has been used in this country, to get a standard form that will be the right thing. I am not prepared to say it is the right thing yet until we go through the process of actually putting the figures together under this table form. I have confidence in it, not because it is New York's or because I had a hand in it, but because I have been able to get advice from one of the best actuaries in the country on a table of this kind, namely, Joseph H. Woodward, formerly actuary of the New York Department of Labor and now a consulting actuary in New York City, who has done a great deal of work on the general problem of computing values in death cases. He has kindly given me his advice so that we might lay out something that not only would insure

a sound statistical compilation but would be in a form to be most valuable and practicable for the actuaries who will have the job of testing the Dutch table on the basis of the compiled statistics.

In making the tabulation there is only one feature which presents much difficulty. This has to do with calculation of the exposure to remarriage. It does not sound complicated, but—well, marriage is a complicated matter anyway.

Mr. McSHANE. Just what do you mean by "exposure to remarriage"?

Mr. HATCH. What I mean is this: It is necessary in order to get "exposure" to compute the total time in which widows of a given status (attained age, year of widowhood, number of children, etc.) might have remarried or actually did remarry. That would be the exposure to remarriage. Now, the time in each case varies. For example, for those in a given year of widowhood, those that remarry do not all remarry at the beginning of the year—they remarry at dates all the way through a given year; so you have the question of fractional years to deal with. Another element to take account of is the dropping out of some of them by death. Then, under the New York law there are withdrawals from the status of a widow by commutation of the widow's compensation to a lump sum, in which case she relinquishes the right to two years' compensation if she remarries. There are a number of complications of this kind, and it is a complicated, technical problem to arrive at the correct method of measuring total exposure.

I am reporting, then, that the chairman of the committee is trying to evolve out of our New York experience a concrete plan for collating the data and tabulating it, which, after submission of course to the other members of the committee, I hope by the next meeting of the association can take form in a formal, detailed plan for compiling American remarriage experience.

I hope that our report will cover not only the matter of what any one State should do, but, in cooperation with Commissioner Stewart, some kind of a plan for a combination of it in a national experience. That is a very important matter, because the conditions in the different States as to the scope of the data will vary considerably, and it is to be hoped that we can work out some plan so that we can get all the value there is out of all the data, even with variations in its scope.

So much for the purely technical side of this subject. I want to say just one thing more. This plan for remarriage tabulation we hope to make just as detailed and practical as the other statistical plans for statistical tabulations that the committee on statistics has in past years presented and which have been applied in many of the States. But just where does this piece of statistical work belong in the statistical program of any industrial accident board or commission? I think it is rather important that we consider that.

What is the purpose of a remarriage table anyway? Its chief value is as a means of computing probability of remarriage as a factor in computing present value of the total compensation which will be payable to a widow of an injured workman. Such present value is the measure of reserves necessary to pay her compensation: In other words, it is essential for insurance purposes. It is not a

minor matter from that point of view. I have heard estimates of the possible effect of an American table on the reserves which are required under workmen's compensation laws put in pretty large figures; unquestionably it might make a very great difference in the necessary reserves, and that, of course, is a matter of great importance. If the reserves are not large enough, the security of compensation of the widow is jeopardized. If the reserves are too high, then industry and society are being required to pay more than they should. It is important that we get the thing right. However, I think this piece of work in any program of statistical work of a commission should be labeled No. 2 and not No. 1. No. 1 should be the compilation of your experience along lines which have been previously recommended by the committee, which will afford you, first, information of practical value on the problem of accident prevention, because, after all, preventing accidents is more worth while than compensating them; and second, dependable data as to the cost of your laws and of the various features of your laws, so that you will be in a position to speak with some authority when questions of changes in law, or debates about the cost of compensation generally, come up in your legislatures or before the public.

In other words, the previously established and recommended program of accident statistics of the committee is of major importance as compared with this remarriage experience. If you can also compile your remarriage experience, it is a desirable thing to do.

I have given you on behalf of the committee only an interim report and the prospect of a definite report next year. May I add to that, as chairman of the committee and on behalf of the committee, this proposal, that if any of you can take up this work and are disposed to do so, the chairman of the committee would be glad to give you the benefit, on any point of detail, of our New York experience so far, and our further experience as we go through the tabulation in the next few months.

DISCUSSION

Mr. INGRAM. In the proposed card for gathering the data, as I understand it, you include the factor of children in the possibility of remarriage; that is, one, two, three, four, five?

Mr. HATCH. That is a matter that can be included. Thus far, however (I think I am right in this), the experience that has been tabulated in this country seems to indicate that that is a minor matter in remarriage experience. A widow with several children remarries as easily and promptly as a widow without children. How long the period of widowhood has continued and the age of the widow at the time of the death of her husband are the two prime factors. Furthermore, so far as testing the Dutch table is concerned, the number of children cuts no figure whatever. That is a table based on the attained age of the widow.

Mr. INGRAM. We make a set-up this year for the reserves and two years from now we find we are "in the red" on the set-up on that very thing. The older the widow gets, the more money she gets, the closer she gets to death, the more money seems to be required to protect the reserves, up to the peak. There is a peak, of course, but

we have not had the experience to be able to find where that peak is, and we are very much interested in the table in order to get proper reserves to protect these widows. As in our State we have unlimited compensation for widows until death, we will have to determine that matter if we are going to have ample reserves.

Mr. STEWART. I consider this work the biggest work we have on hand now. All the boards set up a reserve; it is just like the catastrophe fund. You keep a catastrophe fund. Suppose some catastrophe happens that blows the top off of your catastrophe fund; you have not half enough money to meet it. The boards keep up a remarriage reserve fund. About half of such funds are ridicuously small; they fail to meet the need, nine times out of ten. Others have reserves which in my opinion are ridiculously high. It is up to us to know what we are doing.

This has nothing to do with the widow; it is simply a matter of regulating our money reserves, and it seems to me that the quicker we get down to business and get up such a table, the better it will be for us. I am satisfied that that Dutch table is not worth the paper it is written on, so far as our purpose is concerned.

[The report of the committee was, on motion, duly made, seconded, and carried, received with thanks, and the committee was continued to make further report at the next meeting.]

The CHAIRMAN. Mr. Kingston will give us his experience on the mortality and remarriage experience of Ontario.

Mr. KINGSTON. Mr. Dean was on the program to prepare a paper on this subject of Ontario's remarriage experience and also its mortality experience, and I am sorry he is not able to be here to present this paper and to discuss it, possibly somewhat along the same lines as Mr. Hatch has discussed it. I can not go into the matter with as much detail as that and will simply read the short paper Mr. Dean has prepared.

ONTARIO'S MORTALITY AND REMARRIAGE EXPERIENCE

BY T. NORMAN DEAN, STATISTICIAN ONTARIO WORKMEN'S COMPENSATION BOARD

[Read by George A. Kingston]

Pension requirements under the workmen's compensation act of Ontario, in addition to the ordinary interest, present value, and annuity tables, necessitate three life annuity tables: 1. Value of a monthly pension to a child to death or age 16; 2. Value of a monthly pension to a workman to death; 3. Value of a monthly pension to a widow to death or remarriage with two years' compensation in a lump sum in lieu of subsequent pension payments.

In 1915, on inception of the act, the following standards were incorporated into actuarial tables:

1. *Mortality.*—(*a*) Children: A table said to be used by Canadian insurance companies.

(*b*) Workmen: The American experience table to age 56, and for subsequent years a modification of the healthy male table on the assumption that industrial life is not coterminous with, but somewhat less than, actual life, and in the case of permanent injury,

social rehabilitation is not so easily attained at an advanced age as it is at a younger age.

(*c*) Widows: The widows' life table (pages 68 and 69, supplement to the Seventy-Fifth Annual Report of the Registrar-General of Births, Deaths and Marriages in England and Wales).

2. *Remarriages of widows.*—The Dutch State Insurance Fund (*Rejksverzekeringsbank*) remarriage table as introduced into America by Messrs. Olifiers and Dawson, modified by the assumption, more or less arbitrary, that the remarriage element disappears after age 55.

The Ontario table differed from preexisting tables in the use of the English life table for widows' mortality instead of the Danish survivorship female annuitants table.

In 1919 the Associated Workmen's Compensation Boards of Canada had prepared new tables substituting for mortality the United States life tables, census of 1910, and retaining the Dutch standard for remarriage of widows. These tables in 1920 were adopted by Ontario.

In 1924 an examination was made of the actuarial bases upon which the board was operating. This entailed a study of Ontario's remarriage and mortality experience for the nine years ending December 31, 1923.

During this period pensions were awarded to 2,458 male workmen, of which number 2,144 were still upon the list at the end of 1923; 76 pensions expired by death of pensioner, 139 by commutation, and 63, being temporary pensions, by lapsation. In addition 36 stood suspended, generally by reason of lack of address.

Pensions during like period were awarded to 926 widows. Of this number 727 were still upon the list, 37 had expired by death of pensioner, 4 by commutation, and 145 by remarriage, 13 standing suspended.

At the end of 1923 there were continuing 261 cases of pensions to children without parents and 400 children with widowed mothers, as well as 41 to disabled female workers and 60 to other dependents.

The number of cases of pensions to other dependents and to disabled female workers was considered too small to permit of actuarial survey. Children's rates were found to approximate very closely the United States life rates, so no table was constructed. New tables for mortality of male workmen and of widows and for remarriage of widows were made, and these tables compared with other tables as follows:

1. *Mortality.*—(*a*) Workmen: 1. Ontario experience tables; 2. United States life tables, 1910; 3. English life table No. 8, census of 1911; 4. English Government annuitants' tables, 1900–1920, neglecting year of selection.

(*b*) Widows: 1. Ontario experience tables; 2. United States life tables, 1910 (females); 3. English life table No. 8, census of 1911 (widows); 4. Danish survivorship female annuitants.

2. *Remarriage.*—1. Ontario experience tables; 2. Dutch State Insurance Fund.

Compilation of mortality rates for workmen disclosed the fact that the Ontario experience rates are more closely paralleled by the English Government annuitants' rates than by either the United

States or English life rates. The English life rate shows a smaller mortality than the United States life rate to age 65, and a greater mortality after age 65. The English Government annuitants' rate to age 87 is lower than the United States life rate and after age 87 it is higher. The Ontario experience rate is the same as the English Government annuitants' rate from ages 10 to 14, higher for ages 15 to 30, equal for age 32, and lower to the end of the table, age 94. Compared with the United States life rate, the Ontario experience rate discloses a lower mortality for ages 10 to 16, equal for ages 16 to 17, and lower for ages 18 to 94.

The United States life table for white males covered a population homogeneous with that of Ontario, or as nearly the same racial mixture as it was possible to find, and it is a matter of some astonishment that the Ontario experience rate of mortality not only is much lower, when general population is considered, but is somewhat lower than the mortality rate of a select life table. For the causative factors of difference, the following is offered:

1. There is a tendency, commonly enough admitted, to overstate age.
2. Workmen injured severely enough to necessitate pension, when hospitalized are relieved of ancillary conditions as well as traumatic disability, and after dehospitalization get beneficient regimen. It is suggested that as time goes on, this, like medical selection of insurance risks, will wear off.
3. The quality of medical aid.
4. Less likelihood to fatal accident.
5. Comfort of a life pension.

From ages 20 to 86 the Ontario experience rate of mortality for widows is higher than the Danish experience; subsequent to age 86 it is lower.

The English table begins with age 25 and shows a lower death rate than the Ontario experience rate to age 63, from which age to the end of the table, age 93, the mortality rate is higher. In the United States table the expressed death rates, commencing age 16, are lower than the Ontario experience rates to age 52; at age 53 they are the same, continuing equal for each age to age 99, the end of the table.

Remarriage rates from the Ontario experience are comparable with those from the Dutch State remarriage table. Commencing age 20, Ontario rates are lower; ages 21 to 32, higher; ages 33 to 36, the same; ages 37 to 62, end of the table, they are higher.

In connection with the remarriage table the influence of the Great War, marriageable men being overseas from 1915 to 1919, and their return in 1919, plus the generous gratuity on disestablishment, and the heavy "bonusing" on remarriage under the Ontario compensation act are, perhaps, causative factors.

In American and Canadian remarriage tables it has been customary to disregard the remarriage factor after age 65. Ontario's experience shows that the remarriage factor for age 66 is precisely the same as the figure used for age 54 in the modified Dutch table and that the remarriage factor persists to age 70.

Combining the United States life table rate for mortality and the Dutch State Fund remarriage table remarriage rate an interesting

comparison with the combination mortality and remarriage rate of Ontario is obtained: Commencing age 20, the experience rate is 0.085 as against 0.1115; at age 30 it is 0.0819 compared with 0.07503; at age 40, 0.0399 instead of 0.03603; at age 50, 0.0266 to 0.01959; at age 60, 0.0328 to 0.01592; at age 70, 0.0576 to 0.0566; and from age 71 on, age for age, they are the same (the remarriage factor having dropped out).

Summing up the results of the study of Ontario's experience, it is manifest that although the Ontario experience tables, in general, show higher mortality and remarriage rates, substantially, having speculated as to factors affecting differences, the general population tables for whites, expressed in the United States life tables, census of 1910, and the Dutch State Fund remarriage table as first used in New York State, with, perhaps, a less declivitous graduation for remarriage, are safe and proper bases for construction of actuarial tables in compensation jurisdictions.

Canadian experience has been combined and the unified experience as well as that of each of the six compensation Provinces confirms the trend of results of the Ontario study.

DISCUSSION

Mr. KINGSTON. That is the contribution Mr. Dean has made to the subject. I merely wish to say that we found a year ago, after this survey of our reserves was made, that as a result of the tables we had used during the nine years, on a pension-reserve fund of something like $11,000,000, we had gathered about $1,000,000 too much. We at once turned back from the reserve fund to the general fund that amount of money, so that we not only started then on the new basis—tables adopted to meet what we saw to be the true condition and the real need—but we also restored the conditions resulting from the old rates to as nearly as possible the position in which they would have been had we adopted the more modern rates from the outset. But I feel that we are very fortunate in Ontario in that we guessed as we did. It is very much easier to give the million dollars back to the accident fund than to have to go to the accident fund and collect another million dollars. When the employers paid the money in the first place, they considered it was gone, but to come back for a million dollars 10 years afterwards would be a sore touch. It was a very comfortable thing to be able to turn that million dollars back to the accident fund and restore conditions to what they really ought to be.

I do not know that there is anything more I can contribute to the subject. I do wish to express the hope that in the not distant future we will be able, by collaboration with New York and all the other jurisdictions which are making a study of this subject, to get together a combined experience table of the Canadian Provinces and the American jurisdictions which will be a real, sound basis upon which all of the jurisdictions can with absolute safety determine their rates for these cases.

The CHAIRMAN. This is a subject in which we are all interested. The discussion of this paper will be led by R. E. Wenzel, commissioner of the Workmen's Compensation Bureau of North Dakota.

Mr. WENZEL. It was my understanding that I was to take up some of the experiences of North Dakota. On looking into the matter I discovered that our experience was so slight that any attempt at discussion from our experience would be of very little value to this gathering; and so while we have prepared some tables upon the matter, I do not think that I can add anything here this morning with respect to it that would be of any value.

The CHAIRMAN. We will proceed with the next number on our program, "Necessity for national accident rates," by Lucian W. Chaney.

NECESSITY FOR NATIONAL ACCIDENT RATES

BY LUCIAN W. CHANEY, OF THE UNITED STATES BUREAU OF LABOR STATISTICS

Three organizations are now and have been for some time gathering statistics of accidents on a national scale. These are the Interstate Commerce Commission, the Bureau of Mines, and the Bureau of Labor Statistics. The last-named has up to the present time confined itself to the iron and steel industry.

It is the present purpose to inquire whether theoretical considerations and the experience of the above organizations justify the use of the word "necessity" in the title of this paper.

First, it is desirable to inquire regarding the nature of rates and the steps by which the practice of the Bureau of Labor Statistics has come to be regarded as in some degree standard.

The two elements which make up an accident rate are the amount of exposure and the casualties which occur in connection with that exposure. In vital statistics it has long been the practice to express the rates as the number of cases per 1,000 population of the town, State, or country under consideration. It was natural to endeavor to use a similar form of expression in treating accidents. Accordingly, the early accident rates were "number of cases per 1,000 employed."

Almost immediately it became evident that this did not take into account the fact that exposure to the hazards of industry is limited to the time in which persons are actually engaged in industrial processes. The man who works eight hours per day at a task has evidently a shorter exposure than the man who works 10 hours. In order to take into account this time element the scheme was devised of transforming the time worked and the number employed into an equivalent in terms of workers for 300 days of 10 hours each. These theoretical people were termed "300-day workers" or "full-year workers" and rates became "number of cases per 1,000 300-day workers."

Several objections to this formula were urged, into the details of which it is not necessary to go. As a result the matter was referred to the committee on statistics of your organization. After prolonged and careful consideration it decided that the wise procedure was to break away from the idea of representing people and consider only the working time expressed in hours. The Bureau of Labor Statistics accepted this conclusion and its frequency rates have since been "number of cases per 1,000,000 hours' exposure."

Along with this development went another which was finally referred to your committee on statistics and by it elaborated and in-

dorsed. This pertained to what are called "severity rates." They are formulated on the same basic exposure as the frequency rates but differ in that the casualties, instead of being treated as single events, are translated into terms of loss expressed in days. Temporary disabilities are given their actual time loss, while fatalities and permanent disabilities have fixed time allowances ranging downward from 6,000 days allowance for fatalities. After the application of these constants, rates are computed and expressed in terms of days lost. A severity rate is "days lost per 1,000 hours' exposure."

It may be remarked in passing that insurance companies formulate their rates in terms of "money cost per $100 of pay roll." This is beyond question the most convenient procedure for the purposes which they have in view. For serious and accurate study of accident prevention problems it has one fault so serious as to render it wholly unacceptable. Pay roll fluctuates with the wages paid. Evidently, then, an increase in wages would cause an apparent fall in the accident rate when in fact the rate might be stationary or even rising. Of course, the converse would be true and falling wage rates would be accompanied by an entirely illusory appearance of increasing accident rates.

The above outline gives an idea of the development of the standard method of preparing accident rates. It is now possible to inquire regarding their necessity on a national scale.

There are six things which properly prepared accident rates will show. They will—

(1) Provide standards by which success in accident prevention may be judged; (2) indicate whether the conditions are improving, retrograding, or simply marking time; (3) identify those industrial departments and occupations whose conditions demand the most serious attention; (4) define accurately the importance and relation to each other of accident causes; (5) give an exact indication of the relation of causes to nature and location of injury; (6) furnish material which may be used in that process of education of the worker upon which safety effort must largely rely for further progress.

To many other phases of the intricate accident problem the rate method is applicable, but these do not concern so directly the prevention of accidents as the six specified. Do these six items need to be projected on a national background in order to be of the greatest utility?

STANDARDS OF PERFORMANCE

The importance of standards is so apparent that it scarcely requires emphasis. A given concern needs two such standards, one giving the average experience of that particular industry and the other the record of the most successful plants. Such standards, to be satisfactory, must be derived from a sufficiently wide experience that they may be trusted not to be unduly influenced by local and temporary conditions. The concerns of a single jurisdiction, even if it be one of the larger industrial States, do not afford a sufficient "coverage" to permit their being used as a general standard.

Small groups are apt to fluctuate violently and thus give different indications from period to period. If the cause of such fluctuation

is some nonessential temporary influence, increasing the volume of data will usually smooth out the trend and afford a reliable indication. It is interesting to observe how as smaller units are combined the progressively larger groups show greater regularity until at length a condition is reached which may properly be regarded as standard.

It may be urged therefore that for setting up reliable standards of performances national accident rates are necessary.

DETERMINATION OF PROGRESS

Without satisfactory rates, both general and for his own works, it is impossible for an industrial manager to determine what his accident status really is. There may be improvement as compared with previous periods in his own experience. This may be very much less than it fairly ought to be when considered in relation with the general trend of that industry. One responsible for the promotion of safety in a given plant or company can not too often check up his results and test them both by previous records of his own and by the experience of others such as may be available to him.

No plant management nor association of industrial plants can possibly assemble and analyze the facts in the case in a completely satisfactory manner. If such assembly and analysis is to be made it must be done by some public authority of sufficiently wide scope to render its work dependable. Regarding each of the three agencies collecting accident data it is freely acknowledged that their efforts have been a large factor in such success as has been secured in accident reduction. Therefore for checking up the course of accident experience national accident rates are necessary.

DEPARTMENTS AND OCCUPATIONS REQUIRING SPECIAL ATTENTION

It may happen, in fact does frequently happen, that a group having a particularly unfortunate experience is completely obscured by being considered in combination with other groups whose record is better. On analysis this undesirable condition becomes apparent and suitable remedial measures can be taken. It is highly desirable that it be possible to determine whether this condition is one due to inherently hazardous characteristics or comes about from some local condition. The remedial measures will naturally be of a different sort in one case than in the other.

Not very much has been done so far in the way of occupational rates. The difficulties which have beset the attainment of a satisfactory exposure in the case of industries and departments are multiplied and accentuated when an effort is made to secure occupational rates. It is evident, however, that some problems will remain quite insoluble until this field is covered. It has been noted earlier that any extended analysis at once tends to reduce the size of the groups to a point where they are not a reliable index of conditions. It will be easily seen that this would be particularly true when an effort was made to consider the exceedingly numerous occupations which the subdivision of modern labor has brought about.

For the purpose, therefore, of dealing with departmental and occupational conditions national accident rates are necessary.

THE STUDY OF CAUSES

A good deal has been said about causes and their importance in accident prevention but not much has been done. It has for the most part been thought sufficient to classify causes in a more or less detailed fashion. It has not been recognized that a modification of the rate method mentioned under preceding heads is applicable to the treatment of causes.

To consider a concrete case: In the admirable presentation of compensation statistics in Wisconsin Labor Statistics, March-April, 1925 (page 3), there is a table classifying the cases closed in 1924 according to causes. Column 5 of this table is the total days lost determined according to the schedule recommended by your committee on statistics and approved by your association. The losses there specified aggregate 845,525 days. It is manifestly impossible to determine an exposure for each item of the classification, but the total exposure of the year should be an ascertainable number of hours. With such an exposure rates could be computed which would be much more readily compared with each other than the recorded figures can be. It may be urged with entire propriety that this convenience is gained at a cost in securing the exposure and applying it to the losses which is greater than the advantage resulting. This would be true in a measure if Wisconsin was the only jurisdiction to be considered. Suppose, however, another State uses the same classification and has 1,000,000 days of loss. This greater loss may signify a greater volume of industry; it may mean a higher industrial hazard; it is compatible with a lower hazard. In short, as between the jurisdictions it has no meaning. It may fairly be insisted that a method permitting both comparison within a State and between States is superior to one whose significance is entirely within the State.

The Wisconsin report (pp. 8-10 et seq.) further shows the desirability of national rates in its very extensive classification of causes by industries and by nature of injury. Wisconsin has a very considerable volume of accident occurrences, but not enough to serve as a basis for general conclusions when attenuated to the degree that it must be when distributed into so elaborate a classification.

The study of causes by means of rates supplements the study of departments and occupations which any safety organization must undertake if it is to deal intelligently with accident prevention.

For the study of causes, therefore, national rates are a necessity.

CAUSES AND LOCATION AND NATURE OF INJURY

None of these items relate so closely to accident prevention as do causes. They are not without importance, however. To illustrate, a very high proportion of injuries occur to the eye. It is difficult and in many cases impossible to obtain protection by modifying the machine or changing the process. The only adequate protection is some form of transparent shield—a goggle, a helmet, or a mask. The lack of national rates has for a long time handicapped efforts at prevention and made necessary extensive statistical studies by private agencies which work might much better have been done by some public agency.

EDUCATION OF THE WORKER

Under primitive conditions of warfare with the elements, with the beasts of the forest, and with his fellow men, it was essential to survival that man should possess a certain degree of indifference to danger. The fact that he survived was necessarily associated with an attitude of mind quite unsuited to the different and more complex dangers of modern life. To create a different attitude and relate this attitude to the prevention problem is a large part of the duty of the safety inquirer. In this effort nothing is more important than the facts, clearly understood and pungently presented. If the facts presented are of a national character and can be contrasted with those of the worker's own environment, they have a powerful appeal.

Therefore as a factor in the education of the body of workers national accident rates are a necessity.

NEED OF COOPERATION

It remains to suggest the relation of this organization to the development of a system of national accident rates. The Bureau of Labor Statistics now receives reports of employment monthly from a large number of industrial concerns. From this list the division of industrial accidents of the bureau has selected 2,500 concerns engaged in 26 industries and located in 13 of the more important industrial States. From these reports, supplemented by correspondence, it will be possible to determine the exposure incident to operation of these concerns. If, now, there can be obtained from the concerns or from the records of the States a simple classification of the accidents, it will be possible to make a beginning in the preparation of those national accident rates whose necessity has been the subject of this paper.

It is natural and proper that this organization should actively interest itself in the development of such rates for two reasons: (1) Such standardization as has been already accomplished has been done by or under the direction of your committee on statistics; (2) the State boards and commissions which make up your association have control of the statistical data.

It may finally be stated that if we are ever to have helpful national accident rates such as some other industrial countries have it must be brought about by cooperation of the members of your association and the Federal Bureau of Labor Statistics.

Mr. WENZEL. May I ask a question, please? How could you possibly apply national rates to a State fund, particularly where that fund is exclusive?

Mr. CHANEY. I have not been talking about State funds at all. You can not apply them to State funds. They are intended to be applied in the prevention of accidents in the State and by the appropriate group of people who are concerned in the prevention of accidents.

The CHAIRMAN. It occurs to me in regard to the next number on the program, "Jurisdictional problems arising out of shifting labor," that the State which can give us the most information is

California, and I have the pleasure at this time of introducing John A. McGilvray, chairman of the Industrial Commission of California

JURISDICTIONAL PROBLEMS ARISING OUT OF SHIFTING LABOR

BY JOHN A. M'GILVRAY, CHAIRMAN CALIFORNIA INDUSTRIAL ACCIDENT COMMISSION

The subject assigned me, "Jurisdictional problems arising out of shifting labor," impresses me at once with its importance and magnitude. In the short space of time allotted to me it will be possible merely to skim the surface, as I believe the subject one that could well be employed as a thesis for a master's degree.

Preliminarily, let me state that in California the question of the industrial accident commission's jurisdiction in extraterritorial matters has been settled to all practical purposes, so far as the commission and the employees are concerned, as will appear further on. There is, however, a sharp conflict of authority in various other States of the Union as to the jurisdiction of the different accident boards and commissions in controversies involving the extraterritorial scope of the acts under which they operate. There is a manifest difference between a compulsory act (such as the California workmen's compensation, insurance, and safety act) and the statutes of several of the other States, where the compensation provisions are dependent upon the election or consent of the employer and employee.

The rights declared by an elective statute have their origin and sanction in the agreement of the parties to be bound by the statute. Under a compulsory statute, however, the correlative rights and obligations are not founded upon contract nor do they correspond with the legal conception of a tort, since a liability is imposed without regard to the element of wrongdoing on the part of the person charged. The obligation should be defined as a statutory one attached by law to a given status. (North California Salmon Co. *v.* Pillsbury, 174 Cal. 1.)

Because of my recent connection with compensation work and my unfamiliarity with the manner in which problems such as this are discussed in your international body, I trust that I will be pardoned if I approach this subject from the California viewpoint. As I see it, the jurisdictional problems before accident boards and commissions arising out of shifting labor usually present themselves when employers have manufacturing plants in several States and shift their employees from one State to another; when workmen are hired in one State to perform work in another State for a contractor doing business in several States; and when employees on the boundaries of States occasionally cross the line from one State to another for the purpose of performing work therein.

The seasonal nature of employment in agriculture and in the lumber, canning, and construction industries imposes upon the Pacific coast, and on California particularly, a migratory labor problem of no small magnitude. The men who flock to the coast cities with their accumulated savings from their summer's work are the prey of the unscrupulous and the victims of their own improvidence. This is the source from which is drawn the seasonal labor

in the coastal employments as far north as white men go and as far south as the Equator.

The salmon canning industry in Alaskan waters derives its labor chiefly from this group; they are generally ignorant of their contractual rights and sometimes, it has been asserted, greatly imposed upon. In this industry, the question of the jurisdiction of the California Industrial Accident Commission over this class of labor, where the employee was hired within the State for work outside its exterior boundaries, was finally settled.

By the act of the legislature of 1917, the workmen's compensation, insurance and safety act of California was amended by adding section 58 thereto, which provides that the commission shall have jurisdiction over controversies arising out of injuries suffered without the limits of the State, where the injured employee is a resident of the State and the contract of hire is made within the State. The constitutionality of this provision was upheld by the supreme court of that State in the case of Quong Ham Wah Co. *v.* Industrial Accident Commission of California (192 Pac. 1021), decided in October, 1920, and writ of error in the United States Supreme Court was dismissed in March, 1921 (255 U. S. 445).

This was the case of a machinist in a salmon cannery in Alaska, who was a resident of California and who was hired in that State to perform work in Alaska. The court held "that the legislature has power to provide for the creation of a compulsory obligation to compensate for injury suffered elsewhere as a regulation of contracts subject to the sovereignty of the State, whether the contracting employee be domiciled in this State or not." In a concurring opinion signed by the chief justice of the Supreme Court of California and by one of the associate justices it was said that inasmuch as the provisions of section 58 of the workmen's compensation, insurance, and safety act conferred upon employees residing in the State the privilege of resorting to the workmen's compensation, insurance, and safety act of said State to obtain compensation for injuries received while in the course of their employment, in all cases where the contract of employment was made in this State whether the injury was received within or without the boundaries of the State, the provision of the Constitution of the United States ipso facto carries this privilege to and confers it upon every citizen of any other State whose contract of employment is made in California, thus preventing the California statute from being discriminatory in effect and in contravention of the provision of section 2 of article 4 of the Constitution of the United States.

In other words, notwithstanding the language of section 58 of the workmen's compensation, insurance, and safety act of California, with reference to residents, by virtue of the Federal Constitution a nonresident of California, if a citizen of the United States, is entitled to the same redress as a resident, and for that reason the industrial accident commission has jurisdiction over the complaint of a resident of California and also over the complaint of a nonresident who is a citizen of the United States, where the contract of hire is entered into in the State.

The history of that portion of the California statute, so far as it relates to the extraterritorial effect of the act, may be of interest. In December, 1916, the Supreme Court of California held in the case of North Alaska Salmon Co. *v.* Industrial Accident Commission (174 Cal. 1) that the workmen's compensation act (Stats. 1913, ch. 176) as it existed prior to the taking effect of the amendments of 1915 did not have extraterritorial effect. This decision was based in part upon the decision of the Supreme Court of Massachusetts in In re Gould (102 N. E. 693), holding that the compensation act of that State would not be given extraterritorial effect unless such intention was expressly indicated by its language.

The California act was amended in 1915 by inserting section 75*a*, expressly conferring extraterritorial scope upon the California law. This amendment was carried over without change when the act was reenacted in 1917 and became section 58 of the present act.

At this point I believe a word should be said as to the economic side of the question—why there should be extraterritorial scope to workmen's compensation acts. It may be well to illustrate some of the effects of injuries arising out of shifting labor. Take the salmon canning industry. Labor is recruited in California during the late winter and early spring for work in the Alaska fisheries during the canning season. Workmen who are crippled in the course of their work in Alaska are returned to California either on the next vessel after the injury or when the uninjured workmen return, and affect the interests of California from and after their return to as great an extent as if they had been injured within the State.

If a workman is killed in Alaska in the course of the fishing season he may leave a widow and orphans in California, in which case the interests of California are as much affected as though the fatal injury occurred within that State. If such workmen, although not killed, had families in California, and are prevented by their injuries, either for a temporary period or permanently, from supporting their dependents, the burden upon the State is greater for the period of their incapacity than if they had been killed.

Another illustration: Many traveling salesmen are hired in California, reside in California, and have their families in California, but travel through a number of the Western States in the course of their work. An injury to such a salesman in another State affects the welfare of the State of California, its citizens and residents, to just as great an extent as if the injury occurred in California.

Again, men are frequently recruited in California for large construction jobs such as building railroads, electric power plants, etc., carried on in other Western States. These men have their homes in California and frequently have families or other dependents permanently residing in California. Injuries to such workmen abroad affect the interests of citizens and residents of the State and the welfare of the community in which they reside as much as if such injuries occurred within the confines of the State of California.

The rule as enunciated in the Quong Ham Wah Co. case, as I have said before, has been followed in California and is the settled law. In other jurisdictions, however, I find some deviation, although in States having the compulsory statutes the doctrine of that case has been pretty generally followed. As illustrative of the deviation the following cases are cited:

In the case of Hagenback *v.* Leppert (117 N. E. 531), which is an Indiana case (the Indiana law being elective mainly), we find the court to hold that the right to compensation is contractual and follows the employee if he is injured in employment in another State.

In Holmes' case (Holmes *v.* C. Steel Co., 174 N. Y. Supp. 772), which was a New York case (the New York law being partly compulsory and partly optional), the court said:

> The workmen's compensation act is so far a part of every contract of employment that the rights and liabilities of the parties thereto in case of injury to the employee must be determined in accordance with its provisions whether such injury occurs within or without the State.

In Barnhart *v.* American Concrete Steel Co. (125 N. E. 675), also a New York case, a slight difference is to be observed. There it was held that the right of the employee under the New Jersey act (where acceptance is optional) is contractual, not merely quasi contractual, as in New York, where the scheme of compensation is mandatory, and the agreement for compensation under the New Jersey act was held to be enforceable in New York unless contrary to the public policy of the State.

A further deviation is observed in Smith's case (Smith *v.* Heine Safety Boiler Co. (1921), 112 Atl. Rep. 516), a Maine case (the Maine statute being elective), where the employee, a resident of New York, was killed in Maine while working for a New York corporation. It was held his widow was entitled to compensation under the Maine act, although the contract of employment was made in Massachusetts.

Again, in the case of Donohue *v.* Robertson (199 N. Y. Supp. 470), the New York court held that when the contract of employment was entered into in New York and the injury occurred outside the State, the contract was not necessarily controlling. This case was decided in 1923, the court holding that in such a case it must be shown that the employee was conducting a hazardous employment within the State and that claimant suffered an injury incidental to that employment.

Again, in Indiana, in Johns-Manville *v.* Thrane (141 N. E. 229), the court held that a contract of employment which was made in Illinois (which State has an elective statute), to be performed in Indiana (where the statute also is elective), is in effect an Indiana contract, and an employee under such contract is an Indiana employee, although his permanent residence is elsewhere.

In Texas, where the statute is partly elective but compulsory as to certain enumerated employments under the act, the relation of employer and employee is contractual and the terms of the act are to be read as part of every contract of service between those subject to its provisions. This applies to injuries occurring out of the State as well as to those arising within. (Smith *v.* Van Nuy Interstate Co., 262 S. W. 1048.)

The case of Darsch *v.* Thearle Duffield Fireworks Display Co. (133 N. E. 525), decided in 1922, is distinguished in the Johns-Manville case above noted. The Darsch case held that no award could be made under the Indiana compensation act for an injury which occurred in Indiana, where the contract of employment was made in Illinois, the employer and employee were residents of that State,

the firm had no place of business in Indiana, and the employee was there only temporarily, it being held that a section of the Indiana compensation act provided that every employer and employee should be presumed to have accepted the provisions of the act, and that every contract made subsequent to the taking effect of the act should be presumed to have been made subject to the provisions of the act, and was binding upon such persons only as were residents of the State of Indiana and made their contracts of employment there or maintained an office and place for doing business within that State.

In the case of Altman *v.* North Dakota Workmen's Compensation Bureau (195 N. W. 287, July, 1923), it was held that the North Dakota compensation act, which is compulsory, does not have extraterritorial effect so as to render the compensation fund liable for injuries sustained in the course of employment in another State, although the contract of employment was entered into in North Dakota, the court taking this view of the matter even in the face of the decisions in a great number of States that have held that a compulsory act has extraterritorial operation.

In Anderson *v.* Jerrett-Chambers Co. (Inc.) et al. (206 N. Y. Supp. 458, Nov., 1924), the New York court held that where hazardous business is being carried on in New York by a resident employer and a New York employee is doing work incidental thereto in another State, the employer must insure the employee in New York, and under the workmen's compensation law of New York the employee is bound to his remedy in that State and can not waive it by electing to take compensation in another State.

This last case logically brings us to a consideration of some of the problems arising from a lack of uniformity of the provisions of the various workmen's compensation acts relative to the extraterritorial scope of said acts. As I have said before, in California it is not a problem so far as the injured workmen or the commission are concerned, but there are certain problems that confront the employer as well in California as in other States. The major ones are:

First, lack of adequate insurance or the danger of duplication of insurance, where the employer has failed to make provision for the liability that may attach by reason of injuries arising in States which assume jurisdiction under their workmen's compensation acts, or where a common-law remedy is available to the injured workman.

Second, and closely following the first, the necessity of the employer's paying a double premium; that is, his liability to carry several coverages with no apportionment of the premium.

Third, the danger of double recovery, as indicated in the Anderson case above cited, wherein the claimant was paid New Jersey compensation, but was not prevented thereby from obtaining compensation in the State of New York, where he was entitled to it under the facts of the case, and could not waive the benefits in New York by reason of the provisions of section 32 of the workmen's compensation law of New York, the court saying:

> Whatever rule may be permissible in the case of a nonresident employee and employer in relation to a hazardous employment principally carried on in another State and only incidentally carried on in this State, and leading to injuries suffered in this State, no such rule * * * (waiver) is applicable by election of remedies or estoppel in a case where the State has jurisdiction

of both the parties and the subject matter. Our statute was primarily for the protection of the residents of this State in the conduct of New York business.

This brings us to the question of what remedies there may be to effect more uniformity as to the extraterritorial scope of workmen's compensation laws in the United States. It naturally follows, I think, that some sort of comity between the States is necessary, and if the doctrine of comity could be adopted in its entirety it would probably prevent the double recovery. As an analogy, we have the seamen's acts of the various countries. It is well known, I take it, that the courts of the United States as a rule will not entertain jurisdiction in controversies arising where seamen are involved when the laws of the country of which such seaman is a national make adequate provision for redress, leaving the matter to be determined when the vessel arrives at a port within the jurisdiction of the country under whose flag it is registered.

But under our constitutional form of government—a federation of States—it is a little more difficult to apply the doctrine of comity to the various workmen's compensation acts as such doctrine is understood and applied between foreign States. I believe the best solution of the problem can be obtained by the uniformity of State laws; if it is not possible to make the workmen's compensation laws of the various States uniform, it certainly should be possible to make certain provisions uniform, those provisions particularly which define the extraterritorial scope of the acts. Also, a uniform provision should be adopted that would permit private insurance under compulsory State funds for interstate business. I believe that it would be well for this body to undertake the study of a plan whereby uniformity of the extraterritorial scope of the various acts may be obtained.

DISCUSSION

The CHAIRMAN. Discussion on this paper will be by our most esteemed president, Mr. McShane.

Mr. MCSHANE. It has indeed been interesting to follow Mr. McGilvray in his very able paper on "Jurisdictional problems arising out of shifting labor." Not only has he very plainly pointed out many problems which do arise as a result of shifting labor, but he has also briefed the causes and legal aspects thereof and made valuable recommendations looking to their solution. Upon the matters discussed by him he has left me nothing to say. Having very graciously been furnished with an advance copy of his paper I had an opportunity to give some thought to the subject, and I have been led to conclude that there is another angle from which this subject may be profitably approached.

Mr. McGilvray has dwelt almost entirely upon the sharp conflicts of authority in the various States of the Union as to the jurisdiction of different accident boards and commissions in controversies arising out of the extraterritorial scope of the acts under which they operate, and the resulting confusion as to rights and remedies of employer and employees which result therefrom. I shall dwell for a few minutes upon problems arising out of shifting labor in the same shop, plant, or employment, and shall use examples and illustrations from

the workshops of steam and electric railways engaged in interstate commerce.

Two brothers may be employed here in the Oregon Short Line shops; one is called to work upon an engine withdrawn from service for general repairs; his brother at the same hour may be called upon to make temporary repairs upon an engine of the same class and in the same shop. The fact that the first engine has been withdrawn from service for general overhauling places the mechanic working upon it in intrastate employment, while the fact that the second engine has not been withdrawn from service and is in the shop for temporary repairs only places the mechanic assigned to it in interstate commerce. Let us assume that each of the two brothers sustains a serious injury in which the right arm is lost, and that both were negligent.

The first would come within the protection of the workmen's compensation law and receive benefits in accordance with the provisions of such law without any litigation. The second brother is out; he can not get compensation because of the nature of his employment at the instant of his injury, and he can not recover damages because of the doctrine of negligence which has been ingrafted upon the common law.

This question or illustration can be juggled about in many ways to make many different cases. For example, let us suppose that the injury sustained is as at first set out except that negligence is plainly evident upon the part of the employer instead of the employee. Here again the first brother must accept the benefits as set out in the compensation law, while the second brother is permitted to go into court and successfully press his claim for damages, which amounts to many times the compensation benefits.

Thousands of employees in the United States are thus situated, notwithstanding the fact that they are engaged in the same shop doing the same class of work, receiving the same pay, and sustain the same kind of an injury. The remedies available, as well as the recoveries, are entirely different, thus giving cause for just complaint, and very frequently resulting in a miscarriage of moral justice.

It has occurred to me that there is a method available whereby the benefits and the remedies available to all injured workmen can be made uniform in the same place of employment. In order to do so certain legal obstacles have to be overcome. It might be interesting for you to know that an effort has already been made along this line.

Before proceeding with a discussion of the legal obstacles to be overcome, I desire to make plain the point I have in mind and shall restate it as the problem of unifying remedies applicable to the employees working in the same shop or plant, irrespective of whether they are engaged in interstate or intrastate commerce.

The shops of our interstate railways give the best mental picture of this problem, for there the same employee may be switched from interstate to intrastate employment and vice versa several times during one eight-hour shift. Because of the peculiar provisions of the maritime clause of our Federal Constitution, you have a somewhat similar condition, though much more difficult of solution, in the case of longshoremen who pass back and forth over a gang plank from the wharf to a ship resting in navigable waters,

while loading or unloading the cargo. Thousands of men thus employed find themselves unfortunately situated in case of injury. They are not advised as to the proper forum before which they should press their claims. They are confused as to procedure and they are very uncertain about benefits.

Congress has already entertained a bill providing for the enactment of a Federal compensation law covering employees engaged in interstate commerce. The bill was presented by the Employers' Liability and Workmen's Compensation Commission, pursuant to joint resolution No. 41, approved June 25, 1910 (36 Stat. at L. 884), proposing a Federal workmen's compensation law which reads:

> A bill to provide an exclusive remedy and compensation for accidental injuries resulting in disability or death to employees of common carriers by railroad engaged in interstate or foreign commerce within the District of Columbia and for other purposes. (S. Doc. No. 338, 62d Cong., 2d sess., p. 107.)

It may be assumed that the power of Congress to do this was thoroughly gone into by this commission appointed by Congress before such a bill was drafted.

Even though Congress enacted such a law you would have much the same situation in a different form; that is to say, two employees injured in the same shop, one in interstate and the other in intrastate commerce, would get a different weekly compensation; they would have to follow different procedure and would have to press their claims in different forms.

In view of this situation congressional enactment of a Federal compensation act covering all employees engaged in interstate commerce does not seem desirable. It appears that the real remedy lies in inducing Congress to pass a law making available to workmen engaged in interstate commerce the benefits of the compensation law of the particular State wherein the injury occurs. It is thought by some men of recognized legal ability that such a law is constitutional. While our Supreme Court has not spoken on this question, there are certain decisions from the text of which encouragement may be drawn. The Webb-Kenyon Act, you will recall, was an act of Congress designed to protect a State with the prohibition law against shipments of liquor into it from wet territory. In other words, it was a law which permitted the State prohibition laws to apply to movements of liquor from one State to another, Congress saying in effect: "If the State law prohibits the possession of intoxicating liquors, we by this act will allow that State law to become effective as the expression of our congressional will and in that way prohibit the entrance into that State of intoxicating liquors."

As the Supreme Court upheld the constitutionality of this law, one may be led to believe at first blush that this case is directly in point with our situation, but we must remember that the opinion written by Mr. Justice McReynolds was based on the rather narrow ground that the Webb-Kenyon Act dealt with a peculiar commodity, to wit, intoxicants. It states that Congress could have prevented intoxicants from being shipped in interstate commerce altogether, and that therefore, if they could forbid the movement of intoxicants altogether, they could, of course, do less by forbidding it in certain localities where the law of that locality itself prohibited the possession of it. It must not, however, be overlooked that in the Jen-

sen case the court was construing the powers of Congress under the maritime clause of the Federal Constitution while in construing the Webb-Kenyon Act it was a test of the commerce clause. And therefore, while we may feel ourselves out of the timber on the commerce clause, there is still grave doubt about the power of Congress to make applicable the benefits of the local compensation act in case of longshoremen because of the peculiar provisions of the maritime clause of the Federal Constitution as heretofore stated.

We do, however, find some comfort in the fact that the Jensen case was a five to four decision, as was the Knickerbocker case, and the dissenting opinion of Mr. Justice Pitney bristles with logic in support of the power of Congress to deal with the subject in the manner it intended to do by the amendments to the judiciary act of 1789, which were passed for the express purpose of permitting the States to deal with the subject.

At present, time will not permit an analysis of the various decisions relating to the question but it does appear that it would be profitable to have a law drafted, and carefully briefed as to its constitutionality for presentation to Congress, giving to workingmen engaged in interstate commerce the benefits of the compensation law of the State in which the injury occurs.

The CHAIRMAN. The next number on the program is "What the South is up against (or the purpose of the proposed Richmond convention)". I have the pleasure of introducing Walter H. Monroe, of the workmen's compensation division of the Bureau of Insurance of Alabama.

Mr. MONROE. First of all I want to express my appreciation for the assistance the Bureau of Labor Statistics has given to the State of Alabama since I first became associated with the workmen's compensation administration in that State, and to pay a debt of gratitude to the late Carl Hookstadt, though it was never my pleasure to know him personally.

WHAT THE SOUTH IS UP AGAINST (OR THE PURPOSE OF THE PROPOSED RICHMOND CONVENTION)

BY WALTER H. MONROE, OF THE WORKMEN'S COMPENSATION DIVISION, BUREAU OF INSURANCE OF ALABAMA

I once knew four brothers of differing ages, possessed of varying degrees of personal ability and temperament. At times these boys would disagree violently among themselves and actually come to blows. But in spite of these personal differences an outsider who offended one of those brothers would meet with coordinated violence from the entire quartet. It was simply a matter of family pride.

Each of those boys had his own individual responsibilities, his habits and peculiarities, and his own destiny to shape. Each had personal problems to solve without assistance from the others.

Our national spirit is identical with the cooperative attitude of these brothers. Sectionally we may differ, but our spirit as a mighty Nation is undoubtedly unimpaired.

Geographical boundaries not only limit land and water but mold public opinion, create customs, and sometimes take a hand in fashioning our legislation. This is especially true of the South. Legisla-

tion of a certain kind which might appear progressive and radical to our conservatism would doubtless receive more favorable consideration in other sections of the country.

As major divisions of a powerful unit we should be deeply impressed with the responsibility of working out our own legislative salvation, but as officials we should not withdraw, ostrichlike, within our own borders and thus miss many worth-while things happening all around us. There is not a single one of us who would not render assistance to a neighbor in time of distress, yet, as commonwealths, we reside next door to other States wherein injured and maimed workmen and their dependents are forced to common-law damage suits.

PROPOSED RICHMOND CONVENTION

For the purposes of bringing into line those Southern States without compensation laws, acquainting those States having the court administrative system with the advantages of the commission method, and formulating and recommending to southern compensation officials more uniform legislation and procedure, there is being agitated a proposed convention of southern compensation officials (as well as other interested individuals) to be held in Richmond, Va., at an early date.

This idea of a periodical sectional conference could, I believe, be used to advantage all over the country. Forms and procedure could be simplified, certain features of the laws could be universalized, thus enabling one commission to cooperate with another in the matter of conducting investigations, and assistance and information could be rendered to all interested in these problems.

In this connection one of the most important subjects that could possibly be discussed would be the question of urging southern compensation officials to compile their statistics in line with the recommendations of the committee of statistics and compensation insurance cost of this association. In Alabama I have attempted to see that these minimum requirements were adhered to. This was necessary on account of our extremely limited personnel. Along these lines I can see no valid reason why statistical tables can not be compiled reflecting the industrial accident experience of the North, South, East, and West, and this can be done if the reporting features of the different laws are universalized and the recommendations of your committee strictly adhered to.

While I can see no hope for a national compensation act and personally question the advisability of such a statute, certainly there are features of all laws that can be made more similar; for example, the different methods of reporting accidents, commission procedure contrasted with court procedure, and finally the scope of the different statutes (with special reference to numerical exemptions). Some of us require the reporting of all accidents resulting in time loss or medical expenditure, some require the reporting of those injuries resulting in a disability period exceeding the waiting period (these varying from three days to two weeks), and some require the reporting of only those accidents in which compensation is paid or claimed. Even the forms used vary in size and requirements. Why not use the model reproduced on page 30 of Bulletin 301 of the United

States Bureau of Labor Statistics as a basis, adding thereto those questions covering conditions of a local nature arising out of the individual statute's requirements?

All of these varying features of southern compensation laws must appear most confusing to a foreign corporation entering the southern industrial field for the first time.

STATES WITHOUT ACTS

In a consideration of the compensation outlook in the South we have to deal first with five States having no compensation laws. These five States (Arkansas, Florida, Mississippi, North Carolina, and South Carolina) are the only ones in the Union remaining without this legislation, excluding, of course, the District of Columbia. I have noted the passage of an excellent law in Missouri and she should be accordingly felicitated, but cautioned to keep her newborn babe away from the fires of the referendum.

It is most fitting, I believe, that their sister Southern States render these States, backward in compensation legislation, first aid and interest their lawmaking bodies in this important question. I do not wish to imply that assistance emanating outside of the South would be unwelcome, but I am of the firm belief that these States are more liable to hearken to the voices of neighbors, for, after all, the State is but an expansion of the neighborhood idea. These five States deserve paramount consideration and immediate attention, and I suggest the assigning of each of these States to a southern compensation State to be "worked" as a salesman does a prospect. As soon as this has been done the compensation State's officials should procure a list of the members of the legislature, as well as all others interested, of the State assigned it. Each of these individuals should be acquainted, through circular letters, with the benefits obtained from compensation legislation.

I have already communicated with insurance officials in each of these five States and without a single exception they have displayed hearty interest and a personal desire to secure for their State also a compensation act. In fact, bills have been unsuccessfully introduced at various times in at least four of these States.

In this connection a short review of the legislation attempted in these five States may be of interest.

Arkansas.—In 1919 a compensation act was introduced in the Arkansas lower house, but it proved to be unsatisfactorily drawn and was ultimately withdrawn from committee by its proponents. However, this bill's introduction so stimulated the interest of the legislature that a committee was later appointed by the governor to draw up a suitable act. This committee did not meet after the legislature adjourned, having never been provided with expense money, but its chairman personally undertook the compilation of a bill on behalf of the committee. This bill, introduced in 1921, was modeled after the Virginia law, provided commission administration, a 7-day waiting period, and benefits of 50 per cent of the weekly wages, subject to a weekly maximum of $15 and a minimum of $5. This bill was referred to the judiciary committee, but as all of the lawyers in that session were violently opposed to the measure it died in committee.

There has been no compensation legislation offered in Arkansas since 1921.

Florida.—In 1919 two compensation bills were introduced in the Florida Legislature. The first, written by the president of John B. Stetson University, provided commission administration, but I have not been advised as to its benefits. The other bill provided court administration and benefits ranging from 60 to 65 per cent of the weekly wages, subject to a weekly maximum of $18, a minimum of $5, and a 7-day waiting period. No reason has been given me for the failure of either of these bills.

In 1921 another act was introduced proposing commission administration, a 7-day waiting period, an extraordinary 2-week retroactive feature, and 50 per cent of the weekly wages, subject to a weekly maximum of $20 and a minimum of $6. Neither have I been advised of the reasons for this bill's failure.

In 1923 a bill was drawn by the insurance commissioner of Florida which received favorable consideration from a lower house committee. It was, however, finally and adversely reported in both houses after violent opposition by certain employees and attorneys.

In 1925 two bills were introduced; one, based on the Wyoming act, provided a competitive State fund and an initial appropriation of $50,000, and the other, based on the Louisiana law, provided optional insurance and court administration. The first was favorably reported by its committee, but the appropriation was cut to $5,000, which would have been fatal had the bill become a law. The second bill was adversely reported by its committee. Neither came to a vote. I am advised that the insurance companies actively opposed the bill proposing a State fund.

Mississippi.—There have been only three efforts to pass a compensation act in Mississippi. I have been unable to secure information relative to the exact dates on which these bills were introduced, but have been advised that at either the 1912 or 1916 session of the legislature a bill was introduced providing a State fund, commission administration, extremely liberal benefits, and so liberal a tax for its upkeep that it was bitterly fought by both employers and insurance carriers. The author of the bill finally admitted that he had been convinced of its impracticability and withdrew it.

During the 1920 session a bill was introduced and sanctioned by all parties in interest. Its rejection has been charged to a failure of the parties to agree at the last moment.

In 1924 an act providing very liberal benefits and commission administration was introduced. This bill also failed of passage because of the failure of representatives of capital and labor to agree on certain points.

It appears that the damage-suit lawyer is the principal foe of compensation legislation in Mississippi.

North Carolina.—Speaking industrially, I believe the Carolinas stand in greater need of a compensation act than any of the other States. I have been unable, on account of shortness of time, to procure information relative to the bills introduced in North Carolina prior to 1925. During this year's session, however, a bill was offered creating a commission administration, providing benefits of 50 per cent of the weekly wages, with a weekly maximum of $15 and a minimum of $5, and a 7-day waiting period with a 6-week

retroactive feature. Although this bill was exceptionally well drawn it failed on account of lack of interest on the part of the legislators, so I am advised. Two other bills, copies of which I have been unable to procure, were also introduced at this session and met a similar fate.

South Carolina.—The only response to letters of inquiry addressed to officials in this State indicate that the voters and legislators simply will not actively interest themselves and that contingent-fee attorneys promptly oppose any proposed legislation.

The attitude of officials in these five States is very encouraging, and I believe the southern legislative fields are ripe and that these States will pass appropriate laws if the benefits to be derived are properly placed before the interested parties.

Although it may appear to you a paradox, it is my personal belief that most of the bills offered in these States have failed because of too progressive features embodied in them, a lack of interest and information on the part of all parties interested, and the activities of damage-suit attorneys.

The wiser course, I believe, is to adopt a milder act at the outset and to graduate to more liberal benefits and expansive administrative machinery when conditions justify. In the light of experience the inching-along process is the safest after all.

PUBLICITY

Absence of information usually denotes absence of interest. One of the greatest needs of the South in the field of workmen's compensation is the dissemination in simple, understandable, and nontechnical language of its principles and advantages to employee and employer alike.

Five years ago I had never heard of the compensation principle, was not aware that a compensation law had replaced the old damage-suit system in 1920, and would probably have gone to a lawyer had anything happened to me. I seriously doubt that at that time I was more ignorant than the average run of southern citizens are now. The average citizen and quite a number of politicians (I believe the proper term is "statesmen") have passed up this question as one involving much personal "boning" and intensive research. The simple fact of the matter is that the entire principle is accurately reflected in the modified biblical quotation "The injured laborer is worthy of a portion of his hire."

So far as I am aware Virginia and Tennessee are the only Southern States making definite moves to acquaint their citizens with compensation facts. There is absolutely no valid reason why statutes so far-reaching in their personal application should be hid under a bushel and not placed before the public in simplified form. One of the greatest foes of compensation is its technical verbiage. While this may be a necessary evil for actuaries it should be assiduously avoided by officials administering these laws.

The necessity for publicity is especially acute in the South on account of our negro population. These people expect their "white folks" to look out for their interests when in trouble. When the "white folks" are themselves unacquainted with the proper pro-

cedure the laborer is totally at sea and doubtless winds up in the office of an "ambulance chaser" and his last state is worse than his first. It has been my personal observation that in only the more intensely industrial districts is labor at all familiar with its compensation rights. The smaller the employer's operations the greater the need for compensation coverage. For this very reason it behooves Southern States to reduce numerical exemptions and to broaden the scope of their laws.

After personally reviewing approximately 25,000 settlements in Alabama I have come to the conclusion that employees of our corporations meet with the most liberal treatment.

COURT-ADMINISTERED LAWS

From many quarters there have come to me expressions leading me to believe there is a widespread belief that the South is the stronghold of the court system. However, the facts are that we claim only 3 of the 10 States utilizing this method of administration. These three are Alabama, Louisiana, and Tennessee. The other seven represent New England, the West, and a Territory (Alaska, Arizona, Kansas, New Hampshire, New Mexico, Rhode Island, and Wyoming). It should also be borne in mind that four Southern States already have commission administration (Georgia, Oklahoma, Virginia, and Texas). At least eight bills offered in noncompensation Southern States in the past have proposed industrial commissions. Also, bills proposing a change to the commission idea have been offered at almost every session recently of the legislatures of Alabama, Louisiana, and Tennessee.

A comparison of the merits and demerits of these two systems of administration has not been assigned me as a subject, but I wish to observe (and I believe you will bear me out) that a court, or self-administered, act is a great deal better than no compensation act at all.

A comparative investigation of the court docket of Jefferson County, Ala. (in which Birmingham is located), has revealed the fact that injured workmen and their dependents receive under our present compensation law six times the benefits awarded under the old system.

Another comparison of two Alabama mine disasters (Virginia, 1905, and Dolomite, 1922) has demonstrated that more than 500 dependents in the 1905 disaster placed their hopes for recovery in a single test case that ran the gamut of the courts for six long years before it finally, in 1911, reached the Supreme Court of Alabama, where it was dismissed on the ground of multiplicity of suits. To lend color to the situation the employer thoughtfully bankrupted in 1907. The 1922 disaster occurred after our present compensation act was passed, and the numerous dependents of the 97 asphyxiated miners received the benefits provided by law, their cases being given paramount consideration in the circuit courts of Jefferson County.

I often wonder if our Southern spirit of conservatism is not, after all, the actual, typical attitude of America as a nation. We admit it is sound business judgment to give any proposed policy a thorough trial before permanently adopting it. Witness Minnesota experimenting with the court system for eight years before finally adopt-

ing an industrial commission. Minnesota's legislature meets biennially. Alabama has had its court law only five years and its legislature meets at intervals of four years.

We have safely progressed from common law to a compensation act and I feel safe in saying that our legislatures will, at the proper time and in the light of mature experience, adopt more expansive machinery for the enforcement of their compensation statutes.

Let us all meet in Richmond, fixed in our determination to wipe five inky blots from the face of America's compensation map, to broadcast among our own people the simple principles of workmen's compensation, to open our eyes that we may see what is going on around us, and finally to disillusion ourselves of the erroneous impression that individually we have the best compensation laws in this wide, wide world.

DISCUSSION

The CHAIRMAN. Mr. Monroe, your State has certainly entered upon a real mission, and I hope the members of this association, individually and collectively, will be able to render you some assistance. We are especially glad, Mr. Monroe, to have heard from you to-day, as I am informed that this is the first time that Alabama has been represented at a meeting of this association.

Mr. MONROE. It has been a privilege for me to attend this meeting. I am in much the same position as Mr. McGilvray; it is my first experience at a session of this association. I hope the powers that be back home will some day make a similar appropriation to that which Oklahoma has made.

The CHAIRMAN. The next is the discussion of Mr. Monroe's paper by Bolling H. Handy, chairman of the Industrial Commission of Virginia, which will be read by Charles E. Baldwin.

Mr. HANDY. On December 9, 1924, I addressed a letter to the chairman or official at the head of the compensation department of the States of Georgia, Kentucky, Maryland, Tennessee, West Virginia, and Alabama. In this letter I stated that the members of the Virginia Industrial Commission had for some time felt that a conference of officials administering compensation laws in the Southern and South Atlantic group of States would be advisable, as their problems are largely the same. I asked the opinion of the different officials addressed as to the wisdom of such a meeting.

At that time I had no idea of the formation of any association in the Southern States, nor have I since become convinced that such an association would be advisable. No suggestion of this sort was contained in the letter above referred to. Rather, my idea was that a conference of this sort would probably be beneficial in a group of States confronted with the same conditions. It seems to me that it would probably be unwise to attempt the formation of any southern association of industrial commissioners. The international association that has been in existence a number of years entirely covers the field.

In this day of multiplicity of organizations I am inclined to believe that it is much wiser to avoid the effort of establishing any organizations when well-established organizations are already in

existence. I firmly believe, however, that so far as the South is concerned it would be of material benefit to have such a conference. It is my idea that if the proposed southern conference develops, it would be wise to invite the commissions which have been appointed to study compensation legislation in Southern States not having compensation laws, where such commissions have been appointed, or certain officials of such States to be present.

Another feature which is worth mentioning is the fact that such a conference in all probability would assist in securing uniformity in the administrative features of the compensation laws of the States in the same group. The Virginia commission has frequently conducted hearings in Virginia for commissions of other States, and has also frequently had occasion to call upon other commissions for the same service. This has occurred recently in reference to a hearing in Georgia. The compensation law of Georgia is practically the same in its administrative features as that of Virginia. It was simpler for the Georgia commission to understand just what we desired brought out in the testimony, and it was also much simpler for the attorneys who appeared in the case, as the laws of the two States were so similar.

Mr. Monroe has very forcefully presented the argument in favor of cooperation among the Southern States in reference to compensation matters.

The CHAIRMAN. Is Mr. Wood here?

Mr. STEWART. I want to say just a word about the Missouri situation. That law was passed some weeks ago, and it was understood and so stated in the papers that both sides had agreed that no referendum would occur. I wrote the governor, therefore, asking him to have a representative at this association. Several letters passed between myself and the governor, and he stated that as soon as he could get his commission organized it would of course join this association, and that in the meantime, he would send a representative here of his own; he named Mr. Wood, whom I put on the program. Since then the opposition has been able to get up a petition of sufficient length to put the matter up to referendum again in the hope that the people will do just what they have done two or three times before. I have here a letter from the commissioner of labor of Missouri, part of which is as follows:

> In regards to referendum petition being sufficiently signed to keep the compensation act from going into effect in Missouri, I regret very much to say that this is true. It having been secured through the efforts of the ambulance-chasing lawyers by paying from 10 to 50 cents a name in securing them. There were many untrue statements made in regards to this act. However, I feel as though, when it is properly explained to the people and comes to a vote, we will not have any trouble in passing it. This will come up at the next general election, which will be November, 1926.

I just want you to know that the legislature really did the very best it could, but the law is being held up by the game that has been played there four or five times before, and we are going to do the best we can to help them.

The CHAIRMAN. Oklahoma attempted to do something along the line Mr. Monroe has suggested, in trying to get Missouri interested in the compensation law. Our insurance company and safety department and my associate on the industrial commission have all

been in Missouri, in several of the counties, on different occasions, and we are very much interested. Perhaps the Industrial Commission of Oklahoma is interested in the Missouri law from a selfish standpoint. You know we have been getting all of those weak backs and hernias and trachomas over in Oklahoma that they get nothing for in Missouri.

[It was moved, seconded, and carried that the discussion of the preceding papers be taken up in the first half hour of the afternoon session. Meeting adjourned.]

CHAIRMAN, MRS. F. L. ROBLIN, CHAIRMAN OKLAHOMA INDUSTRIAL COMMISSION

DISCUSSION (concluded)

The CHAIRMAN. We are to devote the first half hour of this afternoon to a discussion of the papers given this morning. If there is no objection, we will discuss each paper separately. Is there anyone who wishes to discuss the report given by Mr. Hatch? There seems to be no further discussion on that paper. We will proceed to the paper of Mr. Kingston. It is practically the same question, but are there any questions you wish to ask Mr. Kingston or any remarks you care to make in discussing this subject? We will then go on to the discussion on the paper of Doctor Chaney.

Mr. LANSBURGH. Of course there are very few of us who have gotten to the point of having very much data along the lines suggested by Doctor Chaney with reference either to the exposure hazard or to severity rates; nevertheless it seems to me that when we consider the collection of such data we should also consider its utilization in order that we may insure that the data collected will be in such form that it may be properly utilized in comparing the experience of the various States and that we may be sure that in utilizing it we are not making some very grave errors.

Pennsylvania has more industrial accidents than any other State in the Union. All accidents causing absence from work of two days or more are reportable, and that is what we base our figures on. Last year we had 2,209 fatal accidents and 175,330 nonfatal accidents. That is more than any of you have, regardless of the size of your State, and it may be that our accident experience in Pennsylvania is very bad. I do not know whether it is or not. That was brought out in some of the discussions last week in the convention of the Association of Governmental Labor Officials, particularly by Mr. Hatch in his paper.

We have developed exposure hazards in certain industries, such as the cement industry and the iron and steel industry. We can compare our plants in the iron and steel industry, plant for plant, and tell them whether they are good or bad in relation to each other. The cement industry has done the same thing. We have no means of collecting our exposure hazards in other industries nor do we at the present time know how we are going to do it. But I am not sure that if we had statistics of our exposure hazard, and if every one of the other States here represented had similar statistics, we would have anything unless we went a great deal further than that. Although we might compare the iron and steel accident rates of Pennsylvania with those of Illinois, or of Ohio, or of any other State having such industries, and compare our textile rates with the textile rates of Massachusetts, Rhode Island, or any other textile State, and

compare our coal mining rates in the same way, nevertheless, unless we subdivided our statistics very carefully, we would have a lot of crude figures bearing no relationship whatsoever to each other, because Pennsylvania, with its iron and steel industries, with more coal mines than any other State, with more machine-shop products than any other State, would be likely to have a very much higher accident rate than a State which was primarily, we will say, a textile State or a State which had a very much larger percentage of clothing manufacture. If you go into a single industry you have exactly the same thing.

We have been mining coal in Pennsylvania for many years. As compared with Utah, our mining conditions are entirely different. We have mining seams which are 2 feet 6 inches high, and a large percentage of bituminous coal mining is of that character because of the fact that we have exhausted many of the better seams. Naturally, you are going to get a very much higher accident rate under those conditions than you are under mining conditions such as you have in your States.

At the present time we are having an enormous number of accidents in our anthracite mines which would have been utterly impossible 20 years ago, for the simple reason that mining conditions have entirely changed. Whereas a couple a years ago certain conditions were existent which made for safety, to-day those conditions are absent, regardless of what any of us may do. So if, as an association, we are going into a program of development of exposure hazards, let us make sure that we go far enough in the collection of our data and in the utilization of it to insure that after we get it we will have something which is comparable.

The CHAIRMAN. Is there anyone else who wishes to say a few words in discussing this paper?

Mr. STEWART. As far as statistics of accidents are concerned, after you have gotten these statistics you certainly can not know any less than you know now, and there will be a chance to subdivide and segregate those figures, particularly if they are compiled, as we have requested, by departments and occupation. The Bureau of Labor Statistics will do the rest. Of course, in a coal mine we should take the thickness of the seam. Now a thick seam stripped is all right, but in a shaft or a slope, if you are going to take your coal all out, you have a blamed sight more dangerous mine with a 35-foot seam of coal than you have with a two and a half foot seam. Of course, those facts would all have to appear.

As I said before, if you get us those figures, the number of accidents and the conditions under which they occurred, I promise you that we will so classify, subdivide, and tabulate them that you will be satisfied you have something to work on in Pennsylvania.

The CHAIRMAN. Is there anyone else? This will close the discussion of this paper. President McShane has a question he wishes to ask Mr. Lucas.

Mr. MCSHANE. Yesterday I asked Mr. Lucas, who represents the largest self-insurer in Utah, a very pertinent question. You all have your problems with the self-insurers—you have some of the finest people on earth to deal with and you have some of the mean-

est. I am going to ask him to answer in public the question I asked him in private.

Mr. LUCAS. Mr. McShane asked me what I thought the reason was why some self-insurers are willing to deal with their men on a liberal basis, whereas others seek every avenue of escape from liability. In some instances perhaps that applies also to private insurance carriers. I told him that I had, as a practicing attorney, represented both classes.

Take the self-insurer which has a law department of its own, with a position such as I occupy to-day. The man filling such a position has a direct interest in preserving a friendly feeling among the employees of that industry for the management. In other words, while he is not expected to steal money of his company in the sense of giving it away when it is not justly due, neither does the management, if it is what it ought to be and I believe most of such managements are, expect you to squeeze and steal from the men. I am honest about that. That man is there for the purpose of doing justice as far as he can do it, and that man's job depends just as much upon having the men in that industry think he is square as it does on having the management think he is square, because if a kick comes from either side he is out of luck. That is one attitude.

On the other hand, take a situation like that if I were in general practice and a client walked into my office and said, "Here is a certain state of facts. Am I liable? Have I got to pay anything?" Of course I would know that the reason that man has come to me as a lawyer is that he does not want to pay. I am glad he came because I want to get paid, and if I can save him paying that money, I can get some more money. Everything in life depends on the point of view, that is all. If you look at a thing through the inverted end of the opera glass, you will get a different view. So when the self-insurer goes to counsel in general practice for advice, that lawyer has not the slightest interest in his client's relations with his men or any other factor in the problem. He looks at the case from the cold-blooded, legal standpoint—"Is this man liable or isn't he?" If he sees a chance of escape, he tells his client so, and they go to bat and he wins or loses. In either event he pockets his money.

Mr. DUXBURY. I may not have fully understood just what the last speaker meant, but if I did, I do not quite agree with him. I think that the last case he cited would be governed by exactly the same rules as the first one. If a lawyer is going to serve his employer, he serves such employer so that he holds his job and deserves to hold his job. When his client comes to him with reference to the client's legal rights in a certain matter, he will advise his client according to what he believes is the legal liability, and the legal rights, because that is the kind of advice that people want from lawyers.

It is a popular impression, I know, that people go to lawyers for the purpose of escaping their legal liability. There may be such lawyers, and there may be clients who want that kind of lawyers, but I feel that the lawyer who is successful and deserves to succeed gives the same kind of service to his employer that he would give in the other relation. He wants to do exact justice, and that is what

the man wants, and if he gives his client such advice as "Well, we may get out of this and we may not," he will involve his client in litigation, with, possibly, adverse verdicts and judgments, and he will soon lose his job with that client because he deserves to lose it.

That may be the conception of some people with reference to the different lawyers, but it is not the conception which lawyers who deserve to be lawyers have of their job. It is not the conception which you will find among members of the American Bar Association when discussing their duties and obligations, and it is not the conception which you will find in any association of decent and respectable lawyers.

The CHAIRMAN. We will proceed with our discussion of the paper which was read this morning by Mr. McGilvray.

Mr. BROWN. I did not arise to discuss the paper, but to express a feeling of thankfulness for the most excellent discussion by Mr. McShane of Mr. McGilvray's paper. Personally, I am connected with a few men in the Northwest—Idaho, especially—in attempting to put before Congress a proposition for just such a law as Mr. McShane outlined. In talking with our most excellent Representative, Burton L. French, he said, "You compensation people know better just what kind of a bill you would like to have introduced, and I promise you that if you will arrange such a bill, so that I can have it by the time or a little before the next Congress convenes, I will do all in my power to have it taken under consideration, considered, and indorsed, if it is possible to do so constitutionally." I want to make it known, especially to our worthy secretary, that that gentleman is at the service of this association in carrying out the plan recommended by Mr. McShane.

Mr. WILCOX. I do not think I quite understand the plan that Mr. McShane suggested this morning. I am in doubt as to whether he means to make it optional with the railway employee, who would otherwise have to bring his case under the common law, to elect compensation as a remedy.

Mr. MCSHANE. Mr. McGilvray drove me into a corner and left me to find something to present to the convention, which I did. I think that the convention should not, at this time, however, take my suggestion too seriously, but I do place it before the convention as a matter for consideration and such action as might be indicated after a thorough examination of the subject has been made.

There is no doubt that such a law at the present time would meet a lot of obstacles. There are constitutional provisions in the States which vary, and you will have a lot of difficulty in the States as well as in the Nation. That is my thought, and I simply proposed it for you to consider. I have not thought it out very well myself; I am willing to admit that.

The CHAIRMAN. Mr. McShane, have you any suggestions as to how this association shall consider these questions?

Mr. MCSHANE. It is in the record. There are a lot of fellows who know more about this than I do, and I rather think if they consider it important they will give it some thought and bring it up. If not, they will let it go.

Mr. WILCOX. This question has been thrashed out over and over again, and we have been trying to devise ways and means to provide protection for railway employees injured in interstate commerce. Not all the obstacles are in the matter of legislating; a great part of the obstacles in practically every State is in the attitude of the railway employees themselves. I think they are openly opposed to any tinkering with the law so far as they are concerned. They want to take their chance under the Federal employers' liability act.

I am not very much in favor of laws which give you a right to select your remedy at common law if you think you can establish your liabilities at common law, but if you know you have not a good case at common law, then you can take a sure shot at compensation. I do not like that kind of a law.

Mr. MCSHANE. That was my intention, to make it optional.

Mr. WILCOX. The biggest problem of all, so far as we are concerned as administrators of law, is to know whether or not the case that occurs right in our own jurisdiction is in fact one cognizable under the compensation law of our State, or whether it is a case that should be disposed of under the Federal employers' liability act. A railway company, if it thinks it has a genuine defense under the Federal employers' liability act, or the common law of the States, is likely to insist that the case arose in interstate commerce, and, vice versa; if it is a case where there is no defense, where negligence of the company is easily established, then it will submit to the injured party or the dependent that it is a case that really ought to be disposed of under the compensation law. That will be found to be the situation you will have to meet, and whether a case is in interstate commerce or in intrastate commerce is a mighty close proposition. This question of whether or not even temporary repairs carry that instrumentality, that car, that engine, into the realms of intrastate commerce is another question. Some courts hold that you can not take the car, if it is not loaded, or the engine inside the shop for these repairs and continue it as temporary repair work and keep it in interstate commerce, and vice versa. I have not seen any light on the matter so far, and I do not know that I do now.

Mr. INGRAM. We have discussed this matter at other conventions. The railroad transportation brotherhoods were the principal objectors to a Federal compensation law which was proposed by a Federal compensation commission created at their request during the Taft administration.

In Nevada, this is the situation with reference to railroad employees. The compensation provisions are used in the settlement of such cases. In every one of our cases in the Federal Court, the suggestion is made that under the compensation law of the State of Nevada the injured man would be entitled to a maximum of $7,200, and of course, that affects the jury in its settlement. In Nevada, as far as the employee is concerned, you will find very few juries who have given a larger compensation award than the employee would be entitled to under the State compensation act.

Mr. WILCOX. Do you mean at common law?

Mr. INGRAM. That is the amount which the employee himself receives. You will find some $10,000 verdicts, but when you go into the matter you will find that the attorney has gotten 33⅓ per cent of it and the employee has paid his costs, so that gets it down pretty close to our compensation figures.

Every one of our compensation amendments in the past six or seven years has been formulated and passed on the strength of representations made by the railway employees, because they are the only active labor lobbyists in Nevada. What was their object? Their object was that they expected that at some future time there was going to be a national compensation act to take the place of the employers' liability legislation and when this time came they wanted to have the figures of the compensation benefits in the State of Nevada such that it would help them in the national compensation law. They are not going to have their congressional Representatives agree that $5,000 as a maximum is a sufficient sum to pay for the loss of a life when in the State of Nevada the widow and orphans can get as high as $25,000. That is why compensation laws are being built up in these various States.

I might remark that I have been the active legislative representative for the train-service organization of the State of Nevada for a good many years, and I do not, at this time, find that objection to a Federal compensation law among the train-service employees. There was a time when in their conventions they opposed such a law, but if you look in the proceedings of the convention of last year you will find every one had something favorable to say about the compensation principle as distinguished from the employers' liability act and the recoveries possible thereunder.

Some education may be needed in some of your States, but let me tell you that the Federal courts are not giving any very large decisions.

Mr. WALNUT. I am going to add some of our experience to this discussion. In Pennsylvania our principal carriers are the Philadelphia & Reading and the Pennsylvania Railroads. The Philadelphia & Reading always insists on this interstate provision in order to avoid liability wherever it can, but the Pennsylvania Railroad for some years has adopted the practice of recognizing all of its accidents as coming within the compensation law, regardless as to whether or not they may be interstate or intrastate accidents, and the system has worked fairly well. Sometimes the railroad gets burned, because when a man has a very good case he refuses to accept compensation under our law and proceeds under the provisions of the Federal employers' liability act, but for the most part it operates on that basis and has operated that way for a number of years. As far as I know, there is no organized complaint from their employees.

Mr. BROWN. Did I understand you to say that it is the custom of that railroad now to bring its accidents under the scope of the compensation law, regardless as to whether they were intrastate or interstate?

Mr. WALNUT. Oh, yes. When an accident occurs the railroad enters into an agreement with the injured man just as though the accident occurred right there. It may be an accident to a brakeman on a through train. The railroad will enter into an agreement with

that man for the payment of compensation and that agreement is approved in the regular way by the board. If there is any serious contest over it, you will find the claimant coming before the board on petition in what is clearly an interstate case and the railroad making no defense on that ground but merely raising other questions, mainly the medical significance of the relation between the alleged accident and the condition, just as if it was liable under our compensation law.

Mr. BROWN. The question in my mind was the practicability of any State attempting to change a law. I am at a loss to see how it would be possible for us to legislate as a board or to agree with the men that they could change a matter that is interstate into intrastate. I do not understand how that can be done.

Mr. MCSHANE. What Mr. Walnut said, as I understood him, was this: Where it is plainly an interstate case the man still has his rights, but if he is willing to settle on the basis of intrastate employment the railroad company accepts it; it is a matter of agreement, and the man certainly has a right under the common law to enter into an agreement for settlement.

Mr. DUXBURY. But your agreement is not within the province of the industrial commission. It is a private agreement.

Mr. MCSHANE. We do not, in Utah, approve such agreements. We tell the parties to go their own way.

Mr. DUXBURY. Minnesota does not have the best law in the world, but it has a good many commendable features. One of them is that we do not restrict its provisions to an employer who has a certain number of employees. We have 7,500 indemnity claims. We limit all permanent total disability to $10,000, which is a little less liberal than some others which have no limitation whatever. We have a $20 weekly maximum. We have unlimited medical benefits. We have many good features, but our law provides that employees of steam railroads are not under the compensation law, so we do not have the trouble that you have been talking about. If the injured men are employees of the steam railroads, the compensation law of the State of Minnesota has no relation to their employment and their rights are under the Federal employers' liability act or the common law of the State with reference to negligence or whatever the jurisdiction may rest upon. In that particular, I think Minnesota is lagging behind the procession, because there is no fundamental reason that I can imagine why steam railroads should not be subject to the same rules of liability as other employers. This exemption resulted from the attitude of the Federation of Labor; it did not want such employees included, and when the men do not want to be blessed, why you can not bless them, that is all.

Mr. CLARK. I would like to ask by what authority you in Pennsylvania take jurisdiction in that sort of a case?

Mr. WALNUT. I do not see that there is any objection to the taking of jurisdiction. You see what really happens is this: The Pennsylvania Railroad says, "We will not raise the question. This is an interstate accident. We will pay this man on the same basis as if he were under the compensation law, and we will follow the same practice that would be followed if it were a compensable case," and we

assist them in that practice. Of course neither side is bound. The employee can, if he chooses, refuse to accept payment on a compensation basis, and say, "I can get a whole lot more under the accident liability law." He is at liberty to do that if he chooses, but if he does not choose that proceeding, the Pennsylvania Railroad will fix the amount of money he is to receive by our compensation rates, asking the board to assist in determining what those rates should be.

Mr. CLARK. It amounts, then, to your board becoming an arbiter instead of a commission.

Mr. WALNUT. You see, the question of interstate commerce never being raised, we would have jurisdiction, prima facie jurisdiction at least, until that question was raised. It does not follow merely because a man is employed by the Pennsylvania Railroad that he is in interstate commerce. The case comes before us as an intrastate commerce case and nobody raises the question that it is interstate. We treat it as an intrastate case.

Mr. CLARK. Is not your commission bound to take judicial notice of the fact that the Pennsylvania Railroad is an interstate corporation?

Mr. WALNUT. We are not bound to take judicial notice that every employee who is injured is injured in an interstate commerce accident; we could not take such judicial notice because that is not true. What percentage of accidents are interstate and what percentage are intrastate, I do not know, but I know that you could not assume they are all interstate accidents.

Mr. CLARK. The courts have held the same as in maritime law, that any railroad corporation whose lines run over more than one State is an interstate corporation and is under congressional and not State regulation.

Mr. WALNUT. Remember, there is a very marked distinction between the interstate character of the carrier and the interstate character of the employment of the employee. Your carrier may be engaged in interstate business, but your employee is not necessarily engaged in interstate business.

Mr. DUXBURY. I wanted to suggest that if one of these railroad cases came before the Industrial Commission of Minnesota upon agreement that the parties would adjust their differences by applying the schedules of the compensation law, I would hold immediately that the Industrial Commission of Minnesota had nothing to do with that case, just as I would if a case of domestic discord in which both parties were willing to be divorced came up; of course, that would not be a case that would appeal very strongly, but if the parties came in and wanted to submit their contention to the right of divorce to the Industrial Commission of Minnesota, I would say they had better go to a court which had jurisdiction of that question.

I do not think this question of jurisdiction has been properly expressed. If you take over something, give your approval to placing the jurisdiction of the subject matter in your commissions, your act is of just as much importance as it would be if a convention of tramps had performed that same function. I think we ought to be careful as regards our jurisdiction. We have troubles enough with-

out hunting for domestic troubles or going outside the jurisdiction of the subject matter.

Mr. WALNUT. The commission of Pennsylvania has taken a different attitude. We have a very high regard for the compensation law and we would like to see it extended. We want to see it extended to cover all the accidents in the State that it can possibly cover. We think it is better than the old precarious gambling of the common law. For that reason, when these parties come before us and undertake to have this compensation system applied to their differences, we are perfectly willing to accept the opportunity of extending the act that far.

Mr. HORNER. In order that you may get a clear understanding with reference to this intrastate and interstate proposition, the Pennsylvania Railroad Co. as a rule holds that all its train-service accidents are interstate accidents. The men who are injured in the shops are as a rule assumed to be in intrastate employment, and in those cases the Pennsylvania Railroad Co. enters into agreements and pays compensation the same as any other employer does; but when it comes to a question of interstate employment, the railroad company notifies the bureau that the case is an interstate case and that settlement is made on the basis of the workmen's compensation law of the State of Pennsylvania. In that case no agreement is entered into. The railroad company simply notifies the bureau that that case has been settled on the basis of the workmen's compensation law of the State of Pennsylvania and that it was an interstate case.

To cite a case in point to show that the courts of Pennsylvania recognize the distinction between the interstate and intrastate case, recently we had a case with the Philadelphia & Reading Railroad Co. I know of this case personally because I handled it. A man was killed. The widow filed a claim under our compensation law, but before that case was finally adjudicated, some "ambulance chaser" in New York got hold of the widow and insisted that she drop her claim against the railroad and proceed under the Federal liability law, which against her will, she did, with the result that she lost out in the courts. The courts did not sustain the case; it was an intrastate case, and the case went before the referee and the referee awarded the compensation. The attorney who represented the widow in the suit against the railroad company under the Federal liability law (after he lost the case and the widow was granted compensation under the compensation law of the State of Pennsylvania) tried to get the Philadelphia & Reading Railroad Co. to commute the amount in order that he might get a fat fee. The widow lived in Harrisburg. She came into our office, and we told her not to pay any attention whatever to this attorney; that she owed him nothing. There was accrued compensation due amounting to something like $1,800. The widow was in bad shape financially. She was notified that she would have to move out of the house in which she lived unless she paid her rent. We interceded with the landlord, saying that an award had been made but that there was some delay in paying the compensation because of the fact that she had been induced to bring suit under the liability law. I immediately communicated with the Philadelphia & Reading Railroad Co., with the

result that it sent us a check for $1,800 and some odd dollars, accrued compensation that was due at that time, and we turned it over to the widow.

Mr. DUXBURY. That was interstate or intrastate?

Mr. HORNER. It was an intrastrate case.

Mr. DUXBURY. It seems to me that it is bad practice and almost unjustified for an industrial commission to assume jurisdiction of a subject matter over which it has no jurisdiction, because there are lots of cases where it has no jurisdiction, the subject matter arising in interstate commerce. If it adopts the practice of assuming jurisdiction—and I doubt if that word is the proper one; I think it would be better to use "usurp"—it is putting into the hands of the railroad adjuster an advantage by which it can settle cases where the liability would amount to a great deal more and a great deal more ought to be paid. It gives that impression and puts that advantage into the hands of those fellows.

If you can make the man believe, by a little reflection on his lawyer, who advises him otherwise and who may have an interest in it, that the lawyer is deluding him, he is mighty glad to settle that kind of a case according to a schedule that does not apply. The industrial commissioner, by usurping jurisdiction in such a case as that, is putting in the hands of the adjusters an advantage which they ought not to possess.

I do not want to lend the good name and reputation of the Industrial Commission of Minnesota to purposes that can not be commended. Industrial commissions ought to have a definite idea of what their jurisdiction is, and they ought not by their influence and their zeal for a law which applies well in some cases to give wrong impressions with reference to the rights of other parties whose rights come under a different set of laws, and by that means induce settlements that are absolutely contrary to the rights of property. There are cases where the legal rights of the parties entitle them to more, and they ought to have it.

Mr. WILCOX. Mr. Stewart tells me that there has been a very apparent change in the attitude of the railroad brotherhoods with regard to this whole problem. I remember the history back to the Columbus meeting, I believe it was. Mr. Pillsbury, former chairman of the California commission, had prepared a bill for introduction into Congress. It was the plan of that bill that in the various States having compensation laws, the compensation law of the State in which the accident occurred should be the measure of recovery for that particular accident in interstate commerce, assuming, of course, that accidents in intrastate commerce were already covered within those States. That brought out very sharp opposition from the railway brotherhoods. I think that the bill was introduced in Congress and met their opposition; at least it was smothered.

There were different views at that time, one of them supporting the Pillsbury plan and another the plan of a Federal compensation act covering benefits for railway employees generally throughout the United States who might be injured in interstate commerce, leaving the States to take care of those in intrastate commerce. It was the hope that that character of legislation might develop on

the part of the States a tendency toward uniformity in their acts, the objection to the Pillsbury plan being that it was unfair to compensate one injured railway engineer on the basis of the law in New York and another on the basis of the law of some other State where benefits might be very different.

We can not settle this matter here to-day by any manner of means, and it occurs to me that perhaps this association ought to name a committee to give the question careful consideration, and in cooperation with the railway brotherhoods, perhaps, work out some sort of a scheme that as an association we can get back of and further.

Mr. DUXBURY. It occurs to me that the suggestion that Congress provide that the laws of the States may govern the extent of liability in interstate commerce can not be done constitutionally. That is the exact point which was held to be unconstitutional in the last act of Congress attempting to bring maritime injuries under compensation laws. The point was that Congress had the power to pass a compensation law for maritime employees or any other employees, but that Congress did not have the constitutional right to adopt the law of a State as its act, and if it is going to give compensation for interstate commerce it will have to provide a uniform compensation law for the United States, because it has jurisdiction of that particular field, and can not adopt the various plans of the States. It has to be its law, and not the law of the State.

Mr. HATCH. The situation as to the maritime jurisdiction problem, which is very much akin to that with regard to interstate commerce, does lend weight, of course, to what Senator Duxbury has said, that, in the light of the Knickerbocker and other decisions, it would be a very hard proposition to draw an act which would be regarded as constitutional providing that the railroad men in one State recover under one benefit schedule and in another State under another benefit schedule.

In the maritime cases the main point of the whole thing was that the law must be uniform everywhere, and to attempt to apply State compensation laws to seamen or to longshoremen would be to say that a vessel in one port would have one kind of law, in another port another kind, and so on; that is what the Supreme Court said you can not do constitutionally. Although I am not a constitutional lawyer, I should think that the same rule of uniformity of law would apply in your interstate commerce proposition. I am in favor of Mr. Wilcox's suggestion that this matter be given study, to see if some remedy can not be found.

The CHAIRMAN. Mr. Wilcox has suggested that a committee might be appointed at this session to make a study of this problem.

Mr. DUXBURY. Why not make it in the form of a motion?

Mr. WILCOX. I move that this organization appoint a committee of five to confer with the railway brotherhoods and other organizations—such other groups as it may see fit—to the end that some uniform type of legislation be provided covering injuries in interstate commerce.

[The motion was seconded. At the suggestion of Mr. Duxbury and accepted by Mr. Wilcox the motion was amended to provide that the committee be appointed by the incoming president.]

Mr. BROWN. Mr. Wilcox spoke about the body with whom this committee should confer.

The CHAIRMAN. I think the motion is liberal enough to cover all agencies which may be of any assistance.

Mr. BROWN. As a body representing the commissions of the United States of America and Canada we are expected to be fair with all parties, and in this resolution we put first that this body confer with the railway workmen. We do not say anything about the railroads. It occurs to me that the railroads should be included, and if we name anybody they should be named also.

Mr. DUXBURY. I think it would be a bad idea to put in details.

Mr. WILCOX. I had a reason for saying it just as I did. The Federal employers' liability act was accomplished after a lot of work. It took a long, long time to write that into the Federal statutes, and it was put there at the instance of the railway brotherhoods. I think that our first duty is to confer with the railway brotherhoods with regard to this type of legislation, because the present law was enacted at their instance and for their protection. I am not quite ready to force on them some different scheme against their will.

Mr. DUXBURY. We ought to assume that this committee will have wisdom enough to consult with the railroad brotherhoods and with all other interests. I would much prefer that we leave out those details.

Mr. WILLIAMS. The amendment I am about to suggest would meet the objection of the gentleman, that is, that a commitee of this association be appointed to confer with parties interested and take such steps as in its judgment might seem wise in order to bring about a remedial condition for the employees of railroad companies engaged in interstate commerce.

[The substitute motion was accepted by Mr. Wilcox, seconded, and carried.]

The CHAIRMAN. The committee will be appointed by the incoming president.

Mr. RYAN. I would like to ask one more question on this subject. Mr. McGilvray, in his excellent paper this morning, stated that if a resident of California, whose contract of hire was in California, went to another State, the California commission would have jurisdiction over that employee if he was injured in another State.

We took this matter up with the California commission. A number of mining companies in Nevada contracted to hire their men in California, running them by bus from Sacramento to Tonopah and the mines of Nevada. The California commission assumed it had jurisdiction over the accidents in Nevada. The Nevada Industrial Commission claimed and held that it had jurisdiction over these men when they were injured in Nevada. I would like some information from Mr. McGilvray on that point—whether he still holds that.

Mr. MCGILVRAY. That is, that we assume jurisdiction? Oh, yes; that is the case of the double jurisdiction that I spoke of. Under your law you probably can maintain jurisdiction over those men while they are employed there. That case is a double burden on the employer.

The CHAIRMAN. Next is the plea of Mr. Monroe as to how we are going to help the South. Have you any suggestions to offer as to the way this association can help Mr. Monroe in his problems?

Mr. STEWART. I think Mr. Monroe is thoroughly satisfied with what has been done through the committees already.

CHAIRMAN, FRED M. WILLIAMS, CHAIRMAN CONNECTICUT BOARD OF COMPENSATION COMMISSIONERS

The CHAIRMAN. The first item on the regular program is a paper by Mr. Kingston, of Ontario.

ADMINISTRATIVE COST—WHAT ITEMS SHOULD CONSTITUTE AND ENTER INTO SUCH COST

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

This is the first occasion during the 10 years I have been attending the conventions of the association where the question of administrative cost has been considered a subject worthy of discussion and of a place on the convention program.

In the very nature of the subject, in what I have to say I must have in mind our administration of the law in Ontario and our experience there regarding this subject.

I should explain first that when the law was first proposed in 1913 in the draft bill submitted to the Government the following section was included:

SECTION 68. To assist in defraying expenses incurred in the administration of the act there shall be paid to the board out of the consolidated revenue fund such annual sum not exceeding $——— as the Lieutenant Governor in Council may direct, etc.

The Chief Justice of Ontario, reporting on the proposed law to the Government of that day, used the following words dealing with the question of administration expenses:

The only remaining provision of the draft bill to which I shall refer is section 68, which provides for a contribution by the Province to assist in defraying the expenses incurred in the administration of the act. I have not ventured to suggest what the contribution should be, but in my judgment it should be a substantial one. The effect of the proposed law will be to relieve the community of a burden of maintaining injured workmen and their dependents in cases in which under the operation of the existing law they are without remedy, and by the transfer from the courts to the board of the determination of claims for compensation which will lessen very much the cost of the administration of justice.

When it actually came to passing the legislation in 1914 the Government recommended that the amount which was left blank in the draft bill and which was the subject of the above paragraph should be fixed at $100,000, which sum was paid by the Government for a number of years, besides providing office accommodation and the salaries of the members of the board.

It is not, however, so much of administration expenses in the general sense that I am asked to speak as of "administration cost with relation to accidents," indicating what the different administrative functions are costing per case and what items should enter into such cost.

In our Province the system is purely what has come to be known more particularly in the United States as "State-fund system." No insurance companies are permitted to operate in this field, and the application of the act is compulsory, with a few exceptions, which were fully set out in my paper at the Halifax convention a year ago. We are able to state, therefore, with some degree of exactness just what the various functions covered by our administration cost per case.

Take the year 1923 for example, the last year of which our records are complete. We had 61,109 accidents reported, and during that year we paid as follows:

Benefits awarded, Schedule 1	$4,036,170.26
Benefits awarded, Schedule 2 and Crown	1,348,785.58
Medical aid	788,905.90
Safety associations	81,980.66
Administration expenses	221,648.34
	6,477,490.74

Of the 61,109 accidents reported 51,655 were in Schedule 1, and as medical aid and safety association work has relation only to Schedule 1 industries, it will be apparent that the cost of these services would be as follows:

Medical aid: $788,905.90÷51,655=$15.27 per claim.
Administration: $221,648.34÷61,109=$3.63 per claim.
Safety associations: $81,980.66÷51,655=$1.58 per claim.

It should be borne in mind, however, that in Ontario, as in any State-fund system, a very substantial portion of the office administration expense has to do with the assessment or insurance side of the work.

I have made no attempt at an accurate division of this expense as between the assessment department on the one side and the claims on the other, but roughly it is about fifty-fifty, so that with us it is fair to say the administrative cost per claim is between $1.60 and $1.75.

Otherwise if we take our whole office expense for a year and try to make it comparable with a jurisdiction where the insurance companies pay the claims we should add the insurance companies' office expense, including the expense of getting business, to the board's administration expense. I do not know what such a comparison would reveal as the figures are not available, but any of you who have access to the data can easily make the comparison in your own jurisdiction.

Just what portions of what we include in our administration expenses should, strictly speaking, be considered administrative cost may be a matter of some controversy. Medical aid is, of course, not administrative cost so much as it is compensation cost, yet medical examinations by referees should, I think, be included in the former. Safety work, in whatever form it may be carried on, should not, strictly speaking, be included as administrative cost. Whatever its effect may be, it will go to the reduction of the accident cost, so safety organization expense should be kept separate.

Rehabilitation expense is in much the same category. In so far as an injured workman is rehabilitated to such extent is the compensation cost in respect of his case reduced. I am unable to give

any figures as to rehabilitation cost as we have practically only started this work in Ontario and our actual office expense incident to the organization of our rehabilitation department is as yet negligible.

Expense incident to the payment of compensation should of course be considered administrative cost, so that in comparing a jurisdiction in which the administering board actually issues the compensation checks with one in which the State treasury uses its machinery for the payment of compensation this should be taken into consideration. A State or Province which makes the board pay the claims must also require the board to collect the fund. This, of necessity, involves the expense incident to the investment and management of this fund. All of this should of course be properly considered administrative cost.

The expense of the medical department of the board's work should be included in administrative cost, provided its functions are purely administrative, i. e., where the department's work is confined to the examination of claim papers and the examination of claimants to ascertain the extent of disability. Should a medical department of any board depart, however, from the purely administrative field and engage in curative practice the expense of such should come under medical aid and not administrative cost. I should think this practice would be very unwise on the part of any board unless possibly it might be in the scientific application of physiotherapy in after treatment of certain cases. This, properly speaking, might come under the head of rehabilitation.

Summing it all up, therefore, we have the two functioning groups:

1. Those the expense of which is properly considered an administrative cost. Items in this group are—

(*a*) Board's salaries and traveling expenses.
(*b*) Office rent, stationery, postage, supplies, etc.
(*c*) Claims department, including claims investigation, etc.
(*d*) Medical department (administration).
(*e*) Assessment department.
(*f*) Finance and bookkeeping departments (including payment of compensation, investment and management of funds, etc.).
(*g*) Statistical and actuarial departments.

2. Those the expense of which should be included in compensation or medical cost—such items as—

Accident prevention and safety association work department.
Factory inspection.
Medical aid (treatment of claimants).
Rehabilitation.

DISCUSSION

The CHAIRMAN. This very interesting paper is to be discussed first by Mr. Horner of Pennsylvania.

Mr. HORNER. Administrative cost in handling accident and compensation cases is controlled largely by the different provisions of the workmen's compensation laws in the different States and Provinces and by the efficiency of administration. Mr. Kingston has given

us some figures on the administrative cost in an exclusive State-fund jurisdiction, covering approximately 61,000 accidents.

Under the provisions of the Pennsylvania compensation law we have self-insurers, stock and mutual insurance companies, and a competitive State fund. In furnishing some data on Pennsylvania's experience I am not including any figures covering administrative cost on the part of the State fund, the insurance companies, or the self-insurers. I am basing the figures on the money expended by the State in the administration of the compensation law and the law requiring the reporting of accidents. These figures do not include money expended by the department of labor and industry in inspection and accident prevention work, or in the administration of the rehabilitation law. The inspection and rehabilitation bureaus are operated separately, although there is close cooperation between these two bureaus and the bureau of workmen's compensation, all being in the department of labor and industry.

The question as to what items should enter into administrative cost is a fertile field for discussion. A strict interpretation would probably confine the cost to operating expenses, not including the expense of accident prevention and rehabilitation work. However, a more liberal interpretation would probably include these latter activities. The Pennsylvania experience, as shown by the following figures, include the operating cost of the workmen's compensation board, referees, and bureau of workmen's compensation, as well as postage and traveling expenses and payment of fees of impartial physicians and surgeons selected by the State.

During the year 1924, the total number of accidents reported to the bureau of workmen's compensation of the Pennsylvania Department of Labor and Industry was 177,539. The average cost of handling these accident and compensation cases was $1.49 per case. The number of cases in which agreements and awards were made during the same period was 78,774 and the average administrative cost of handling each of these cases was $2.95. Of the 78,774 compensable cases 73,445 were noncontested—cases in which compensation was paid upon agreements properly executed by the parties in interest and approved by the State. It cost the State to handle these 73,445 noncontested cases $0.917 per case. By eliminating the compensation board and referee expense items in handling the 177,539 accident reports, including the 73,445 noncontested compensation cases, the actual cost is reduced to $0.474 per case.

Five thousand three hundred and twenty-nine cases were contested before the referees at an average cost of $18.90, while 1,046 cases were disposed of by the compensation board at an average cost of $58.14. It must be remembered that the referees travel from place to place in holding hearings in the districts over which they preside and that the workmen's compensation board travels over the entire State.

The State-fund experience shows that during the year 1924 the average administrative cost in the handling of 28,000 accident reports, including approximately 8,600 compensation cases, including every item of expense with the exception of the payment of compensation and medical and hospital expenses, was $16.71 per case. These figures, of course, include the cost of contesting cases before referees, the workmen's compensation board, and the courts, as well

as pay-roll auditing. The actual cost of adjusting the 28,000 cases for the purpose of paying compensation and medical and hospital expenses was $1.97 per case. The State-fund experience also shows that the average cost per case for medical and hospital expenses for the last seven months of the year 1924 was $18.19, while the medical cost for the year 1923 was $16.52 per case. In the State of Pennsylvania the payment of medical and hospital expenses is limited to the first 30 days after disability begins.

The CHAIRMAN. Next in the discussion comes Mr. Wilcox, of Wisconsin.

Mr. WILCOX. The items that form the basis of the bulk of the expense of the administration of the compensation act must, of course, vary from State to State. The administration of a law in New Jersey or Connecticut, States where you are in very close contact with the people with whom you have to deal, must necessarily be a very different thing from what it would be in a State like California where you have to take a day and a night to travel the length of the State, and the type of law will, of course, vary the program from State to State.

The legitimate costs of administration, of course, are such costs as are necessary to see that the law is administered adequately, and that an employee or his dependents gets the amount that is due and gets it promptly and in full measure, and that the supervising body really knows that such is the fact.

With us, we feel that our first obligation is to make certain that we learn of all of the compensable accidents in the State by prompt reports from the employers—not from the insurance carriers but direct from the employers. That always involves quite a considerable outlay, because the employers will soon fall back if you are not everlastingly after them to see that they do make their reports. That is not the case so much with the larger institutions as it is with the smaller ones, and the contractors will be the slowest of all to get the information to you.

Our next obligation, we think, is to see that we have a sufficient force properly to file and docket those claims. So far as our department is concerned, we will then have the beginning of a sufficient record on any particular case, and we think information should immediately be furnished an injured employee, giving him just an outline of his rights under the law, so that he may be relieved as far as possible from anxiety and from the necessity of spending money in order to learn his rights.

Then we think we should do sufficient follow-up to see that the money goes to the injured employee promptly, and that in the case of a contest between him and his employer or his insurer making it necessary for a conference or a hearing, we should hold it in a locality where it will be possible for the parties to present the issues as freely and quickly and completely as possible. Of course that involves, in a State like Wisconsin or the larger States, quite a good deal of traveling expense and a good deal of effort to make certain that you are giving prompt service in that field.

Of course we feel that we ought to have a sufficient force to see that the claims are disposed of after they have been submitted.

When the parties are depending on us for action, we ought to be in a position where we can act.

Next, as Mr. Kingston mentioned, we ought to have sufficient medical advice for the commission to satisfy itself that what it is doing is the right thing, and then—the point that Miss Harrison stressed—a follow-up at sufficient times to make certain that the compensation estimates were, after all, decently accurate estimates.

We think we ought to maintain the highest type of statistical department. I do not know how a department can administer workmen's compensation without the knowledge that can be gained from a well-ordered statistical department. The first thing we organized in Wisconsin was our statistical department. We got it started right at the first part of the game, and we have never let it slip for a minute.

We think our experience ought to be tabulated and put out to the public. We publish our experience in bulletins every month or so. There is one on "Promptness of compensation payments." Here is one on "Place where accidents occur and the cost of accidents, the number of injuries that resulted in death and in permanent total disability and in permanent impairments, according to occupation," and things of that sort.

We try to get that information out to all the people in the State who are particularly interested in it. It is published in bulletin form, and we have a very large mailing list. As soon as it is ready, we get it to the people who are or ought to be interested in the material we are collecting, because it should be of help to them. And on top of it all is the publication generally of information to apprise the whole public of what the compensation act is, its general working, and what its benefits are—that general information, which after all, yields material dividends..

Mr. KINGSTON. Mr. Wilcox speaks of publishing this bulletin. I wish all the States that publish bulletins would adopt the practice of putting the rest of us on their mailing list. I know I look forward with a great deal of interest to that bulletin which comes from Ohio every month. It has put each member of our board on the mailing list. I should very much like to receive the Wisconsin bulletin and also bulletins published by other States, because they would keep us in touch with what you are doing, and we want to study what you are doing as well as study what we ourselves are doing.

The CHAIRMAN. It occurs to me that it might be of great interest in this connection if we knew the number of employees connected with the administrative departments in the States of which you gentlemen are speaking. Can you tell how many you have in Ontario?

Mr. KINGSTON. We have approximately 100 on our staff at home.

The CHAIRMAN. How many have you, Mr. Horner?

Mr. HORNER. We have 121.

The CHAIRMAN. How many have you, Mr. Wilcox?

Mr. WILCOX. We have about 140 employees administering all the functions of the department in the State. That takes in the child labor employment office.

Mr. KINGSTON. You do a lot of things in Wisconsin that we do not.

Mr. WILCOX. We do not have an insurance fund to administer like you do in Ontario and in Pennsylvania.

Mr. LANSBURGH. The 121 in Pennsylvania does not include the insurance fund force.

Mr. STEWART. I would like to submit a statement as to why I asked for this subject to be put on this afternoon.

I made an effort during the year to get a line on the administrative costs of workmen's compensation from two points of view—first, the cost per case; second, the percentage that the administrative cost was of the total money handled. I am not going to discuss both of these angles at this time because what I have to say is just as true of one angle as of another.

The prime difficulty has been just what the Bureau of Labor Statistics has always found, that it is impossible to get information by correspondence because it is impossible to write a letter or draft a schedule that can not be construed in more than one way.

The result is that I do not know what the figures mean. In the first place it will be necessary to know just the type of the administration, what the commission does. I received a report from one State that its operating expense for 1924 was 64 cents per case. Its highest operating expense was in 1922, when it cost $2.77 per case. This was due to the fact that the compensation cases in 1922 were only about one-fourth of what they were in 1924, while their total expenses were a little more. An average for the five-year period 1920 to 1924 inclusive gives $1.22 per case. Now just what administration meant in that case I do not know. I do not know what $3.58 per case in one State means as against $15.07 in another State, nor $3.54 in another, $7.30 in another, $23.40 in another, and $1.93 in another.

In the case of the self-insurers many of them simply can not separate their compensation administrative cost from their accident prevention work, and some of them can not separate it from their general welfare expense. I can not tell whether the administrative cost of one self-insurer, for instance $41.85, is comparable with another at $2.35. One self-insurer listed its plants, and the range is from $1.31 to $32.15 for the same year. I do not know what these administrative costs mean; neither does anybody else—first, because we do not know what administration means; and second, because we do not know what items go into the total of administrative cost as expressed in dollars and cents.

I think we have come to the place where we will have to have a show-down as to administrative costs. I do not believe that anybody has anything to fear when it comes to a clear-cut statement of just what administration means; that is to say, what is included in administrative costs and what is accomplished by administration. In order that this may be cleared up as an association matter I have introduced a resolution, which has been turned over to the resolutions committee.

Mr. BYNUM. I represent a State in which there is private insurance, and in order that it may be made a matter of record and for such assistance as it may be to our secretary-treasurer, I believe I

can give offhand the cost of administration. The items that go to make up this cost include every item of expense connected with the compensation report or a report of accident, including some expense for medical examinations ordered by the hearing board member or by the full board, as the case may be. We have a right to do that under the law. The last fiscal year there were 49,004 accidents reported in the State of Indiana. I do not know how many of these cases came to agreements, but it is my recollection that we have about 65 agreements come in each day. There were 1,498 adjudicated claims out of these 49,000 accidents. Of these 1,498 adjudicated claims, 437 were appeals to the full board of five members at Indianapolis. The other cases were heard, as provided by law, at the county seat in the county in which the accident occurred, and Indiana has 92 counties.

The average cost per accident, including the agreement cases, the adjudication of claims by the individual member, the adjudication by the full board, the medical examination attendant upon it, was a shade less than 99 cents per claim or per accident.

The CHAIRMAN. The next matter on the program is "Factors used in rate-making for compensation—Their explanation and illustration," by William Leslie, general manager of the National Council on Workmen's Compensation Insurance.

FACTORS USED IN RATE MAKING FOR COMPENSATION INSURANCE—THEIR EXPLANATION AND ILLUSTRATION

BY WILLIAM LESLIE, GENERAL MANAGER NATIONAL COUNCIL ON WORKMEN'S COMPENSATION INSURANCE

Insurance has been defined by A. H. Willett in his classic treatise entitled "Economic Theory of Risk and Insurance" as "that social device for making accumulations to meet uncertain losses of capital which is carried out through the transfer of the risks of many individuals to one person or to a group of persons." While it is uncertain what loss will be sustained by any particular individual the amount of loss to be sustained by the group as a whole can be determined within comparatively narrow limits if reference can be had to the past records of the losses caused by a large number of similar individual risks. Each individual must pay as a consideration for the transfer of his risk a sum which is proportional to the amount of risk transferred plus an equitable share of the cost involved in rendering supplementary or incidental service and in handling the details of the transaction. This consideration is what we term the premium, and from its definition we see that it must satisfy two conditions—(1) that the combined premiums for all the transferred risks must be sufficient to meet the losses and the expenses of the insurance carrier and (2) that in respect of each individual the premium must bear a definite relation to the amount of risk transferred. This relationship is obtained by measuring the hazard of the individual's risk in terms of the probability of occurrence of a loss-producing event and the amount of resulting loss. This measure is called the "expected loss" because it represents the average amount of loss per risk which we would expect among a large group of identically similar

risks. "Expected loss" should be carefully distinguished from "actual loss." In the case of a large group, the expected loss for the group should approximate the actual loss, but for an individual within the group the two may be far apart.

Applying these elementary concepts of insurance to compensation rate making, we find that we can state our problem very broadly as involving two major processes—(1) that of estimating the actual losses to be incurred by the entire group of insured risks and (2) that of dividing this amount among the contributors so as to make each bear a share proportionate to his expected risk loss. Of course, the overhead loading for service, tax, and expense items must be added to obtain the full premium, but as the practice is to apply this loading as a uniform percentage of the risk premium we can ignore it entirely in our present consideration of rate making and deal only with so-called "pure premiums" or premiums designed purely to meet losses. A compensation rate is simply a statement of the amount of the premium per hundred dollars of pay roll to be paid by the individual for insurance. When the expense loading is removed from the rate, the remainder represents the amount which should be contributed on each hundred dollars of pay roll to meet losses. Hence, we always refer to the unloaded rate as the "pure premium," which is merely an abbreviated way of saying "expected losses per hundred dollars of pay roll."

The complications in compensation rate making are introduced by the fact that the insurance is not against the occurrence of a single event involving a definite monetary loss. It is true that the event insured against is an industrial injury, but such injuries cover a wide range of possibilities running from those involving only medical attention to those resulting in fatality or in permanent total disability. Furthermore, the monetary loss not only is dependent upon the nature or extent of the injury in accordance with the benefit schedules of the particular compensation law but also usually involves as additional variable wages or extent of dependency or both.

The probability of occurrence of injuries producing each of the distinctive types of disability varies from risk to risk according to the general hazard of the industrial process and to the particular hazard of the individual risk due to its physical condition and the attitude of the management and employees toward accident prevention.

We have seen that equitable rates must recognize the differences in hazard between risks and that those differences may arise from a great variety of causes occurring singly or in combination. It is therefore essential to reduce the problem to simpler and more definite terms by classification and analysis. Hence the first step in rate making is really embodied in the establishment of manual classifications, to some one of which every risk may be assigned and for which average rates can be determined. The classification system which the National Council employs is one which tries to preserve national industrial groupings. You do not want to cut across national industries and break them into illogical and unnatural divisions. An attempt is made to classify them either according to the product which they turn out or according to the process employed in turning out the product. It is not strictly either one or the other; it is not strictly a product system or a process system of

classification, but it is a combination of the two. There are at the present time some 850 classifications which are used for the purpose of establishing rates.

Further refinement in the treatment of individual risks, through what is equivalent to a refinement of this general classification system, then comes through the application of the plans of schedule and experience rating which modify the average class rate up or down according as the hazard of the individual risk, as measured by these plans, is greater or less than the average of the class. In the interests of space and time it is necessary to confine this paper to an exposition of the factors employed in the establishment of average classification rates ordinarily known as base or manual rates. Those who desire a more complete understanding of the structure and method of application of schedule and experience rating plans will find very detailed explanations in various papers that have appeared from time to time in the Proceedings of the Casualty Actuarial Society. It is merely essential to point out in this paper that individual rating systems play a very important part in carrying out the true principles of loss distribution and that without such systems the average class rates would work injustice upon individual employers and accident prevention would be handicapped seriously.

Having classified our risks we can now restate our rate-making problem as being that of first estimating the actual losses to be incurred by the entire group of insured risks and then dividing these losses among the several manual classifications in proportion to the expected loss cost of each. To perform the second operation we must know the relative standing of each classification as a producer of losses. Because of the fact that this relativity of hazard will be different for different types of injury, one class producing predominantly severe injuries while another produces mainly minor injuries, we have found it expedient to group losses into three divisions as follows: 1. Serious, involving indemnity in death, permanent total and major permanent disability cases; 2. Nonserious, involving indemnity in minor permanent and temporary disability cases; and 3. Medical. For each of these loss divisions and for each classification a measure of relativity must be obtained which will serve as a basis for the equitable division of the total expected losses.

These two steps in compensation rate making are ordinarily described as the "establishment of the rate level" and the "determination of partial classification pure premiums." These descriptions are readily understood if we think of pure premiums as measuring relativity between classifications without necessarily reflecting the absolute loss cost per hundred dollars of pay roll to be incurred in the immediate future. If the established pure premiums are correct measures of the relative loss cost per class, then the absolute loss cost per class is found by dividing the total estimated future losses among the various classifications in proportion to their pure premium relativity. This method of approaching rate making is extremely helpful in view of the practical limitations which delay the reporting of classification experience and in view of the fact that a great many classifications do not have enough experience in any single State from which to determine their relative or absolute cost. We can determine our pure premiums upon any level of cost we

please—State or national, present day or past—and then apply to such pure premiums the necessary factor, known as the projection factor, to place them upon the desired rate-level basis. This projection factor is the quantity by which the pure premiums or measure of relativity must be raised or lowered in order that they may measure the absolute loss cost per hundred dollars of pay roll to be incurred in the future.

In obtaining measures of classification relativity, we have available the experience of the past, comprising a statement of the insured pay rolls and the actual incurred losses. This information is reported by the insurance carriers on a form known as Schedule Z. For the information of those interested, there are available a limited number of copies of the instructions for the preparation of Schedule Z, as published by the National Council on Compensation Insurance. Each carrier furnishes this schedule for each State either to the State authorities, who make it available to the National Council, or direct to the National Council. The experience is reported separately for each manual classification under all policies issued in a given year. The reports of each carrier are audited and, after necessary corrections have been made, are combined to give the aggregate State experience of all carriers for each classification, for each policy year. Changes in loss cost due either to amendments in the law or to new conditions as to medical or hospital cost are introduced at this stage, so that the experience for each year in each State is placed upon a common level so far as the benefit provisions of the law and the standard of medical cost are concerned. Now, in order to obtain dependable measures of relativity it is necessary to have a broad exposure both in years and in volume. Experience which is too old may be misleading because of subsequent changes in industrial methods or other conditions affecting relative costs. It is believed that the best results can be obtained by using the five most recent available years. The fact that Schedule Z experience can not be obtained until all policies issued in a given year have expired and some additional time has elapsed for the making of pay-roll audits and the development of outstanding losses on open cases, creates a considerable lag between the period covered by the latest available classification experience and the future period during which resulting rates are to be employed.

But, as we have already seen, this lag is in a large degree overcome by the subsequent projection of those pure premiums to the rate-level basis. We want measures of relativity which are as nearly up to date as we can get them because of the necessity of distributing the insurance burden equitably, but such changes in insurance cost as may have occurred subsequent to the compilation of classification data must be assumed to be uniform for all classes and, therefore, reasonably measured in the process of establishing the rate level.

But even five years of classification experience in a single State will not give a sufficient volume of data for establishing pure premiums in a large number of classes. Hence it is necessary to combine the experience of all States to obtain dependable measures of relativity for these classes. Such combination can not, of course, be made until the experience of each State has been converted to a common level. Again we recognize the fact that pure premiums

derived from a combination of the experience of several States are relatively but not absolutely correct. They are in reality a series of index numbers which furnish valuable information for comparative purposes but which do not tell us anything about absolute cost. But we can easily reconvert these so-called national pure premiums to any individual State basis and then project them to the rate-level basis required for the particular State with the indications of both the State and national experience before us in the shape of pure premiums on the rate-level basis. We can then determine which of the two shall be used. This determination is made separately for the serious, nonserious, and medical pure premiums respectively. Where the State experience is sufficient to give a dependable measure of relativity, the pure premium indicated by the State's own experience is employed. Where the State experience is insufficient to furnish any guide to the relativity, the national pure premium is employed. Where the State experience is insufficient to give a dependable measure of relativity, but is nevertheless a partial guide, we take a weighted average of the State and national pure premiums, assigning a weight to the State that is proportional to the credibility of its experience. As these pure premiums, both State and national, have already been projected to the State rate-level basis, we have only to load our final selections for service and overhead expenses to obtain gross rates.

Now, to run over these operations in a little more detail so as to see what factors are applied, how they are derived, and how they work. In the first place, the classification experience reported for each State represents actual pay roll and actual incurred losses. The losses are reported according to six subdivisions; namely, death, permanent total disability, major permanent disability, minor permanent disability, temporary disability, and medical. If amendments to the law have been adopted during the experience period, it is necessary to calculate the effect of such amendments upon compensation cost in each policy year. For amendments affecting indemnity, the effect is calculated by applying the law both before and after the adoption of the particular amendment to a standard distribution of injuries and comparing the results. The American Accident Table, containing a distribution of 100,000 injuries according to the nature and severity of the resulting disability, is used for this purpose. The valuation is first made in terms of weeks' wages and then reduced to monetary values based upon the actual wage level underlying each year's experience. The latter step is necessary because of the presence of the maximum and minimum monetary limits contained in the various laws. These limits have the effect of making the average percentage of compensation actually payable different from the nominal percentage set forth in the law. Therefore, to find how much a given amendment has changed compensation cost, we must know not only the nominal effect of the change but also its actual effect when applied to a given wage distribution. Of course there are some amendments affecting indemnity cost which do not involve this question of limits, but by far the greater number do.

These amendment factors are calculated separately for each of the indemnity loss divisions shown in Schedule Z. For example,

if the death-benefit provisions are changed, the effect of this on death-benefit cost is calculated and the resulting factor is applied to the death losses reported in Schedule Z. Separate factors are calculated for each policy year, not only because of possible variations in average wages but also because the earlier years of the experience may be affected by more than one amendment and it is most satisfactory to bring each year's indemnity losses to the present law level by its own appropriate amendment factors. In Exhibit A there are shown typical amendment factor calculations for different types of losses. These may be of interest to those who care to go more deeply into the actual mechanics of the matter.

While medical losses may be affected by actual law changes, they are also affected by other conditions which can not be measured theoretically as can indemnity amendments. Changes in fee schedules, hospital charges, methods of medical practice, requirements of injured employees, and the attitude of the medical profession in charging for compensation work, all have their effect upon medical cost. A comparison of medical costs recently made for the five years covered by policies issued from 1918 to 1922, inclusive, shows that all over the country the medical cost has risen steadily and in some cases by astounding amounts. The comparison was made by computing the ratio of medical losses to premiums for each policy year for each State. In order to make the comparison valid, the premiums for each year were computed upon a common basis by applying the then present prevailing manual rates to the individual classification pay rolls. Exhibit B contains the comparison as it was worked out in terms of medical loss ratios. From a study of this exhibit it was concluded that for rate-making purposes the medical losses of the earlier years should be converted to the level of medical cost indicated by the latest available year of Schedule Z experience. Accordingly by dividing each year's medical loss ratio into that of the most recent year, we obtain a series of medical conversion factors respectively applicable to the medical losses of each such year.

When indemnity losses have been modified for amendments by application of the respective amendment factors they are combined for each year into two groups, serious and nonserious, as previously defined. The entire State experience of each classification is then ready to exhibit upon what we call the "present-law basis," which, as we have just seen, includes medical loss adjusted to the latest year's level of cost. The form used for this purpose by the National Council is shown as Exhibit C, upon which there has been posted a typical class experience.

As we have emphasized in the preceding general remarks, the pure premiums indicated by the State experience upon the present-law basis are primarily for the purpose of determining relativity and have not yet been projected to the rate-level basis. To anyone familiar with compensation, it will be apparent at once that the law amendment and medical adjustments that have been made do not cover all of the possible influences that may affect the experience of the past in its relation to present or future conditions. Variations from year to year in the rate at which accidents occur, in the severity of accidents, in the average wages paid in different industries, as well as changes in economic conditions and social policies, exert an influence, direct or indirect, upon compensation costs. It

has thus far been impossible to find any satisfactory manner of separating permanent from cyclic or change variations in all these items or of determining the conditions that will prevail in the future with respect to these variables.

For these reasons we have come to believe that the most satisfactory method of rate making is one which utilizes the experience of the past without introducing conjectural factors based upon predictions as to the future. In taking this course we tacitly assume that there is no substantial permanent trend in cost, either upward or downward, and that if we adjust compensation rates annually upon the basis of a fixed number of years of past experience, these rates will on the average over a considerable period of years be neither excessive nor inadequate. Admittedly, they will not necessarily fit the particular years in which they are applied. It is expected that there will be lean years and fat years, but that by husbanding the excesses of the fat years to meet the deficiencies of the lean years, the average will be generally satisfactory. Now it must be admitted that it is not desirable to place too great a strain upon insurance carriers either in meeting several years of excessive losses or in holding on to the profit of several good years. On the other hand, it is equally bad from the public point of view to have rates fluctuate too widely from year to year, so that if possible we should find a way to adjust rate levels each year upon a basis which, if consistently followed year after year, not only will yield adequate and reasonable rates in the long run and on the average, but also will be nicely balanced between the two conflicting desires of a minimum of strain upon the carriers and a minimum of variations from year to year.

If we use too long a period of the past for the annual determination of rate levels we are quite apt to create a heavy strain because of the slowness with which resulting rates will respond to changes in current cost levels. On the other hand, if we use too short a period of the past we are just as apt to produce violent fluctuations in rate level from year to year. Our problem is, therefore, to select that particular period of years which will produce the happy mean. This we have decided, after considerable study of past records, should be the three most recent completed policy years of experience available for the State at the time of the annual rate revision.

It is possible to obtain the aggregate experience of the carriers showing total premiums and total incurred losses much sooner after the close of the policy year than the detailed classification experience contained in Schedule Z can be obtained. Consequently, we usually find that in addition to the five years of Schedule Z experience which we compile for determining classification pure premiums, there is available aggregate loss experience for an additional and more recent policy year. When this is the case, we take the two most recent years of Schedule Z and this still more recent year of aggregate experience as the basis for establishing the rate level. The aggregate losses of these three years are converted to the present-law basis just as were the classification losses of the five years of Schedule Z experience. In addition, the premiums at existing manual rates are computed both for the three years of experience and for the five years of Schedule Z experience. The ratio of losses

on the present-law basis to premiums at existing manual rates is then computed for both the three-year rate-level period and the five-year classification pure-premium period. The loss ratio for the three-year period divided by the loss ratio for the five-year period gives the factor to apply to the losses of the five-year period to place them upon what we have defined to be the rate-level basis. As a matter of fact, however, the medical losses do not require any projection as both for the three-year and for the five-year period they have been converted to the same level of cost; namely, that represented by the latest available year of Schedule Z experience. Consequently in practice we compare the indemnity-loss ratio of the three-year period with that of the five-year period and thus obtain an indemnity-projection factor which is applied to the indemnity losses (serious and nonserious) of the five-year period to put them on the rate-level basis. A typical indemnity-projection factor calculation is shown in Exhibit D.

If the classification experience were sufficient in each State to give dependable pure premiums in each classification, our rate-making task would now be practically finished. For the application of the projection factor to the pure premiums would put them on a basis where, if applied to the pay rolls of the rate-level period, they would yield an amount just equal to the actual losses of that period upon the present-law basis. We then would have to add only the loading for service and overhead costs to obtain gross rates. But, unfortunately, the great majority of classifications do not contain enough experience within a single State to furnish a dependable pure premium. We are thus forced to have recourse to national pure premiums for the purpose of equitably distributing the cost of insurance between classifications. This brings us to a consideration of the methods employed in establishing national pure premiums and in fitting them to the rate-level basis of a particular State.

By the same methods employed in calculating amendment factors it is possible to compute theoretical factors, generally called law differentials, which measure the difference between the theoretical cost of the laws in any two States. These factors are computed separately for each principal type of injury, and if it is desired to have a single factor to express the theoretical cost relationship as a whole it is obtained by weighting the factor for each type of injury by the volume of losses shown in Schedule Z for such injury. Exhibit E contains figures worked out on this basis for each State in which the council is interested in the rate-making procedure. From these figures comparisons can be made as to the theoretical level of benefits in the various States. Undoubtedly such figures would be of some interest in comparing the adequacy of the benefit provisions in various laws, but they do not yield the most suitable factors for converting the experience of all States to a common level. Just as was pointed out in connection with rates for a single State, there are many things other than the law itself that affect compensation cost. Wage levels, accident and severity rates, methods of administration, medical and hospital conditions, and all the other related subjects are more apt to be sources of disturbance between States than they are between the experience of different years within a single State. Consequently, so-called experience differentials seem

the most desirable measures to use in converting the experience of several States to a common level. There are a great variety of ways in which such differentials may be computed and it would be out of place to attempt to discuss the relative merits of the various methods at this time. A brief description of a very simple form of experience differentials will suffice to show wherein they differ from theoretical differentials. Let us take the rates that are in effect for State A and by applying them to the pay rolls of the State experience obtain premiums at manual rates. Let us also put the State losses for the experience period upon the present-law basis and then ascertain the ratio of such losses to the premiums. Then let us take the same rates and apply them to the pay rolls of the experience for State B, thus obtaining premiums for State B upon the level of rates in effect in State A. We then ascertain the ratio of losses in State B, upon its present-law level, to these premiums. The division of this ratio for State B by the loss ratio obtained for State A gives the factor to apply to the losses of State A to place them upon the same level of cost as State B. By breaking the rate for State A up into its component elements (serious, nonserious, and medical) and comparing partial loss ratio a set of partial experience differentials can be obtained in exactly the same manner. The essential feature of such differentials is that they measure by a single factor all of the differences in cost conditions between States, whereas theoretical law differentials measure only differences in the laws.

If we assume that the experience of all States has been combined by some such experience differential method and the indications of the combined experience have been used to give what we call national pure premiums, we next have the problem of reversing the process and in turn putting the national pure premiums upon the basis of each individual State. This is done by a wholly analogous method. The national pure premiums are multiplied into the pay rolls of the five years of Schedule Z experience that have been compiled upon the present-law basis, and the resulting expected losses are compared with the total State losses. The ratio of actual losses to expected losses gives the factor to apply to the national pure premium to put it upon the State present-law basis. Separate factors are computed for serious, nonserious, and medical. From the manner in which the factors are computed it will be seen that the national pure premiums, when placed upon the State present-law basis and applied to the State pay rolls, will exactly reproduce the State's actual losses upon the present-law basis. Therefore, if the indemnity projection factor is now applied, thus putting the national pure premiums upon the State rate-level basis, such pure premiums, if applied to the State pay rolls, will yield the same identical sum in the aggregate as will the pure premiums indicated by the State's own experience if similarly applied. In both instances the sum will exactly reproduce the State's total losses upon the rate-level basis. Hence the question of whether to follow in their entirety the rate-level pure premiums indictated by the State or national experience is one affecting relativity but not general level.

In the final step of our rate-making procedure, we endeavor to solve the problem of when to use State and when to use national pure premiums in a rational and systematic manner. We know that

State experience should be used wherever adequate and therefore we establish a criterion of adequacy of exposure in terms of expected losses for each of the pure-premium divisions. These criteria are:

Serious: Expected State losses equal in amount to 25 times the average State cost of serious cases.

Nonserious: Expected State losses equal in amount to 300 times the average State cost of nonserious cases.

Medical: Eighty per cent of the nonserious criterion.

Wherever the expected State losses for any classification equal or exceed the criterion, the pure-premium indication of the State experience is taken without reference to the national pure premium. If the expected State losses fall below the criterion, a weighted average of the State and national pure premiums is taken. In getting these averages the weights assigned to the State and national pure premiums, respectively, vary with the volume of expected State losses. The following table shows the manner in which these weights vary:

WEIGHTS USED IN CALCULATING WEIGHTED AVERAGES OF STATE AND NATIONAL PURE PREMIUMS

Volume of expected State losses	Weight assigned to—	
	State pure premiums	National pure premiums
	Per cent	*Per cent*
Equal to 100 per cent or more of State criterion	100	0
Between 75 and 100 per cent of State criterion	75	25
Between 50 and 75 per cent of State criterion	50	50
Between 25 and 50 per cent of State criterion	25	75
Between 0 and 25 per cent of State criterion	0	100

The final pure premium selections resulting from the application of this formula, when loaded for expenses, should give rates which are as nearly relatively right for each classification as the complicated aspects of compensation rate making will permit, and which will furnish just the desired volume of premiums as measured by the rate-level procedure. In order to be sure on this latter point a further and final check is made on these rates. The loss ratio of the three rate-level years, upon the basis of the present-law and existing manual rates, is divided by what is called the " permissible " loss ratio. The permissible loss ratio is the percentage of the premium available for losses after deducting the amount required for service and expense costs. The result of the division indicates the average percentage increase or decrease that should be made in the existing rates to put them on the rate-level basis. The pay rolls of the latest available Schedule Z policy year are then multiplied by the existing rates and the resulting aggregate premium is increased or decreased by the above percentage to give premiums upon the desired rate-level basis. The same pay rolls are then multiplied by the new rates resulting from our rate-making procedure and the aggregate premium so obtained must balance with that above.

This in a general way touches the high spots of compensation rate making as at present developed and practiced by the National Council on Workmen's Compensation Insurance.

EXHIBIT A.—TYPICAL AMENDMENT FACTOR CALCULATION

PREPARED BY K. C. STOKE, OF NATIONAL COUNCIL ACTUARIAL STAFF

State "X" has amended the benefit provisions of its compensation law as follows:

1. The maximum weekly compensation payable has been increased from $10 to $12.

2. The waiting period has been changed from 2 weeks not retroactive to 10 days retroactive at 6 weeks.

In order to estimate the increased compensation cost we must have four things; namely, a copy of the law before the amendment, a copy of the amendment, tables showing the distribution of accidents by kind, degree, etc., and finally the average wage which obtains in State X, as of the latest available date. Everything is at hand except the wage, and this is readily determined from the data on the reports of individual accidents which are filed with the National Council by its member companies.

Formerly the procedure called for wage data in the form of a distribution showing the number of employees by successive wage groups. This distribution was considered essential in order to calculate limit factors. The method then employed may be illustrated by the following simplified calculation, assuming limits of $5 minimum and $10 maximum:

Weekly wage groups	Number of employees	Total weekly wages (col. 1 × col. 2)	Nominal compensation (50 per cent of col. 3)	Effective compensation (col. 4 modified by limits.)
	2	3	4	5
$0 to $10	100	$500	$250	$500
$10 to $20	1,000	15,000	7,500	7,500
$20 to $30	2,000	50,000	25,000	20,000
$30 to $40	1,000	35,000	17,500	10,000
$40 to $50	100	4,500	2,250	1,000
Average $25	4,200	105,000	52,500	39,000

$\frac{39000}{52500}$=0.7429, ratio of effective compensation to nominal compensation. This is called the limit factor or the factor (due to the effect of limits) applicable to nominal compensation to produce effective compensation.

This method has been materially simplified in practice by the construction of a set of tables based upon a standard wage distribution. These tables obviate the necessity of knowing the actual wage distribution in each case, as the limit factor is now obtained upon the basis of the average wage and this standard distribution. The full details and the mathematical basis of the new method can be obtained from papers presented to the Casualty Actuarial Society.[1]

In the example which we are considering the average wage has been found to be $23 and using this wage, together with the standard distribution mentioned in the preceding paragraph, we find the limit factors to be:

(*a*) For the old law (50 per cent compensation rate, $5 minimum and $10 maximum limits), 0.7985.

(*b*) For the law as amended (50 per cent compensation rate, $5 minimum and $12 maximum limits), 0.8859.

[1] Proceedings of the Casualty Actuarial Society, Vol. IX, p. 208: "Legal limits of weekly compensation in their bearing on rate making for workmen's compensation insurance," by A. H. Mowbray.

These are reduction factors and indicate that the 50 per cent compensation rate provided in the law is not realized. The ratio of these two limit factors (0.8859÷0.7985=1.109) shows that, everything else remaining constant, the increase in compensation cost would be 10.9 per cent. This condition is an ideal one and is never met with in practice. The increase in fatal cost will be a little less than 10.9 per cent because the burial portion is unaffected by compensation limits; that for permanent total disability will be less than 10.9 per cent also because of a limiting amount on total compensation payable. Major and minor permanent partial and temporary total disability cost will increase more than the amount here indicated because of the change in waiting period (it is obvious that waiting periods do not affect fatal or permanent total disability).

We must go into more detailed calculations because of the aforementioned facts. The American Accident Table is of great value from now on.

The American Accident Table—General distribution of accidents

Fatal		762
Permanent total		62
Permanent partial:		
Major	924	
Minor	2,864	
		3,788
Temporary total		95,388
Grand total		100,000

Old law

A. *Fatal.*—The 762 fatal cases are split into numerous minor subdivisions, each of which must be valued separately. An example follows:

Widow alone, 177 cases—average age 47. Present value of an annuity for 300 weeks ceasing upon death or remarriage, 258.63 weeks.

$$177 \times 258.63 = 45{,}777 \text{ weeks' wages.}$$

A similar procedure having been followed for every kind of beneficiary we obtain a total of 155,917 weeks' wages at 100 per cent compensation rate, or 77,959 at the legal rate of 50 per cent. But, as we have said before, the nominal rate of 50 per cent is not realized because of the limits imposed. Hence 77,959×0.7985 (limit factor)=62,250 actual cost in weeks' wages with limits.

62,250×$23=	$1,431,750,	monetary cost of compensation.
762 (cases)×$100 (burial)=	76,200,	monetary cost of burial.
	1,507,950,	total cost in fatal cases.

B. *Permanent disabilities.*—"Every workman who is permanently and totally disabled will receive 50 per cent of his average weekly earnings (subject to the $10 maximum) for 500 weeks. In no case, however, shall the total amount of compensation exceed $4,000." This latter provision is a very important one because the duration (500 weeks) multiplied by the maximum per week ($10) gives $5,000. A rather involved calculation is necessary for this reason and the work will not be reproduced here.

62 permanent total cases cost $200,790.

C and D. *Permanent partial disabilities.*—The calculation of major permanent partial disabilities is here reproduced:

Loss of—	Number of cases	Duration of payments provided in the law (weeks)	Present value of durations at 3½ per cent	Cost (col. 1×col. 3)
	1	2	3	4
Arm	61	200	187.27	11,424
Hand	86	150	142.75	12,277
Leg	62	175	165.19	10,242
Foot	43	125	119.93	5,157
Eye	290	100	96.73	28,052
Total	542			67,152
Cost at 50 per cent				33,576

The 382 cases which do not qualify for specific durations as those above do are "related to" the latter. From our statistics we find that, on the average, each of these cases costs 90 per cent as much as does the average dismemberment case. Hence:

33,576÷542=61.948, average cost of 1 dismemberment case.
61.948×0.90×382=21,298 weeks' wages.

This represents the total cost of the "all other" cases.

We have found many major permanent partial cases which were preceded by a period of temporary total disability. This period averages around 20 weeks, and subtracting the 2 weeks' waiting period we find that there will be on the average 18 weeks' wages paid for total disability before major permanent partial disability begins.

924 (cases) ×18 (weeks) =16,632 weeks' wages at 100 per cent.
or 8,316 weeks' wages at 50 per cent.

Summarizing:

Major permanent partial disabilities:

	Weeks' wages
Dismemberment	33,576
All other	21,298
Temporary total	8,316
Total	63,190

63,190×0.7985 (limit factor) =50,457 weeks' wages with limits.
50,457×$23=$1,160,511, monetary cost.

By similar procedure we find minor permanent partial disability costs to be $1,022,005.

E. *Temporary total disability.*—The 95,388 temporary cases in the American Accident Table are arranged in a distribution showing the number of cases having various durations of disability. From this table we can determine the number of weeks' wages involved in any sort of a condition as to waiting period. As this law has a two-weeks waiting period, we find involved a cost of—

123,437 weeks' wages at 100 per cent compensation.
123,437×0.50×0.7985=49.283 at 50 per cent compensation.
49,283×$23=$1,133,509, monetary cost.

Summary of the cost of the old law:

Fatal	$1,507,950
Permanent total	200,790
Major permanent partial	1,160,511
Minor permanent partial	1,022,005
Temporary total	1,133,509

Amended law

The cost under the amended law will be:

A. *Fatal.*—Same as previous law up to the application of the limit factor.

77,959×0.8859=69,064 weeks' wages with limits.
69,064×$23=$1,588,472, monetary cost of compensation.
76,200, monetary cost of burials.

1,664,672, monetary cost of fatal cases.

B. *Permanent total disabilities.*—The new permanent total cost will be $221,076.

C. and D. *Permanent partial disabilities.*—The waiting period is not to be deducted now because the new retroactive feature, coupled with the length of duration in permanent partial makes the waiting period inoperative.

Major cost:

33,576+21,298+9,240=64,114 weeks' wages.
64,114×0.8859×$23=$1,306,377 monetary cost.

Minor cost:

39,637+11,715+7,160=58,512 weeks' wages.
58,512×0.8859×$23=$1,192,228 monetary cost.

E. *Temporary total disability.*—The waiting period is now 10 days.

145,232 weeks' wages at 100 per cent compensation.
145,232×0.50=72,616 weeks' wages at 50 per cent compensation.

But there is now a retroactive feature which means that all those cases which last 43 days or more must be reimbursed for the wage loss during the first 10 days. Of the 95,388 temporary cases 8,580 cases last 43 days or more.

$$\frac{8{,}580\times 10 \text{ (days waiting period)}}{7 \text{ (days per week)}} = 12{,}257 \text{ weeks' wages.}$$

12,257×0.50=6,129 weeks' wages.
(72,616+6,129)×0.8859×$23=$1,604,480 monetary cost.

Summarizing:

Kind of injury	Monetary cost of prior law	Monetary cost of amended law	Amendment values (col. 3÷col. 2)
1	2	3	4
Death	$1,507,950	$1,664,672	1.104
Permanent total disability	200,790	221,076	1.101
Major permanent partial disability	1,160,511	1,306,377	1.126
Minor permanent partial disability	1,022,005	1,192,228	1.167
Temporary total disability	1,133,509	1,604,480	1.415

NOTE.—In connection with the above the reader is referred to Proceedings of the Casualty Actuarial Society, Vol. IX, p. 208: "Legal limits of weekly compensation in their bearing on rate making for workmen's compensation insurance," by A. H. Mowbray; Vol. X, p 163: "The compensation rate-making problem in the light of the 1923-24 revision," by W. W. Greene.

EXHIBIT B.—MEDICAL LOSS RATIOS—"PRESENT-LAW" BASIS

(Actual medical losses; premiums based on present manual rates)

State	Policy year				
	1918	1919	1920	1921	1922
Alabama			14.5	20.2	20.1
California	16.9	18.2	19.2	21.7	21.7
Colorado	9.0	11.8	12.9	14.3	15.2
Connecticut	14.9	17.1	18.6	23.9	25.2
Georgia				19.8	24.9
Idaho	8.0	12.4	10.8	15.8	14.7
Illinois	13.4	14.6	16.6	19.1	18.5
Indiana	9.4	11.1	11.5	14.6	21.2
Iowa	10.2	11.9	13.2	16.8	20.4
Kansas	9.3	9.4	11.6	13.9	14.7
Kentucky	9.6	11.0	11.2	14.0	17.4
Louisiana	9.0	9.8	10.1	14.0	14.8
Maine	9.1	10.7	11.9	15.2	18.6
Maryland	6.3	8.0	10.5	15.6	17.2
Massachusetts	11.2	13.3	14.1	17.0	18.0
Michigan	9.5	12.6	13.0	16.7	17.0
Minnesota	10.0	12.0	14.8	18.0	19.0
Nebraska	11.2	12.9	12.8	17.4	21.3
New Hampshire	10.8	6.0	5.3	8.6	11.0
New Jersey	8.4	11.0	12.2	15.1	16.8
New York	8.2	9.5	10.2	12.8	14.1
Oklahoma	9.5	12.7	14.4	23.3	25.0
Rhode Island	15.2	18.0	19.0	24.4	27.5
Tennessee		14.8	16.5	20.6	23.3
Texas	11.3	12.7	14.0	17.0	18.2
Utah	8.3	11.5	13.8	19.7	22.8
Vermont	11.0	12.1	13.3	16.3	19.4
Virginia		10.1	14.3	17.8	23.6
Wisconsin	11.1	12.0	13.1	16.6	18.7

EXHIBIT C.—STATE EXPERIENCE CLASSIFICATION ON PRESENT-LAW BASIS

NATIONAL COUNCIL ON COMPENSATION INSURANCE

State, *Maine*
Date, *5/27/25*
Nat'l Rev'n No. *1*
Local Rev'n No. *1*

Sch., *5*. Gr., *111*. Code, *2111, 2112*. Class, *Canneries—Fruit preserving*.

Policy year	Pay roll	Serious			Nonserious, *IV*			Medical *IV*	P. p	Total	P. p.
		No.	Amount	P. p	No	Amount	P. p				
1918	846,214	1	6,190		13	1,365		2,468		10,023	1.18
1919	998,454				22	1,002		1,091		2,093	.21
1920	639,864	1	1,128		25	3,417		2,631		7,176	1.12
1921	734,555	1	2,084		47	3,753		3,545		9,382	1.28
1922	1,436,224				45	2,178		2,353		4,531	.32
Total, present law	4,650,311	3	9,449	0.21	152	11,715	0.25	12,088	0.26	33,252	.72
P. p.: Indications on rate level				.21					.31		.26		.78
P. p.: National on rate level (*Eastern States, except New York*).				.26					.28		.22		.76
P. p.: Derived by formula				.26					.29		.25		.78
P. p.: Underlying present rate				.26					.25		.17		.68
P. p.: Proposed				.26					.29		.23		.78
P. p.: Adopted													

Sch., *6*. Gr., *122*. Code, *2220, 2222, 2320, 225*.. Class, *Cotton spinning—Yarn mfg. Cotton—flax spinning—Twine mfg.*

Policy year	Pay roll	Serious *I*			Nonserious *I*			Medical, *I*	P. p	Total	P. p.
		No.	Amount	P. p	No.	Amount	P. p				
1918	11,216,508	6	11,219		201	15,147		18,999		45,365	0.40
1919	12,042,268	4	10,292		227	15,147		18,035		43,474	.36
1920	15,144,492	9	29,978		295	21,809		27,962		79,749	.53
1921	12,491,363	5	8,969		358	23,793		21,332		54,094	.43
1922	12,330,736	8	15,980		467	22,136		19,509		57,625	.47
Total, present law	63,232,367	32	76,820	0.11	1,548	98,032	0.16	105,837	0.17	280,689	.44
P. p.: Indications on rate level				.11					.20		.17		.48
P. p.: National on rate level				.14					.23		.17		.54
P. p.: Derived by formula				.11					.20		.17		.48
P. p.: Underlying present rate				.14					.18		.13		.45
P. p.: Proposed				.11					.20		.17		.48
P. p.: Adopted													

NATIONAL COUNCIL ON COMPENSATION INSURANCE

State, *Maine*
Date, *5/27/25*
Nat'l Rev'n No. *1*
Local Rev'n No. *1*

Sch., *6*. Gr., *131*. Code, *2286, 2291*. Class, *Wool spinning—Yarn mfg.—Wool*.

Policy year	Pay roll	Serious, *II*			Nonserious, *I*			Medical, *I*	P. p	Total	P. p.
		No.	Amount	P. p	No.	Amount	P. p				
1918	9,965,186	11	20,590		166	18,208		14,788		53,586	0.54
1919	9,329,730				139	12,441		8,918		21,359	.23
1920	12,896,461	9	22,453		231	18,213		22,404		63,070	.49
1921	11,316,399	6	10,807		283	17,692		14,845		43,344	.38
1922	12,129,768	9	23,719		337	20,739		19,579		64,037	.53
Total, present law	55,637,544	35	77,957	0.14	1,156	87,293	0.16	80,534	0.14	245,784	.44
P. p.: Indications on rate level				.14					.20		.14		.48
P. p.: National on rate level				.11					.18		.14		.43
P. p.: Derived by formula				.13					.20		.14		.47
P. p.: Underlying present rate				.11					.17		.11		.39
P. p.: Proposed				.13					.20		.14		.47
P. p.: Adopted													

Sch., *54*. Gr., *809*. Code, *2584, 8017, 8090*. Class, *Store risks—retail (n. o. c.). Auctioneers—Towel Supply Co.*

Policy year	Pay roll	Serious			Nonserious			Medical, *IV*	P. p	Total	P. p.
		No.	Amount	P. p	No.	Amount	P. p				
1918	1,540,003				12	672		1,270		1,942	0.13
1919	1,794,918				16	474		1,270		1,744	.10
1920	2,219,818				20	1,638		1,377		3,015	.14
1921	2,330,504				21	736		1,257		1,993	.09
1922	2,285,999					2,569		1,430		3,999	.17
Total, present law	10,171,242				69	6,089	0.06	6,604	0.06	12,693	.13
P. p.: Indications on rate level				0.06					.07		.06		.13
P. p.: National on rate level									.08		.09		.23
P. p.: Derived by formula				.06					.08		.08		.22
P. p.: Underlying present rate				.07					.14		.12		.33
P. p.: Proposed				.06					.08		.08		.22
P. p.: Adopted													

EXHIBIT D.—INDEMNITY PROJECTION FACTOR

Policy year	Premiums at present manual rates	Indemnity losses on present-law level; medical on level of 1922 medical cost	Loss ratio
			Per cent
1918	$2,823,173	$1,657,732	
1919	3,355,341	1,955,099	
1920	3,112,512	1,847,817	
1921	2,338,355	1,479,479	
1922	2,853,893	1,768,027	
1923	[1] 3,555,158	[1] 2,421,689	
1918–1922	14,483,274	8,708,154	60.1
1921–1923	8,747,406	5,669,195	64.8

[1] Based upon aggregate data as distinguished from Schedule Z data.

Indemnity projection factor equals 1921–1923 indemnity loss ratio divided by 1918–1922 indemnity loss ratio.

$$\frac{64.8-{}^{2}25.2}{60.1-{}^{2}25.2}=\frac{39.6}{34.9}=1.135$$

Medical projection factor=1,000

$$\frac{720,371}{2,853,893}=25.2 \text{ per cent}$$

EXHIBIT E.—COMPARATIVE BENEFIT COST OF VARIOUS WORKMEN'S COMPENSATION LAWS AS OF JULY 1, 1925

State	Death	Permanent total	Permanent partial		Temporary	Medical and hospital	All benefits
			Major [a]	Minor [b]			
	1	2	3	4	5	6	7
New York	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000	$1,000
Alabama	359	294	454	593	644	821	553
California	496	645	667	758	958	1,000	767
Colorado	427	679	565	384	569	877	587
Connecticut	492	393	616	712	851	1,000	711
Georgia	385	265	514	686	720	772	585
Idaho	549	539	581	493	813	1,000	692
Illinois	486	487	629	952	842	935	735
Indiana	437	311	624	706	714	877	643
Iowa	504	328	546	566	679	784	599
Kansas	469	338	457	565	796	833	609
Kentucky	478	350	468	625	821	877	635
Louisiana	435	388	597	651	953	944	696
Maine	476	377	819	1,259	912	784	782
Maryland	606	321	715	770	1,123	969	803
Massachusetts	549	276	597	469	947	772	652
Michigan	497	378	503	657	806	957	665
Minnesota	795	565	904	941	1,053	864	882
Missouri	644	615	701	968	1,208	1,000	878
Montana	594	378	500	420	636	963	623
Nebraska	597	711	768	791	873	1,000	800
New Hampshire	383	232	448	294	944	735	555
New Jersey	475	930	689	875	933	762	748
Oklahoma	451	455	674	793	1,015	938	760
Rhode Island	352	309	667	406	810	877	613
Tennessee	510	292	427	541	683	772	570
Texas	652	367	600	758	893	883	730
Utah	568	753	636	547	1,005	969	760
Vermont	289	209	531	498	722	679	521
Virginia	411	270	500	618	619	926	591
Wisconsin	715	741	1,136	806	1,037	969	918

[a] Major permanent partial disability is defined as the loss, or loss of use, of a hand, arm, foot, leg, or eye, and the loss of hearing in both ears. Also partial loss of use is related to the benefits for total loss of use.

[b] Minor permanent partial is defined as loss, or loss of use, of thumb, finger, toe, etc.

[2] 1922 medical manual loss ratio equals 1922 medical losses divided by 1922 premiums at present manual rates.

Explanation.—The object of the above table is to afford a convenient comparison of the benefit scales of the several workmen's compensation laws, both for each kind of benefit and in total, taking the New York law as the basis of comparison.

Examples.—The figures shown in column 2 for Colorado and Montana are respectively, $679 and $378. This implies that, on the average, for permanent total disability the Montana benefit is $\frac{3}{6}\frac{7}{7}\frac{8}{9}$ of the Colorado benefit.

The figures shown in column 7 are, for Illinois and New York $735 and $1,000, respectively. This indicates that, for all kinds of injury, the Illinois benefits average $\frac{7}{1}\frac{3}{0}\frac{5}{0}\frac{}{0}$ of the New York benefits.

NOTE.—This comparison of cost for "all benefits" is based upon the national compensation insurance experience. Since the distribution of accidents by type of injury varies between States and therefore is in each case somewhat different from the national distribution, the comparison of cost for "all injuries" is correct only in a general way.

DISCUSSION

The CHAIRMAN. May I ask you a question, Mr. Leslie? Assume that you have two plants engaged in the same line of work, that the number of employees is substantially the same, and that at the inception of your policy the premium is substantially the same; assume also that the number of injuries is substantially the same. A man at each plant is hurt so that he can not do anything except the sort of a job he is familiar with, but one plant takes him back and puts him to work, perhaps at a lower rate than he got before, the insurance company having to pay half the difference perhaps, while the other fellow says, "I don't want a cripple around me," and will not hire him. How do you adjust those two sets of premiums the next year?

Mr. LESLIE. Of course, in establishing these base rates we do not go into the question of individual rating as you do, but I will be glad to answer to the best of my ability.

The base rate is purely the rate for the classification. The rate for the individual risk is adjusted by application either of a schedule or an experience-rating plan. The schedule-rating plan applies to only a limited number of risks, those which are engaged in operations which are subject to inspection and rating according to the schedule—primarily manufacturing risks. The experience-rating plan is more universal, so far as application to different types of risk is concerned, but it is still limited in its application to risks which have a certain premium volume.

The schedule varies the rate according to the physical hazard as revealed upon inspection. The experience-rating plan varies the rate according to the actual loss cost as indicated by the past records of the employer, and in that connection deaths, as well as disabilities, are always included at a fixed average value so as not to discriminate where there are dependents, thus preventing undue fluctuation in rates through mere chance occurrences.

The particular circumstances which you cite might not fit. The variation is produced by either of those plans. I am not sure I got the exact point, but if there was a difference in cost which was produced by the one employer being willing to hire the semicrippled man and the other employer refusing to hire him, it might not be adequate for the card in the rating system, but do you not think that if one employer had a sufficient interest in his employees to hire those who were crippled, take them back into his establishment, he

would also be the one who would be primarily interested in preventing accidents, and consequently, as a matter of fact, he would get, as the result of his actual experience, the lower rate of the two?

The CHAIRMAN. The discussion of this paper is to be given by Mr. Clark, of Ohio.

Mr. CLARK. In Ohio we do not have to deal with facts as extensive and as varied as we have heard discussed so well in the last few minutes. I can not quite see how a State that has a compulsory act and an exclusive State fund can consider intelligently the problems that have to be met by States or commissions which have self-carriers, which have insurance companies, and which have the State fund or any two of these three.

In our State, as you all know, for some six or seven years there has been no reinsurance of risks. When I went on the commission about eight years ago, a great many of the risks were carried by the insurance companies. Some 1,100 companies exercised their option, gave bond, and carried their own insurance under what we call section 22 of our act, and the remainder paid into the State fund.

The very best witness to our system of rate making and the factors that we employ, I think, is simply to state that the self-insuring group has been reduced from 1,100 some eight years ago to a little less than 400, and it is still gradually diminishing. I think the time is not far away when there will be very few employers in Ohio who will not be in the State fund.

Somebody said to me to-day that the rates in Ohio were higher than those of the insurance companies.

If that statement were true, the larger employers of Ohio would be giving bonds and carrying their own insurance but they are not doing it. They are doing the opposite—they are cooperating as never before; they are lending their assistance as never before; they have fought every effort—and there has been one in every session of the legislature since I have been on the commission—to break down the present system of rate making of the Ohio Industrial Commission, and every one has failed, and failed by reason of the support of the men who put the money into the department—the employers of Ohio. There is no State in the Union organized more splendidly by the employing group than the State of Ohio.

Rate making in Ohio, due to Ohio having an exclusive State fund, eliminates the necessity of considering factors which must be considered by the National Council on Workmen's Compensation Insurance in developing rates for various States. I think that is self-evident and needs no explanation. You have already heard that some 800 classifications had to be considered by the National Council, that being the natural consequence of having to take into account the varied conditions, the varied localities, and the varied industries of all the States, or practically all of them, in making up the factors that go to establish the rates.

The exclusive State-Fund plan makes it possible to obtain practically the entire workmen's compensation experience of the State. This experience is all compiled and developed by the commission, thereby eliminating any variation in the developing of same, while the National Council is unable to obtain the entire experience of any given State. Also, the data it receives is compiled from many

different sources, which results in more or less variation in the same. Because of this condition the council has to obtain a much broader experience, necessitating including data from many States. This, then, necessitates the allowance for variation in the laws of the various States, which is done by using a certain State as a unit or base, then analyzing the laws of other States used and developing a modification factor or differential for these States, which differential is applied to the experience of such State to bring the same to a comparative level with the State used as the base.

For illustration, using the compensation law of New York State as the base and desiring to include the experience of the State of Pennsylvania, it would be necessary first to consider the benefits under the two State laws. It would be found that the benefits in the State of Pennsylvania are considerably lower than those in the State of New York, therefore the experience of the State of Pennsylvania would be lifted up to a point where it would be considered on a level with that of New York, and then the experience of Pennsylvania and New York combined.

In using the experience of a large number of States in developing the basic rate, it becomes necessary to consider the variation in the conditions between States due to geographical location, which would be a factor in the frequency as well as the severity of accidents. For illustration, outside construction work in northern Michigan in winter months would be much more hazardous than construction work in a Southern State with a warmer climate; there must also be considered the development within the State of various regulatory laws, such as sanitary and health regulations and competent hospital and medical services.

I might add, a factor which it seems to me is one that can never be better than a guess, namely, the various conditions of the State as to safety and educational effort along that line. Take it in my own State, for example; we are just now setting up a new department known as a safety department—one unlike any that any of the commissions have, I think. This department was created by a special act of the legislature, which provided that 1 per cent of the premium paid in to the commission, or so much of it as the commission may deem necessary, may be set aside. The commission has absolute control over that 1 per cent in the developing of a safety department which will be over and above our shop inspection department, our mine inspection department, our boiler inspection department, our engineer inspection department, and all the others ordinarily found in the commissions or labor bureaus of other States.

We have appointed as the head of that department a man who has been 14 years at the head of our shop inspection, and an assistant who has been 14 years in the service of one of our largest corporations; we took from Pennsylvania at a very much increased salary one whom we learned was the finest statistician there was anywhere; and we have appointed his assistant. By the time this convention meets again, Mr. Secretary-Treasurer, there will be some 20 or 25 technical men in the State of Ohio who will have devoted a year to the collection of statistics along many of the lines that have been discussed at this meeting and which will be helpful to you in your department. That will, perhaps, benefit many other commissions.

Some one suggested they would like to have such helps. We proposed, and our law provides, that we may spend any part of this money that we want, and we are going to be mighty liberal in the publication of statistics, of bulletins, of anything and everything which will educate employers to a higher degree of safety and employees to a higher degree of care. That is a factor that must of necessity enter into the rates of any State, at least any single State where that kind of work is scientifically and splendidly done, as we propose to do it.

A serious accident requiring special medical attention would be less liable to cause further complication in the State of New York, where competent medical and hospital services would be available, than a similar injury occurring in the State of Arizona where such medical services could not be as readily obtained.

It might be said that the degree of advancement in civilization is a factor in the consideration of rates, in that it affects the frequency as well as the severity of accidents. It must be apparent that any State which employs a larger group, proportionally, of the foreign type of civilization has a very different problem than the State which employs in the major part the high-grade American employee. Some one said when we went out to the mines yesterday, "You can find people here from every country on God's earth, I don't care where it is." A condition like that is not comparable at all, in the matter of the risk under any workmen's compensation law, with one of the high-grade factories of the East or the Middle West, or in the West, where a very different type of men and women are employed.

Wage scales, which are the base on which rates are applied as well as the base on which compensation is based, become a factor for consideration in rate making, this being due to the fact that all compensation laws have a maximum and a minimum limit for the computation of benefits, while the premium rate is applied against the total aggregate pay roll with no upper or lower limitation. This, then, means that the variation in such level in various States becomes a factor for consideration. It would not be expected that the average wage level in the State of New York would be comparable to the wage level of a Southern, a Central, or a Western State; therefore, modification of factors must be provided for the experience of these States if used with the experience of the State of New York.

The Ohio plan provides for the assessing of a premium on the industry sufficient only to provide funds for the payment of compensation to the injured worker or his dependents and medical and hospital services. The entire administration of the law is borne by the taxpayers of the State out of the general revenue fund. This, therefore, eliminates the necessity in Ohio for providing factors for the administrative expense in the operation of the Ohio act. Ohio also, by using the experience for the last five years, eliminates the necessity of providing modification factors for old experience developed under different benefit levels and different wage levels than those for which rates are to be computed.

We have also adopted the merit-rating system, and we make a finding on the first day of July of every year now on the merit rating of the employer. Those that are penalized, and there are

not many, are penalized on the first day of January. Our actuarial department, consisting of some 40 people, reports those employers who are entitled to the better credit, by individuals and by classes, and they are notified that they have a credit for the next premium of such and such a percentage. That becomes a very important factor, but could not be considered as a general factor, it seems to me, where many of the States are combined in order to get the experience.

In rate making it is always to be desired that the necessity of applying modification factors to the statistical data to be used be eliminated as much as possible.

All the factors noted above are to a large extent eliminated under the exclusive State-fund plan, making for a much more dependable rate development. Especially is this true when it is considered that all modification factors must be first applied to the State's statistical data before it is consolidated with other data in developing the national basic rate, and then must be again applied to this national basic rate to develop the rate for such State; that is, taking the State of Pennsylvania, the statistical data for Pennsylvania would be raised in order to bring the same on a level with the New York statistical data when considering the level of law benefits between the two States. Then, after the classification rate has been developed from the consolidated experience, it would be necessary to take this rate and reduce the same on account of the lower law benefits prevailing in Pennsylvania as compared with the State of New York.

The CHAIRMAN. This concludes the formal program. The paper is now open for general discussion.

Mr. CHANEY. The rates you have been discussing this afternoon are not the same rates that were discussed in my paper. The rates which are now under consideration are premium rates and the rates which we were discussing this morning were accident rates, considered for the purpose of their application to accident prevention. I have found that even in this convention there were several people who did not know that there was a difference.

Mr. LANSBURGH. I feel that Mr. Clark has given us a real contribution in his discussion of this paper, but I want to point out that in using Pennsylvania as one of his illustrations he used a State which is not in any way connected with the National Council of Workmen's Compensation Insurance and which makes its own rates, not State rates but within the State, and has its own rating bureau, which will be noticed in the fact that Pennsylvania and Ohio have been left out of the table.

Mr. CLARK. I knew that, Mr. Lansburgh.

Mr. WILCOX. Wisconsin is one of the States which has no State fund and which has to make rates for insurance companies, and while we elect to make our own rates, we do not do quite what Mr. Lansburgh does in Pennsylvania, but advise and counsel with the National Council.

I do not think that Mr. Clark means to say that they in Ohio do not have to do the same thing that the National Council has to do. After all, the National Council is doing this service for a large group of States, and because of the fact that the insurance companies which

are writing business in Wisconsin are writing business also in Connecticut, in New York, in Minnesota, and in a large percentage of the States of the United States, it is necessary that Wisconsin shall know that the rates that are being charged in Minnesota, in Connecticut, and in New York are adequate to take care of the obligation of those companies in those other States in exact proportion as they are adequate to take care of the liabilities in Wisconsin.

Rate making, after all, is a determination of the liability of the various classifications and the amount that the insurers in those classifications are required to contribute to a general fund in order to take care of the liability, but Ohio must do exactly what the National Council does; it must know that one concern in Ohio pays a certain relative proportion to its fund, just exactly the same as an employer must know that he must pay a right amount to the insurance carrier. The processes to be used by the council must be a very much more elaborate affair, because it must dispose of the matter not only for the States individually, but also for the States as a group, because of the overlapping of the insurance companies. Ohio must know that the amount it is collecting from each individual is a sufficient amount to carry that liability. The National Council has to do one thing more, and that is to make certain, absolutely certain, that the rates are relatively right as between the States. I believe that is the situation. I think Ohio must be doing exactly the same thing.

Mr. CLARK. I can not let that go unchallenged. I am an officer in an insurance society, and there are about 10 States in the Union in which we will not write a policy, and about 5 of those have workmen's compensation. That has been so for years. Now on your theory, which to me is a sophistry, if you will pardon me, we should write policies in those States irrespective of the increased risk.

The point that it seems to me is apparent is that in any small group of men you can get the exact experience, which gives you a more definite basis and a purer basis on which to work than when you have to take 50 groups in different industries, different climates, different conditions, social and otherwise. So I do not think we are doing what they are doing.

Mr. WILCOX. In Wisconsin, in any State, I do not care where it is, if you have a sufficient spread of experience, you make your rates on the basis of your own individual experience just exactly as you do in Ohio, but there are in Ohio, as there are in Wisconsin, a large number of classifications on which you have not sufficient experience upon which to base a dependable rate, and it is then that the National Safety Council groups its experience for the purpose of getting a dependable rate. You can not get any more in Ohio than we get in Wisconsin.

Mr. DUXBURY. The State of Minnesota is one of those States which is glad to make use of the services of the National Council, but we have the duty of prescribing rates for the State of Minnesota. I think anyone who listened to the discussion of Mr. Leslie must realize that the service which Minnesota gets from the National Council is a valuable service. It enables us to get the benefit of high-class experts in the question of rate making. We have, of

course, to determine the special factors which belong to Minnesota as the Ohio commission has to determine the special factors which belong to Ohio. Possibly we are not as capable of doing it as the Ohio commission is, but it is fair to presume that we would come up to the average. As Mr. Leslie stated, we are not bound by the rates which the National Council system indicates; we modify them as our local conditions seem to warrant.

Of course Ohio gets a result, and collects money enough to pay its losses and have quite a substantial fund left, according to the bulletins which I have read, but it does not follow that it would not profit immensely by the refinements and the scientific rate-making system of the National Council, resulting in a more equitable and scientific distribution of the premium rates among the employers of Ohio. It would collect the same amount of money that it now collects, but I am of the opinion that the system of rate making in Ohio or any other State can be very much improved and made more scientific and just to the different insurers if use is made of a high-type expert body of rate makers such as the National Council. The council is not serving the ends of any particular company or group of companies, or anything of that kind, but is giving a service which no State, not even Ohio, can expect to duplicate so far as the character of that service is concerned.

Mr. CLARK. I hope I did not leave the impression that I did not think there was great merit in the National Council's work. I said that in a State such as ours I did not see how we could fit in. Of course I recognize the technique and science of the National Council. I did not finish what I was going to say about the bulletin we are going to issue. We will be glad to send that bulletin to every commissioner or to any one else whose name he may send in. If you will send the names to me, I will see that they are put on the mailing list.

[The president took the chair and 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. 212. Hartford, Conn., was chosen as the place of the next meeting. The following statement was made by the secretary-treasurer regarding the publication of an index to the proceedings of the association:]

Mr. STEWART. I want to call your attention to the fact that during the last year we have made an index to all the proceedings of past conventions of this association. It is a double index, first by subjects discussed, and then by the parties entering into the discussion. In my report I said that the secretary had made the index. Of course that had to be official, whether or not it was true. As a matter of fact, my private secretary, whom you all met at Baltimore, proposed the index herself, drafted the plan, and did all the work, perhaps 20 per cent on her own time. This index makes the file of the proceedings, which I suppose you all have, of very great value, because almost any subject that comes up here has been discussed at some convention by some of the very best men we have. It makes a real library out of your proceedings, a real encyclopedia upon compensation matters.

[Meeting adjourned.]

CHAIRMAN, FRED M. WILCOX, CHAIRMAN WISCONSIN INDUSTRIAL COMMISSION

The CHAIRMAN. The first number on the program is the report of the committee on legal aid by Mr Horner, of the Pennsylvania department.

REPORT OF JOINT COMMITTEES OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS AND THE NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS, 1925

The committees were appointed at the 1924 annual convention of the respective associations to consider the extent to which legal aid organizations could assist industrial accident boards in the task of administering workmen's compensation laws. The two committees held a meeting in Washington, D. C., on February 19, 1925, and have been in constant correspondence.

MATTERS FOR JOINT ACTION

The committees believe, after considering the matter at length, that legal aid organizations can render considerable assistance to industrial accident and workmen's compensation boards. Some of the occasions for requiring such help are:

(*a*) Some persons pretending to be lawyers take cases for the employee, and then, either because they can not proceed or because they are working for the employer, they do nothing and the statute of limitations runs against the claim.

(*b*) Some lawyers on settlement take the checks to the bank and have the client indorse them, then take 50 per cent for fee.

(*c*) Some lawyers receive money to send to alien dependents in Europe in cases where foreigners have been killed or injured here, and because of expenses along the way only a small proportion ever reaches its destination.

(*d*) Many lawyers urge a lump-sum settlement and then proceed to use the money for investment in some kinds of real estate, or otherwise, which are wholly unsuited to the finances of the employee, who loses all.

(*e*) Ignorance and suspicion by the employee prevent him from learning about the benefits to be derived and the methods of obtaining them. Many accidents are not reported.

(*f*) The contingent fee system.

(*g*) The inability of the poor man to pay for a lawyer and yet the need that he have a lawyer to prepare the evidence and the law in certain cases.

It is likely that almost every State will have instances of some of the above or of other similar situations where the service of a

lawyer known to be impartial and experienced in the work of appearing before the industrial accident or workmen's compensation boards or referees will be of value.

THE MACHINERY TO ACCOMPLISH THE RESULT

The committees can not devise a universal plan which will meet the needs of all the local organizations belonging to the respective associations. Cooperation between a given legal aid society and a given industrial accident or workmen's compensation board is a matter which must be worked out by those familiar with local conditions. The committees have appended to this report a list of local organizations—members of the respective associations—for mutual convenience in making contacts.

The existing situation of cooperation in Boston may well be used as a model, with appropriate modifications necessary to fit local conditions.

RECOMMENDATIONS

The committees recommend that the respective associations approve the following resolutions:

1. *Resolved*, That cooperation in handling workmen's compensation problems is hereby approved by the International Association of Industrial Accident Boards and Commissions and the National Association of Legal Aid Organizations.

2. *Resolved*, That the member organizations of the International Association of Industrial Accident Boards and Commissions and the National Association of Legal Aid Organizations be requested and encouraged to cooperate with each other in handling workmen's compensation cases.

3. *Resolved*, That these committees be continued by their respective organizations to supply information as to methods of cooperation, to study the results and report from time to time on the progress of the mutual work.

Respectfully submitted.

COMMITTEE OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS.

W. H. HORNER, *Pennsylvania, Chairman.*
RICHARD J. CULLEN, *New York.*
H. R. WITTER, *Ohio.*
ETHELBERT STEWART,
Washington, D. C., member ex officio.

COMMITTEE OF THE NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS.

RAYNOR M. GARDINER, Esq., *Chairman.*
CLAUDE E. CLARKE, Esq.
ELMER C. JENSEN, Esq.
JOHN S. BRADWAY, Esq.

INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS

ACTIVE MEMBERS

United States Bureau of Labor Statistics.
United States Employers' Compensation Commission.
Connecticut Board of Compensation Commissioners.

Georgia Industrial Commission.
Hawaii Industrial Accident Boards (Counties of Kauai, Maui, Hawaii and Honolulu.)
Idaho Industrial Accident Board.
Illinois Industrial Commission.
Indiana Industrial Board.
Iowa Workmen's Compensation Service.
Kansas Public Service Commission.
Maine Industrial Accident Commission.
Maryland State Industrial Accident Commission.
Massachusetts Industrial Accident Board.
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.

Associate Members

Industrial Accident Prevention Associations, Toronto, Ontario.
Porto Rico Workmen's Relief Commission.
Republic Iron and Steel Co., Youngstown, Ohio.
Leifur Magnusson, American representative of the International Labor Office, Washington, D. C.

LEGAL AID ORGANIZATIONS IN OPERATION, 1925

City	Name of organization	Address
Akron, Ohio	Legal aid committee of the Charity Organization Society.	5 East Buchtel Ave.
Albany, N. Y.	Legal Aid Society of the City of Albany (Inc.)	86 State St.
Atlanta, Ga.	Atlanta Legal Aid Society	Room 922, Fulton County Courthouse.
Baltimore, Md.	Legal aid bureau of the Baltimore Alliance of Charitable and Social Agencies.	830 Munsey Bldg.
Boston, Mass.	Boston Legal Aid Society	16A Ashburton Place.
	National Association of Legal Aid Organizations; Albert F. Bigelow, president.	111 Devonshire St.
	Legal aid committee of the American Bar Association; Reginald Heber Smith, chairman.	60 State St.
Bridgeport, Conn.	Legal aid division, Department of Public Charities.	Public Welfare Bldg.
	Robert F. De Forest, Esq., public defender	First National Bank Bldg.
Buffalo, N. Y.	Legal Aid Bureau of Buffalo (Inc.)	Lincoln Bldg., 327 Washington St.
	Legal aid committee of the New York State Bar Association; John Alan Hamilton, Esq., chairman.	Erie County Savings Bank Bldg.
Cambridge, Mass.	Harvard Legal Aid Bureau	Harvard Law School.
Camden, N. J.	Legal aid bureau, Bureau of Charities	519 Arch St.
Chattanooga, Tenn.	Social Service Bureau	Ham. Bank Bldg.
Chicago, Ill.	Legal aid bureau of the United Charities	308 North Michigan Ave.
	Jewish Social Service Bureau of Chicago, legal aid department.	1800 Selden St.
	Chicago Bar Association committee on defense of poor persons accused of crime.	112 West Adams St.
	Legal aid committee of the Illinois State Bar Association; Clayton W. Mogg, Esq.	140 South Dearborn St.

LEGAL AID ORGANIZATIONS IN OPERATION, 1925—Continued

City	Name of organization	Address
Cincinnati, Ohio	Legal Aid Society of Cincinnati	304 Southern Ohio Bank Bldg.
Cleveland, Ohio	Legal Aid Society of Cleveland	614 Fidelity Mortgage Bldg.
Columbia, S. C	Associated Charities of Columbia	1123 Gervais St.
Columbus, Ohio	Legal aid committee of the Franklin County Bar Association.	Assignment room, courthouse.
	Carl Young, Esq., public defender	Grand Theater Bldg.
Dallas, Tex	Free Legal Aid Bureau	City Hall.
Dayton, Ohio	Bureau of Legal Aid	Cappel Bldg., 129 South Ludlow St.
Denver, Colo	Legal Aid Society of Denver	Care of Harry C. Green, 712 Central Savings Bank Bldg.
Des Moines, Iowa	Legal aid committee of the Federation of Women's Clubs.	Care of Dr. Carrie Harrison Dickey, 621 Forty-eighth St.
Detroit, Mich	Legal aid bureau of the Detroit Bar Association.	71 West Warren Ave.
	Legal aid committee of the Michigan State Bar Association; Otto G. Wismer, Esq., chairman.	Do.
Duluth, Minn	Free legal aid bureau, Division of Public Affairs	312 West Superior St.
Grand Rapids, Mich.	Legal aid bureau of the Social Welfare Association.	404 Houseman Bldg.
Greensboro, N. C	Committee organizing the work	Care of Samuel R. Dighton, Esq., 1009 Jefferson Standard Bldg.
Grinnell, Iowa	Legal aid committee of the Social Service League	923 Broad St.
Harrisburg, Pa	Legal aid committee of the Dauphin County Bar Association.	Care of George Ross Hull, 5 South Third St.
Hartford, Conn	Legal Aid Bureau	Municipal Bldg.
	John F. Forward, Esq., public defender	720 Main St.
	Legal aid committee of the Connecticut State Bar Association, Thomas Hewes, Esq., chairman.	18 Asylum St.
Hoboken, N. J	Legal Aid Society of Hoboken	1 Newark St.
Indianapolis, Ind	Family Welfare Society	5th floor, Baldwin Block.
Jacksonville, Fla	A legal aid organization is being urged; address communications to	C. G. Daniel, 123½ Main St.
Jersey City N. J	Legal Aid Society of Jersey City	Care of John Francis Gough, 15 Exchange Place.
Kansas City, Mo	Legal aid bureau, Board of Public Welfare	3d floor, City Hall.
Knoxville, Tenn		Care of Malcolm McDermott, 203 East Main St.
Lansing, Mich	Legal aid bureau of Ingham County Bar Association.	Care of Social Service Bureau, 303 West Allegan St.
Lexington, Ky	Legal Aid Bureau	Care of Associated Charities.
Long Beach, Calif	Legal aid committee of Long Beach Bar Association.	Care of Clyde Doyle, Esq., Suite 1115 Pacific-Southwest Bldg.
Los Angeles, Calif	Ernest R. Orfila, Esq., city police court defender	419 Bullard Bldg., 156 Spring St.
	William T. Aggeler, Esq., public defender for Los Angeles County.	906 Hall of Records.
Louisville, Ky	Legal Aid Society of Louisville	609 Realty Bldg
Memphis, Tenn	Memphis Legal Aid Society	Room 7, basement county courthouse.
Milwaukee, Wis	Legal Aid Society of Milwaukee	85 Oneida St.
	Legal aid committee of the Wisconsin State Bar Association; William Kaumheimer, chairman	840 Wells Bldg.
Minneapolis, Minn	Legal aid society of the Associated Charities	510 Temple Court.
	L. L. Longbrake, Esq., public defender	901 New York Life Bldg.
Montreal, Canada	Montreal Legal Aid Bureau	207 St. Catherine St. west.
	Legal Aid Department	Care of Baron de Hirsch Inst., 410 Bleury St.
Nashville, Tenn	Legal Aid Bureau	Care of Nashville Chamber of Commerce.
Newark, N. J	Essex County Legal Aid Association	222 Market St.
New Bedford, Mass	New Bedford Legal Aid Society	234 Union St.
New Haven, Conn	An organization is being established by the students of Yale Law School; address—	Care of Miss Dorothy Ludington, Yale Law School.
	Samuel E. Hoyt, Esq., public defender	Colonial Bldg., 195 Church St.
New Orleans, La	Legal Aid Society of Louisiana	1406 Whitney Central Bank Bldg.
New York City	Legal Aid Society	239 Broadway.
	Legal aid bureau of the Educational Alliance	East Broadway and Jefferson St.
	National Desertion Bureau	799 Broadway (cor. Eleventh St.)
	Voluntary defenders committee of the Legal Aid Society.	32 Franklin St.
Oakland, Calif	Associated Charities of the City of Oakland	1930 Harrison St.
Omaha, Nebr	Free Legal Aid Bureau	403 City Hall.
	John N. Baldwin, Esq., public defender	1106 First National Bank Bldg.
Passaic, N. J		James H. Donnelly, Esq., Overseer of the Poor, Municipal Bldg.
Philadelphia, Pa	Bureau of legal aid, Department of Public Welfare.	587 City Hall.

LEGAL AID ORGANIZATIONS IN OPERATION, 1925—Continued

City	Name of organization	Address
Philadelphia, Pa.	National Association of Legal Aid Organizations, office of the secretary.	133 South Twelfth St.
	Legal aid committee of the Pennsylvania Bar Association; John S. Bradway, Esq., chairman.	Do.
Pittsburgh, Pa.	Legal Aid Society of Pittsburgh	1315 Union Trust Bldg.
Pittsfield, Mass.	Associated Charities	119 Fenn St.
Plainfield, N. J.	Case conference committee, Society for Organizing Charity.	City Hall.
Pontiac, Ill.	Social Service Bureau	Pythian Bldg., Huron St., West.
Portland, Me.	Associated Charities	15 City Bldg.
Portland, Oreg.	Legal Aid Committee	Care of George S. Shepard, Esq., Gasco Bldg.
Providence, R. I.	Legal Aid Society of Rhode Island	326 Grosvenor Bldg.
Reading, Pa.	Legal aid committee of the Berks County Bar Association; Harry W. Lee, Esq., chairman.	Liberty Bank Bldg.
Richmond, Va.	Legal Aid Society of Richmond	601 North Lombardy St.
Rochester, N. Y.	Legal Aid Society	31 Exchange St.
St. Louis, Mo.	Legal aid bureau, Department of Public Welfare.	208 Municipal Court Bldg.
St. Paul, Minn.	Legal aid department of the United Charities.	203 Wilder Bldg.
San Diego, Calif.	J. A. Hahn, Esq., attorney under the DeWitt C. Mitchell Trust.	548 Spreckels Bldg.
San Francisco, Calif.	Legal Aid Society of San Francisco	912 Hearst Bldg.
	Frank Egan, Esq., public defender	Hall of Justice.
	Legal aid committee of the California State Bar Association; O. K. Cushing, Esq., chairman.	821 First National Bank Bldg.
Schenectady, N. Y.		Allan B. Mann, American Legion Post No. 21, 420 State St.
Scranton, Pa.	Legal aid committee, Lackawanna County Bar Association; Walter L. Hill, Esq., chairman.	Connell Bldg.
Seattle, Wash.	Legal service bureau, Social Welfare League	243 Central Bldg.
Springfield, Mass.	Committee organizing the work	Care of Edward S. Bradford, Esq., 359 State St.
Toledo, Ohio	Social Service Federation	572 Ontario St.
Toronto, Canada	Neighborhood Workers' Association	71 Grosvenor St.
Washington, D. C.	Legal aid bureau, Associated Charities	1022 Eleventh St. NW.
	The Barristers	Care of F. Regis Noel, Esq., 408 Fifth St. NW.
Wilkes-Barre, Pa.	United Charities	46 North Washington St.
Winnipeg, Canada		Care of Jules Preudhomme, Esq., city solicitor, Law Department.
Worcester, Mass.	Legal aid committee of the Worcester Bar Association.	Care of Arthur J. Young, Esq., secretary Bar Association, 314 Main Street.
Yonkers, N. Y.	Charity Organization Society	55 South Broadway.
Youngstown, Ohio	Committee organizing the work	Care of C. G. Crumpler, Esq., 37 Central Square.

DISCUSSION

[A motion was made and seconded that the report of the committee be adopted.]

THE CHAIRMAN. It has been moved and seconded that the report of the committee on legal aid be adopted. I presume we had better hear the discussion of the paper before we act on the motion. The discussion of the report of the committee is to be by Mr. Scanlan, chairman of the Industrial Commission of Illinois.

Mr. SCANLAN. Most of the delegates will regard this proposition, I think, as one peculiarly up to each jurisdiction. The States, being constituted differently, some being largely agricultural while others are largely municipal and having large cities, will have different phases of this problem with which to deal. I think that the commission of each State should devote very careful attention to the questions involved in this matter. It behooves it to watch very strictly the actions or conduct of lawyers representing litigants, of physicians who may appear as witnesses for or against litigants, and of those calling themselves agents, who are generally of the same nationality as the injured workman and who because of that

come under the guise of friendship for the workman. We have that to deal with in Illinois, particularly in Chicago; we do not have so much of it in other parts of the State.

In the list of organizations read by Mr. Horner, he mentioned two in Illinois—one in Chicago and one at Pontiac. We never hear from the Pontiac organization; as a matter of fact we rarely have any business in Pontiac, as it is a small city in a farming region, having no factories.

I have prepared a little paper that may be of interest. It is as follows:

Those of us who attended the convention at Halifax, Nova Scotia, last summer were favored with an interesting discussion by John S. Bradway, secretary of the National Association of Legal Aid Organizations. One of the results was the formation of the joint committee to whose report and recommendations we have just listened.

The object sought is to foster a closer cooperation between legal aid organizations and industrial boards and commissions for the better protection of the injured man who is poor and ignorant of his rights.

In the report of the committee, as a matter for joint action, particular mention is made of lawyers who may defraud injured workmen or mishandle their cases. Our experience in Chicago on the subject of lawyers defrauding the workmen is limited to a few lawyers of the same nationalities as the injured workmen. Oftentimes when a man is injured he knows some lawyer of the same nationality living in his neighborhood and he goes to him with his case. That lawyer may not know anything about the compensation law, and when he appears before the arbitrator or commissioner, he is absolutely unable properly to present the applicant's case. Under such circumstances our arbitrators and commissioners have been instructed to and actually do all they can to help the applicant present his case. Oftentimes we arouse the displeasure of the representatives of insurance companies and employers because we do that, but we feel that the real purpose of the act is to give protection to the man who is injured. If he is unfortunate enough to have a lawyer who does not know how to present the case we generally help him present it or grant him a continuance and tell him to get somebody who can present it.

In Chicago we have many high-class lawyers engaged in this business who are absolutely square and fair with the applicant, fair with the commission, and fair with everybody concerned. When a lawyer of that kind comes before us with a settlement contract, because we have found that lawyer's reputation to be good, we approve the settlement contract without setting the case for a hearing and bringing in the applicant as we do in cases where the lawyer representing the applicant has not that reputation. With the inception of compensation acts, by making the procedure simple and summary it was believed that the services of attorneys in contested cases would be almost, if not entirely, unnecessary. This theory has been much discussed, but I think most of us will now agree that it is not borne out by practice, and that the lawyer, in his proper

sphere, is just as essential as the physician or the surgeon. However, I believe that the evils resulting from this source can be largely eliminated without injustice to either the injured man or the legal profession.

In the brief time allotted to me, I would like to convey to you what our experience in Illinois has taught us along these lines. The same problems are probably encountered in other jurisdictions. In the case of Inland Rubber Co. *v.* Industrial Commission, appearing in volume 309 of the Illinois Supreme Court reports, the court has laid down the following rule: "In proceedings under the workmen's compensation act the rules respecting the admission of evidence and the burden of proof are the same as prevail in common-law actions for personal injury. The procedure only is different."

Digressing for a moment, I might say that this case is one where the court held that the injured employee had failed to make claim for compensation within the six-months' period provided by law, whereas, if he had sought proper advice and made his claim before the six months had elapsed, his award, aggregating $3,750, would certainly not have been set aside.

Under our Illinois procedure a workman with some intelligence, if the issue is not too involved, can and sometimes does, handle his own case before the commission, after a study of the act, with such advice as he can get and some assistance from the arbitrator.

But where the questions are technical and intricate, a record must be built up in accordance with the long-established rules of evidence. Here the layman is at sea without an oar, and the services of someone skilled in legal procedure, who may do the questioning and cross-questioning of witnesses and make proper objections, is absolutely essential.

It is at this point that we may meet or come upon the unscrupulous, ignorant, or too greedy lawyer. In Illinois a number of attorneys have for many years made a specialty of compensation cases. Most of them are capable and honest. On the other hand, and particularly in Chicago, we have the so-called ambulance chaser, who brings to a lawyer all sorts of personal injury cases, among them being cases coming under the compensation act, and who expects a generous share of the fee in case of an award. The injured man signs a written contract to pay the lawyer from one-fourth to one-half the amount recovered; a claim is filed with the industrial commission and an award is entered in accordance with the law and the facts.

The industrial commission, however, does not recognize these contracts for attorney's fees as being valid, nor is there such a thing as an attorney's lien in compensation cases. If it is brought to our attention that an excessive fee has been charged or if there is a complaint as to a fee, we direct that the matter be set for hearing and thereupon determine and fix a reasonable fee, based upon the services actually rendered.

Because of their exacting what we believed to be excessive fees, we have disbarred a number of attorneys from practicing before the commission, and the license of at least one attorney has been revoked by the supreme court. We are in constant touch with the grievance committee of the bar association, and whenever we find

a lawyer doing something objectionable, we report him to the grievance committee, and in a month or two the commissioners and the grievance committee meet at a hotel and have dinner and discuss these questions; so a lawyer can not pull very many things with the Illinois commission until he is in trouble with the bar association. If his conduct warrants it, the association files charges asking that he be disbarred.

On the subject of contingent fees, most injured workmen are without funds, so that if it becomes necessary to employ a lawyer, the case must be taken on a contingent basis or not at all. Oftentimes an award is obtained, but because of the compensation being payable in weekly installments, the lawyer has no means of collecting any fee whatsoever for his services.

Under our act which, unless a lump sum is awarded, requires the payment of the award in installments, no matter how hard a fight the lawyer may have had, no matter how far he may have gone with the case—he may have gone to the supreme court with it—he is a mighty long time getting his fee if the award is paid in installments. That applies, of course, to the lawyer who put up a great fight and won on close questioning.

We have in Chicago a lawyer, George A. Schneider, the author of Schneider's Compensation. I have in mind a particularly complicated case where a motorman on a street car ran into a truck, or a truck ran into the car, and the motorman received an injury about the knee. He was quite badly injured and was laid up for quite a while at home, but he was improving, was happy, and feeling in good shape when about five or six weeks after, all of a sudden he keeled over at home and died. His wife filed a claim for compensation against the street-car company; she had an ordinary lawyer whose experience and whose ability in this respect were limited. He did the best he could before the arbitrator but was unable to make a showing which would justify the arbitrator in making an award, and so the award was against the widow. At that time some friend of hers advised her to see Schneider, which she did, and George took the case and filed a petition for review. It was about five or six months after the burial when Schneider took the case and a long record had to be written up. He secured a couple of professors from the Chicago and Northwestern Universities, experts on matters of that kind, who disinterred the body, took out the heart, the lungs, and the firmer arteries, brought them in, and submitted them to test. The case came up for hearing (the street-car company ably represented), and they battled away for one day and part of the next day, when a continuance was asked for.

Schneider demonstrated by these proofs of pathology secured by the professors of these important universities that the death was caused by the injury to the knee; that a blood clot had been formed which had followed an artery, evidence of it being found in the lungs. The case was continued for a week, at the end of which the street-car company came in and said, "We are willing to pay."

That was a case which was rescued by a good lawyer who knew what to do. In that kind of a case, where the attorney had personally obligated himself to these professors of pathology, who had

gone to the expense of disinterring the body and making the examination, he was in a bad fix so far as his fees were concerned if he had to get from his client so much a week as long as the compensation period ran.

Lawyers of that kind are worthy of respect and confidence and have the support, or ought to have the support, of commissions; they have the support of our commission.

The records of the Chicago Legal Aid Society show that during the year ending July 1, 1925, workmen's compensation cases came into their offices to the total number of 869. In most of these cases adjustments were made with the employer or insurance company, or an investigation developed that the workman had nothing coming. In 109 of these cases applications for adjustment of claim were filed with the industrial commission. There were hearings before an arbitrator in 78 cases and 38 hearings on review.

The legal aid cases tried before the commission are either handled by attorneys on the society's staff or referred to outside attorneys, it being the custom in the latter instance to refer the cases to attorneys who were formerly members of the society's legal staff, and who charge a fee in the event of an award.

The function of the industrial commission is administrative as well as judicial. Since a year ago to-day, more than 60,000 accident reports have been filed. In most of these compensation has been or is being paid and proper receipts filed with the commission as a matter of routine.

During the same period something like 12,000 disputed claims were filed for arbitration Under our administrative function we have the right to make an individual investigation in each case where there is a dispute, but we are without facilities for doing this, except to the extent to which an arbitrator may go when hearing a case.

Here is a domain where an organization like the legal aid society may and does render an exclusive and useful service. Cases frequently arise where a workman is injured and there is some dispute as to the extent of temporary disability or as to what he may be entitled for specific loss, the difference in money amounting anywhere from $10 to $100 or more. The amount involved is too trivial to justify the services of an attorney. When these men come to the commission for advice, we are sometimes able to take the matter up informally with the employer or insurance company and get a satisfactory adjustment. If not, all we can do is to advise the man to file his claim and have the matter set for hearing before an arbitrator. This type of case, and there are many of them, is peculiarly one for the good offices of a legal aid society.

In Chicago the legal aid society has another important and useful function. It has a main office and several branches in districts where the poor and foreigners reside. An injured workman, often ignorant of the fact that the State has provided an avenue of relief for him in his hour of need, will seek out the local office of the organization for aid and advice, where his story will be listened to patiently, an investigation made, and proper steps taken in his behalf.

The society is thus rendering a distinct public service, not only in giving advice and aid, but in helping to give the compensation act a much needed publicity among those least able to act for themselves.

Many times injured employees or their beneficiaries have been denied compensation because they have learned of its benefits too late. I recall one notable case where a widow was apprised of her rights only by the merest coincidence. The family resided in Chicago. The husband left home and found employment on a bridge construction gang in one of the cities down State. There was an accident and he was instantly killed. There was nothing among his effects to identify him, other than his name. The employer reported the case to its insurance company in Chicago. The insurance company upon investigation found no dependents, paid the burial expenses, and closed its file.

The Chicago Daily News runs a social service column, where those in need may write and ask for such necessities as they may require. These letters are published and those charitably inclined may respond. Months after her husband had been killed, the widow wrote to the Daily News asking for cast-off clothing for her children. The insurance adjuster who handled the case happened casually to glance through this column in the newspaper, read the letter from this widow, noted the similarity in names, investigated, and found this was the widow of the man who had been killed, and compensation payments, which would aggregate $3,500, were at once started. This one insurance adjuster, at least, was honest. I believe, though, that the old-fashioned hard-boiled claim agent is passing out of the picture. His place is being filled by earnest young men of high ideals, often sympathetic.

While the measure of compensation requires considerable judgment, yet the amounts to be paid for injury have been fixed by legislative enactment and the computation has become largely a matter of arithmetic. While there are still disputes in plenty, the personal animosity, trickery, and bitterness of the old common-law injury suit no longer prevail in compensation cases.

In the report of the joint committee, reference is made to lawyers who urge a lump-sum settlement and then proceed to get the money invested in real estate, or otherwise, where it is wholly lost. In cases where a petition for a lump-sum settlement is filed with our commission, proof or a showing as to what disposition is to be made of the money is required. The commission will not approve a lump sum where there is merely a general statement that the money will be invested in some kind of business or in real estate. If there is a mortgage or payment coming due on property already owned, and no other means of meeting it, the commission will grant a partial lump sum to meet the payment.

If it is sought to purchase real estate, we require proof as to the specific premises to be purchased and the reason for the investment, and in addition it is our practice to send our own investigator out to inspect the premises and to make a report as to whether the purchase is desirable from the standpoint of the petitioner and the price reasonable.

It is our policy to discourage lump sums as far as possible, or to approve only an amount, from the end of the payments, to cover some pressing exigency.

Then, too, the Illinois Supreme Court has laid down rules limiting the scope of our authority to grant lump-sum settlements. It has

held, for instance, that we can not grant a lump sum merely for the purpose of paying an attorney fee. In another case recently decided it has reiterated this in the following language: "The State is concerned in preventing dissipation of the money paid and an early recourse to that charitable aid which systematic compensation aims to avoid."

Reference is also made in the report of the committee to lawyers who receive money to be sent to alien dependents, only a small proportion of which ever reaches them. The whole subject of alien dependents has given our commission much concern. In Illinois most of these cases pass through the hands of the public administrator. Some are handled by the local consul of the country of which the deceased was a citizen, through his attorney. Sometimes there is a conflict as to which has the right to represent the dependents of the deceased.

Recently a case came before the commission where a Mexican citizen had been killed, leaving a dependent father and mother in Mexico. Claim was filed with the industrial commission by the Mexican consul at Chicago, as representing the parents in Mexico. Claim was also filed by the public administrator of Will County, Ill., being the county in which the accident occurred. The only issue in the case was as to who was the proper party to represent the beneficiaries in a compensation case. By agreement, both cases were tried at the same time. The commission held that the public administrator was the proper party. The Mexican consul then took an appeal to the circuit court, which confirmed the findings of the industrial commission. The case is now, I believe, on its way to the supreme court.

I do not know what other commissions are doing in this respect, but we are hoping to devise a method of handling these foreign beneficiary matters, wherever possible, through the American consular service. This applies to the taking of depositions and also to the payment of compensation installments, so that proper receipts showing the exact amount received by the beneficiaries may be on file in our office. This will have the result of keeping the costs down to a minimum and prevent diversion into unscrupulous hands of the compensation due the beneficiaries.

Lastly, I believe that the recommendations submitted by the joint committee relative to a closer cooperation with members of the National Association of Legal Aid Organizations are splendid and should have the whole-hearted support of this convention.

The CHAIRMAN. Are there others here who want to discuss this question of the relief that may be had through cooperation with the legal aid society?

Mr. WENZEL. I should like, for the benefit of the committee, to present a rather peculiar situation which exists in our State. We have a provision in our law that in case an employer does not pay premiums into the compensation fund, the employee who is injured may proceed in two ways. Mind you, we have what is known as a compulsory system and an exclusive fund, but if a man is injured while in the employ of an employer who has not paid premiums, he may proceed either under the common law in a suit against the employer, or he may come to the bureau and present what we call an

elective claim. If he presents an elective claim, the bureau is without a penny of money that it can spend to investigate that claim. In other words, the injured employee must come to Bismarck or have his testimony taken where the injury occurred and present it to us.

At the last legislature I drew up a bill that the State appropriate the sum of $500 to cover expenses of the commission in investigating such claims. That was turned down. Subsequently, we introduced another bill giving the bureau power, in making awards in such cases, to include expenses and attorney's fees. So far so good, but we are without any means whatever to disseminate that information among the employees who may be working for employers who are not within the fund, and it is a long and tiresome process to get all of the employers under the act, notwithstanding the fact that there are heavy penalties provided. So it seems to me there is a field right there for just such an organization as this to disseminate that information, and that there is also another field in cases where the employee elects to bring suit directly under the common law against the employer.

Mr. McSHANE. Under the Utah laws, attorney's fees are fixed by the commission. We did not go at that arbitrarily, but through a conference with the Utah Bar Association. We have arranged a schedule for all instances where an attorney may appear; there is always an accumulated amount due, and we order paid direct to the attorney by the employer or the insurance carrier the amount of the fee which we fix, making certain that he will be compensated. On the other hand, we have an agreement with the lawyers and they thoroughly understand us and support us, on the principle that "Inasmuch as we are going to get a fee, inasmuch as this is a humanitarian law, we are going to catch its spirit, move along with it, and we do not expect more than a third to half as much in this kind of practice as we do where we pursue the remedies for our clients under the common law."

Another thing with reference to the Schneider case (because I do not know any better name), I do not believe we have an industrial surgeon in Utah handling a case of that kind who would not have required an autopsy at the time that man died. We would have been immediately notified and would have been represented by a good physician and surgeon. Under this arrangement (and this is a new arrangement within the last three or four years in Utah) I do not believe it would have been necessary to disinter that man to determine the cause of his death, and I do not believe that under our practice it would have been necessary for a rehearing.

Mr. SCANLAN. That case was more acute, Mr. McShane, than you appreciate, because there was an inquest held on his body; the coroner's physician conducted an autopsy and said he died of a cerebral hemorrhage. That was a matter of record.

Mr. McSHANE. It was not a matter of putting Illinois on trial, but I thought that perhaps the way Utah handles the cases might be of some value to the association.

Mr. SCANLAN. Schneider had to overcome the record of the coroner's physician who held the autopsy and found the man had died of cerebral hemorrhage.

On the attorney proposition, we have the right to fix fees for the surgeons, but our law does not give us the right to make an order directing the payment of any money to the attorney. There is a large manufacturing institution in southern Illinois whose officers attempt to keep their men from filing claims. In one case I know of, a leading lawyer in Centralia took the case of an injured workman out of sympathy more than anything else, and beat this company, and then the assistant to the president went to the injured workman and said, "Don't you pay that lawyer a cent; he is not entitled to any money." So here is a high-class lawyer who can not get his fee, because we have no authority by statute to direct the respondent to pay any money to the lawyer. We have a right to fix his fee, but we can not issue an order directing the respondent to pay.

Mr. BROWN. The question I wish to ask is concerning this supreme court decision. We had a similar case in Idaho some time ago in which the attorneys asked us to make a lump-sum settlement in order that they might be paid their fee, which was $900. We told them we would not do it. Our law provides that we have a right to control the fees of surgeons and attorneys, and we went over the case very carefully and determined that the lawyers were entitled to $300 and we made partial settlement in that way. It was agreed to between the parties and the money was paid over. The question I wished to bring up was if your supreme court would hold a matter of that kind unconstitutional.

Mr. SCANLAN. I know of a case where an old lady's son on whom she was dependent had died after he was injured at work, and she was entitled to compensation. She filed a petition for a lump sum. The evidence tended to show that she owed $200 to a sister, and $400 to merchants around town. The supreme court said that in view of the old lady's age, and since the compensation was all she had in the world, a lump sum should not be allowed; that it could not be given for the purpose of paying debts, and included among debts attorney's fees, so that the attorneys were in no better position than her relatives. The court said this money was not for that purpose but that it was supposed to be used for the benefit and upkeep of that lady as long as she lived, and let the creditors hold the sack.

The CHAIRMAN. Let us not stray from the question before us, the question of the value of legal aid.

Mr. ARIZA. In the case you referred to, do you mean to say that the Mexican consul in the United States should not take care of the cases of Mexican citizens, but that they should be handled through the physicians or the relatives of those Mexican citizens in the United States by the American consul in Mexico?

Mr. SCANLAN. Every one of these cases comes up through peculiar circumstances. This Mexican who was injured was the employee of the Illinois Steel Co. of Joliet. There is where this alien, this Mexican subject, lived and had personal effects, which gave that court the right to appoint a public administrator. The public administrator filed claim for compensation. The Mexican consul in Chicago also

filed claim. The Illinois Steel Co. wanted to know to whom they were to pay this money, and it was up to this commission to determine who should get it. We decided that the public administrator should, for several reasons, one of which was that he is an officer of the court; when the money is paid to him, he must make his report to the court and it is a matter of record, and the Illinois Steel Co. will know then that its obligation is fulfilled.

Another thing, we have an American consular service over there, and our experience has been that we can get more correct depositions through the American consul in foreign countries like yours than we can through the consuls of such foreign countries in this country. We have nothing against any of the consuls, but that is our experience.

Mr. ARIZA. That is a point I wanted to make clear, because you mentioned something about fees and costs of getting such depositions.

Mr. SCANLAN. We have no knowledge of any charge of that kind against a Mexican consul, but we have against some consuls from Europe.

Mr. ARIZA. As you are speaking about the Mexican consul, I thought you meant that.

Mr. SCANLAN. That was a case where the Mexican consul was involved. There are other States, I understand, that recognize the foreign consuls and let them file claims for compensation, let the employers pay directly to them, and let them distribute the money. Mexico is in the favored nation class, under a treaty, and we must recognize the Mexican consul. We recognized the public administrator, and in an appeal to our circuit court we were sustained. We let the parties thrash out the question there whether the treaty right gave the consul the right to supplant the public administrator.

Mr. ARIZA. That was a question of supplanting the public administrator, but if the consul had filed his claim previous to the court appointing the public administrator, in that case, under the national law, he would have the right.

Mr. SCANLAN. He did not.

Mr. ARIZA. During my time here, which is a little over a year, my consulate has handled over $16,000 of compensations paid to Mexican citizens through the industrial commission. In only one case have I been compelled to use an attorney; this case is still pending, and this attorney will get the fees decided by the industrial commission. I have got along with insurance companies and with industrial commissions, to the greatest satisfaction of my citizens, and I think our relationship has been really an example of good relations. Has it not, Mr. McShane?

Mr. MCSHANE. It has been very pleasant as far as the commission is concerned.

The CHAIRMAN. We all recognize that this question of how to handle the claim of foreign dependents is a troublesome one for any department. It would be interesting if we had time to continue the discussion further, but I think we ought to pass on to the next paper. Unless there is objection, I will put this motion.

Mr. INGRAM. I want to ask one more question. What reason is there why the claimant should have to pay for legal assistance to get his compensation award any more than he should have to pay for medical assistance? It seems to me that where the claimant exhausts all of the administrative procedure allowed by law, where he does all the things that are required to be done to present his case properly to the industrial commission, and then the industrial commission recommends or suggests that he needs an attorney, some provision should be made for paying those attorney fees, not by the claimant, but by the insurer.

It seems to me it is just as important to that man, from the compensation standpoint, to be able to secure legal assistance in order to get money that is coming to him as it is to secure medical assistance, and I think the association should go farther than we have gone this morning on the proposition of attorney's fees.

The CHAIRMAN. If we could always know in advance that it was a legitimate claim, why that would be another matter, but the trouble is that there is a dispute and it may finally be determined that he had no claim, and to say that in that case the public shall have presented his claim at public cost is another matter.

Mr. INGRAM. As a court allows costs if you have a meritorious case, in such a case I say he is entitled to attorney's fees as part of the presentation of that claim, but if he has not a meritorious case he should pay such fees himself, as he does now.

The CHAIRMAN. That is a matter for Utah to take care of itself.

[The motion that the report of the committee on legal aid be adopted was carried.]

ROUND-TABLE DISCUSSION OF ADMINISTRATIVE PROBLEMS

The CHAIRMAN. In the round-table discussion, the first matter is that of "Compensation liabilities in bankruptcy proceedings," to be discussed by Commissioner Duxbury of Minnesota.

COMPENSATION LIABILITIES IN BANKRUPTCY PROCEEDINGS

BY F. A. DUXBURY, COMMISSIONER MINNESOTA INDUSTRIAL COMMISSION

The situation with reference to my being assigned the discussion of compensation claims in bankruptcy proceedings arose from a circumstance that came to my attention in the State of Minnesota. Two different claims on awards of compensation, when our administration was vested in the court, had been presented in bankruptcy proceedings of the employer, and it was determined by the court in those proceedings that these claims were on the same basis as general claims against the bankrupt, having no priority.

You all know that the bankruptcy law provides for certain priorities, among which are wages in a limited amount and several other matters which you probably are familiar with. It did seem that that situation ought not to exist in the bankruptcy law, and I referred the matter to Mr. Stewart and to the present president of

this association, and suggested to them that some action be taken to correct what seemed to me to be a defect in the compensation law. The next thing I knew about it I was informed that I was to discuss the question here, and then I commenced to look the matter up so as to inform myself a little fuller.

The Federal bankruptcy law was passed in 1898, in a former century and at a time when such things as compensation claims as we know them now did not exist. The system of compensation liabilities was first adopted in this country about 1910, many of the laws being adopted in 1913 and subsequent years, so there can be no criticism of the original framers of the bankruptcy law that this matter was not taken care of in that law.

It might be explained that there was no immediate action taken to give priorities to compensation claims because they were regarded as not being much different from claims for damages for personal injury or any other claims arising out of court. But through the development of the social idea, we now regard these claims as having a peculiar sacredness, which is shown by the fact that in every State, I presume, such claims were made exempt from levy or any other proceeding by which they could be appropriated to the payment of debts. Efforts are made to get compensation commissions to violate that policy by allowing lump-sum settlements to pay certain debts, but, I am glad to say this is not very popular with commissioners generally.

In looking this matter up I found that the American Bar Association had been interesting itself for some little time in necessary amendments of the bankruptcy law and the bankruptcy proceedings. Its committee on trade and commerce law (I think that is the name of the standing committee) had the matter under consideration and made a report to the 1922 convention of the association held at Philadelphia. In the last Congress three separate bills were introduced in which a great variety of amendments were proposed, but none of these bills passed.

At that 1922 meeting the American Bar Association, because of the interest aroused, appointed a special committee on bankruptcy amendments and practices. That committee has been giving a great deal of time to consideration of the work. In the program for the annual meeting which occurs at Detroit next month there is an analysis of the proposed amendments in the three bills which were before the last Congress, showing where they touched upon the same subject matter, where they disagreed, and so on. The standing committee prepared that analysis. The special committee interested itself in a change in the general orders. Now the general orders in bankruptcy are promulgated by the Supreme Court of the United States. These orders had become rather out of date; experience had indicated where they did not work well, and the committee succeeded in getting the Supreme Court of the United States, after several conferences with the Chief Justice and other members of the court, to promulgate entirely new general orders in bankruptcy.

At the meeting which is to occur next month the committee is to report a proposed bill, including the various amendments which it approves, as suggested by these bills in the last Congress. One of these bills was sponsored by the Merchants' Association of New

York, another by the National Association of Credit Men, and another by the Commercial Law League of America, and all of them were reviewed by a committee of the Bar Association of New York.

In looking over this proposed bill which the committee submits for its report to the coming meeting of the American Bar Association, I found to my regret that this question which I have been called upon to discuss here seems never to have been brought to its attention. If the subject had been brought to the committee's attention I believe that it would have appeared in the section which provides for priorities, but there is a possibility that this might not have been done, because in my investigation into this subject I have come to the conclusion that it is not nearly so important as I had thought it was.

The reasons, some of which I will recite, may occur to you at once. The general provision of compensation laws requiring employers to insure or to show financial responsibility generally, of course, takes care of the payment of these claims, so that they do not have to be presented in case the employer becomes bankrupt. That is one reason. The provisions of some of our State laws and the exclusive State-fund system under which some States operate, furnish another reason why these claims do not ordinarily arise in bankruptcy proceedings. Another reason, which probably is not so important as it might seem on the first suggestion, is that the bankruptcy law itself provides, in the section on priority, second paragraph, as to the character of debts which shall have priority. You could hardly find any fault with the arrangement, because it is perfectly logical, being, first, the actual necessary costs of preserving the estate; second, the filing fees paid by creditors in involuntary cases; third, the costs of administration; fourth, wages due workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of the commencement of the proceedings, not exceeding $300; fifth, debts owing to any person who by the laws of the States or of the United States is entitled to priority.

That last clause covers a multitude of sins with reference to this situation, because I think in a large majority of the States, either in their compensation law, or their insolvency laws, or in some other way, these compensation claims are given a certain degree of priority. If the State gives them priority, they have priority under that last clause to which I have called your attention.

The State of Minnesota, at the last session of its legislature, amended its insolvency law. Of course the insolvency law is sort of a dead letter; as long as the bankruptcy law prevails, it is very seldom used, but after all it conforms to this condition in that it provides that compensation claims have priority, to which they are justly entitled. I have not made any investigation of the subject, because that is far enough to go, but I believe it is true that that situation exists quite generally.

Another proposition would arise if you attempted to amend this law so as to create a classification of priority for compensation claims. You might advance them a little bit from this fifth place, but you would land somewhere in the neighborhood of the fourth

place, which refers to wages. The more I investigate it the less important I think it is that any action be taken, although I realize that there are many instances where the laws with reference to securing claims have not been complied with. The whole liability is against the fellow who is a bad business man; that is, he is not systematic in his methods; there may be a larger number of that class of claims than I imagine, and it may be a proper subject for amendment to the Federal bankruptcy act.

Because of that state of mind in which I find myself after my limited investigation, I hope no very definite conclusions in relation to the matter, but I have prepared a resolution for your consideration, and, in the language of Abe Lincoln, you can vote it up or vote it down. If you vote it down, that will end this matter and there will be nothing further to do. This resolution simply determines whether it is the sentiment of this association that the law ought to be amended. If you vote it down, you will express your conclusion that the matter is not important enough to bother with, and that will end it. On the other hand, if you conclude it is important and the law ought to be amended, I have a resolution providing for the appointment of a committee. I took the liberty in that resolution to depart from precedent and make the president a member of that committee, because I think he would be quite competent, with two others to be selected by him, to take such action as may be necessary to bring about that result.

My own notion is that the proper thing to do would be to confer with this special committee on bankruptcy of the American Bar Association at its coming meeting and see if it can be induced to amend its proposed bill in that particular, because if it does, the work is pretty nearly done; its bill will go by. If you go before Congress with a separate bill for a matter of this kind upon which there are all these varying views which I have suggested to you, and a lot more, Congress may consider that it is a case of hunting sparrows with a cannon and forget all about it, so my own notion is that about the only possibility of getting the law amended, if you conclude it ought to be amended, is to cooperate with this committee which is doing a wonderful work in the amendment of the law.

If you vote the resolution down, I will bow to your wisdom. A habit which I have observed in legislative bodies, and I think it applies to all other bodies, is that it is always a little more courteous and easy to vote "aye" than "no." There is something about the fellow who votes "no" which we do not like, but it will not offend me if you vote "no" on this resolution. The resolution is as follows:

Whereas the Federal bankruptcy act does not by the provisions thereof give priority against the assets of the bankrupt for compensation claims and awards, for the reason that no such claims existed at the time said law was passed; and

Whereas this association believes that the peculiar character of that class of claims warrants that same be given priority over general creditors; now, therefore, be it

Resolved, That this association earnestly recommend that the Federal bankruptcy act be amended to give compensation claims that degree of priority which the nature of such claims may require.

DISCUSSION

[A motion was made and seconded that the resolution be adopted.]

The CHAIRMAN. It has been moved and seconded that this resolution offered by Senator Duxbury be adopted. Are you ready for the question?

Mr. STEWART. While I am inclined to agree that the cases of bankruptcy are so few that this is not a life and death matter in any sense, I do feel that this association ought to bring this compensation question, as well as all of our other problems, up before every committee of Congress and every legal association where it can be brought up, for the very purpose of letting people know that we are on earth. The encyclopedic ignorance shown by people who ought to know something about this association and its work is perfectly amazing. If for no other reason, I think the resolution should pass, and let the Detroit convention know that we live, move, and have our being, and that we want things along their line.

Mr. WILLIAMS. I am in favor of that resolution. I suggest that George E. Beers, of Connecticut, who is commissioner for the third district and has been for many years, always goes to those American Bar Association meetings; he is on some of their important committees, and is one of the three men appointed from Connecticut on the committee on uniformity of laws. It might be perfectly proper to call Mr. Beers's attention to this resolution and perhaps get some action that way.

Mr. SCANLAN. I think the resolution ought to be adopted, but it occurred to me that maybe it would not cover all the questions involved. For instance, in Illinois we have the right to require employers to satisfy the commissioner that they are either financially responsible or that they carry insurance in a reliable company.

Some of our mining companies have been in bad shape. One company down in southern Illinois had some difficulties with its insurance carriers and in the course of a couple of months it had two or three changes, and finally wound up without any insurance. The next move it made was to go into the Federal court and institute bankruptcy proceedings. Receivers were appointed and we were enjoined from conducting any hearings or entering any orders for the payment of any compensation.

It seems to me that under those circumstances, in addition to the bankruptcy amendment, the order of the court ought to be such that the receivers, pending the bankruptcy, would take care of these awards, because in the cases I have reference to there are widows who have nothing in the world but these weekly payments coming to them because of the death of their husbands. We have asked the attorney general of Illinois to intervene with the Federal court and set up those facts to try to get the order modified. I was wondering whether the resolution was broad enough to cover such cases.

Mr. DUXBURY. I do not think it quite covers that situation. That is another matter entirely.

Mr. SCANLAN. Except that it might by order of the court protect these compensation claims.

MR. DUXBURY. It might come in the general orders for bankruptcy which the United States Supreme Court has lately adopted.

Mr. KINGSTON. I wish to make one suggestion. It occurs to me that you would get further with the proposition before this committee in Detroit if you suggested some limitation to the amount of the preference.

MR. DUXBURY. My idea is that that is a detail we have not time to consider here; it is a matter that the committee which I propose to authorize the appointment of in the next resolution can be charged with. We want to give it entire authority to do the best it can. In this resolution, as I intimated, I made the president of this association a member of the committee, and he is to pick out the other members. I have so much respect for his wisdom and judgment that I think you will get a committee that can give better consideration to the matter of details than we can.

The CHAIRMAN. I suppose if the president of the association thinks there are other matters that ought to be considered by that committee, he will take the pains to call its attention to them.

[The resolution was adopted.]

Mr. DUXBURY. I think if I had not moved the adoption of the resolution I would have voted "no" myself, but it is all right, because I have serious doubt about whether or not it should be done. Mr. Stewart, with his usual persuasive arguments, convinced me that I was wrong again; that encyclopedic ignorance of which he speaks is a new one on me. The other resolution which I desire to offer is:

Resolved, further, That the president elected at the present meeting be authorized and directed to appoint a special committee, consisting of himself and two other members, to take such action as they may determine necessary to secure an amendment to the Federal bankruptcy act giving priority to claims and awards of compensation against a bankrupt estate.

Of course that leaves the details of it entirely to them. I move the adoption of this further resolution.

[The motion was seconded and carried.]

The CHAIRMAN. The next paper is by Mr. Williams on the question of "Neuroses from a compensation standpoint."

NEUROSES FROM A COMPENSATION STANDPOINT

BY F. M. WILLIAMS, CHAIRMAN CONNECTICUT BOARD OF COMPENSATION COMMISSIONERS

The subject assigned is so large that in the limits of such a paper as can properly be read here only the slightest outline can be attempted. Such slight value as this paper may have will be principally due to the footnotes giving authorities read. So many States make no provision in their acts for the various occupational neuroses that this subject will be passed over lightly. The neuroses with which we have to deal are for the greater part traumatic neuroses. By this term is intended "any deviation from the normal state of the nervous system caused by violence." We shall not consider those cases due solely to fright, when there is no immediate personal injury. It is doubtful whether in most of the States this type is a

compensable injury any more than it was a ground of action at common law.[1]

It is not essential for a compensable injury that it should leave such external signs as are perceptible to inspection. This is a matter involving questions of evidence only. The most common type is that where a comparatively slight trauma is followed by a disabling neurosis. This is especially liable to follow if there is fright attending the trauma. A typical case of this kind is Brewster *v.* Hemingway Silk Co., 2 Conn. Comp. Dec. 128–135. In this decision there are cited a very large number of authorities, both medical and legal. Prior to the general adoption of compensation statutes such conditions were not usually brought to public attention, certainly not litigated to a large extent, except in personal injury suits, brought for the most part by passengers who had been in railroad accidents, against the railroad.

From this circumstance arose the use of the phrase "railroad spine." This phrase was apt to be spoken with a sneer, and in the minds of many persons came to connote something like constructive fraud. Many fraudulent suits of this kind were no doubt brought. In many other cases of genuine injury symptoms were grossly exaggerated. Granting this, the fact remains that this terminology is unjust. Traumatic neurosis is just as genuine a condition as a broken bone.

In the 1910 edition of Keen's Surgery, written before the existence of any general compensation system in this country, is found the following: "Surgeons should be cautioned against too hastily deciding that a given patient is a malingerer. The time has long since passed when the reality of genuineness of the symptoms met with in the traumatic neurosis can be questioned. Everyone knows that cases constantly occur independently of litigation." [2]

It may be granted that a disabling traumatic neurosis is more apt to occur, and is more serious in its consequences, in a person somewhat below normal prior to the trauma. This while true is not from a legal standpoint important. It has become elementary law that an employer takes his employee as he finds him.[3]

When the Brewster case above cited came before me in 1916, I had very little help from reported decisions. In 1918 when I next had occasion to go somewhat carefully into the matter,[4] authorities were more plentiful.

The Supreme Court of Massachusetts had held in substance that if one who had sustained a trauma accompanied by shock and fright (the man was in a falling elevator) was physiologically able to work, but by reason of a neurosis due to the injury was possessed of an honest belief that he could not work, his condition was compensable.[5]

Still more illuminating is a decision of the British Court of Appeal rendered in 1916, but owing to war conditions not accessible in America until much later.[6] In this case it was for the first

[1] Mitchell *v.* Rochester Ry. Co., 151 N. Y. 107, opinion, 110; Spade *v.* R. R., 168 Mass. 285, opinion, 290.
[2] Keen's Surgery, 1910 ed., vol. 2, p. 781; see vol. 6 (1913 ed.), p. 255.
[3] Clover, Clayton & Co. *v.* Hughes, 3 B. W. C. C. 275; Crowley's case, 223 Mass. 288; Bongialatte *v.* Lines, 97 Conn. 548.
[4] Smith *v.* Smith, 2 Conn. Comp. Dec. 628.
[5] William Diaz's case, 217 Mass. 36.
[6] Southampton Gas Light & Coke Co. *v.* Stride, 9 B. W. C. C. 555.

time, so far as I know, definitely set forth by a court of high authority that the gravamen of a neurosis consisted in a definite impairment of the victim's will power. It was not so much a question of what the patient could physically do if he made proper effort to work as it was whether, by reason of the neurosis, he was disabled from making such an effort.

A compensation tribunal must of necessity be constantly watchful against making an award in favor of a malingerer. Those interested in studying this aspect of the problem will be entertained by reading a monograph entitled "Hysteria and accident compensation," by the famous Doctor Dercum, published in 1916. My own experience, extending over nearly 12 years of this work, is that the genuine malingerer is comparatively rare, and the troublesome cases are those with some genuine neurosis mingled with a considerable tendency to exaggerate. In this class of cases a proper and reasonable lump-sum settlement is probably the most valuable therapeutic agent.

Probably all the States recognize insanity due to an injury as one of the gravest consequences possible, and often the question of when a neurosis ends and a psychosis begins is difficult, if not impossible, to decide. No attempt is here made to go into this question.

In dealing with disputed questions where the issue is as to whether in a given case the claimant's alleged neurosis is a ground for an award it is most important from a legal standpoint to bear in mind the distinction between "proximate cause" and result, insisted on as an essential in a common-law action of negligence or a suit on an accident policy, and "causal connection," which is a sufficient basis for a compensation award.[7]

Some practical considerations of importance which should be borne in mind in our trial work are these: So far as possible, keep the claimant out of the trial room while his symptoms are being discussed by expert witnesses. In case of bone injuries followed by neurosis do not encourage him to examine radiographs of his own body. If possible, do not let him see them. Study the patient's home surroundings, and if his neurosis is being aggravated by somebody, either accidentally or purposely, get him, if possible, into a different atmosphere.

A partial list of authorities referred to is here annexed: Oschner's Surgical Diagnosis and Treatment, vol. 3, p. 982; vol. 4, p. 885; Frazier on Surgery of the Spine and Spinal Cord, 374 et seq.; Mott on War Neurosis and Shell Shock, 188 et seq.; Barker's Monographic Medicine, vol. 4, pp. 595–596; Brackett, E. J., M. D., on Low Back Strain with Reference to Industrial Accidents, Boston [1924?] (reprint of paper read by the author before the orthopedic section of the American Medical Association, at its meeting in Chicago in June, 1924. No attempt is made to make the citation of either legal or medical authorities complete).

The CHAIRMAN. We will pass to the next paper, "Supervision of compensation payments," by Dr. Andrew F. McBride.

[7] Aquilano *v.* Lambo, 1 Conn. Comp. Dec. 145; Harle's case, 217 Mass., opinion, 224; Fenton *v.* Thorley, 5. W. C. C. 1; McNichol's case, 215 Mass. 497, opinion of Rugg, C. J., 499; Clover, Clayton & Co. *v.* Hughes, 3 B. W. C. C. 275.

SUPERVISION OF COMPENSATION SETTLEMENTS

BY ANDREW F. M'BRIDE, M. D., COMMISSIONER, NEW JERSEY DEPARTMENT OF LABOR

In 1910 the Legislature of New Jersey created the employer's liability commission for the purpose of drafting a workmen's compensation law. The commission was composed of two legislators, two business men, and two representatives of labor. The bill prepared by this commission was enacted in 1911, and the commission was continued in office and charged with the duty of observing the workings of the law. The present secretary of our compensation bureau was appointed its secretary, and has been in a position to observe the operation of the law since 1911, nearly 14 years.

From 1911 to 1916, a period of five years, there was no official administration of the act, except in rare and important cases, when suit was actually brought in the common pleas court. An act of the legislature required employers and insurance carriers to report to the commissioner of labor all compensative accidents and the compensation settlement. These reports were, by law, accessible to the employer's liability commission, whose clerical force made a study of all such reports with regard to nature of injury, length of disability, rate of wages, and compensation paid.

Five years' experience, as disclosed by this means, demonstrated beyond question that active supervision of the administration of the law was imperative. Compulsory insurance was not in effect in New Jersey at that time, and it was found that, owing to inexperience in interpreting the terms of the law, employers were constantly making mistakes, and the absence of any checking of the activities of carriers left them free to make agreements as inadequate as they could work out.

The employer's liability commission, therefore, advocated the creation of a bureau to supervise adjustments and to certify to the common pleas court such cases as could not, by informal means, be brought to a just conclusion. At the instigation of the commission there was enacted in 1916 a law creating the workmen's compensation aid bureau. This bureau undertook to administer the law, without, however, having judicial powers.

Two years' experience under this act was sufficient to demonstrate that a system requiring joint action on the part of the bureau and the common pleas court, in order to compel obedience to findings, was incapable of giving the best results. Consequently, in 1918 the compensation bureau was given original jurisdiction of all compensation matters, endowed with judicial powers, and its findings were placed on a par with the decisions of the common pleas court. These courts were relieved of all jurisdiction except in case of appeal as provided by law.

It will be seen, therefore, that New Jersey, through having one official associated with this subject throughout its entire history, has been in a position to observe and compare the workings of the act during the three stages of its development, as described heretofore.

Our views, therefore, of what constitutes successful supervision of compensation settlements are based on very complete actual experience, and the methods in use in New Jersey are the result of a gradual development along lines dictated by such actual experience.

The following explanation of supervision of compensation settlements as accomplished in New Jersey is presented with the assurance that it is not a theory which is being advanced, but a system which has developed gradually as time and experience dictated.

The supervision of a compensation settlement in New Jersey ordinarily has its inception upon the receipt of the first report of the accident by the employer to the compensation bureau of the department of labor. Our method requires the employer to prepare a duplicate first report, one to be sent to the bureau, the other to the carrier. A supplemental report is sent in like manner at the expiration of the waiting period, or earlier if the employee resumes work. This enables the bureau to start its checking up on the case. Next follows a report by the carrier of the cause of the accident and the preliminary estimate of injury. If this report is not received within a specified time, an investigator of the bureau calls on the carrier. When received, the case is card indexed by a visible system, given a number, and then assigned to one of the examiners, whose duty it is to enter the number in a follow-up book and keep the record active until the case is finally closed. The carrier next files an agreement for compensation, which also contains a wage statement. At the close of the period of temporary disability the carrier files a final statement, giving all the facts relative to temporary disability, nature of permanent injury, and compensation paid and payable. These are carefully reviewed and calculated and an approval sent the employee and employer if no error is detected. This approval states the amount of compensation the injured employee should receive per week ,the number of weeks, and the total, and accompanying it is a list of the offices maintained by the State in the different cities, with the suggestion that if there be any question about his compensation he call at one of the offices listed.

If, upon reviewing the form above mentioned, error is discovered, we correct it by correspondence or refer the case to the office in the territory concerned. At this office the case is listed for an informal hearing, and notices as to time and place are sent the injured and the carrier.

In the larger cities of New Jersey offices are maintained which are open each day of the week. An official visits the smaller cities once a week or once in two weeks, while some of the rural towns are visited but once a month. The dates of these visits are published and sent to each injured man. When a man presents himself with some complaint his case is docketed and the notices issued for an informal hearing. At this hearing, or prior thereto, the injured person is examined by the bureau's physician and the carrier's representative is present, also such witnesses and records or other medical testimony as may be obtainable. The case is then fully discussed and an award or dismissal issued. These awards are informal and do not have the same standing as an award issued after due process of law; nevertheless, in about 95 per cent of the cases heard a just settlement is reached, and a formal trial becomes unnecessary.

When the above-described informal methods do not avail, legal procedure must be followed by the filing of a petition, the service of same, followed by due notice of hearing, and trial. An award so reached can be filed in the common pleas court as a judgment. In-

formal hearings are conducted by referees or assistant referees. Formal trials are conducted by deputy commissioners.

It has not been our judgment, nor has our experience indicated, that it is necessary for every injured man to attend a hearing. The majority of cases are not serious, either as to lost time or permanent injury, and a wholesale ordering of every man to a hearing must result in a useless waste of time and loss of wage in about 50 per cent of the cases. In New Jersey we deem it sufficient if we notify every injured man of a place and time where he can present his case.

The results of each informal hearing are reported to the main office at the capitol and are used as a check on the final report filed by the carrier.

It may be mentioned in passing that the surgeons who assist the referees at the hearings are connected with the rehabilitation commission, and one element of their work is to refer to the rehabilitation clinics any cases which seem to indicate further treatment.

Recapitulating briefly, our experience leads us to conclude that supervision of compensation settlements involves the following principal elements:

Supervision by the State is absolutely essential.

Early knowledge of accidents by the bureau.

Prompt information to injured person as to location of our offices.

Division of the State into territories.

Establishment of a unit of the bureau in each territory, each unit to consist of a referee, a doctor, an investigator, and such clerical force as may be necessary to docket cases, issue notices, act as secretary at hearings, handle correspondence, etc.

Reports as follows: Immediate report by employer to State and carrier. Supplemental report at end of waiting period. First report by carrier of cause and result of accident. Second report consisting of agreement to pay and to receive compensation with statement of wage and compensation rate. Third report of full terms of settlement, covering temporary disability and permanent injury and nature of same.

Expert examiners for checking all reports with statute.

A strict and efficient follow-up system.

Notice to every injured person of amount payable.

Facilities for conducting informal and formal hearings.

Capable officials, preferably attorneys.

Sufficient appropriation of funds to make all of the foregoing possible.

BUSINESS MEETING

CHAIRMAN, FREDERIC M. WILLIAMS, NEW PRESIDENT I. A. I. A. B. C.

The CHAIRMAN. The first is the report of the committee on resolutions.

REPORT OF COMMITTEE ON RESOLUTIONS

RESOLUTIONS

Resolved, That we do hereby express our grateful appreciation of the many privileges and courtesies that the association and individual members thereof have enjoyed at this twelfth annual meeting of the International Association of

Industrial Accident Boards and Commissions held at Salt Lake City, Utah, August 17 to 20, 1925.

Resolved, further, That the thanks of this association be extended to his Excellency, the Hon. George H. Dern, Governor of the State of Utah, to the Mayor of Salt Lake City, the Hon. C. Clarence Neslen, to the Industrial Commission of Utah, and to the many other citizens of said convention city and State who have had part in providing for our welfare, instruction, and entertainment, and especially to the several members of the medical profession who contributed the unusually able and practical papers to the literature of this association. [Adopted.]

Whereas, it is reported that certain universities have and now are engaged in research work relating to the results of compensation laws and the administration thereof; and

Whereas we believe that such work may be of value to our members and helpful in the work in which this association is engaged if it be wisely directed and efficiently done: Therefore, be it

Resolved, That a committee be appointed by the president elected at this convention, to consist of such number as he may determine, to consider and adopt suggestive lines, subjects, and methods of such research work, and to use its good offices in cooperating with those engaged in or about to undertake such research work, to the end that the same may be wisely directed and correspondingly valuable for practical purposes. [Adopted.]

Resolved, That Bulletin of the United States Bureau of Labor Statistics No. 385 be, and the same is hereby, approved as the record of the proceedings of the eleventh annual convention of the association held at Halifax, Nova Scotia, August 26–28, 1924. [Adopted.]

RECOMMENDATIONS

Whereas the matter of the practice heretofore prevailing in this association of advancing the vice president to the position of president, as well as the practice of holding the annual conventions in the State where the president resides, has been presented to the committee on resolutions by a resolution for its consideration, and the committee having given the matter due consideration: Now, therefore,

The committee has concluded that while it is convinced that the matter is one that the association at any convention has the right to determine as the circumstances may seem to require, yet, we recommend that the present convention take no express action in relation to the subject matter, either approving or disapproving the practice, and that the association at all future conventions be left entirely free to take such action as the circumstances and existing conditions may seem to require. [Adopted.]

The committee on resolutions, to whom was referred the resolution offered by R, E. Wenzel, commissioner Workmen's Compensation Bureau of North Dakota, in connection with his paper on "Preexisting Diseases," which resolution is as follows, to wit—

Whereas it is one of the aims of the International Association of Industrial Accident Boards and Commissions to bring about equity and uniformity in the adminstration of workmen's compensation legislation; and

Whereas it is the opinion of the representatives of the International Association of Industrial Accident Boards and Commissions from the Provinces of the Dominion of Canada and States of the United States, assembled at this, the twelfth annual meeting of said association, held in this year 1925 in the city of Salt Lake City, Utah, that equitable administration of such workmen's compensation legislation will be furthered by and through the uniform adop-

tion and adaptation of the following basis for the handling of preexisting disease cases arising in the course of industrial employment, to wit:

That, in case of aggravation of any disease existing prior to such injury, the compensation shall be allowed only for such proportion of the disability due to the aggravation of such prior disease as may reasonably be attributable to the injury; and

Whereas it is the further opinion of such representatives that it may reasonably be expected that definite and proper expression and publication of such opinion will hasten the uniform adoption and adaptation of such basis for the handling of preexisting disease cases; now, therefore, be it

Resolved, That the various industrial accident boards and commissions of the Provinces of Canada and the States of the United States be, and they hereby are, urged to accept, adopt, and adapt the foregoing basis in the handling of preexisting disease cases; that the same be done as speedily as possible through the adoption and publication of rules by such bureaus or commissions, wherever they possess the power; and that, wherever such power is not now possessed, such bureaus, boards, or commissions sponsor the necessary legislative amendments to make this resolution effective; be it further

Resolved, That due and proper publicity be given the passage of this resolution.

reports that, in the opinion of your committee, the question of whether or not any action should be taken by this association on the subject matter of said paper and resolution, as well as what such action should be taken, if any, are matters of too much importance and depend for wise action upon fuller information and deliberation than is available to your committee, or in the opinion of your committee, is obtainable at this convention of the association; now, therefore,

Your committee recommends that the said resolution and paper offered by Mr. R. E. Wenzel, together with this report, be referred to a special committee of five members to be appointed by the president elected at this convention, to consider the subject matter and the provisions of compensation laws relating thereto, as well as the state of the law generally on the subject, with such recommendations for the action of this association on the subject as the committee may determine, to be submitted to the next convention of the association. [Adopted.]

With reference to the resolution brought before your committee by Mr. Ethelbert Stewart of the United States Bureau of Labor Statistics, as follows—

Resolved, That the committee on statistics and compensation insurance cost be and is hereby instructed to investigate and report at the next convention on administrative costs.

That the committee shall take into consideration the question of what items and elements of expense shall enter into such costs as has been brought out in the discussion of this general subject in the Salt Lake City convention. But the committee need not be confined or restricted in its study by such discussion.

That the committee's report indicate just what items have been covered in its investigation, and it shall report five ways—

1. By total number of accident cases reported.
2. By total number of compensable cases reported, whether compensation was in fact granted or not.
3. By number of compensated cases.
4. By number of cases really investigated, whether compensated or not, wherever such information can be made available; and
5. By percentage of money compensation actually paid.

your committee reports that the matter has had consideration and the committee has concluded that the subject matter is one that can best be determined by the standing committee on statistics and compensation insurance costs, both as to the question of whether the matter is one that is important enough to justify the action suggested as well as the form and method of such work, and we recommend that the whole matter be referred to the committee on statistics and

compensation insurance costs for such action, if any, as that committee may determine. [Adopted.]

[A rising vote of thanks was given R. G. Lucas, as chairman of the entertainment committee for the convention.

The customary honorarium of the secretary-treasurer and of the clerical and stenographic help for the secretary's office was authorized.]

The CHAIRMAN. Is there any further business?

Mr. MONROE. It appears to me that it might be a good idea that a committee be formed to look into the question of attendance and membership at these conventions. There are a lot of States where there is no special appropriation covering traveling expenses. I believe their commissioners would like to come, but they have not been provided with the funds. I would like to see what everybody thinks about it—say appoint a committee of three members known as the membership and attendance committee. I may be out of order in making that suggestion, but I would like to see what you think about it.

[Mr. Monroe put his suggestion in the form of a motion, which was seconded, and the following discussion thereon was had:]

Mr. WILCOX. I think Mr. Stewart carries on correspondence from the beginning of the year until the end, from one convention to another, with all these States, trying to prevail upon them to have representation at these gatherings. What do you think, Mr. Stewart? Is there any advantage in a committee handling it?

Mr. STEWART. I do not think there is. I do think, however, it might help if this association, by some motion or resolution, would express its regret and concern that so many States have cut out the appropriations that the commissions used to have for such purposes. For instance, it is not the legislature in the case of Michigan, and I do not know that it has been the legislature in any case, but some board or other has cut out the expense fund of the Michigan commission, the Oregon commission, and the Washington commission.

There is no trouble in getting the commissioners to agree to come—that is not the problem at all—it is this new trick of putting the power to expend the money in some other commission, and after the commissioner plans to come and everything else, he finds himself forbidden to do so. If this convention could hit that somehow, it might be helpful. As to having a publicity committee to try to round up these fellows, why we do that 365 days of the year, and so I do not think that would be necessary; but I do think we ought to express our opinion on this stinginess which prevents the compensation men from coming here, where they get as much for the money spent as the State does for any other money that it spends.

Mr. CLARK. Might I suggest, following Mr. Stewart's remarks, that the best one to whom this association could go would be the governor of the State. The board that Mr. Stewart talks about (I suppose it is the same in all States) is known as the board of control. It is the board that is left over from the legislative sessions, in many places called the emergency board, which has the power to make appropriations out of the general fund of the State for extraordinary expenses or for unforeseen expenses which were not

put in the State budget. We have that committee in our State, and it took it until about 48 hours before the train left to decide whether Ohio should be represented here.

The governor, the auditor of State, the treasurer of State, the attorney general, and two other members appointed by the legislature constitute that committee. It seems to me that the governor would be the person to whom to go. I do not think you can reach it any other way than through your governors.

Mr. GLEASON. This is one of the times that Massachusetts agrees with Ohio. I think it is a good idea, and that if Mr. Stewart will write to the governors of the States a month or two before the convention is held, stating what we do at these conventions, it will help a great deal. We have in our State a committee on administration, and every request for travel outside of the State has to go to that committee; at the same time a letter goes to the governor, and if that committee approves it, the governor O. K's it. In my particular case, the committee tried to block the governor, but he finally approved the expenses of my coming out here. I believe it would help a great deal if Mr. Stewart would take it up with the governors of the States.

The CHAIRMAN. In Connecticut we have to go to the governor and obtain his approval in advance. I wonder if Mr. Monroe would accept as a substitute for his motion something like this:

Resolved, That it is the sense of this association that the various States in the Union having workmen's compensation laws would receive benefit by being represented at each meeting of this association; and be it further

Resolved, That the secretary of this association is requested prior to the next meeting to communicate with the governor or other proper authorities in each State having a compensation law, with a view to urging upon them the feeling of this association.

Is that acceptable to you, Mr. Monroe?

Mr. MONROE. Yes, sir. Might I also suggest, Mr. Williams, that we do not confine ourselves to compensation laws, because I believe there are certain individuals in the noncompensation States who would be just as much interested.

The CHAIRMAN. Those States would not pay their expenses to come.

Mr. MONROE. In that event it is acceptable.

Mr. WILCOX. It ought to apply to the Provinces.

Mr. KINGSTON. That would not apply to the Provinces.

The CHAIRMAN. Any member who does not want Mr. Stewart to write such a letter can tell him so.

Mr. STEWART. As a matter of fact, I know about which commissions can handle that matter. Oklahoma, for instance, has written into the law a provision for a fund to attend these conventions. Certain States do not want me to butt in, but when they have wanted me to do so, I have written to the governors. I have a file of letters written to the governors which we will have to burn to get space for the next file. Last year the question came up in Ohio, and I not only wrote to the governor but also got the Secretary of Labor to write to the governor; he said, "We will get those fellows there if I have to get the President to write to the governor."

Now I can not do any more than I am doing. It is simply a question as to whether a motion or resolution from this association will tend to make these boards of control let that expense go through. I think the first part of the president's resolution probably will do just as much good as anything that can be done.

The CHAIRMAN. You write up as much as you approve of.

Mrs. ROBLIN. Before my associate's and my term was about to expire, we went before the legislature and had written in the compensation law a section that we should meet with this association; in fact, the legislature made it mandatory that we do meet. We felt free in doing that because it appeared that it would not serve our own interests particularly. We went in the interest of those who would follow us, not knowing at that time that either one of us would be reappointed, so that was written into the law, and being now a specific provision of our law, it is not hard to get an appropriation.

The CHAIRMAN. If Mr. Monroe will accept as much of my suggestion as Mr. Stewart approves as a substitute for his motion, that is the question before the house.

Mr. MONROE. I am agreeable.

[The motion was carried.

A rising vote of thanks was given to the retiring president, O. F. McShane, and to Nephi L. Morris and William M. Knerr, members of the Utah Industrial Commission for the personal attention they had given to the comforts and desires of the delegates and the visitors to this convention.

The auditing committee reported that the financial statement of the secretary-treasurer is true and correct, and the report was adopted. The report of the medical committee as to the action the association should take on Doctor Black's report was called for but not given, the time being limited. Meeting adjourned.]

APPENDIXES

APPENDIX A.—OFFICERS AND MEMBERS OF COMMITTEES FOR 1925–26

President, Frederic M. Williams, chairman Connecticut Board of Compensation Commissioners.
Vice president, H. M. Stanley, chairman Georgia Industrial Commission.
Secretary-treasurer, Ethelbert Stewart, United States Commissioner of Labor Statistics.

Executive Committee

Frederic M. Williams, Connecticut Board of Compensation Commissioners.
H. M. Stanley, Georgia Industrial Commission.
Ethelbert Stewart, United States Commissioner of Labor Statistics.
O. F. McShane, Utah Industrial Commission.
Fred W. Armstrong, Nova Scotia Workmen's Compensation Board.
James A. Hamilton, New York Department of Labor.
Mrs. F. L. Roblin, Oklahoma Industrial Commission.
Ralph Young, Iowa Workmen's Compensation Service.
W. H. Horner, Pennsylvania Department of Labor and Industry.

Committee on Statistics and Compensation Insurance Cost

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.
William J. Maguire, 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.
E. K. Erwin, 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.
C. E. Gleason, Massachusetts Department of Industrial Accidents.
Charles H. Verrill, United States Employees' Compensation Commission.

Medical Committee

Chairman, James J. Donohue, M. D., Connecticut Board of Compensation Commissioners.
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.
Andrew F. McBride, M. D., New Jersey Department of Labor.
M. D. Morrison, M. D., Nova Scotia Workmen's Conpensation Board.
F. H. Thompson, M. D., Oregon State Industrial Accident Commission.
Maurice Kahn, M. D., California.
Charles J. Rowan, M. D., Iowa.
Ralph T. Richards, Utah.

Safety Committee

Chairman, John Roach, New Jersey Department of Labor.
Lucian W. Chaney, United States Bureau of Labor Statistics.
Thomas P. Kearns, Ohio Department of Industrial Relations.
R. McA. Keown, Wisconsin Industrial Commission.
James L. Gernon, New York Department of Labor.

Committee on Investigation of Results of Compensation Awards

Chairman, Ethelbert Stewart, United States Commissioner of Labor Statistics.
Secretary, W. H. Horner, Pennsylvania Department of Labor and Industry.
Miss R. O. Harrison, Maryland State Industrial Accident Commission.
T. J. Duffy, Ohio Department of Industrial Relations.
R. E. Grandfield, Massachusetts Department of Industrial Accidents.

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 com-

mittee 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 TWELFTH ANNUAL MEETING OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS, HELD AT SALT LAKE CITY, UTAH, AUGUST 17–20, 1925

CANADA

Ontario

George A. Kingston, commissioner Workmen's Compensation Board.

MEXICO

Carlos V. Ariza, Consul of Mexico.

UNITED STATES

Alabama

Walter H. Monroe, compensation clerk Bureau of Insurance.

California

John A. McGilvray, chairman Industrial Accident Commission.

Connecticut

James J. Donohue, M. D., member Board of Compensation Commissioners.
L. E. Evens, M. D.
F. M. Williams, chairman Board of Compensation Commissioners.

Georgia

R. C. Norman, commissioner Industrial Commission.

Idaho

Joel Brown, chairman Industrial Accident Board.
John D. Case, secretary Industrial Accident Board.
W. D. Yager, manager State Insurance Fund.

Illinois

George B. Arnold, director Department of Labor.
William M. Scanlan, chairman Industrial Commission.

Indiana

D. H. Bynum, chairman Industrial Board.

Iowa

Ralph Young, deputy commissioner Workmen's Compensation Service.

Kansas

Alice K. McFarland, director women's work, Public Service Commission.
Frank O'Brien, commissioner Public Service Commission.
Mrs. F. O'Brien.

Maryland

Robert P. Bay, M. D., chief medical examiner State Industrial Accident Commission.
A. E. Brown, secretary State Industrial Accident Commission.

George Louis Eppler, commissioner State Industrial Accident Commission.
Rowena O. Harrison, director of claims State Industrial Accident Commission.

Massachusetts

Chester E. Gleason, member Department of Industrial Accidents.
Mrs. C. E. Gleason.
Ethel M. Johnson, assistant commissioner, Department of Labor.

Michigan

Morton K. Averill, assistant to vice president, Dodge Brothers, Detroit.

Minnesota

F. A. Duxbury, member Industrial Commission.
Henry McColl, chairman Industrial Commission.
Ora E. Reaves, claims manager M. A. Hanna Co., Duluth.
Louise E. Schutz, superintendent Division of Women and Children, Industrial Commission.

Nevada

Frank W. Ingram, labor commissioner.
John M. Gray, commissioner Industrial Commission.
E. Ryan, Ely.

New Jersey

Andrew F. McBride, M. D., commissioner Department of Labor.

New York

L. W. Hatch, director Bureau of Statistics and Information, Department of Labor.
Mrs. L. W. Hatch.
William Leslie, general manager National Council on Compensation Insurance.

North Dakota

R. E. Wenzel, commissioner Workmen's Compensation Bureau.

Ohio

J. D. Clark, commissioner Industrial Commission.
H. R. Witter, director Department of Industrial Relations.
Mrs. H. R. Witter.

Oklahoma

Mrs. Carl Jones, claim examiner Oklahoma Industrial Commission.
H. C. Myers, commissioner Industrial Commission.
Mrs. Faye L. Roblin, chairman Industrial Commission.

Pennsylvania

W. H. Horner, director Bureau of Workmen's Compensation.
Richard H. Lansburgh, secretary of labor and industry.
Mrs. Richard H. Lansburgh.
T. Henry Walnut, chairman Workmen's Compensation Board.

Rhode Island

Christopher M. Dunn, deputy commissioner of labor.
Mrs. Christopher M. Dunn.

Utah

D. K. Allen, M. D., Salt Lake County Medical Service.
Charles A. Caine, manager State Insurance Fund.
A. W. Christensen, safety engineer Columbia Steel Corporation.
Mrs. A. W. Christensen.
J. F. Coombs, director safety and labor American Smelting & Refining Co.
John Crawford, coal mine inspector Industrial Commission.
Elias L. Day.

George H. Dern, Governor of Utah.
Irene M. Fowler, labor inspector Industrial Commission.
J. G. Hadley, employment director Utah Copper Co.
E. D. Hammond, M. D., doctors' committee Industrial Commission.
T. A. Heringer, factory inspector Industrial Commission.
E. A. Hodges, mine inspector Industrial Commission.
N. E. Everson, claim adjuster.
William M. Knerr, commissioner Industrial Commission.
Mrs. William M. Knerr.
J. C. Landenberger, M. D.
F. L. Leech, Industrial Relations Department.
R. G. Lucas, attorney Utah Copper Co.
O. F. McShane, chairman Industrial Commission.
Mrs. O. F. McShane.
Nephi L. Morris, commissioner Industrial Commission.
Mrs. Nephi L. Morris.
Arthur L. Murray, M. D., surgeon United States Bureau of Mines.
Carroll E. Nelson, claims adjuster Ocean Accident & Guarantee Corporation.
C. Clarence Neslen, Mayor of Salt Lake City.
Ralph C. Pendleton, M. D., Utah State Medical Association.
Robert B. Porter, general attorney Oregon Short Line Railroad Co.
Ralph T. Richards, Salt Lake Clinic.
Carolyn I. Smith, secretary Industrial Commission.
George A. Smith, representative Utah Idaho Sugar Co.
John Taylor, coal mine inspector Industrial Commission.
Jos. E. Tyree, M. D., Salt Lake Clinic.
G. R. Yearsley, safety engineer State Insurance Fund, Industrial Commission.

Wisconsin

Maud Swett, director Women's Department, Industrial Commission.
L. A. Tarrell, member Industrial Commission.
Fred M. Wilcox, chairman Industrial Commission.
Mrs. F. M. Wilcox.

District of Columbia

Charles E. Baldwin, assistant commissioner United States Bureau of Labor Statistics.
Lucian W. Chaney, economist United States Bureau of Labor Statistics.
Leifur Magnusson, American correspondent International Labor Office.
Agnes L. Peterson, assistant director Woman's Bureau, United States Department of Labor.
Ethelbert Stewart, United States Commissioner of Labor Statistics.