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

**BULLETIN OF THE UNITED STATES }
BUREAU OF LABOR STATISTICS } No. 432**

WORKMEN'S INSURANCE AND COMPENSATION SERIES

PROCEEDINGS OF THE THIRTEENTH ANNUAL MEETING
OF THE
INTERNATIONAL ASSOCIATION OF INDUSTRIAL
ACCIDENT BOARDS AND COMMISSIONS

HELD AT HARTFORD, CONN.
SEPTEMBER 14-17, 1926



FEBRUARY, 1926

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1927

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.
13	Sept. 14-17, 1926	Hartford, Conn	F. M. Williams	Do.

¹ Special meeting.

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TUESDAY, SEPTEMBER 14—MORNING SESSION

CHAIRMAN, FREDERIC M. WILLIAMS, PRESIDENT I. A. I. A. B. C.

The thirteenth annual meeting of the International Association of Industrial Accident Boards and Commissions was called to order by its president, Mr. Frederic M. Williams. Hon. John H. Trumbull, governor of Connecticut, and Hon. Norman C. Stevens, mayor of the city of Hartford, delivered addresses of welcome, to which response was made by H. M. Stanley, of the Industrial Commission of Georgia. President Williams then delivered the following address:

ADDRESS OF THE PRESIDENT

BY FREDERIC M. WILLIAMS, PRESIDENT I. A. I. A. B. C.

After the official welcome to this ancient capital city to which you have listened, it is perhaps superfluous to add any word of welcome from your president. It is, however, impossible for me to refrain from expressing my personal gratification at your presence.

A meeting of this association, at which I was unable to be present, was held some years ago in Boston, but it was at a time when the organization was decidedly in a condition of adolescence. With the exception of this meeting in Boston, the society has had no meetings in New England and none in the group of States where I am most acquainted. The first session which I was privileged to attend was in Washington; since then I have attended meetings at Madison, Wis., at Baltimore, at St. Paul, at Halifax, and at Salt Lake City. Through your courtesy I have prepared papers which were read at meetings where I was unable to be present, notably at San Francisco. I was also unable to be at Chicago or Toronto.

The meetings of this society which I have attended have all involved journeys of considerable length and have taken me into surroundings with which I was unfamiliar, into territories as to which I had no knowledge except from reading, and among people

whose ways of thought, whose background, and general ideals I knew nothing of, and at times among people whose ways of thought I had misunderstood and whose ideals I had misapprehended.

For a person like myself, of Connecticut ancestry, receiving my professional education in New Haven at Yale, and having the limitations and perhaps the prejudices natural to such an environment, it would at first blush have seemed more agreeable, as well as more economical, to have made trips to New York, Boston, or other New England cities where I would have come in contact with people with the same outlook upon life which I had myself, and I confess to having formerly felt a certain amount of irritation at being obliged, in order to attend the meetings of this association, to journey to those distant points and to have the expense of the trip deducted from my regular appropriation.

Upon more mature reflection, however, and after keeping track of the activities of this organization for several years, I have reached the conclusion that the main benefit to me of my membership therein has been exactly those features which had formerly seemed the most unpleasant. If we all thought alike there would be no use in having a conference. In Washington, for example, I first saw and heard the late Samuel Gompers and never again did I entertain just the same feelings for him and for the organization of which he was long a chief as I had entertained prior to that time. When he took the platform he seemed like a lion at bay, and while disagreeing with many things that he said and did, I was always thereafter impressed by the fact that he was a man of tremendous force and acted, according to his viewpoint, as a good American citizen; that he stood like a castle wall of medieval times against the inroads of socialism and communism. At Baltimore I came in contact, not only with the peculiar culture of the southern border as represented by that sterling gentleman, Robert E. Lee, but also with representatives of the more distinctly southern type as personified by our old friend Captain McHugh, then chairman of the Virginia commission, but by birth a representative of the early Catholic aristocracy of Charleston, S. C.—a man who, not only in his own personality, but also as a representative of his church, was firmly opposed to those same elements of socialism and communism which now are and for some time have been the greatest menace to the future prosperity of America.

I have spoken thus freely of the dead; perhaps the proprieties forbid that I should mention the impressions made upon me by the personalities and environment of F. M. Wilcox, of Wisconsin; F. A. Duxbury, of Minnesota; F. W. Armstrong, of Nova Scotia; O. F. McShane, of Utah, and many others regularly at our meetings. It is, however, entirely within the bounds of propriety to say that each one of these gentlemen has in his own way caused me to become genuinely fond of him, and each one has given me a different viewpoint of the ideals of his own community and the problems which that community has to confront.

So that upon the whole I conclude that in the last analysis the main benefit of this association is the opportunity which it gives for close personal friendship and affection between men having in the main the same problems to solve and working along the same lines.

No one of us knows so much but that he can learn from the other fellow. This to my mind is of infinitely more importance than any effort to adopt a uniform compensation law for all our several jurisdictions. I do not believe that this is practical or that if practical it would be desirable. For example, our district system in Connecticut is for our small area and dense population ideal. It is possible for any injured man who is able to travel personally to visit the commissioner, or if a man can not travel the commissioner can, if necessary, go to his bedside and hear his story. This system would not be at all practical in those regions in the South and West where they have large areas and scattered population.

An early reading of school histories, coupled with some family traditions as to the experiences of my paternal great grandfather during the winter at Valley Forge, were wont to cause me to see red when the British flag was even mentioned. I did not have to look at it. Age, of course, brought some additional wisdom, but I could not to-day look at the two flags draped together, I could not view our common heritage of law, literature, and idealism in just the same way that I now do, were it not for the international character of our society and the friendships formed by this means.

My early recollections of Georgia are confined to a general idea that it was a place which General Sherman marched through. Atlanta used to mean the starting point "from Atlanta to the sea" and was a part of a verse in that well-known piece of martial music, the strains of which I do not apprehend will greet us when we visit Atlanta next year and which probably the people of Georgia do not relish hearing any more than General Sherman relished hearing it in his latter years. Certainly when my recollections of that new commercial empire of the South were confined to the above-mentioned march I never dreamed of the time when, through the medium of this association, it would happen that I should be the recipient from the State of Georgia of the beautiful memorial coin containing the effigies of two great Southern leaders—a coin struck off by the United States Government as a graceful token of the decay of sectionalism.

Shortly after I became chairman of the Industrial Commission of Connecticut I was invited to read a paper before the Connecticut Bar Association on the general subject of compensation law, and by the use of a few days' time found it easy to prepare a paper of reasonable length referring to practically every decision of a State court of last resort or of the Federal Supreme Court in which important principles of compensation law had been laid down. Even a bare list of cases on this subject from the same courts to-day would be longer and more tiresome than Homer's Catalog of the Greek Ships and to prepare one would be not only futile but foolish. The history of the system, its foundations, its origin, its purposes, and its development are sufficiently known to you all, so that it is a useless task to discuss them either in detail or in summary form. I assume that the representative of each jurisdiction present probably considers his own statute the best in the world and the methods of his own commission in administering it as representing the last word in human wisdom, and with this theory I have no quarrel. It is my earnest hope that on this occasion we will consider those problems

which are common to us all, particularly the medical and surgical problems with which we all have to do, and that not only shall we go away better acquainted and better friends, but also that each one shall have made his own some particular piece of scientific knowledge from the rich mine which the distinguished speakers who will address us will lay open for our use. I again bid you welcome and invite you to proceed to the serious business of the convention.

BUSINESS MEETING

On motion of the secretary the following gentlemen were granted the privileges of the floor in the discussions: Ramón Montaner, chairman Workmen's Relief Commission, Porto Rico; C. A. Vargas, labor attaché Mexican Embassy, Washington, D. C.; Walter H. Monroe, compensation clerk Workmen's Compensation Division of Alabama; George B. Beers, former commissioner Connecticut Workmen's Compensation Commission; and John B. Andrews, secretary of the American Association for Labor Legislation.

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.
- California Industrial Accident Commission.
- Connecticut Workmen's Compensation Commission.
- Georgia Industrial Accident Board.
- 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 Department of Industrial Accidents.
- 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 active member, the Industrial Accident Boards of Hawaii, and one associate member, the Republic Iron & Steel Co., dropped out of the association.

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.

Lelfur Magnusson, Washington representative of the International Labor Office, Washington, D. C.

At the Salt Lake City convention it was suggested that the following papers read at that meeting be printed and distributed in advance of publication of the proceedings. This was done.

The Relation of Trauma to Cancer and Tuberculosis, by Dr. Joseph E. Tyree, of Salt Lake City, Utah; Chronic Infectious Hypertrophic Arthritis of the Spine and its Relation to Industrial Accidents, by Dr. J. C. Landenberger, of Salt Lake City, Utah; Trauma and its Results from an Administrative Point of View, by Dr. James J. Donohue, M. S., F. A. C. A., member Connecticut Board of Compensation Commissioners; Phosphorus Necrosis of the Jaw, by Dr. Robert P. Bay, chief medical examiner Maryland State Industrial Accident Commission.

The Salt Lake City convention ordered that President McShane's address be published by the secretary in pamphlet form for distribution to the members. This was done.

The following standing committee was appointed:

Committee on investigation of results of compensation awards.—Chairman, Ethelbert Stewart, of Washington, D. C.; secretary, W. H. Horner, of Pennsylvania; Miss R. O. Harrison, of Maryland; T. J. Duffy, of Ohio; and R. E. Grandfield, of Massachusetts.

The committee met May 7, 1926, and a report will be submitted for the approval of this convention.

The committee in cooperation with the committee of the National Association of Legal Aid Organizations met April 21, 1926. A report will be submitted for the approval of this convention.

It was directed that a committee on compensation legislation for interstate commerce employees be formed, and the following were appointed by the executive committee to report at this convention:

Committee on compensation legislation for interstate commerce employees.—Chairman, F. A. Duxbury, of Minnesota; F. M. Wilcox, of Wisconsin; O. F. McShane, of Utah; William C. Archer, of New York; and Dixon H. Bynum, of Indiana.

It was directed that the incoming president appoint a committee on pre-existing diseases to make recommendations for action of the association, to be submitted at this convention. The following members were appointed:

Committee on preexisting diseases.—Chairman, George A. Kingston, of Ontario; F. W. Armstrong, of Nova Scotia; F. A. Duxbury, of Minnesota; F. M. Wilcox, of Wisconsin; and Dr. James J. Donohue, of Connecticut.

It was directed that the incoming president appoint a committee to take such action as seemed necessary to secure an amendment to the Federal bankruptcy act giving priority to claims and awards of compensation against a bankrupt estate. The following committee was appointed:

Committee on amendment to Federal bankruptcy act.—Chairman, Charles Kleiner, of Connecticut; George Beers (former compensation commissioner),

of Connecticut; F. M. Williams, of Connecticut; and Ethelbert Stewart, of Washington, D. C.

The work on the remarriage table was referred to the committee on statistics and compensation insurance costs with instructions to continue its work.

The work on administrative costs was referred to the committee on statistics and compensation insurance costs; no action taken as yet.

The following representatives of the association on the Safety Code Correlating Committee are appointed to serve until December 31, 1926:

Representatives.—Ethelbert Stewart, United States 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; and 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; and G. R. Yearsley, Industrial Commission of Utah.

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

Cranes, derricks and hoists.

High pressure piping.

Dust explosion.

Amusement parks.

The safety code for the use, care, and protection of abrasive wheels has been revised, approved as American standard, and is being prepared for printing by one of the sponsors.

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.

The association was asked to appoint representatives on a committee of the National Safety Council to investigate and study health hazards involved in the practice of spray coating, or so-called mechanical painting. The following representatives were appointed:

Representatives on National Safety Council Committee.—Dr. Elizabeth B. Bricker, Department of Labor and Industry of Pennsylvania; Dr. Leland E. Cofer, Department of Labor of New York; Dr. Martin Szamatolski, consulting chemist, Department of Labor of New Jersey; and Dr. John R. Dexter, Department of Labor and Industries of Massachusetts.

Mr. Ethelbert Stewart, United States Commissioner of Labor Statistics, has been appointed on the advisory staff of the National Civilian Rehabilitation Conference to represent the association.

All available copies of the constitution of this organization have been exhausted. Under the secretaryship of Doctor Meeker a number of copies were mimeographed on long sheets, which, while they served the purpose, were at least awkward. An estimate on the cost of printing this constitution as an eight-page pamphlet without cover is \$22.50; the estimate of printing the constitution as an 8-page pamphlet with cover is \$29. In order to get the matter before the convention I recommend that authorization be given to print the constitution in pamphlet form with covers.

The Salt Lake City convention ordered that the combined former proceedings of the association conventions be bound and distributed to the membership. This was done.

The proceedings of the Salt Lake City convention have been issued by the Bureau of Labor Statistics as its Bulletin No. 406, and copies are available for members who desire them at the headquarters here, or they will be sent from the Bureau of Labor Statistics upon request.

Special letters have been sent to all States eligible to membership inviting them to join the association.

Respectfully submitted.

ETHELBERT STEWART,
Secretary-Treasurer.

FINANCIAL STATEMENT OF THE SECRETARY-TREASURER, JULY 31, 1925, TO AUGUST 31, 1926

BALANCE AND RECEIPTS

1925

July 31.	Balance: In bank, \$1,329.97; unexpended postage and telegraph fund, \$8.77	\$1,338.74
Aug. 1.	North Dakota Workmen's Compensation Bureau, 1926 dues	50.00
3.	Minnesota Industrial Commission, 1926 dues	50.00
	New Brunswick Workmen's Compensation Board, 1926 dues (exchange deducted)	49.85
	Nova Scotia Workmen's Compensation Board, 1926 dues (exchange deducted)	49.85
	Ontario Workmen's Compensation Board, 1926 dues (exchange deducted)	49.91
	Indiana Industrial Board (new member), 1926 dues	50.00
6.	Georgia Industrial Commission, 1926 dues	50.00
7.	Connecticut workmen's compensation commissioner, fourth district (E. T. Buckingham), 1926 dues	10.00
	Connecticut workmen's compensation commissioner, second district (Dr. J. J. Donohue), 1926 dues	10.00
8.	Illinois Industrial Commission, 1926 dues	50.00
12.	Oregon Industrial Accident Commission, 1926 dues	50.00
	Wisconsin Industrial Commission, 1926 dues	50.00
17.	Idaho Industrial Accident Board, 1926 dues	50.00
21.	Virginia Industrial Commission, 1926 dues	50.00
24.	Washington Department of Labor and Industries, 1926 dues	50.00
29.	New Jersey Department of Labor, 1926 dues	50.00
31.	Utah Industrial Commission, 1926 dues	50.00
Sept. 4.	New York Department of Labor, 1926 dues	50.00
8.	Montana Industrial Accident Board, 1926 dues	50.00
11.	Massachusetts Department of Industrial Accidents, 1926 dues	50.00
14.	Wyoming Workmen's Compensation Department, 1926 dues	50.00
21.	Interest on Canadian bonds	13.75
23.	Hawaii Industrial Accident Boards, 1926 dues	50.00
Oct. 19.	Interest on Liberty bonds (two at \$100 each and one at \$500)	14.88
31.	Interest on \$1,000 coupon bond	21.25
Nov. 13.	West Virginia State compensation commissioner, 1926 dues	50.00
Dec. 21.	Ohio Industrial Commission, 1926 dues	50.00
1926		
Jan. 1.	Interest on bank account	12.25
Feb. 2.	Porto Rico Workmen's Relief Commission, 1926 dues (exchange deducted)	9.50
	Interest on Canadian bonds	13.75
Apr. 16.	Interest on Liberty bonds (two at \$100 and one at \$500)	14.87

1926		
July	1. Interest on bank account.....	\$6. 31
	12. Kansas Public Service Commission, 1927 dues.....	50. 00
	13. Maryland State Industrial Accident Commission, 1927 dues.....	50. 00
	New Brunswick Workmen's Compensation Board, 1927 dues.....	50. 00
	Industrial Accident Prevention Associations, associate membership dues, 1927.....	10. 00
	19. Nevada Industrial Commission, 1927 dues.....	50. 00
	26. Iowa Workmen's Compensation Service, 1927 dues.....	50. 00
	29. Wyoming Workmen's Compensation Department, 1927 dues.....	50. 00
	30. North Dakota Workmen's Compensation Bureau, 1927 dues.....	50. 00
Aug.	3. Maine Industrial Accident Commission, 1927 dues.....	50. 00
	4. Wisconsin Industrial Commission, 1927 dues.....	50. 00
	6. Oklahoma Industrial Commission, 1927 dues.....	50. 00
	Connecticut workmen's compensation commissioner, second district (Dr. J. J. Donohue), 1927 dues.....	10. 00
	Connecticut workmen's compensation commissioner, third district (Charles Kleiner), 1927 dues.....	10. 00
	Connecticut workmen's compensation commissioner, fourth district (E. T. Buckingham), 1927 dues.....	10. 00
	7. Ohio Industrial Commission, 1927 dues.....	50. 00
	Indiana Industrial Board, 1927 dues.....	50. 00
	9. Pennsylvania Department of Labor and Industry, 1927 dues.....	50. 00
	Connecticut workmen's compensation commissioner, first district (Leo J. Noonan), 1927 dues.....	10. 00
	10. Virginia Industrial Commission, 1927 dues.....	50. 00
	11. Lelfur Magnusson, American representative of the International Labor Office, associate membership dues, 1927.....	10. 00
	13. Interest on Canadian bonds.....	18. 75
	Interest on \$1,000 United States Liberty bond, coupon.....	21. 25
	Interest on \$500 United States Liberty bond, coupon.....	10. 63
	18. Utah Industrial Commission, 1927 dues.....	50. 00
	Nova Scotia Workmen's Compensation Board, 1927 dues.....	50. 00
	23. Idaho Industrial Accident Board, 1927 dues.....	50. 00
	28. Connecticut workmen's compensation commissioner, fifth district (F. M. Williams), 1927 dues.....	10. 00
	30. Georgia Industrial Commission, 1927 dues.....	50. 00
	Montana Industrial Accident Board, 1927 dues.....	50. 00
	Ontario Workmen's Compensation Board, 1927 dues.....	50. 00
	31. New Jersey Department of Labor, 1927 dues.....	50. 00
		<hr/> 3, 730. 54 <hr/>

DISBURSEMENTS

1925		
Aug.	1. Postage and telegraph.....	\$3. 52
	3. Gibson Bros. (Inc.), printing 1,000 programs, 1925 convention.....	35. 00
	20. Mrs. Irene Fowler, services at 1925 convention.....	25. 00
	Mrs. Thelma Born, services as secretary and stenographer to resolutions committee, 1925 convention.....	15. 00
	31. Mrs. Glenn L. Tibbott, preparation of index of former proceedings.....	250. 00
Sept.	1. Ethelbert Stewart, reimbursement for flowers for Mrs. McShane, approved by executive committee, 1925 convention.....	10. 00
	3. Master Reporting Co., reporting twelfth annual convention, including traveling expenses, and postage.....	331. 07
	17. Reginald Heber Smith, contribution to National Legal Aid Organization, approved by executive committee, twelfth annual convention.....	50. 00
	21. Ethelbert Stewart, expenses attending twelfth annual convention, over amount allowed by the Bureau of Labor Statistics.....	61. 00
Oct.	3. Maud Swett, services at twelfth annual convention.....	15. 00
	19. Maryland Casualty Co. (bonding secretary-treasurer to Oct. 23, 1926).....	12. 50

FINANCIAL STATEMENT OF SECRETARY-TREASURER

9

1925	
Nov. 9. Gibson Bros. (Inc.), printing 1,000 envelopes and 3,000 letterheads.....	\$40.50
Judd & Detweiler (Inc.), binding 75 sets proceedings up to and including eleventh annual convention.....	154.00
21. Postage and telegraph.....	5.00
24. National Savings & Trust Co., Liberty bond, coupon, No. E-00170425, second loan, converted, 4¼ per cent, 1927-1942, at \$100.98.....	504.90
Commission on above.....	1.25
Interest on above.....	.29
Dec. 18. Eva M. Taylor, partial payment, stenographic and clerical services, 1925-26.....	50.00
Gertrude M. Darracott, partial payment, stenographic and clerical services, 1925-26.....	50.00
1926	
Feb. 17. Ethelbert Stewart, honorarium, 1925-26.....	300.00
Mar. 10. Eva M. Taylor, partial payment, stenographic and clerical services, 1925-26.....	50.00
May 20. F. M. Williams, expenses in attending program committee meeting, Washington, D. C.....	53.96
Aug. 18. Postage and telegraph.....	10.00
21. Gibson Bros. (Inc.), printing 1,000 programs, 1926 convention.....	35.00
23. Gertrude M. Darracott, balance stenographic and clerical services, 1925-26.....	100.00
Eva M. Taylor, balance stenographic and clerical services, 1925-26.....	50.00
	<hr/>
	2,212.90
Aug. 31. Balance: Bank deposits, \$1,512.30; unexpended postage and telegraph fund \$5.25.....	1,517.55
	<hr/>
	3,730.54

SUMMARY

RECEIPTS

Cash:	
In bank.....	\$1,329.97
Postage and telegraph fund.....	8.77
	<hr/>
	\$1,338.74
Membership dues.....	
	2,249.11
Interest:	
Securities.....	\$124.13
Bank deposits.....	18.56
	<hr/>
	142.69
Total.....	<hr/>
	3,730.54

DISBURSEMENTS

Printing.....	\$110.50
Postage.....	18.52
Preparation of index of former proceedings.....	250.00
Reporting proceedings, twelfth annual convention.....	331.07
Contribution to National Legal Aid Organization.....	50.00
Bonding secretary-treasurer.....	12.50
Binding former proceedings.....	154.00
Purchase of Liberty bond.....	506.44
Honorarium and clerical service in secretary-treasurer's office.....	600.00
Clerical service at twelfth annual convention.....	55.00
Miscellaneous.....	124.96
	<hr/>
	2,212.99

Balance:

In bank.....	\$1, 512. 30
Unexpended postage and telegraph.....	5. 25
	<u>\$1, 517. 55</u>
Total.....	<u>3, 730. 54</u>

ASSETS

Cash.....	\$1, 517. 55
Bonds:	
United States Liberty bonds.....	2, 200. 00
Canadian bonds.....	500. 00
Total.....	<u>4, 217. 55</u>

The following dues have been received since the bank book was balanced, and are therefore to be deposited at the beginning of the new fiscal year of the association, this statement being closed as of August 31, 1926:

Oregon Industrial Accident Commission.....	\$50
Washington Department of Labor and Industries.....	50
Manitoba Workmen's Compensation Board.....	50
	<u>150</u>

In addition to the above, and to the assets enumerated in the summary statement, there are the following unpaid dues:

California Industrial Accident Commission.....	\$50
Illinois Industrial Commission.....	50
Massachusetts Industrial Accident Board.....	50
Minnesota Industrial Commission.....	50
New York Department of Labor.....	50
West Virginia State Compensation Commissioner.....	50
	<u>300</u>

Porto Rico dues (\$10) have been paid, but check is in bank for collection on account of exchange.

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

United States Liberty bonds:

No. 1217874.....	\$100
No. 1217875.....	100
No. 236204.....	500
No. E-00170425.....	500
No. A-00031671.....	1, 000
Dominion of Canada bonds (5) Nos. 1852-1856, inclusive, at \$100 each....	500
	<u>2, 700</u>

Respectfully submitted.

ETHELBERT STEWART,
Secretary-Treasurer.

AUGUST 31, 1926.

The secretary's report was approved and ordered placed on file and the treasurer's report was referred to the auditing committee, to be appointed later.

CHAIRMAN, DIXSON H. BYNUM, CHAIRMAN INDIANA INDUSTRIAL BOARD

REPORTS OF COMMITTEES

The CHAIRMAN. The first committee is that on Doctor Black's eye schedule. I might say for Indiana that we have adopted no sched-

ule for eye injuries. I hope to take back this time something definite. We have flirted with the Snellen test and have discarded it. We have used to a considerable degree the Wise schedule. Dr. James J. Donohue is going to address us.

Doctor DONOHUE. I have prepared a report upon the question of the eye schedule which was prepared by the Ophthalmological Section of the American Medical Association. I have not had an opportunity to confer with the other members of the committee, but from what was said at the meeting in Salt Lake City I think that the report which I will present will practically cover the views which the members of that committee entertain in this matter.

The report of the Ophthalmological Section of the American Medical Association, of course, is a very lengthy document and it is one which can not be properly comprehended by the average medical man—I might say by even the average specialist who is doing very good work in his profession in that particular line. If that class of man can not properly comprehend it, you can readily understand how the layman would react to it.

I extended an invitation to Doctor Black, who was a member of that committee, to come here and address the gathering, but unfortunately he was unable to come. He sent me a copy of a paper which he prepared and read before the American Ophthalmological Society, and it has reduced to as plain English as is possible the workings of that branch of the society. I have his report here, and if you care to have me read it I will, after I have read the report which I have prepared for the committee.

MEDICAL COMMITTEE'S REPORT ON REPORT OF OPHTHALMOLOGICAL SECTION OF THE AMERICAN MEDICAL ASSOCIATION

BY JAMES J. DONOHUE, M. B., CHAIRMAN

The report in question on the matter of determining specific loss of vision in eye injuries is a very scientific document, worked out with great care, and it is indicative of a great amount of thought and study. It is, however, too scientific and technical for any layman to understand. It is also beyond the comprehension of the average medical man unless he is engaged in special work upon the eye, and many of the eye specialists who are doing good work would undoubtedly be unable fully to comprehend this report in its various details.

As the majority of the men administering compensation laws are not especially skilled in medical work, it is expected that they would not be able to comprehend the scope of the report, and they will have to resort to the use of eye specialists whenever the question of specific loss of vision comes up for consideration.

Your committee feels that a tremendous amount of work and study is represented in this report and that the organization owes a debt of gratitude to the members of the committee for the work which they have done; and while it is impossible to hope for a method so simple in dealing with eye injuries that it can be applied by the average layman, still we feel that a great advance has been made by the committee who have done this painstaking work in this report.

We have no recommendations to make upon it other than as has been stated, and we feel that it should be accepted as a report of

progress by our association, and we hope that we may gain the benefit of any future work along this line which the Ophthalmological Section of the American Medical Association may accomplish.

DISCUSSION

Doctor DONOHUE. That is as far as I felt we could go in acting upon that report. It is a very lengthy document and covers a great amount of work. If the time warrants it and you care to have me read Doctor Black's report on the ophthalmological report, I shall be glad to do so.

Mr. STEWART. Doctor Donohue, is that a simplification of the Black report? I have printed the Black report.

Doctor DONOHUE. I think it is a simplification, although there are features of this report which probably most of you would not comprehend.

[The consensus of the meeting was that the report be read.]

Mr. WILCOX. I think this association has never had quite so much service from any group as we have had from this group of eye specialists, who have tried to help us solve one of the knottiest problems with which a compensation commissioner is faced. I think this is the time to give careful consideration to the work they have done.

With all due deference to Doctor Donohue, I do not think the report is as complicated as it appears to be on its face. All the American Medical Society recommended we should do is to make provision to measure visual efficiency by different standards from those now used by compensation boards. Generally we are testing by sharpness of vision, and that alone, and for that reason we use the Snellen charts. We adhere to this Snellen chart plan whether or not we use the Wise plan of rating.

The committee has undertaken to apply a more accurate and detailed and carefully worked-out system really to get at the deficiency in the eye which may be caused by an injury. It not only measures the sharpness of vision but also sets up a table which measures depth perception and also the field of vision.

It goes without saying that a man may have his central vision, or vision somewhere out of his eye, as sharp as it ever was, but his field of vision is so closed in that while he may read this Snellen chart perfectly his eye is not worth very much in the carrying on of his work. So the committee has undertaken to bring together these three different kinds of measurement.

I believe that if every compensation board will adopt something of the plan that the American Medical Society has worked out, we may be able to set up charts for measurement so that any eye specialist can carry out the examination, permitting the board then to determine the amount of disability that applies to that measurement. It is just a matter of applying some other measuring test and of allowing us then to make a calculation as to the extent of disability.

Recently our commission called in a number of eye specialists who had given a lot of attention to this subject matter, as well as a number of men from employers' groups and from the insurance companies, for an all-evening conference on this very schedule, for the commission is very anxious that something be done. I do not

mean that this group can adopt this plan or that plan, but I think we ought to understand it, if it is possible for us to understand what they are attempting to do. I think it would be worth while for Doctor Donohue to refresh our recollection as to what the Black report is. We have had it before, but it is away from me just at present and probably from the rest of you as well, and I think we will all profit by a reading of the report.

Mr. STEWART. I should like to say one thing more about this schedule. It is like the other schedules that this association dallied with year after year until finally at the St. Paul meeting we said: "Accept this schedule or you will have to appoint a new committee. We are through. This is the best we can do." I do think this meeting ought to adopt an eye schedule. We have been working on this ever since the St. Paul convention and certainly we ought to be able to get it in such shape that the State commissioners can understand it; at least, we can ask our committee to translate Doctor Black's report into English so that we will know what it means.

I suppose it is all right. I do not feel that I am in a position to criticize scientists and great men, but when science persistently and progressively adopts a jargon that nobody else understands I am wondering whether science is not more interested in forming a cult than in assisting mankind. The Black report is absolute jargon. Why not, at least, have our committee translate Black's report into English so the commissioners will know what we mean by eye measurements? I hope this discussion will go on until we can agree upon an eye schedule at this session.

The CHAIRMAN. I think it is the sense of the meeting that this report be read and then reduced to simpler language.

Doctor DONOHUE. I am quite in sympathy with Secretary Stewart's remarks and his plea for the simplification of these reports. You can readily see how difficult it is for your committee to reduce it to simpler language if Doctor Black can not do so—a man well versed in eye matters, perhaps one of the leading men in this country. I think his effort in this paper is a great step in advance of the paper originally prepared by the eye specialists of the American Medical Association.

Mr. WILCOX. He was talking to eye specialists when he wrote the original paper.

Doctor DONOHUE. He was talking to eye specialists when he wrote this paper also, but I believe that you will be able to get more out of this paper than anything you could possibly get out of the report of the eye section of the American Medical Association. I wish I could feel like Brother Wilcox, that it is not so complicated. I have read it over, and I must confess it is beyond my depth. I have talked with good eye men, and they think likewise; so we have a difference of opinion upon that subject.

I will proceed to read this paper. I think the chances are that you will get considerable out of it. You will not get it all, I will say, because I do not get it all myself.

I will first read Doctor Black's letter:

Please accept my thanks for your kind invitation to present a paper on the evaluation of visual efficiency following eye injuries, based on the report of the committee on compensation for loss of vision following injuries.

I find it will be impossible to accept the invitation, much as I would like to be present, for I am sure it would be easy to demonstrate to your association that there is nothing complicated or mysterious about determining the visual efficiency of an individual, at least to any ophthalmologist, for it is a part of his daily work. All we do is to determine for the industrial commissions or insurance companies an individual's visual efficiency for each eye separately, and then for both eyes combined. We have nothing to do with estimating compensation; that is their function.

I feel that our committee has, however, arrived at a just, fair, and exact method for determining visual efficiency, both to employee and employer, that any eye doctor can use with but little study, and one that does not involve a knowledge of mathematics other than that of the common school.

I am inclosing a copy of a paper read at a recent meeting of the American Ophthalmological Society, which may throw some more light on the subject.

Regretting my inability to be with you.

Very sincerely yours,

NELSON MILES BLACK.

EVALUATION OF VISUAL EFFICIENCY—THE BASIC FACTOR IN COMPUTING INDUSTRIAL COMPENSATION FOR LOSS OF VISION

BY NELSON M. BLACK, M. D.

The final report of the committee on compensation for eye injuries of the Ophthalmological Section of the American Medical Association was accepted and adopted by the section and unanimously indorsed by the legislative body of the association last year (1925).

Such being the status, it is deemed expedient that an attempt be made to standardize the method of determining the visual efficiency of an individual who has suffered an impairment of vision, the result of industrial accident, occupational disease, or otherwise, such findings to be the basis upon which to compute compensation for the loss in industrial efficiency.

Just what does the loss of vision of both eyes mean to an individual from an economic standpoint? The unanimous conclusion of the committee is that "total permanent disability of both eyes is identical with total permanent disability of the individual." Hence, 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.

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 of ocular disability shall be based on the percentage of permanent total disability only.

It is hoped the following suggestions for determining the visual efficiency of an individual will elicit discussion and constructive criticism.

First in importance is to decide when the injured eye or eyes have recovered sufficiently for the final examination to be made upon which compensation is to be computed. This is covered largely in Section VIII of the report as follows:

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 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 18 months shall intervene before the examination shall be made on which final compensation is to be computed.

To determine the visual efficiency of an individual necessitates the following equipment:

First. Charts for testing visual acuity for distance and for near. The letters and characters to subtend a 5-minute angle and the component parts a 1-minute angle. The chart to be used at 20 feet from the patient for distance and 14 inches for near under an illumination of not less than 3 foot candles on the surface of the chart.

The Industrial Visual Acuity Charts published under the supervision of the compensation committee meet the Snellen requirements and include illiterate charts. The letters and characters on these charts conform to those adopted by the Ophthalmological Section of the American Medical Association (Transactions Ophthalmological Section of the American Medical Association, 1916, 1917, and 1919).

Second. (1) A standard perimeter; (2) A white test object or target which subtends a 1-degree angle at the distance used; (3) Visual field records.

Third. (1) A chart or screen for platting binocular single vision in the field of binocular fixation; (2) Muscle function records.

A chart may be painted on a convenient wall or on a piece of beaver board 4 by 5 feet in size and divided into 1-foot squares.

Central Visual Acuity Efficiency

The best central 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.

(1) Determine the visual acuity for distance for each eye separately at 20 feet. Consult Table No. 1 for per cent of visual efficiency for distance.¹

(2) Determine the visual acuity for near for each eye separately at 14 inches. Consult Table No. 1 for per cent of visual efficiency for near.¹

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 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.

Visual Field Efficiency

A visual field having an area which extends from the point of fixation outward 65 degrees, down and out 65 degrees, down 55 degrees, down and in 45 degrees, inward 45 degrees, in and up 45 degrees, upward 45 degrees, and up and out 55 degrees, is accepted as 100 per cent industrial visual field efficiency.

Doctor DONOHUE. That is, the eye that can perform all those different movements and cover that field is a 100 per cent eye.

¹ The notations on the Industrial Visual Test Charts are given in Snellen notation and also in per cent of visual acuity efficiency for distance and near.

Concentric contraction of the visual field to 5 degrees from the fixation point is considered as zero field efficiency.

Doctor DONOHUE. If you cover only 5 per cent of that field, that eye is practically worthless.

Determine the extent of the field of vision by the usual perimetric test methods under an illumination of not less than 3 foot candles, employing a white target which subtends a 1-degree angle for the radius of the arc of the perimeter used. For a perimeter having a radius of 11 inches, the size of the target should be 6/25 inch (5.8 mm.). Plot same 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 field) will give the visual field efficiency of one eye in per cent. For example, if the readings of the eight principal radii were contracted 15 degrees, we would add $50+50+40+30+30+30+30+40=300+420=71.4$ per cent visual field efficiency.

Doctor DONOHUE. That 420 figure is the figure which you use as a divisor, and that figure is gained by adding these various figures in the previous readings which I gave you—which represents a normal vision.

On the Industrial Visual Field Charts designed by the compensation committee, the area inclosed by the shaded portion (representing 100 per cent industrial visual field efficiency) is just 10 square inches; thus, one may easily determine the loss to field efficiency by means of a planimeter.

Muscle Function Efficiency

When diplopia involves the entire field of binocular fixation 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.

When diplopia is present, this shall be platted on the Industrial Motor Field Chart. This chart is divided into 20 rectangles, 4 by 5 degrees 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 2).

For example, if there exists a diplopia in the left half of the field of binocular fixation as indicated on the muscle chart illustrated, consulting the muscle function table, with diplopia in eight of the squares of the field of binocular fixation, the motor field efficiency equals 77 per cent.

Industrial Visual Field Efficiency of One Eye

Having determined the visual acuity efficiency, the visual field efficiency and the muscle function efficiency of each eye, we are now ready to compute the industrial visual efficiency of each eye. This is determined by obtaining the product of the computed coordinate efficiency values. Thus, if in the injured eye central visual acuity efficiency is 50 per cent, visual field efficiency 71.4 per cent, and muscle function efficiency is 77 per cent, the resultant industrial visual efficiency of the eye would be $0.50 \times 0.714 \times 0.77 = 27.3$ per cent.

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 the vision of one eye, vision in the fellow eye remaining normal.

Doctor DONOHUE. We are hardly working that way at the present time. Nevertheless, this is absolutely a fact, and it comes from information gained by a lot of work and a lot of observation and experience of skilled men. But it is not the way we are operating.

Hence the necessity for a weighted average. The researches of the committee show that a weighting factor of 3 applied to the more efficient eye gives an efficiency 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 or visual efficiency.

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, three 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 27.3 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:

$$\frac{(27.3 \times 1) + (100 \times 3)}{4} = \frac{327.3}{4} = 81.8 \text{ per cent individual industrial efficiency.}$$

Compensation should be 18.2 per cent of the amount awarded for total permanent disability.

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.

Types of Ocular Injury not Included in the Disturbance of the Coordinate Factors

Certain types of ocular disturbances 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, metamorphosia, 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 occupa-

tion 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.

Doctor DONOHUE. That is the sum and substance of the paper. There is one feature which an eye man suggested should be taken up for consideration, the matter regarding the provision as to the injured man who has lost an eye. He should be provided with glass eyes, because they become coated with film, break, and are a considerable expense.

That is the report. I am very glad to turn it in.

Mr. McSHANE. There is one question which I think is of importance; I think you can answer it. It is the matter of getting before the assembly here the reaction of that committee as to whether the ultimate result is determined with or without glasses.

Doctor DONOHUE. I presume that in every case it is with glasses.

Mr. McSHANE. That is a very, very important matter.

Doctor DONOHUE. Yes, it says in the report, "Every case with glasses."

Mr. McSHANE. We have discussed Doctor Black's committee's report on several occasions and heard Doctor Black talk at Halifax. In the Halifax proceedings his report is published at length. I have studied it, and I believe that the three factors which he sets out are proper factors upon which to base the loss of visual efficiency of an individual: the width of vision, the range of vision, and the muscle tone or muscle action.

There is a fourth factor that he does not consider important; but Doctor Black and most of the eye specialists with whom I have come in contact are insistent that a man's compensation be based upon the visual efficiency after glasses have been fitted to his eyes. I feel that that is not the proper way to compensate a man who has lost 100 per cent vision by the removal of the crystalline lens, if later that is corrected by refraction. He still has lost 100 per cent vision in that eye, just as a man who has a leg dismembered in an accident has lost his leg, notwithstanding he can get an artificial limb and move about and engage in some sort of gainful employment.

Our board has had a very striking illustration of this. For instance, in my home city 2,600 shopmen are employed under one roof. No man who has lost the sight of an eye can get a job in that shop. He is industrially out so far as his occupation is concerned. It does not make any difference how we may theorize as scientists on the restoration of vision by the use of a lens—that man is blind. As far as getting employment with those 2,600 men is concerned, he is totally and permanently disabled and has to reeducate and readjust himself to some other field.

So I am in favor of and ready to vote for a motion accepting the report of this committee, with the understanding that we do not accept the feature stating that the vision is to be compensated by the use of a lens.

The CHAIRMAN. Mr. McShane, you will bump up against the State laws by so doing. For instance, the law of Indiana specifically provides that the loss of vision shall be corrected with glasses. I presume there are other States having the same provision.

Mr. McSHANE. I have no idea of this association setting aside any State laws, but I merely want that as an expression of what is just and right and equitable. I have great respect for the Indiana law, but I think that in that one feature it is, perhaps, a little bit lame. Whatever action we may take here will have no effect on any of our statutes, of course, but it may have an effect on some of the administrative bodies not bound by a statute.

The CHAIRMAN. In regard to physical tests, Mr. McShane—you mentioned one in Utah with reference to the eye—it has occurred to me, and I have so expressed myself in Indiana, that whenever industry starts to give strict physical examinations, particularly excluding men who have lost one eye, then it is on the road to State insurance, old-age pensions, and the dole system.

Mr. SCANLAN. I should like to know if any among those represented here strike some figure between naked vision and corrected vision. I think Wise has done that. In Illinois we give compensation on naked vision. In Wisconsin and some other States, I understand, they try to find some medium figure between naked vision and corrected vision. So far as I personally am concerned, I do not rate the disability upon corrected vision. I think if the man has injured an eye, that is an injury to him, regardless of the fact that his vision may be corrected.

Miss HARRISON. The Maryland act specifically states that the loss of an eye be determined without regard to the effect that correcting lens may have upon the eye or eyes.

Mr. KLEINER. Compensation is rated according to the loss of vision with glasses, in our law.

Mr. WILCOX. From the reading of the report Doctor Black gave to Doctor Donohue I realize that as he tries to tell us as laymen how the eye specialist is going to make these tests, it is thoroughly confusing to us and we are lost in a maze. But we take testimony of doctors day in and day out upon all manner of disabilities without very much inquiry as to why they go into all the ins and outs of the situation, and as to why they reach certain conclusions. We take their conclusions and listen to their tales as to what is the trouble with all the organs affected and just how they are affected. After they are done, we get their estimate of the disability that follows and then apply it. I think I am pretty truthful in that statement.

That is what we will have to do with respect to this matter of rating eye disabilities. We will have to depend on an eye specialist to determine these rules and how they are to be applied, and then to give us an opportunity by some formula or otherwise to strike the percentage of disability. We need not inquire as to all the details of these charts and formulas that are used for measurements any more than we need to go into the details concerning different types of lenses and how they are ground, and so on. We would not think of going into a thing of that sort. I submit to you that it is necessary for us to leave that up to them.

As I see it, the thing that we should determine is whether or not we are concerned with anything else than just how many of these letters on the chart can be read. If that is going to measure the visual efficiency or the loss of vision, in the way we apply our compensation, that is one thing. We should do it that way if we are satisfied with that method.

But you would not think of applying such faulty tests of measurement to any other type of disability. I know that it is a hard matter; but are we not concerned enough about it to be willing to do a hard task in order to see that these people who have eye injuries are rated as they ought to be rated?

Doctor Donohue, in one of the first formulas Doctor Black says that we count the far vision as one point and the near vision as two points; that is, we give a heavier weighting to near vision than to distant vision. Where do you do your work? Is that man going to be off 20 feet or 1,000 feet? No; he is doing it at close range. So the thing that is important is the question of near vision to the workingman. Therefore near vision is given double the weight that distance vision is given. The reading for the distance vision is multiplied by one, the reading for the near vision by two, and the result is divided by three, and in that way proper rating is secured. That is a little hard for us lawyers to get, perhaps, but it is an easy thing for the eye specialist.

I want to refer to one or two things more. I have watched Doctor Black go through his tests. The question is whether we are concerned with depth perception, with muscle tone, with binocular vision, and with making a distinction between near and distant vision—things of that sort. I am enough concerned about it so that I would like to do something of that kind.

I can not make myself believe that either of these groups is following out the right and decent thing in this matter of rating vision, either with or without glasses. I am pretty nearly as blind as a bat without my glasses, but I can see quite a distance when I get my glasses on. After all, what we are trying to do is to rate the effect of the loss of an eye in connection with wages.

It is well recognized—and that is one of the reasons we have our trouble with eye disabilities—that a man with one eye may go back to work and still do the same job he did before he lost his eye. That is being done in every one of our States; yet we allow considerable indemnity when one eye is lost, although the man can do the same job he did before practically as well as he did before. We figure that he ought to have something for that loss.

Perhaps the reason why men in Mr. McShane's State, when they have lost an eye, can not get into those shops is because when they lose the other eye the employer has to pay for permanent disability.

MR. McSHANE. No, sir, that is not the case. He pays for an eye as set out. If the man goes back to work and loses the other eye, the second employer pays for one eye, and the total permanent disability is paid for out of a special fund, and that does not affect the second employer. I took that up with the chief surgeon of the Denver & Rio Grande and tried to fight it out, but I lost out.

MR. WILCOX. We have a similar provision. We are after the employers who cull out men on account of lost vision, because it does

not cost them a cent more when a man loses his second eye than when he lost the first. That is not an added hazard at all.

Mr. McSHANE. I made the same argument, but the chief surgeon would not listen to me.

Mr. WILCOX. The loss of an eye should not place a man, either on the railroad or any place else, on the dump heap. In Wisconsin we are not going to permit employers to adopt means that will eliminate from industry men who are skilled and experienced in a trade because of disability. No concern is granted self-insurance if it adopts physical examinations for that purpose.

Mr. SCANLAN. Do you not think that physical examinations are a good thing?

Mr. WILCOX. For placement, but not for junking. I think this ought to be done, that when a man can put a glass on his eye and bring his vision back to the point where he works pretty well, he ought not to have as much compensation as he would have if he could not go back to work and could never see again out of that eye. If a glass will restore vision, there ought to be some allowance made for it. It is not fair to the employer and the insurance company to charge them with the full loss. I do not mean to say that that man has not lost something, because every man of us who has had his glasses smut up, smoke up, and steam up, knows that a man who has to wear glasses suffers a loss. But there should be some middle ground by which we take account of those things.

The loss of an eye with vision restored by the use of a glass is not the same as the loss of a leg, Mr. McShane. Here is a man who has still left to him the very best there is in his eye and all he needs to get his vision back is to apply a glass to it. He has not lost his entire vision. He can put a glass on and with it see again, but the man with a leg gone can not put on a wooden leg and have a natural leg. The former should be compensated, but not as much as if he were totally blind and could not bring back his vision with a glass. That is common, every-day sense.

Mr. McSHANE. Doctor Donohue said that it was not the system in these States to give a higher rating for the remaining eye than for the eye that was gone. Did you say, Doctor Donohue, that to count the eye that was lost as only one point and the remaining eye as three points is not in keeping with our present systems?

Doctor DONOHUE. As I read it, Doctor Black estimates the individual efficiency of the man in that way.

Mr. WILCOX. Doctor Black has no preconceived notions as to the efficiency of the eye with glasses or without them. He is setting up formulas for the determination of visual efficiency on the basis of how much this man can see for working purposes. Of course, he can put on his glasses. With my glasses on I can see letters just as well as I could see them in the days when I did not have to wear glasses. If the glasses are fitted right, this man with the glasses on can read those letters just as well as he did before. What Doctor Black is doing is setting up standards by which to measure efficiency of the eyes.

The CHAIRMAN. Mr. Wilcox, how about a man who comes into the industry wearing glasses? Are you going to discriminate

against him? That is why it is proper to measure the eye as correct with glasses—because they are now being so universally worn.

Mr. WILCOX. I think it is a matter of weighting.

Mr. McSHANE. My object in making that motion was to have this association go on record as favoring this plan to rate a man on the visual acuity or visual efficiency, but I want that phrase "with glasses" left out.

Mr. WILCOX. Doctor Black takes no point in opposition to that, because we know the sight has gone out of the eye without the glass on and know that it is brought back with the glass. He makes his determination with the glass. He can tell what the man can see or can not see without the glass. But when it comes to rating compensation from those tests, that is a matter which is left for us to determine for ourselves. * We have to set up our own loading.

May I say this: These measurements figure that total blindness of an eye which can not be brought back with a glass, if the other eye is normal, entitles that man to a 25 per cent disability rating. That is obtained by multiplying 100 per cent in the remaining eye by 3, multiplying 0 per cent in the injured eye by 1, which still gives us nothing, and dividing it by 4, which gives a quotient of 75. That means a 25 per cent loss. If you had a 50 per cent eye, measured from the standpoint of visual efficiency, and the other eye was normal, then the loss of vision would be only $12\frac{1}{2}$ per cent.

That is what we are doing pretty much all the time. There is no State in this Union that is paying 50 per cent of total permanent disability for the loss of one eye, is there? Is there any State that does that sort of thing? That would not be fair, because, after all, the purpose of compensation is to try to compensate a man for his wage loss. No very great wage loss is sustained because of the loss of the vision of one eye. Most men with such a loss will go back and earn pretty much the same wage as before.

At any rate, Mr. Bynum, I think the thing for this association to do is to determine whether or not we are willing to adopt a system by which we give account to the matters of near vision and distance vision, with proper weightings to the visual acuity itself, the operation of the muscles, the field of vision, and the other factors mentioned, instead of doing as we are doing now. That is an inefficient way, measuring distance.

Doctor DONOHUE. Just one word. I think that any State—with due regard for the opinion of Miss Harrison, of the State of Maryland—that adopts a schedule or scheme of measurement of eye efficiency without the use of glasses has a pretty clumsy way of going about it. Practically everybody who reaches the age of from 40 to 45 years has to put on glasses, because the eye is taking different shape; its contour is shaping itself differently, and consequently needs assistance.

Regarding the other point which Mr. Wilcox mentioned—that is, the case of the individual who has lost one eye and has another good eye—I think the percentage which Doctor Black gives is 18.2 per cent of disability.

Mr. WILCOX. I think he states 25 per cent for total loss if the other eye is normal.

Doctor DONOHUE. If I recall the paper, his individual efficiency is impaired 18.2 per cent. In that case, some of the States are going rather to abridge the benefits under the compensation law if that procedure is followed too closely. In our State we aim to give the fellow a little bit more.

Mr. McSHANE. I move that the report of the committee submitted by Doctor Black and published in the proceedings of the Halifax convention be adopted in so far as it relates to standards of measurement, the eye efficiency of the individual, and all the formulas given pursuant thereto, with the understanding that the provision as to whether or not the final test is to be made with or without glasses be left to the individual jurisdictions.

The CHAIRMAN. Mr. McShane, talking on your motion, it occurs to me that possibly the report had better be referred back to the medical committee, which is a standing committee, in order that it may be reduced to terms which we laymen can understand.

Mr. McSHANE. The interpretation I am going to leave to the eye specialists. I believe all of us can handle the formulas.

[The motion was seconded by Mr. Stanley.]

Mr. WILCOX. I call attention to the fact that Mr. Hatch, who has given very great attention to the question before us, is to read a paper to us at another session on "What shall we pay for an eye," in which he goes somewhat into the Black schedule. It seems to me that we ought to have that paper read first and then have his advice when we finally act on this matter. It would be my suggestion that we hold this matter over until immediately following the reading of Mr. Hatch's paper.

Mr. SCANLAN. I think that is a good suggestion. In addition, perhaps, Mr. Hatch can tell us of the case in New York, I think it was, that went to the highest court of the State. He may be able to tell us something of interest in connection with that case.

The CHAIRMAN. I take it that it is the sense of the meeting that the motion lay over until we have heard from Mr. Hatch, of New York.

Mr. BUTTLES. I should like to ask Mr. Wilcox one question with regard to how the lines should be drawn in a case of this sort: Suppose a man has lost 80 per cent vision without glasses, but by the use of glasses that percentage can be reduced to 10 per cent. Would you take the median line?

Mr. WILCOX. That is what we do; we split it in the middle. That would be a 15 per cent loss. We take the two visions and divide by two, taking the average.

The CHAIRMAN. Is there further discussion?

Doctor DONOHUE. As to the question of individual efficiency, the gentleman from Washington has just looked up the matter, and the figure which I suggested, 18.2, is the correct one.

Mr. WILCOX. I thought you were talking about the entire loss.

Mr. STEWART. I suggest that the follow-up committee give its report.

The CHAIRMAN. It has been suggested that before we adjourn we take up the next report, that of the follow-up committee, by Miss Rowena O. Harrison, of Maryland.

Miss HARRISON. At the Salt Lake City convention a committee was authorized on this subject of investigation of results of compensation awards, the purpose of the committee being to work out a plan by which every State could follow up to some extent the results of its work, and through which universities and colleges desiring to take up the follow-up work of compensation commissions could obtain the cooperation of this association.

REPORT OF COMMITTEE ON INVESTIGATION OF RESULTS OF COMPENSATION AWARDS

The committee on investigation of results of compensation awards of the International Association of Industrial Accident Boards and Commissions met in the office of the Commissioner of Labor Statistics and outlined a report as follows:

Cooperation with universities and colleges.—The committee recommends that the secretary of the association notify the principal universities and colleges of the United States that in case students desire to study the work of the compensation commissions as theses for doctors' degrees the secretary of the association be so informed, and that the association will furnish to such students a general outline covering the principal topics; and in such instances the committee recommends that the State in which such student studies are being made shall also notify the secretary of the association that such studies are being proposed; and recommends further that all possible facilities be given for such student studies.

The difficulty so far experienced with student studies has been that their sample has been too small, and it is believed that any single study made in this way will always meet with the same difficulty. It is recommended that where students will agree to the general topical outline as hereinafter submitted, the assistance of the association or of the Bureau of Labor Statistics shall be given to such students, to the end that their studies shall cover a sufficient number of cases to make that work effective.

State investigations.—The committee recommends that the State compensation boards and commissions begin as soon as possible, in each State, to inaugurate a systematic follow-up system of (1) all lump-sum settlements regardless of the nature of the injury; (2) all total permanent disability cases whether the same are settled in lump sums or not; that each State making such survey of the results of its own work shall use as a part of its plan of study the questionnaire hereto attached.

The purpose of this is to secure comparable information from all States making such investigations. It is not urged nor suggested that the States confine their study to the topics herein listed, each State making its investigation as narrow or broad as it sees fit, and in such a way as to meet its own problems. In other words, there is no thought on the part of the committee of controlling the details of

State investigation, but only that where such investigation is made the broad general principle involved in this questionnaire shall be incorporated as a part of such investigation, the results, at least upon the topics suggested, to be furnished to the secretary of the association and combined by him in such a way as to furnish for all the States the results of the investigation in each State.

In respect to time to be covered the committee recommends that wherever practicable the States go back to 1920 in fatal and permanent total disability cases; in partial disability cases investigation should be confined to pending cases.

ETHELBERT STEWART.
ROWENA O. HARRISON.
W. N. HORNER.

QUESTIONNAIRE

Instructions: In fatal and permanent total cases, investigation should cover only cases where five years have elapsed since date of injury; in permanent partial cases, investigation any time immediately preceding expiration of period covered by award.

1. Date of injury.....
2. Industry in which accident occurred.....
3. Nationality..... 3a. Race.....
4. Sex of injured..... 5. Age.....
6. Married or single..... 7. Number of dependents.....
8. Nature of injury.....
 - a. Death..... b. Permanent total.....
 - c. Permanent partial.....
9. Wages at time of injury.....
10. Amount of award.....
 - a. Amount per week..... b. Kind of insurance.....
11. Settlement.....
 - a. Expiration of compensation period.....
 - b. Lump sum.....
12. If lump sum—
 - a. Amount..... b. Date.....
 - c. Purpose (alleged).....
 - d. Was lump sum used as per alleged purpose?.....
13. Present condition:
 - a. Was lump sum used to real advantage of the injured or dependent?.....
 - b. Present physical condition of injured or dependent.....
 - c. Present financial condition.....
 - d. Is injured or dependent now self-supporting?.....
 - e. If widow remarried, give date.....

DISCUSSION

[It was moved and seconded that the report be adopted.]

Mr. LANSBURGH. A recommendation has been made, if I heard correctly, that an investigation be made of all lump-sum settlements. In Pennsylvania (and I suppose elsewhere), where we have a number of lump-sum settlements amounting to a few hundred dollars

or less for particular purposes, such as the payment of particular bills, we have been making investigations of lump-sum settlements which involve the whole or a large amount of the compensation due. I take it that it was not the purpose of the committee to recommend the investigation of settlements which involve only a few hundred dollars and are made for a specific purpose clearly outlined at the time of the settlement.

MISS HARRISON. Yes; it was the purpose of the committee that all lump-sum awards be investigated. It was brought out at the Salt Lake City convention that only one State, Massachusetts, had established a follow-up system. It was the purpose of the committee that all lump-sum settlement awards be investigated, and also permanent partial disabilities.

MR. LANSBURGH. In most cases there is nothing to investigate. The money spent in investigating is absolutely wasted, because the investigation is made prior to the time the lump sum is approved. The only investigation you can make is whether or not the money was used for the purpose which was intended. If you supervise the settlement in the first place, you know that it was used for that. There is certainly no sense in making any such investigation, and the cost is prohibitive.

THE CHAIRMAN. It seems to me that in Pennsylvania you have a law which rather ties up the property purchased by compensation paid in a lump sum unless it has the approval of the Industrial Board of Pennsylvania. Is that correct?

MR. LANSBURGH. No lump sum may be paid without the approval of the board.

THE CHAIRMAN. How about the property purchased with that money? Suppose it is real property? I got the impression that in both Ohio and Pennsylvania you could tie up property purchased with compensation money paid in a lump sum. In fact, as I remember the deed, it had a provision therein that the property could not be encumbered or sold without the approval of the board of the State of Pennsylvania.

MR. HORNER. I think that is true. In Pennsylvania, you will recall, our law states that compensation shall be paid only during the period the woman remains a widow. If a widow remarries, her compensation ceases. We have had instances in Pennsylvania where a lump-sum settlement was made and later the widow remarried, with the result that the employer or insurance carrier paid considerable in excess of the amount of compensation that should have been required. That is why that provision was made. It is not a law; it is a procedure that has been followed in Pennsylvania to protect the interests of the employer or insurance carrier.

MR. LANSBURGH. I am not questioning the advisability of follow up on that type of lump-sum payment. I think it is extremely advisable. We are following up such cases at the present time, as provided for by the recommendation of the committee, but I do seriously question the necessity or advisability of making check studies of investigations of the type of lump-sum payments to which I have referred.

The CHAIRMAN. As I recall it, at Salt Lake City, when it came to follow-up systems, no delegate present could say there was any follow up in his State. I know there is none in Indiana. We have not the money to finance it. I am going to ask the legislature at the next session for money for this purpose. Where it will come from, I do not know. If we can not get the money, we will not be able to do it. Nevertheless, it seems to me it is very important to know what effect the payment of compensation in lump sums will have.

Mr. KLEINER. We have no follow-up system in Connecticut. We would not have the means to finance it even if we wanted it.

Mr. STEWART. This report does not require any State to make an investigation. It does not even ask the States to make an investigation. It recommends that in case any State is making an investigation it include in its questionnaire certain questions, so that when a number of States have made investigations we can combine their reports and get certain essential facts from all the States. In case you make such an investigation, the report provides a uniform schedule. You can add anything else you want to. But we want this information, at least when you attempt to get any information at all.

On the question of those small settlements, I do not remember that the committee really discussed the question of limiting the amount. I agree with Mr. Lansburgh that in all probability it would not pay to follow up those very small settlements, except that in the total amount you might find quite an amount of money, paid out for a specific purpose, which was really used for some other purpose. I would not like to see a limit put on the investigation. I do not think it is necessary, because each State would do as it chose, anyhow. If the State wanted to limit the sum, it would.

Mr. SCANLAN. I think the principal purpose of this report is the statistical value. So far as the money all being paid out is concerned, it does not make much difference, after the board has approved it, that it is spent for some other purpose. But in Illinois, where a partial payment of lump sum has been allowed for a certain purpose and later on the compensated person comes in for an additional sum, we require a statement showing that the original amount of money given was used for the purpose indicated in the application. I do not know how far that might go. Our statistical department is functioning in pretty good shape and in a few years may be able to present some statistics that will be of value. This report, as I see it, is merely for the purpose of getting facts which might influence the commissions of the different States in passing on applications.

So far as appropriations are concerned, we have assigned to different branches of work a certain amount.

I think the report of the committee should be adopted.

[By unanimous vote the report was adopted.]

Meeting adjourned.]

TUESDAY, SEPTEMBER 14—AFTERNOON SESSION

CHAIRMAN, DIXSON H. BYNUM, CHAIRMAN INDIANA INDUSTRIAL BOARD

REPORTS OF COMMITTEES (CONTINUED)

The CHAIRMAN. We are now ready for the report of the bankruptcy committee, by Charles Kleiner.

Mr. KLEINER. The members of this committee have endeavored to make some headway. We did get in touch with the members of the committee of the American Bar Association but have not succeeded in getting anything definite.

A great many questions arise as to what this means and how far we are to go if we attempt to get such priority. A tentative report was drawn up by my colleague, Mr. Beers, and submitted to the other members of the committee, but we have been unable to agree upon a definite report, although we are all agreed that something ought to be done. Just what that something should be is for this body to determine. Personally, I can not go into details. I am not a bankrupt. I do know a little about compensation, but I suggest that Mr. Beers, who knows more of the details, give you an idea of what it is about.

BANKRUPTCY AS AFFECTING COMPENSATION

**BY GEORGE E. BEERS, FORMER COMMISSIONER CONNECTICUT BOARD OF COMPENSATION
COMMISSIONERS**

The subject of bankruptcy as affecting compensation divides itself into two parts. My object in putting it this way is because the committee wants to get the ideas of the association on certain points.

In the first place, in the case of a concern or individual employer who is insured there may be a bankruptcy on the part of the employer, or a bankruptcy on the part of the insurer. With the scrutiny made of insurance companies these days, it is hardly possible that the insurer should go bankrupt, so perhaps it is not necessary to tarry on that point. The employer may go bankrupt, and then the question occurs as to what effect, if any, that has upon the liability of the insurer.

Under the law as we understand it generally—under the statutes of many of the States and also under the Federal bankruptcy law—the bankruptcy of the employer does not affect the insurance, so that the employee gets his money anyhow. With that, I think we may dismiss that feature of the subject.

A more important feature, however, and the one that is in the mind of all of us as we think of this subject, is the case of the self-insurer. I suppose there are these systems of securing compensation (of course, compensation is no good unless it is going to be paid): In the first place, there may be the assumption of liability on the part of the State and the compensation administered through a State

fund. There may be the giving of a bond of indemnity, or there may be insurance. Then we have the insurance system which looms quite large in many States—that of self-insurance. I imagine that everywhere the self-insurer must prove up his solvency in some way or other and before some board—generally, I presume, before the compensation tribunal itself.

I resigned from the Connecticut board on its tenth anniversary, and I know of no single instance during the 10 years I was with the board where any man who had proved his solvency went bad afterwards. During the last three years I have no doubt that even greater care has been taken and even greater supervision used. Personally, I have heard of no case in which the employer whose solvency was proved went bad.

Yet you can not guess right every time. There are going to be cases in which a man who was apparently solvent turns out to be insolvent. The question is, What shall you do about it? Furthermore, in our administration, and no doubt in the last three years there have been others, and in the other States as well there have been cases in which the employer has not complied with the law—has simply done nothing—has gone on employing, and has been unable to pay the award. In other words, he has thrown himself outside the law. There may be penalties which will get at those cases, but of course they do exist.

Therefore, you have two cases. You have, first, the case of the man who has fulfilled all his obligations, who has proved up his solvency, and luck has gone against him and he has become insolvent. What will you do about it when the employee does not get his money?

There are two modes of attack. We want to get the sense of this association as to what should be done or what should be recommended in each one of these cases. You will remember that the vote was that we favor such priority as should be had. Of course, that is so general in its terms that nobody could quarrel with it, and so general that it did not give us anything particular upon which to work. As Brother Kleiner has said, we made such effort as we could to get proper action, but we did not get very far, and you will not get very far until you have something very definite to suggest.

As I say, there are two modes of attack. In the first place, should the discharge of the bankrupt be affected? Of course, the theory of bankruptcy is that it cleans the slate and the man leaves the court a free man, to do business in his own name, to incur obligations, and to hold property in his own name. Should compensation claims be excluded from the discharge?

Personally, I can see no reason at all why a man who scoffs at the law and does not prove up or does not insure and then gets stuck should not remain stuck. He has violated the law. He has thrown himself outside the bulwarks. If he gets caught in the process, there is no use in shedding tears over it.

My own opinion—I do not know the opinion of the committee—is that if a man breaks the law he should not be discharged from the obligation of compensation.

Suppose, however, he has done what is perfectly proper, and has proved up his solvency. He thought he was all right and the commission thought he was all right, but after events were against him. It seems to me—and I use the first person singular because I am not authorized to use the name of the committee—that at least that man should be discharged from the debt.

You will observe, if you remember the terms of the bankruptcy act, that among the debts which are not discharged are taxes, which stand in a situation by themselves. Debts due to the fault of the bankrupt, such as taking money he ought not to, are not discharged, or debts that arise from retaining property of the creditor, as for instance, keeping back part of the wages of the workmen in order to see that they live up to their contract.

The only other case aside from those is the case where wages for the last three months have become due. Those are not discharged. I do not see any particular logic in that, but it is in the law. It might furnish a parallel for some action to be taken as to compensation.

My own notion would be that if the man has behaved properly, proved up, and gets stuck through bad luck, that his debt ought to be wiped out—be it compensation or not. If there is any exception—and I feel very chary about that—it ought only to be for the last few months of compensation or some limited period of time.

So much for the holding back of the discharge. A more practical thing is the question of priority. Generally speaking, when a man goes through bankruptcy he is down and out. There are exceptional instances in which men get up and make a success, but it takes so long that if you are waiting for your daily bread while he is waiting to rise again you are likely not to get it.

But the subject of priority is of great importance. There again the great feature of the bankruptcy act is that it distributes assets *pro rata*. A man gets a certain percentage and all men get the same. There are only two or three exceptions to that. Here again the first is the obligation due to the State; owing to the peculiar nature of those obligations, they are always given priority. That is one case.

Another case is wages for a limited period and for a limited amount—three months' wages, up to \$300, come out first. Then, of course, there are the expenses of administration. Then there is the sort of omnibus clause at the end which states that the State gives priority to certain claims that are preferred or given priority in bankruptcy.

When you come to the wages, it is true, of course, that if I work for three months and earn \$300, and you lend \$300, and my friend the secretary furnishes goods to the amount of \$300, our claims are all equally meritorious. I take it the only reason I, as the worker, would be preferred would be for social reasons—to prevent suffering and to make sure that the State did not have the burden of support thrown upon it. It is a social distinction—a distinction growing out of the necessity for social legislation—rather than out of the equity of the case.

What about compensation? Of course, the claim for compensation is a very appealing thing. Compensation is given to a man who has suffered a misfortune, in order to enable him to live. If he dies, it is given to those who come after him, to enable them to live. It is very appealing, yet we must consider carefully whether in yielding to its appeal we are or are not so disturbing other equities that in the end it would react to the disadvantage of everybody concerned.

In the first place, you might make a distinction between awards that have been made and awards that have not been made. But that is a very artificial distinction. If a man is injured on January 1 and is given a reasonable time to reduce that compensation to a formal award and bankruptcy occurs February 1, it is a very artificial distinction to say that if he has actually acted and got his award he is in one position, and if he has been fairly good-natured and not reduced the claim to an award he is in a negative position, because the equities are exactly alike. So it would seem very, very artificial indeed to make any such distinction as that.

There ought also, in the nature of things, to be no distinction between a specific amount which can be figured in dollars and cents and an amount which can not be so figured. I earn \$20 a week; my compensation is \$10. If I lose a finger I am entitled to \$20. There is no reason why I should get that amount, when the man who is insane as the result of the injury, the amount of which can not be reckoned, gets no priority. That is a very artificial distinction there.

Then, again, you must remember that business is kept along because those who are furnishing goods, those who are doing work, those who are lending money, can find out the situation. Money is often furnished at the last minute. Those claims have a very strong equity, and it is a very nice question as to whether to give the workman his priority would not so interfere with the equal rights of others as to disarrange things. It is like an Irish race, where everybody ought to be first. Of course, the only way they all get first is where the whole thing is divided up pro rata.

It seems to us that a question on which you might help the committee—or whatever committee has to take the matter up in the future—very greatly is to tell us whether you think the whole compensation should be preferred, and if the whole compensation, what machinery should be devised for determining what the amount is.

You must remember that bankruptcy estates are to be wound up promptly. They are not going to drag on 10 years to see if a man is going to get well. They have to be wound up promptly. In your specific compensation you have a certain definite number of weeks, at least, under the laws of certain States—the claim for which is inheritable and passes on if the man dies. You have the amount of the wages. You get a certain number of dollars which you can set against a certain number of dollars due for something else. When you come to the case of the man who is injured you have one figure and you have to multiply it by X, and not even the lucidity of Doctor Donohue will enable him to multiply one figure by an unknown and produce a known.

The point is clear. There should be some method of reducing it to a certainty. The Deity only knows how long a man may be sick, but of course the trier can determine the fact and for the purpose of the determination his results would be final. If there is to be any general preference, there must be some method of reducing it to a certain figure.

If you think that the whole amount should not be preferred, is it possible to prefer a smaller amount? If you work for 10 years for a man and do not draw your pay any of the time and he goes into bankruptcy, you get that for the last three months. Should it be something analogous to that? In the first place, you can act in strict analogy to it by preferring the compensation that should have been paid but has not been paid in the last three months. If the man has not been drawing his money, you can give it priority. That is in close analogy to the workmen's case. The trouble is that it would not hit many cases, because the real trouble occurs in what is going to happen in the future. The uncertainty of that I have been pointing out.

So far as those future awards are concerned, awards or rights reaching into the future, you can of course have a tribunal adjudicate how long a man is going to be sick. Their adjudication may be wrong, but such a chance is incident to most human decisions. When you come to those dependent on life, you can use your life tables. Since we now have women on this board, I have no doubt that it might be possible to construct a table that would show the probability of the handsome widow remarrying. But somebody has to do something before you can reduce a general idea or a general right to terms of dollars and cents.

It might be possible to give compensation for, say, three months following bankruptcy. There again you have an element of uncertainty. That three months is important in settling up the estate. In my own mind I have reached the conclusion, tentatively—to be changed on showing that it is wrong—that you can not do much with priority other than, perhaps, along the lines of the pay for work—by giving unpaid compensation for the last three months, which might help in a few cases.

Such is the problem—a problem of great difficulty. In the first place, it is hard to see what you want to do and then it is hard to get up machinery for doing it. I think it would be of real assistance if we might have a series of expressions of ideas and then a series of formal expressions on these points:

1. Should there be an exception from discharge so the man remains bound in case an employer has performed his duty and had bad luck?

2. Should there be an exception from discharge so that the man remains bound in cases where the man has neglected his duty and has had misfortune?

3. Should there be a privilege of the whole compensation?

4. Should there be a privilege of compensation due but unpaid up to bankruptcy?

5. Should there be a privilege as to compensation for a short period following bankruptcy?

6. Should any compensation for the future be privileged and made preferred in payment?

7. What in general is the machinery which should be devised for reducing the uncertainty to terms of dollars and cents?

DISCUSSION

The CHAIRMAN. Is there any discussion?

Mr. STEWART. This matter came up at the Salt Lake City convention through a proposal that Mr. Duxbury originated by a question that he asked the Bureau of Labor Statistics to answer in regard to compensation payments in bankruptcy cases.

I do not agree with Mr. Beers in many respects. In the first place, we have had quite a number of insurance companies go broke or at least get out of business. The entire list of workmen insured by them lost everything. So there is a problem in the case of insurance carriers. It is not so very long ago that some of them failed to make good in the Middle and Western States.

There is no reason on earth why a workman's compensation claim should not have the same preference that wages have.

So far as I am concerned I am not satisfied with the preference given to wages—that is, of three months. I think in cases that where there has been an adjudication and the compensation fixed, that a certain sum for a certain number of weeks be paid, the entire claim should be a preferred credit.

Of course nobody knows what Congress will do, but my impression is that it is willing to do just that. So far as these foggy claims are concerned, where the time limit can not be set and the amount of claim fixed, I am wondering whether there are enough of them to make it very important that they be carried over. I wonder if it would work a very great hardship if we fixed a limit to the priority of an unfixed claim. In other words, say that the fixed claim should be made a priority claim, and an unfixed claim award should run for six months or whatever length of time you elect to say.

I do think that this convention ought to agree upon something if the matter is of sufficient importance to do anything with at all. If it is not, we will have wasted a lot of time.

I do not believe you can say that the insurance company is any safer than the self-insurer. Some insurance companies are safer than some self-insurers, but I do not see why that should enter into it. The essence of the thing is to get a recognition of compensation awards in bankruptcy cases.

Mr. WALNUT. I was very much interested in Mr. Beer's analysis of the situation. I was turning over in my own mind the number of cases that a change in the law would have assisted in Pennsylvania. In my experience, there is only one that I can think of. Of course, under our law, if the insurance carrier fails, the employee still has the chance of recovery against the employer.

I was interested in what Mr. Beers had to say about those employers who do not take insurance and are not exempt from carrying insurance. I was wondering in how many of those cases a modifi-

cation of the bankruptcy law would be of any use. In the cases that we have had—and we have had a fair number—although we have a compulsory provision in our account, the employers were not of sufficient responsibility to make even bankruptcy proceedings in the first place of any avail, because they had nothing. If that were generally true, it would bring the effectiveness of any change in the bankruptcy account entirely to bear upon the employers who are self-insurers. I was wondering how our experience in Pennsylvania checked with the experience in other States.

I should like to ask the question: In the case of men who are not exempt and who have not been insured, to what extent do they have assets sufficient to make a change in the bankruptcy law of any avail? The second question I should like to ask is: What would be the effect if the self-insurer failed to meet his obligations?

The CHAIRMAN. I will say for Indiana that the man who does not carry insurance is usually the small employer; he is either a little grocer or contractor, or something of that sort. Consequently, his assets are small, and the bankruptcy proceedings would not avail anything.

We have had two failures of insurance companies, the Integrity Mutual and the Mid-American Mutual. In those cases we fell back upon the employer—as we can in Indiana and in nearly every State—and the employer took up the payment. I have doubt in my own mind as to whether an amendment of the bankruptcy act would really be worth while.

Mr. DUXBURY. It is a little embarrassing for me to say anything in this discussion, because, if I remember rightly, I was probably to blame for starting the whole discussion.

I think the inference could be drawn from the report which I made after having been appointed to consider the subject (because I had raised the question) that it would be difficult to find any effective remedy by amendment to the bankruptcy law, because of the many reasons which were so well presented by Mr. Beers in his analysis of the subject, and because of other reasons which have been suggested. It is hardly possible to hope that we could make this priority precede very many of the prior claims that now exist, because they are arranged in the order in which they would logically occur, and we could not get in much before the fifth class of priority. With the small number of cases in which bankruptcy remedy is likely to be in vogue and the very small proportion of those in which there would be any assets, it appears to me that we are almost hunting sparrows with a cannon.

I had concluded that while there are theoretically strong reasons why compensation claims ought to be recognized with priority in the bankruptcy law, practically there is no very serious occasion for it. That was the conclusion I came to after being forced to consider the subject which I had raised in a rather impulsive way.

The occasion for my bringing it up occurred from two instances in the State of Minnesota, where compensation claims arose even under the old laws when there was no compulsory insurance which under the present law undoubtedly would not have arisen. We have not had any such cases since the present law went into effect, June, 1921. Of course, we may have, but I am of the opinion if we

do have it will be in such cases where there are no assets, because business men of prudence are ordinarily carrying compensation insurance. The fellows who do not do business in a businesslike way and according to law are usually the men who have no assets. That is a case in which there is almost no remedy.

The CHAIRMAN. What is the pleasure of the conference?

Mr. HATCH. I would suggest another way of meeting the situation, as far as self-insurers are concerned. That is the method followed in New York. New York State does not let the injured employees run the risk of the insurer going bankrupt and being unable to pay the compensation. The safeguard which the State sets up as a requirement that a self-insurer may operate is that he shall file with the industrial commissioner securities which are intended to cover approximately the total liability for future compensation which the firm has at any one time. The self-insurer does not lose the interest on his bonds. It is simply that certain securities are filed as security for future compensation payments. As far as self-insurers are concerned, that problem practically does not exist in New York State.

Our experience, however, tallies with that in Indiana, that it is the small employer who surreptitiously carries on business without compensation insurance. It is a very difficult problem in a State of any size to find out who and where all the small employers are, particularly in the case of small contractors, grocers, etc., who come and go. We have had trouble in New York, in which the first intimation we have had of a concern doing business is the claim for compensation. Then we discovered that the employer had no insurance. As Mr. Duxbury has pointed out, usually it is also discovered he has no assets either. It is very difficult to know just how to prevent that happening in a comparatively small number of cases, relatively to the whole number of compensation cases in the State.

As far as self-insurance is concerned, New York safeguards that chance by requiring the employer to keep on file with the commission bonds of a certain specified nature, sufficient to cover any claims that may arise. The matter is checked up from time to time to determine whether there is sufficient security to cover the liability for actually existing compensation claims.

Mr. DUXBURY. Do you do that with all concerns?

Mr. HATCH. Absolutely. No self-insurer, no matter how small the firm is, can operate without filing the minimum amount of securities. That means, as a matter of fact, under the rulings of the board which govern this matter, that no very small employer can self-insure in New York. It requires a concern of considerable size to meet this provision, and of course it can not self-insure until it meets the requirement.

Mr. MCGILVRAY. What is your minimum?

Mr. HATCH. I can not recall at this moment. I have \$5,000 in mind.

Mr. MCGILVRAY. You said that all self-insurers must put up security. Is that true in regard to the larger self-insurer?

Mr. HATCH. Oh, yes. The larger self-insurer is required to put up security as well. There is a maximum and a minimum amount set up in the rules of the board. I think the maximum is \$50,000. The

general rule is that an appraisal is made of the pay roll of the concern and the fixed amount of securities must be equal to the estimated premium for a year which would be charged if the firm were insured in the State insurance fund.

Mr. MCGILVRAY. Is the minimum \$5,000?

Mr. HATCH. I do not know definitely. The amount was increased.

Mr. SCANLAN. What character of deposit do you require in order to keep these bonds apart from the claims of the creditors of the bankrupt concern? Are they in escrow or what?

Mr. HATCH. These bonds are in the custody of the State. They are the property of the self-insurer but are held in trust by the State.

Mr. SCANLAN. Has a case ever been fought out in court in which the creditors tried to get that money?

Mr. HATCH. I can not say that any case has ever been fought out in court in this connection. One large concern went bankrupt and no difficulty developed in the way of the commissioner's using those bonds for the payment of the outstanding compensation claims. You must bear in mind that the actual custody of the securities and the nature of the requirement of the law are such that those are not assets of the concern in the ordinary sense of the term. If they were, what you say would be true. The industrial commissioner would be estopped from using them for the payment of the compensation claims.

Mr. SCANLAN. The reason I asked that is because we had just that thing happen in Illinois. I was fearful of the result if the case were fought out. In this case, the Federal judge in the bankruptcy proceedings felt that the men ought to have the money and that decision was never appealed from. I wonder if that has been fought out in any of the States?

Mr. HATCH. I do not recall that we have ever had any difficulty on that score. I should be glad to check it up for you when I get home.

Mr. SCANLAN. If the character of the deposit were such that the bond could be put beyond the reach of the creditor, that would be all right. We tried the escrow proposition; it was the escrow case that came up.

Mr. HATCH. I see the point, all right. So far as I know, it has not come up in New York. In New York the industrial board has actually had to appropriate, in one case that I know of personally, securities to pay the compensation claims.

Mr. WILLIAMS. We have no banking duties in our board, but frequently self-insurers are required to deposit a trust fund in some trust company, and there is a very definite agreement that no checks can be drawn on it unless they are countersigned by the commission.

Mr. MCGILVRAY. In California it is customary to insure; it is a misdemeanor not to insure. Why would it not be all right to make that national? Then when Mr. Bankrupt tried to get a discharge, we could spring the point on him that he was trying to perpetrate a fraud in that he had not complied with the law, and then refuse to discharge him. If he had assets it would be all right, if there were

a preferred provision in the law. I offer that merely as a suggestion.

Mr. WALNUT. Mr. Hatch spoke about the trouble his commission had with the men who did not take insurance. We have had considerable trouble in Pennsylvania. In Pennsylvania it is a quasi misdemeanor not to insure, even though that provision is almost not enforceable. New York, I believe, has a real penalty. I am wondering what the effect of that is. I have drafted several amendments to our law which have not been acted upon, but I had considerable difficulty in my own mind in arriving at an amendment which would be satisfactory.

Having been a prosecuting attorney for some years, I have not much faith in adding another statute. I think it would be better to create an effective remedy than to create another offense. I was wondering what the New York experience had been.

Mr. HATCH. I can not speak very definitely about that because that is in the hands of the attorney general's office of the State, which is connected with the Department of Labor. But I do know that that section of the bureau is busy a great deal of the time trying to collect compensation in bankruptcy cases.

Then there is the case of the little contractor who has started in business—the man who has got a contract to build a building. That may be the first time he has ever been an employer. He goes right ahead. He is pushed for time on contract and he goes ahead and thinks he will get by without any compensation. A lot of them are lucky enough not to get caught, undoubtedly, but every once in a while there is the unlucky man and the still more unlucky employee.

It is not a question of self-insurance. The small employer cannot self-insure. We can not find out what men are in business from the day they start. There are presumably 200,000 employers in New York who are subject to the compensation law. With the changing processes of business, it is a physical impossibility to check up every day, and catch every employer who may be subject to the compensation law.

What the department does is to push the matter of prosecuting for failure to insure to the limit. That is done consistently and steadily. The trouble is that when you catch one of these little concerns which has had an accident, which has perhaps placed it in the bankruptcy court, it has not the money to meet the claim, let alone pay the penalty for failure to insure. Putting those concerned in jail does not help the injured man. In New York it is a matter of following up as vigorously as possible and as vigilantly as possible. I do not say that we have been able to solve the problem. The bigger the State, the harder it is to administer the law.

Mr. BEERS. May I add a word? In order to get it on record, may I suggest that if it is deemed wise to have compensation put on the same basis as workmen's wages for a limited period that an amendment might be made to section 17 of the bankruptcy act, which would read as follows:

There shall not be discharged such probable debts as are due for claims under any workmen's compensation act in case such claims remain unsatisfied, where the employer has failed to comply with the provisions of the law as to insuring or providing security or establishing his responsibility,

and that there also be added at the end of section 64D424:

There shall be preferred compensation under any workmen's compensation act due for a period within three months before the date of the commencement of proceedings, not to exceed \$300 to each claimant.

Personally, it seems to me that would afford such a small amount of relief that it is hardly worth while pursuing the Senators and Congressmen around Washington to try to get it passed. If they really want to do something, it would be a little help. My thought would be that it is deemed to go no farther than that—to allow compensation for a few months. In that event, it would be just as well to accept the committee's report and vote that it is inexpedient to take any action, although perhaps action along those lines would help a little. If, on the other hand, it is the feeling of this body that there should be a very substantial preference of the whole compensation claim, it ought to be taken up for further action.

I agree with Mr. Duxbury that after all we are chasing pretty small game with a big weapon if we are only trying to get a few months. That situation can be handled by a beneficiary who is fairly active in his own interests and by the commission. At the same time, if people want to do something and Congress wants to help us out, it would be of some assistance to get that legislation through. We ought not to get too much excited over that. However, if we believe the whole thing should be preferred, then we shall have to take some very energetic steps to bring that about.

The CHAIRMAN. Is that a motion?

Mr. NORMAN. I move that we leave this matter to each individual commission. It is difficult to get an amendment by Congress. Usually it is not difficult for a commission to get an amendment from its own legislature. Under the Georgia act compensation ranks the same as a laborer's lien. A distinguished judge from the little village in which I live, by the law of our State made such lien superior to every other lien. So we have the matter settled in Georgia and have no trouble about it.

[The motion was seconded.]

Mr. KLEINER. In Connecticut each commissioner handles all the cases in his district. So that in my district, with a population of about 300,000, I have all the cases to take care of. In the three years I have had jurisdiction of that district, I think only three cases arose concerning a person who had not insured. One did not pay and suit was subsequently brought against the owner of the premises. In the second case the intimation that under our law he was subject to prosecution brought about results. In the third one I called the matter to the attention of the prosecutor, and both members of the firm were fined and compensation was subsequently paid.

It seems it would be advisable for each State to handle the situation.

The CHAIRMAN. I take it that your motion would include the acceptance of the committee's report as well as its discharge.

Mr. NORMAN. Yes.

[The question was put to a vote and unanimously carried.]

CHAIRMAN FREDERIC M. WILLIAMS, PRESIDENT I. A. I. A. B. C.

The CHAIRMAN. The next thing is the report of the committee on compensation legislation for interstate commerce employees, to be presented by Mr. Duxbury, the chairman.

REPORT OF COMMITTEE ON COMPENSATION LEGISLATION FOR INTERSTATE COMMERCE EMPLOYEES

At the annual convention of this association, held in Salt Lake City, Utah, August, 1925, as a result of a somewhat lengthy discussion of general conditions and particular administrative problems arising from injuries to employees in interstate commerce, a motion was passed directing the incoming president, F. M. Williams, to appoint a committee of five to investigate the matter of compensation legislation for interstate employees. Thereafter, the president appointed as such committee F. M. Wilcox, of Wisconsin; O. F. McShane, of Utah; W. C. Archer, of New York; Dixon H. Bynum, of Indiana; and F. A. Duxbury, of Minnesota, as chairman.

The discussion at the Salt Lake City convention indicated that the subject is one that has heretofore had more or less consideration and that it involves many perplexities. Among these is the attitude of the railroad employees' organizations and the attitude of many of the carrier employers on the general merits of compensation legislation in this field. In addition to this, the particular details of the provisions of such an act afford grounds for radical difference of opinion.

It seems quite certain, however, that there is a growing inclination among both classes to look with more favor on the general policy of compensation legislation for this group of workers. The compensation principle has been quite universally adopted for work accidents in other lines, and employees of this group are generally subject to compensation laws in other countries, and there seems to be no fundamental reason why occupational injuries for employees in interstate commerce should not be made subject to the principles of compensation laws for other classes of workers.

It is true, however, that the Federal employers' liability act, which applies to this group of workers, makes their present situation with reference to the claims for occupational injuries much better than that which formerly existed and which was an important factor in bringing about the enactment of compensation laws for employees generally. The relief afforded, however, by the Federal employers' liability act does not cover a large number of occupational injuries of this group now practically without remedy, and it seems that the only practical relief for such injuries lies in the enactment of a compensation law for this class of workers.

It would serve no useful purpose to attempt in this report to detail the many arguments in favor of such legislation, or to attempt to recite what is necessary to bring about such legislation. The arguments in favor of such legislation are well known to people engaged in the administration of compensation laws. These arguments are supported by the fact that in 1910 Congress created a Federal commission to investigate the subject of liability for injuries in interstate commerce activity, of which commission Senator Sutherland, now Justice Sutherland of the Supreme Court, was chairman, and this committee in a voluminous report favored a

Federal workmen's compensation law for employees injured in interstate commerce. This report covers the subject very fully, and probably largely because of the facts contained in this report the Senate passed a bill on May 6, 1912, which was passed by the House on March 1, 1913, with amendments, which amendments were never concurred in by the Senate, and the legislation failed. Notwithstanding this promising beginning, no effective act has been passed to remedy the conditions existing with relation to this group of workers, although Congress has applied the principle of workmen's compensation to civilian employees of the Government in the provisions of the United States employees' compensation act of 1916.

There are many practical difficulties in securing action of Congress which must be met. Soon after the appointment of this committee it became apparent that it was not possible for the committee to undertake the task of preparing a suitable bill and securing its introduction, as well as the very many other matters necessary to get the favorable action of Congress. It would require a large amount of the time of someone to attend personally to the multitude of details involved, as well as a considerable sum of money for necessary expenses incident to such effort, and this committee concluded that it was absolutely impossible for it to undertake such work.

Soon after the opening of the last session of Congress bills were prepared for introduction into Congress to provide compensation for interstate commerce and harbor workers. It soon became apparent, however, that as a practical proposition it did not seem expedient to attempt to combine these two groups in the same bill, and separate bills were prepared to provide a compensation law for each group. These bills were introduced in the Senate by the late Senator Cummins, of Iowa, chairman of the Senate Judiciary Committee, and in the House by Representative George S. Graham, chairman of the House Judiciary Committee.

At the request of the chairman of this committee copies of these bills were furnished to the members of this committee, and the members of the committee were asked to cooperate in promoting their passage by corresponding with their Congressmen and others. The bills received favorable action in the committee of the House, and the bill to provide compensation for maritime workers passed the Senate with certain amendments, one of the most important of which was to substitute the benefit provisions of the existing United States employees' compensation act of 1916 for the benefit provisions of the bill. This amendment, while logical in a sense, very materially affected the desirability of the legislation, as indicated by the fact that the maximum weekly benefit was reduced from \$25 to \$15.40 per week, with other similar modifications. The House Judiciary Committee early in May unanimously reported the original maritime bill, with a few modifications but without radically changing the provisions of the bill.

The Senate bill was considered by the House committee in an all-day hearing on June 29, when it was expected that final adjournment would be had on July 3. The result was that the bill never reached the House for final action.

When it is considered that the organizations of longshoremens and other employees affected by the maritime bill are practically unani-

mous in a hearty support of the bill, and that there is a considerable sentiment against the enactment of compensation laws for interstate commerce workers, it is plain that the task of securing passage of a Federal compensation law for interstate commerce workers is one that will require a considerably organized and intelligent effort and much preliminary work in order to harmonize the conflicting ideals of this group of workers, not only upon the general policy of such legislation but with reference to the particular provisions of the act.

Your committee is advised that bills for compensation legislation for maritime workers, as well as for workers in interstate commerce, will be introduced at the opening of the next session of Congress which convenes in December. It is assumed that these bills will be practically the same in their provisions as the bills introduced in the last Congress. It is almost too much to be expected that the bills will be enacted without very material amendment. Many amendments may be desirable, but it is not improbable that some of the commendable features of the bills may be eliminated or unwisely modified, and that the desirability of the enactment will depend largely upon the nature of the amendments which will be adopted. It is not improbable that after the bills have been subject to amendment a serious question will arise as to whether the bills should be passed, unless the result of the amendments is not seriously to impair the beneficent nature of the legislation.

It is the opinion of the committee that this association ought to keep in close touch with the drafting of the bills for introduction, with the hearing before the congressional committees, and with the nature of the amendments which may be proposed during the consideration of the bills. The means by which this may be accomplished is a matter than the committee has not been able to consider and is not prepared to give any definite suggestions. We have thought best to leave this question for the deliberate consideration of the association for such action as may be determined by the association to be proper and within the means available for that purpose. After a discussion of the subject, it is possible that a special committee may be able to report such specific action for this convention as the conditions may warrant. It seems not improper to suggest that the least the session might do is to adopt some resolutions expressing the sentiment of the association with reference to the merits and propriety of the general principles of such legislation and to offer its cooperation and support to those who are actively engaged in securing the enactment of compensation laws for workers in interstate commerce and for maritime workers.

F. A. DUXBURY, *Chairman.*

F. M. WILCOX.

DIXSON H. BYNUM.

O. F. McSHANE.

DISCUSSION

[Mr. Duxbury moved the acceptance of the committee's report and the discharge of the committee.]

The CHAIRMAN. In view of the motion, the chair would be pleased to entertain an amendment to Mr. Duxbury's motion, to the effect

that the report be received and approved and the same committee be continued.

Mr. BROWN. I arose for the purpose of making the same amendment. I suggest that the committee not only be continued, but also be requested to draft the resolution suggested and to present it to this body.

Mr. DUXBURY. I had hoped that there might be some discussion. I have no doubt that members have valuable experiences to relate or suggestions to make, and we should like to hear from them.

Mr. STEWART. I would like to suggest that Mr. John B. Andrews, of the American Association for Labor Legislation, who has been handling that bill and that subject from the angle of his association, talk to us on this question.

The CHAIRMAN. The question now before the house is that the report of the committee be accepted, approved, and the committee continued, with the request that it draft such amendments to pending legislation as may be advisable or draft an original bill if it deem it wise.

I trust I may be pardoned—because I believe the president is theoretically a member of all these committees—if I take up a minute's time in discussing this. Personally there is nothing that gives me greater pain than to see a man with a railroad uniform on come into the office. He knows that his neighbor who got hurt in one of the big factories is being taken care of. It is rather difficult for me to tell him very much about interstate commerce, especially if he can hardly talk English. I think very often he goes out as a potential anarchist, if not an actual one. He thinks that somehow he has been defrauded.

The original employers' liability act was first declared unconstitutional and then, as you all know, in the second employers' liability cases was sustained. There is one principle in that legislation which, it appears to me, can be directly drafted in here. Our Supreme Court has held that it was competent for Congress to pass a statute and to let a State tribunal enforce it. It appears to me that a general Federal statute dealing with interstate commerce workers can with great propriety be left to the administrative care of the compensation commissioners in the respective States. The Volstead Act is a statute with which the various State tribunals have something to do. It seems to me that the way is clear for a general act, not one requiring a Federal commission to administer it, which would have to travel over the United States every time a freight handler falls down and breaks his arm, but one administered by the several States in their respective jurisdictions. I have felt more interest in this particular subject than in anything else that has arisen or is likely to arise during my term of office. I hope that the discussion will be full and free. We will welcome Doctor Andrews' views on the subject.

Mr. ANDREWS. I had not expected to have the honor of speaking here. I came to your convention this year more especially because I knew this report was to be made by this committee. It is a matter of very vital interest to some of us.

Most of you will recall that when the first accident insurance laws were enacted in this country the longshoremen were covered as a matter of course. It was not until 1917, after the Jensen case, that we discovered to our astonishment that these local workers at the ports could not be considered as local workers under compensation legislation of the United States, although they are local workers, pay the local taxes, and in case of disability without this relief they would fall upon local charities for support. Nevertheless, it was found in that decision, which was followed by two more, and conclusively settled for all time by the highest court, that these workers could not be compensated by the individual States if their injury occurred while they were on board a vessel.

Every effort was made to bring these workers under the State compensation commissions. At two separate times amendments to the Federal Judicial Code were prepared, were introduced in Congress and passed, and were signed by the President of the United States, for the purpose of extending protection under the State commissions for periods averaging about two years each. Then the door was completely closed. The remedy can be only through Congress.

The report of the committee refers to the men injured in interstate commerce on railways and to the maritime workers. It is necessary, I think, very briefly to distinguish between two separate groups of maritime workers in order to face squarely this issue which is before us: First, the seamen, the members of the crews of the vessels, are in a position quite apart from the local workers who do not go from port to port, and it is absolutely necessary, in considering this matter from a practical standpoint, to remember that from the beginning of our Nation seamen have been favored. The ancient rights of care and cure to the end of their voyage, with their full wages, and full medical care at the expense of the United States Government after they reach port, have been accorded to them and accorded to no other group of wage earners in America.

More than that, although the seamen's organization had reached the point a few years ago where it cooperated in the preparation of a bill to make a Federal workmen's compensation act for seamen, and had it introduced in Congress, developments in the industry very soon after that led them not to press it. Meanwhile, they have secured an amendment, through the Jones Act, which gives to them the same right to sue for damages under the Federal employers' liability act of 1918 that the railroad men have. With that situation, which is not entirely disassociated from the strong personality of Andrew Furuseth the seamen feel that they have a remedy, and that they prefer to sue for damages under the United States employers' liability act and also to have their ancient rights of care and cure, rather than to take a chance with a compensation bill in Congress and what may happen to the bill before it is passed. It is clear, I think, that they are absolutely opposed to being included in any Federal compensation measure unless the compensation is given to them in addition to all of their present remedies.

The railway men in interstate commerce, as the report brought out, also had a bill introduced in Congress under the Sutherland

Commission. The bill passed each House, but in different form, and adjustments were never made to put it into effect. At that time two of the railway brotherhoods favored the legislation, while two of them were rather lukewarm about it. But to-day only one of the railway brotherhood organizations, to my knowledge, is in a position to go forward with any aggressiveness in favor of Federal compensation legislation for the men in interstate commerce on railways.

That is a situation which is most interesting to me, the most amazing chapter of labor legislation history in this country.

Many of the railway unions were organized shortly after the Civil War. Early in their history they did not incorporate in their constitutions a provision for getting men out of the union later on if they ceased to be in that particular employment which brought them into the union originally. As a result, railway work being hazardous, in which men suffer very severe injuries, frequently these men can not go back to railroading but they read law. As they keep up their dues in the railway union, they can be elected as delegates to the conventions of the brotherhood. They become speakers who understand the technical phases of compensation and liability legislation, and when this question comes up in the form of a resolution before a railroad brotherhood, these lawyers spring to their feet and by pointing to a few individual cases in which the claimants got \$40,000 as an award for damages, succeed in having the action against compensation rather than in favor of it. This whole question can not be faced intelligently without an understanding of that situation.

A year and a half ago conferences were held with the various groups concerned to try to remedy some of these evils spoken of by the committee. Finally a bill was drawn up, with the cooperation of representatives of those most directly affected and with the very great help of certain compensation commissioners of the States, for the purpose of including everybody—all of these three groups. But it quickly developed that the railway brotherhoods, through their lawyers, were not yet ready for a Federal workmen's compensation law. That involves the fact not only that they can sue for damages under the rather liberal United States employers' liability act, but also—an equally important factor—that they have agreements in many of the districts which do bring to them benefits often equivalent to those of the compensation laws.

The committee has suggested in its report that a study be made in order to have a greater understanding of the subject. In my judgment, it is more essential that a study be made of these agreements, to bring out clearly what benefits the railway men injured in interstate commerce now get, than it is even to study the results of their suits for damage, although that, too, is very important.

I do hope that your organization will find some way to make such a study, which will bring out the facts on both of those points, because I believe that the only way that the rank and file in the railway organizations will come fully to appreciate this whole matter will be through such a study of the facts as you people are particularly in a position to make, a study which will show what the benefits of an adequate compensation law would be as com-

pared with what these men are now getting through their more or less uncertain remedies.

As to these local maritime workers, just for the present I am putting aside consideration of the seamen and also the railway men as not being ready for action. But there is this group which furnishes us with the most important immediate problem in American workmen's compensation legislation: About a third of a million men engaged in extrahazardous employment at the docks, who are compensated under the State law if they are injured on the docks, but who if they walk out on planks and are injured are practically without any remedy at all. What they can do is to sue under the very limited opportunities of the Federal court sitting in admiralty. It is not worthy of the name of a remedy.

It was the necessity of facing this new condition for the local harbor work, which the highest court has decided must be treated uniformly throughout the whole country, that led to the development of the present legislation in Congress. We must not interfere with the proper uniformity and harmony of the maritime law, says the Supreme Court. We can not, no matter what we think common sense would suggest with reference to dealing with local men under local commissions, do anything but accept that. We have to do it.

As I said, the bill which was drawn was drawn up with the cooperation of many of your compensation officials, and it was then submitted to the compensation boards in every State in the country. The suggestions and criticisms which resulted were incorporated in the bill before it was introduced in Congress. As the report shows, the bill with modifications was adopted by the United States Senate, and more nearly in the original form was reported unanimously by the House Judiciary Committee, with an instruction that the Judiciary Committee request a special rule of the Rules Committee in order to get the legislation expedited.

Unfortunately, certain elements of opposition developed from certain shipping interests. Their lawyers succeeded in getting an eleventh-hour hearing before the House committee only four days before the adjournment of Congress, on the plea that the Senate bill was the only one possible to enact at the session about to close, the other having been changed, and therefore they had never had a hearing on such legislation. That was the climax of the tactics of delay which defeated the measure for that session. But you should remember that the short session which opens in December is part of the same Congress and that the bill has now been passed by one House and reported in a little different form by unanimous vote by a committee of the other House. So everything is set for you to point out, if you wish, to your Representatives from the various States the urgency of the remedy for these men, who are in the most unprotected situation, considering the hazard, of any group of workers we have in America, and the remedy has too long been deferred.

MR. MONTANER. In regard to this matter of maritime work, I have something interesting to tell you about Porto Rico. We have the privilege of protecting maritime work both on board vessels and on the docks.

In 1920, when the case of Knickerbocker Ice Co. *v.* Stewart was decided, the steamship companies argued that they were not covered by the workmen's compensation law of Porto Rico. After making a study of our organic act—that is, the Jones Act passed by Congress—our commission decided that it had jurisdiction over the case of accidents on docks as well as on board the vessels.

Our attorney general was against this point of view of the commission, and so we decided to retain a private lawyer. We took the case to the United States District Court of Porto Rico. We lost the case there, but we then took it to the circuit court of appeals and won the case there.

We have something that you do not have, the privilege, by decision of the court of appeals, confirmed by the Supreme Court of the United States, of compensating cases of maritime work.

The CHAIRMAN. I trust that Mr. Duxbury will not be the only member of the committee to talk on the subject. We certainly want to hear the views of the other gentlemen. It is an important subject.

Mr. WILCOX. I thought we had pretty nearly everything in the report that was necessary to bring before this convention. I think, with Mr. Andrews, that perhaps the principal thing we can do just now is to make certain that Congress does enact legislation protecting these harbor workers. Any State that has maritime workers will appreciate how serious a matter it is to have those men going unprotected while their neighbors have protection.

I should like to have the association do something more with regard to interstate employees on railroads. In Wisconsin we compensate those who are engaged in interstate commerce. Some States do not. Of course, it is the interstate commerce employee who gives the trouble, who raises the problem. I think those of you who are here will remember that I made an observation at the Salt Lake City convention that we were up against a stone wall because of the attitude of the brotherhoods.

At that time Mr. Stewart thought they were thinking a little more democratically and that perhaps we had a chance to do something. Since I have seen what has occurred I have grasped the suggestion of the secretary of our own commission, which was relayed through Mr. Andrews, that what we have to do is to make a study first hand in some of these States where intrastate commerce employees are being compensated and also, with the cooperation of the railways, of those cases that arise in interstate commerce, so that we may make comparisons of the amounts recovered under the Federal employers' liability act with the benefits under compensation.

I do not think we will ever get the brotherhoods pried loose from their set notion that a few ought to be compensated with high recoveries and all the rest go unprotected. If we can develop in three or four States the comparative experience—I believe the railroads will cooperate in giving us a list of the cases, so that we can send out and make the survey—then we will have something with which to talk. At the present time the brotherhoods make their members believe that they are giving away their benefits, and we are almost done for before we start.

The CHAIRMAN. We should like to hear from you, Mr. McShane.

Mr. McSHANE. I think that we have heard some very profitable suggestions from Doctor Andrews. As has been said by a former speaker, the report of the committee incorporates about all the views that I entertain on the subject relative to suggestions, together with the resolution Chairman Duxbury has ready to spring. I am not claiming any credit for either the preparation of the report or the resolution, because I am just a little bit off color on this subject. I think with the crowd; I feel that any action we may take or that Congress may take is a makeshift. I am more or less in favor of a change of the attitude of the Supreme Court of the United States, which Doctor Andrews mentioned when he referred to that uniformity. That must be complied with in all instances, and the door has been closed against us. I wish he had said, "Unless we can win over one more member of the Supreme Court." I believe that would have a very desirable effect. It would help me out in my situation, anyhow.

Mr. DUXBURY. I do not like to have any member of the committee suggest that I have kept something covered up. You will notice in our report I very artfully, I thought, tried to draw out suggestions from the discussion here about what we ought to do, but in the event that no one had anything very definite to offer I had prepared something myself that I was going to spring.

There are some phases of this discussion that has arisen with which I am not entirely in harmony. I have not agreed with some of our good friends who have been disposed to criticize the Supreme Court because of the Knickerbocker case and some of the other cases following that, which have held that the actions of those laudable agents of Congress, which had such a very high-minded purpose, were really ineffective. I think that the Supreme Court of the United States never performed any more beneficial act—and it has performed many beneficial acts—than when it pointed out to Congress and to the people who are so concerned about the interests of this class of workers that they must accomplish their object in that particular way which, everybody now admits, is the only way it can be done.

For this reason, do you want a condition by which these people are to be compensated in Connecticut according to the laws of Connecticut and in New York according to the more beneficent laws of New York, and in Pennsylvania according to a different scale of benefits and ideals, and out in Missouri probably not at all? What an undesirable situation that would be and how subject to just criticism.

There is no reason in the world why an injury resulting to an interstate commerce worker or to a maritime worker in New York should be compensated upon a different or better basis than an injury to one in Pennsylvania or New Jersey. While the Supreme Court undoubtedly was somewhat embarrassed, when the very high purpose of these acts was brought before it, to declare what the law is, there was only a majority of one that had courage enough to do it. It is mighty lucky for all of those workers and for the subject matter itself, that the court did so, because now we have the field open and the right tribunal can act and a law can be passed that will be a model for compensation laws in many ways. But it is very important

at this stage that Congress does not do something of a bungling nature and pass a law that is archaic and out of date and a disgrace. That is why the subject now is getting acute.

Congress is likely to do something. It ought to do the right thing. It ought to enact a law that is as good as the law in force in New York or Minnesota or any other State, and perhaps just a little bit better. There is no reason why it should not do that, and it will be a regrettable thing if it passes a law such as we have in some States that I will not mention because I do not want to criticize any particular State. Such a law Congress may think will establish a principle, but it will be a compensation law practically only in name. Congressmen may think if they pass a law establishing the principle that is the main thing. If the principle is established but the provision is undesirable, your job is not done and it is going to be a complicated one. For that reason I think we had better go slowly until we get the thing done right.

Through the wisdom of the Supreme Court we have been advised how to do it and where to do it. Let us have the wisdom and the vigilance to see that it is done right. I should like to impress upon all of you the importance of appointing yourselves a committee to impress upon your Congressmen, and upon others whom you may know to have some influence, the importance of not emasculating these bills and of not destroying them by passing something that is unworthy, but of passing something that is worth while. It is that thought that I have embodied in my resolution.

Everybody knows that we have the highest ideals in the world, and we would like to bless the whole universe if we could, but we are short of money and can not do it. We are very busy with our jobs at home, and when it comes to doing something that does not come onto our desk every day, we put it off, thinking we will have more time later. I know that is what I do. You are likely to do that same thing with this subject, but I urge each of you to make this a part of your duty, to bring to bear upon your Congressman every possible influence to amend those bills if they need amendment, to draft new bills if they are needed, and not to stand for any amendment that will make them worse.

When Congressmen find they are likely to be obliged to pass a bill in order to say, "Well, we voted for a compensation bill," they may be willing to make it a compensation bill that is worthy of the name. If they pass an unworthy bill, that will be unfortunate. The men who are in charge of this legislation before Congress have a very weighty responsibility, and you ought to do everything you can to help them discharge that responsibility.

I understand that the motion made was amended so that the committee who had charge of this matter for its present report be continued. I am in serious doubt about the wisdom of that. There are some members of that committee who are all right and some others who are hardly equal to the task, for instance, the chairman. He has felt that the little he might do would be so trifling that it would be almost not worth while to make the attempt. There ought to be some one on that committee who is a little nearer to the seat of government so that he can get to Washington often enough to know where the Capitol building is located. Some of us fellows

in the Far West would have to be told where to go if we went down there, and we would not know what to do when we got there. There ought to be some one on that committee who is nearer at hand and gets to Washington so frequently that he does not feel strange in the town, and knows which end of the Capitol the Senate meets in and where the various committee rooms are located, and a lot of other details of that sort. It is quite important to have that sort of knowledge in getting around and promoting legislation of this sort. I served some little time in the legislature of the State of Minnesota, and I know something of the many details involved in getting action in any legislative body, and I apprehend that getting action in Congress is so much worse than what I have experienced that I would be a mere novice at the job.

It is my notion that this committee ought to be modified. I am going to make a motion to that effect when I get through with these resolutions which I am about to offer. I am offering them because nobody else seems to have suggested any other plan, not because they have any particular merit.

Whereas the principle of compensation laws for work accidents has been quite generally adopted in foreign countries and American States and found by experience to be a highly satisfactory system; and

Whereas there are in the United States more than 1,000,000 employees in maritime and interstate commerce, subject to occupational hazards of similar nature to those in other occupations to which compensation laws now apply, including in many States employees in intrastate commerce; and

Whereas much confusion and perplexity as well as injustice results from conflicting remedies of liability laws in cases practically identical in the conditions of work and result of occupational injuries; and

Whereas the constitutional power to enact laws relating to liability for injuries in these occupations is vested exclusively in the Congress of the United States: Now, therefore, be it

Resolved, That the International Association of Industrial Accident Boards and Commissions, consisting of compensation administrative bodies of the Provinces of Canada and several States of the United States, in the thirteenth annual convention at Hartford, Conn., this 14th day of September, 1926, does most earnestly and heartily recommend and petition the Congress of the United States at the coming session to enact suitable compensation laws for occupational injuries in interstate and maritime employments; be it further

Resolved, That it is the sense and judgment of this association that compensation laws for such employees should equal or excel the beneficial features of existing State compensation laws, both as regards the amount of indemnity and other provisions for the benefit of injured employees and their dependents, to the end that such act of Congress may serve as a model for compensation laws of the several States as well as avoid unfavorable comparison of its effects with the better type of the State compensation law in similar occupations and in States where large numbers of this class of workers are actually employed; be it further

Resolved, That this association tenders to the Members of Congress and its committees the counsel and assistance of the officers and committees of this association in the work of framing bills for the consideration of Congress, or in any other manner in which it may be possible to render service in the enactment of this class of legislation.

[A motion to adopt the resolutions was made, seconded, and unanimously carried.]

The CHAIRMAN. We come now to the motion that was pending.

Mr. BROWN. I think that the assembly will recognize the wisdom of the amendment that this committee be continued, not only because of the personnel of the committee, men who I am sure will give the subject very careful consideration and who have the ability to do

so, but also because of the remarks from the chairman of the committee. From those remarks we are certain that they understand the intricate matters with which they have to deal. Though some of the members are farther from Washington than perhaps would be desirable, yet they are possessed of such understanding of the subject that I am sure they should be continued.

Perhaps it might be well if some member could be put on the committee who lives nearer Washington—perhaps some man from New York State or Pennsylvania who is well acquainted with this subject and who could cooperate with the committee. I give that merely as a suggestion.

[The question was put to a vote and unanimously carried.]

The CHAIRMAN. Next is the report of the committee on the Wenzel resolution. I do not believe Mr. Kingston is here. Is there any member of the committee prepared to make a report?

Mr. WILCOX. Mr. Kingston sent me a copy of a report he had drawn up. The committee was unable to meet. We had to carry on our consideration of the question by correspondence, and Mr. Kingston sent me his own type of report. He was making a report as chairman of the committee for himself alone. I understood he was sending that on. I returned the copy he gave to me.

Mr. SINCLAIR. I have a copy of that report here.

The CHAIRMAN. Will you read the report?

Doctor DONOHUE. As I happen to be a member of that committee also, I might say that that document is a pretty lengthy one, like the one I read this morning. It covers, I should say, largely Mr. Kingston's personal views and cites a number of instances of court cases. I scarcely think we would accept it as the report of the committee; at least I, as a member of the committee, should not want to accept it as its report.

While there are some very interesting things in it, there is also a lot that is not of very much concern to us. If you feel you want to take the time to have this paper read, it may be interesting, and it may not in some respects. Personally, I would not accept it as a report.

The CHAIRMAN. You have read the report?

Doctor DONOHUE. Oh, yes. Mr. Kingston sent me a copy of his views. I suppose he intended that this should be a report of the committee, but I doubt if the other members have the same views on this matter as he has.

Mr. McSHANE. I would suggest that inasmuch as the committee has not met, and, as I gleaned from the remarks made by Doctor Donohue, that this report is more or less argumentative, the committee be given the privilege to go over that report and to submit a report that is less voluminous, taking out the arguments, and then letting the arguments come out on the floor after its recommendation is made.

Mr. STEWART. Mr. Kingston sent me a copy of this report. It is not a report of the committee to this convention in any sense that it suggests anything for us to act on. It simply continues Wenzel's line of argument. It lengthens Wenzel's speech; that is all it does. It recommends nothing, and to adopt it would neither approve of

Wenzel's resolution nor disapprove it. If you adopt Kingston's report you are right where you were before so far as any indorsement of the Wenzel resolution is concerned.

I think we all appreciate pretty fully the importance of the Wenzel resolution and what it means. It seems to me the thing to do is to refer this matter back to the committee, and substitute some one else in Mr. Kingston's place at this convention, because I can assure you that it is not a report that would put the convention on record. I believe Mr. Sinclair will agree with me.

Mr. SINCLAIR. Evidently this is a warm subject at this convention. This paper does not purport to be any more than Mr. Kingston's opinions on the matter, which lead up to a suggestion that you apply common sense in this matter. That is about as far as it goes. He gave the members each a copy, and I thought that a copy would be forwarded here. If you have not a copy, there is one here at your disposal. I have no desire to press Mr. Kingston's report because we have never met about it.

Mr. STEWART. Mr. Kingston did not suggest that we use common sense. He suggested that we accept the theory of preexisting disease, and the convention ought to dispose of that in some way.

Mr. WILCOX. I think it is fair to Mr. Kingston to state that the matter submitted is the opinion of only one of the members of the committee. I think it so states in the paper. When I suggested that perhaps we ought to have that paper read, it was rather to get something before us to discuss. I had rather definite views myself, and I told Mr. Kingston in a letter I wrote him that I did not subscribe to his views, and I do not yet. I am willing to sit with the committee.

[Doctor Donohue seconded Mr. McShane's motion.]

Mr. MCSHANE. I should be very glad to have the secretary's suggestion substituted for my motion.

[The second agreed to the substitution.]

Mr. DUXBURY. I do not know that I am clear as to what the motion is. I will state the motion as I recall it: That the place of Mr. Kingston be filled by appointment of the president, that the committee may make a report at this convention. We have no report.

I have the honor of being a member of that committee, and I have a copy of Mr. Kingston's paper. However, I have not become as excited as some people have become after having read it. I do not know that it contains any virulent poison. It seems to me rather a discourtesy to Mr. Kingston not to read it. In fact, I feel that this convention does not seem exactly what it used to be without his being here. I should hate to have the impression prevail that he had prepared some views which we thought ought not to be permitted to be exposed. I hardly think the paper warrants any such feeling. In fact, I thought it was a rather able presentation of the situation as it exists and a citation of a good many authorities that might be interesting to those who had not thought much about it. To me it was a very interesting paper, with considerable information in it.

Neither was I so terribly excited about Mr. Wenzel's resolution. If you will read his paper (which was not read at the convention) in the report of the proceedings of the Salt Lake City convention,

you will find he had some matters to which he had given serious thought, and they might have been some things in your experience. As I remember it, he did not have any very definite conclusions; he just stated some of the situations that arise and handed the matter over to this association for consideration.

We ought not to be afraid of anything that pertains to our activities. We ought not to assume that it is impossible for us to make progress along certain lines, for in many particulars we have not yet reached perfection. The subject of Wenzel's resolution is one that has perplexed most of you. His paper was not read at the Salt Lake City convention, and, as I said, if you will read that first the resolution itself will not be so startling. There is nothing startling in the paper.

Mr. McSHANE. I do not think it was the purpose of any member here to keep out of the record any argument that Mr. Kingston wanted to make. It was my understanding that this was not a report; that we did not have anything before us. Personally, I have the highest regard for any opinion that may be expressed by Mr. Kingston. When there is a proper report for us to act upon I should be very glad to listen to the paper. But I understand that this paper is an argument and not a report, and that is why I made the motion I did.

The CHAIRMAN. There are three members of the committee here, two of whom say they would not concur if it were in the nature of a report. Consequently, it is not a committee report. I do not think it would be considered discourteous to Mr. Kingston if we took the procedure suggested, because his paper is not a committee report.

Is there any further discussion? If not, I will put the motion to a vote. If it is left to me to appoint the substitute member, I will put Mr. Sinclair in Mr. Kingston's place.

[The question was put to a vote and unanimously carried.]

The CHAIRMAN. The Chair appoints Mr. Sinclair in place of Mr. Kingston on this committee and requests the members to hold a meeting this evening at their convenience.

[The paper of Mr. Kingston, heretofore referred to, is as follows:]

PREEXISTING DISEASE—ITS RELATION TO INJURY BY ACCIDENT UNDER WORKMEN'S COMPENSATION LAWS

**A REVIEW OF THE SUBJECT BY GEORGE A. KINGSTON, COMMISSIONER OF THE ONTARIO
WORKMEN'S COMPENSATION BOARD**

[Submitted but not read]

At the convention last year at Salt Lake City, Representative R. E. Wenzel, of North Dakota, after presenting a very excellent paper on the subject of preexisting disease and its relation to workmen's compensation, moved the following resolution:

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 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 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 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; and 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.

This resolution was referred to the committee on resolutions, of which Representative F. A. Duxbury, of Minnesota, was chairman.

The report of this committee which was adopted at the closing session of the convention was as follows:

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.

Pursuant to the authority thus given, President Williams appointed the following special committee: George A. Kingston, of Ontario, chairman; Fred W. Armstrong, of Nova Scotia; F. A. Duxbury, of Minnesota; Fred M. Wilcox, of Wisconsin; and James J. Donohue, of Connecticut.

It has been found practically impossible for the committee to meet prior to this Hartford convention, and I am not sure that the committee is in complete accord on all points involved in the subject. It is felt, however, that Mr. Wenzel has in his very excellent paper presented to the association a problem with which our boards and commissions in greater or less degree are confronted constantly, and he is deserving of the thanks of the association for his contribution on the subject. Whether we should pass the resolution in this convention and seek to make it effective may, perhaps, be open to some question.

The proposal, in effect, is to say that this association desires our respective legislatures to direct that in all cases coming before our various boards we shall determine to what extent, if any, the disability is due to or prolonged by a preexisting disease, or, to put it the other way, to what extent a preexisting disease has been aggravated by the accident in respect to which compensation is claimed.

I grant you that in many cases, regardless of legislative enactment, the common sense of the situation compels us to make such determination, but there are so many cases in which obviously on the one hand the preexisting disease has so little bearing on the

result of the accident or on the other hand the accident bears so trifling a relation to the preexisting disease that to be called upon to make a decision on relative importance of these factors in every case would probably be considered by most of us as going too far.

Perhaps no two workmen are in absolutely equal degrees of physical fitness. At all events, while many workmen are what we might call practically perfect specimens of humanity, very many, probably the vast majority of them, are in varying degrees under par, and this for a variety of reasons. I might mention a few that will readily occur to everyone's mind. One man has a weak heart, another weak lungs, another perhaps has been undernourished, another has developed a kidney condition, another has neglected his teeth so that his system is poisoned from this sort of infection, another has some form of venereal disease, another has varicose veins, another has an arthritic condition of his joints, others have met with some sort of accident in childhood which has left a deformity and a consequent weakness of some sort, while a great many are simply afflicted with old age. One could go on and mention an almost infinite number and variety of conditions which in themselves more or less impair the efficiency of a very large percentage of our workers; yet they do work, they must work, and their services usually are accepted without any regard to these weaknesses. I suppose it must be said, however, that production is more or less affected by these varying conditions of fitness, because in theory at all events a perfectly fit workman should produce more than one much below par, but, as I say, there are so few who are perfect and so many under par that from the point of view of practical industrial management men are taken as they come and as we find them and rarely is any distinction made as to wages on this account. "A man's a man for a' that."

Now comes an accident, say, a fall, with a bad bruise and a broken leg. When it happens in the case of the physically fit A-1 man, if no vital part is seriously injured, you are going to get a quick recovery and a minimum of time loss for such an accident and probably no permanent partial disability, but let the same accident happen to a man afflicted with one of the many conditions or ills that flesh is heir to—take for example the man with a bad case of pyorrhea and whose teeth are badly infected (a very common condition)—and it will cost probably twice or three times as much time loss as well as a much larger medical-aid bill, and in the end it will probably leave a condition calling for a more or less substantial award for permanent partial disability. I do not think any of us would think of saying to the last named: "We are going to allow you just the same and no more than we were required to pay in the first-named case," yet if the resolution under discussion were made effective by legislation and we were called upon to decide in case No. 2 how much of the disability was due to the preexisting condition of the workman's teeth, we would probably be warranted in making a finding that possibly half or more could be charged up to such condition.

Let me cite another type of case. A workman gets a bit of cinder or dust in his eye. He naturally rubs it and an iritis is set up. It does not respond to treatment, and upon a blood test being taken

it is found to be very positive X X X. In spite of all that medical aid can do, he loses the sight of the eye. The question at once confronts us: Should that man be compensated as for loss of eye on account of its being injured by accident? I would say "no," because, looking at it from a broad common-sense point of view, I would say the accident, if it may be so described, did not contribute in a material or substantial sense to the loss of the eye.

But suppose we take this same man, or at least a man in the same condition, and he meets with a serious accident—a scaffold breaks resulting in a compound comminuted fracture of the arm, the bones will not unite probably because of the condition referred to and amputation becomes necessary. Would any of us hold that this unfortunate man should be deprived of compensation as for loss of arm on this account, or if called on to apportion the cause, where would you draw the line? As I said above, most of these cases can be determined by the exercise of ordinary common sense in relation to the evidence adduced.

Much has been said and written in the reported cases in England and America on this subject. The leading case in the former country was decided in the House of Lords in 1910—*Clover Clayton & Co. v. Hughes* (3 B. 275). That case, judging from the words of Lord Chancellor Loreburn, seems to go probably farther than many of us who are not bound by the decision would care to go. It was only a bare majority of one decision and as a matter of actual decision it merely held that there was evidence upon which the county court judge who originally tried the case was entitled to hold, on the conflict of evidence, in the claimant's favor, and having so held his finding of fact should not be disturbed. Had the county court judge found the other way on the facts, and I think without straining the situation at all he might well have done so, it is morally certain, I think, that the House of Lords would not have disturbed such finding. It is not the finding of fact in favor of the claimant in this case, however, that makes it so important. It is the statement by the judges, particularly the lord chancellor, of the important principles of law governing such cases that causes the case to be so widely quoted and relied on.

The facts in the Clayton case, shortly stated, were as follows: A workman died from the rupture of an aneurism; the county court judge found as a fact that the rupture was caused by the strain of the work deceased was engaged upon and consequently that the rupture was an accident arising out of the employment. In giving the judgment of the House of Lords simply determining that there was evidence which entitled the trial judge to make this finding, the lord chancellor said:

There must be some relation of cause and effect between the employment and the accident as well as between the accident and the injury.

Then after quoting with approval the reasoning of Lord Lindley in the *Fenton v. Thorley* case, decided in 1903, as to the meaning of the expression "injury by accident," he continues:

It seems to me enough if the employment is one of the contributing causes without which the accident which actually happened would not have happened, and if the accident is one of the contributing causes without which the injury which actually followed would not have followed.

Then, answering the argument that upon the above statement everyone whose disease kills him while he is at work will be entitled to compensation, his lordship negatives such idea and says, and this seems to qualify the broad statement above quoted:

It may be that the work has not as a matter of substance contributed to the accident though in fact the accident happened while he was working. In each case the arbitrator ought to consider whether in substance, as far as he can judge on such a matter, the accident came from the disease alone, so that whatever the man had been doing it probably would have come all the same, or whether the employment contributed to it. In other words, did he die from the disease alone or from the disease and the employment taken together, looking at it broadly? Looking at it broadly, and free from over-nice conjectures, was it the disease that did it or did the work he was doing help in any material degree?

It seems to me the last few lines above quoted constitute the sum and substance of this decision and it really means nothing more than that the judge when called upon to decide the facts in such cases must use ordinary common sense and should not be over-technical or narrow minded in sizing up the situation on the evidence before him.

In the case of *Doughton v. Heckman* (1913; 6 B. 77) a workman died suddenly shortly after pushing a heavy truck. There was evidence that though he had fatty degeneration of the heart, it would not have failed had it not been subjected to a strain, and therefore the trial judge held there was an accident. On appeal the court simply held that there was evidence upon which the county court judge was entitled to make the finding he did.

In *McArdle v. Swanson* (1915; 8 B. 489) the facts were very similar to the *Clover Clayton* case—rupture of an aneurism of the aorta in the course of his work, but because it occurred while the workman was doing the lightest part of his ordinary day's work and he had a heart disease condition of long standing, the county court judge held that there had been no accident within the meaning of the act. The court of appeal held that this was a misconstruction and decided that as soon as it was ascertained that the rupture occurred by reason of a strain at work, however slight that strain might have been, an accident within the meaning of the act was proven.

The cases cited above indicate how far the courts have gone in England in giving a liberal interpretation to the words "injury by accident arising out of employment," and perhaps it is small wonder that in many quarters there should be a desire to apportion the cause, particularly in cases where it is so obvious that the preexisting disease is by far the most important factor in the cause of the disability or death. With all respect to the court of appeal in England, I am satisfied we would not in Ontario have found in the circumstances related in the *McArdle v. Swanson* case, above cited, an accident within the meaning of the words "injury by accident arising out of employment."

At the last session of the Ontario Legislature a bill was introduced which was designed to give the board authority to have regard in death cases to the effect of a preexisting condition in the workman, so it would be possible to make an award having regard to all the

circumstances. The following is the wording of the proposed amendment :

Where death does not wholly result from an injury, but in the opinion of the board partially results therefrom, or is contributed to or hastened thereby, the board may make a payment or award a pension to the dependents commensurate with the extent to which, in the opinion of the board, such injury causes, contributes to, or hastens such death.

Although this was designed and submitted as an added benefit to workmen, labor representatives were afraid of it and urged that the bill be withdrawn, which was done.

I may say here that in Canada the Province of New Brunswick has such a provision in its compensation law, as follows:

In any case of aggravation of a disease existing prior to such injury compensation shall be allowed only for such proportion of the disability due to the aggravation of such prior disease as may reasonably be attributed to the injury sustained.

Reference to a few cases decided by our Ontario board will indicate our feeling in regard to many of the cases in which the subject under discussion has arisen.

Claim 14236.—A workman fell in the water and with much exertion pulled himself out, worked a week or two after and then quit, died two months later of heart disease. Held that death was not due to accident.

Claim ST3226.—Captain S. was in a shipwreck on Lake Ontario—not hurt but suffered from exposure; he continued on another ship all the remainder of that season (4 months) and took a job in a mill for the winter. He is said to have lost his nerve, developed heart trouble and died about a year after the shipwreck incident. Held death not due to injury by accident.

Claim 12242.—A number of fishermen, claimant included, were engaged in pulling in their net. It suddenly gave way and they all went down in a bunch against the cabin of the boat. Claimant was picked up helpless and died shortly after. He had a "bad heart" before but claim was allowed as it seemed clear the accident was the immediate cause of death.

Claim ST5749.—A conductor on a radial car was found dead alongside the track at a curve in the road, having evidently fallen off the car. He was found within 15 minutes after the fall. There were no serious bruises on head or body to indicate damage by the accident to any vital spot. A post-mortem indicated a bad heart and it was urged that the fall had not killed the man, but that he died first and that the fall was the fall of his dead body. The board held that the fall being established from which death might have resulted, though not likely to do so in a healthy man, the accident was the immediate cause of death.

Claim 86898.—Workman in the course of his employment twisted his leg a little and it snapped. It was found he had cancer at the time and he died of cancer two and a half months later. The board allowed the claim as regards temporary total disability up to the date of his death but rejected the death claim, as it was considered death was not due to the accident.

It seems altogether likely that in the last three cases cited had the provisions of the bill above referred to been a part of our law, the causes would have been apportioned on such basis as the board deemed reasonable instead of either wholly rejecting or allowing claims in full.

In cases involving merely permanent partial disability, we find ourselves making such apportionment almost every day. Many of these are cases where there is only a slight accident but by reason of some prior condition, such as mentioned above, there is incom-

plete or very slow recovery. We simply size the situation up from a common-sense point of view and try and allow what is fair having regard to all the circumstances.

Mr. Wenzel in his able review of this subject cites a number of interesting cases to which it may be appropriate to make passing reference in this connection. The decision in the first case cited, *Miami Coal Co. v. Luce* (131 N. E. 824), from Indiana, is short and to the point and I am sure will appeal to every one here as properly expressing the duty of each administering board.

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.

Case No. 2, *Indian Creek Coal & Mining Co. v. Calvert* (119 N. E. 519), is almost on all fours with the *Clover Clayton English* case as to the facts and it is noted that the Indiana court adopts the identical language of Lord McNaughton in the famous *Fenton v. Thorley* case, which was adopted and recognized as conclusive by Lord Loreburn in the *Clover Clayton* case as to the definition of accident.

My own feeling with regard to this Indiana case (and I feel the same about the *Clover Clayton* and *McArdle* cases) is that it is not really fair as between man and man where the preexisting condition is such a substantial factor in the cause of death as appears in these two cases to charge industry with all the consequences of a death under such circumstances. At the same time one naturally feels in such cases that but for the strain in question, slight though it may have been, death would not have resulted quite so soon and therefore to deny compensation absolutely would seem harsh. We feel in Ontario that the sensible thing is to be permitted under such circumstances to apportion the relative value of the factors entering into the cause of death.

Referring to the *Jones* case from Illinois, No. 4 of Mr. Wenzel's list, the judgment of the court does not appeal to me as warranted by the facts quoted. The man did not meet with an accident, so far as anyone saw. He was simply found unconscious at his work, having suffered a stroke (cerebral hemorrhage). It is easy, of course, to imagine that the exertion entailed in his work (though this was not out of the ordinary), or the heat of the molding room during pouring operations may have contributed in some slight degree to the stroke coming on when it did, but it seems to me a far call to say that such a stroke was an accidental injury in view of the known preexisting condition of arterio sclerosis, high blood pressure, and the natural condition following excessive alcoholism. I am satisfied that in Ontario we would reject a claim under such circumstances, or if we were permitted to apportion the cause of death, a very slight percentage, if any, would be allowed as for the factor of accident.

The decisions in the other four cases cited by Mr. Wenzel contain important expressions of the law, and I wish to quote two of them particularly as part of this record—one from Illinois and one from

Utah. I do not think that any of us will disagree with the important principles of law here stated.

In No. 5, the Peoria Terminal Railway case, where a fireman evidently had fallen from his engine and was picked up dead, autopsy showed he had several preexisting conditions.

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.

This is much like the case from Ontario, mentioned above, of the conductor falling from a radial car. The same principles of law so aptly stated by the Illinois court, as above quoted, were in the mind of the Ontario board in reaching its decision in the case referred to.

In the Tintic Milling Co. case from Utah, a workman was said to have a dormant tubercular condition, lighted up by being gassed from fumes from a roaster.

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.

Under the California law, a section of which I quote, the industrial commission of that State is entitled to apportion the cause of disability as between preexisting condition and accident.

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.

An interesting decision was rendered by the commission in December, 1925, which I have had the opportunity of reading, and I wish to quote it as a part of this record.

Claim 16996—F. J. Kelly.—Applicant was employed by an oil company as a pump mechanic. While using a 44-inch Stillson wrench with a piece of pipe over the end of it to give additional leverage he felt a stinging sensation in the vicinity of his heart. A short time later he began to spit blood and went home. At the time he was putting his entire strength into an effort to loosen a T. Medical examination two days after this occurrence disclosed a chronic endocarditis of some years' standing, together with a decompensation. He was removed to a hospital and continued under treatment until April 28, at which time all symptoms of decompensation had disappeared. Auricular fibrillation was noted at that time which, in the opinion of the attending physician, made it unwise for him to return to his former work. After a further period of four weeks' rest he went back to work and continued for a couple of months. On lifting some pumps he had a new hemorrhage. Examination at this time, July 19, 1924, disclosed chronic endocarditis and myocarditis, auricular fibrillation, and some congestion of liver and lungs. In the opinion of the doctor who examined him at this time, pulling on the wrench on March 28 was the exciting cause of the fibrillation and cardiac decompensation which followed. The applicant continued disabled, and in July, 1925, submitted to a further examination, which disclosed him still suffering from the auricular fibrillation and decompensation, with marked left ventricular preponderance and vital capacity 57 per cent. This examiner was of the opinion that the strain in March was an exciting cause, which, superimposed upon a heart already affected, resulted in disability. Other examiners testified that while the strain had some effect upon the chronic condition they were unable to estimate the extent of its results or how long disability from it would continue. The medical director of the commission, after a review of the entire record, reported that the evidence showed the man had a very badly diseased heart that was getting progressively worse, and that under the conditions presented, sooner or later even ordinary activity would become too much for him. In his opinion the strain added something to the incapacity. The permanent disability for the entire condition was rated at 75. It was held that inasmuch as the man was able to work effectively previous to the strain and following it was shown to have a condition which caused disability and will prevent his ever again reaching the same degree of efficiency, he has suffered a permanent disability, due to the injury which, in consideration of his preexisting chronic heart condition, amounts to one-third of the entire rating or 25 per cent.

The facts in the above California case are so similar to those in the Clover Clayton and McArdle cases above cited that any jurisdiction feeling bound by the principles of law set forth in these English cases would have allowed compensation in full as for injury by accident, and I confess that on the facts as stated I would rather allow such a claim than reject it if I had to choose between one or the other course; yet, one can not help but feel that as between man and man the California commission has done what seems fairer in this case than either to allow in full or to reject it altogether.

Sizing up the whole situation it is felt that there is much to be said in favor of the idea which Mr. Wenzel evidently had in mind in presenting his resolution at the Salt Lake City convention.

The CHAIRMAN. Next is the report of the committee on statistics and costs, including reports on remarriage and on administrative costs, by L. W. Hatch.

Mr. HATCH. I have a rather informal report for the committee on statistics and costs, partly for the chairman and three members of that committee, and partly for the chairman. However, I have reduced what I want to lay before you to writing.

**REPORT OF COMMITTEE ON STATISTICS AND COMPENSATION
INSURANCE COSTS**

BY L. W. HATCH, CHAIRMAN

There are at this time two matters which may be styled "unfinished business" and one of "new business," which during the past year have been in the hands of the committee on statistics and concerning which some report on behalf of the committee should be made here. The unfinished business includes the subjects of remarriage experience and administrative cost; the new business relates to revision of the standard plan for accident statistics.

STATISTICS OF REMARRIAGE

An interim report on this subject was made a year ago. It was then hoped to make definitive report on it this year. The chairman is compelled to report, however, that such final report is not yet ready. I had hoped, as explained at last year's convention, to complete this year a plan based on experience in New York in developing such statistics which could be laid before the committee on statistics for consideration, with a view to adoption as a standard plan. This hope has been frustrated because other more important statistical work has prevented such preliminary development in New York. It can only be suggested, therefore, that this subject of remarriage statistics be left with the committee for another year.

STATISTICS OF ADMINISTRATIVE COSTS

Here also the chairman is compelled to report that while he has individually given considerable thought to the matter he has not been able to find time in the past year to arrive at suggestions sufficiently concrete or comprehensive to justify submission to the committee by correspondence or conference. As pointed out in the discussion of the subject at the last convention, the problem of comparable data on this matter, under the widely varying laws and procedure in the different jurisdictions, is far from simple. That, coupled with the significance and delicacy of the subject, will necessitate a good deal of investigation and study before conclusion or recommendation of any finality can be presented. This subject also will have to go over for another year.

REVISION OF STANDARD PLAN FOR ACCIDENT STATISTICS

During the year a new matter has come up which is of much more importance than the two particular subjects above referred to. This is the question of some revision of the standard plan for accident statistics of this association. This arose as follows:

The members of this association are probably familiar with the fact that at the National Conference on Industrial Accident Prevention, held in Washington in July of this year under the auspices of the United States Department of Labor, the general subject of the conference was the "value of statistics for accident prevention." Among others, a committee on classification of industries—for use in

connection with accident statistics—was appointed at this conference. This committee consisted of six members, four of whom, including the chairman, were members of the committee on statistics of this association. The other two represented, respectively, the National Safety Council and the National Council on Workmen's Compensation Insurance. As soon as this committee began consideration of the subject referred to it it promptly developed that the particular thing and the only thing it could take up was whether or not the standard industry classification of this association needed revision, and if so, how such revision could best be carried out. This question soon broadened also into that of whether, after 10 years of experience under it, the entire standard plan for accident statistics of this association should not now be restudied with a view to revision in the light of experience and recent developments in industry, accident prevention, and statistics. The result was that the national conference committee reported unanimously as follows:

The committee finds—

(1) That some revision of the existing plan for standard and uniform accident statistics of the International Association of Industrial Accident Boards and Commissions seems desirable.

(2) That such a revision is a matter requiring study and time;

(3) That pending such a revision the use of the existing plan is urged;

(4) That the most promising means of revision would be utilization of the machinery of the American Engineering Standards Committee, as it is being employed for development of standard industrial safety-code rules; and

(5) That the logical and appropriate agency to sponsor revision by this means would be the International Association of Industrial Accident Boards and Commissions, under whose auspices the existing plan was developed.

The committee therefore recommends—

That this committee be temporarily continued and authorized to take up negotiations with the International Association of Industrial Accident Boards and Commissions and the American Engineering Standards Committee looking to revision of the standard plan by this means.

This report was adopted by the conference, and accordingly, as chairman of the Washington committee, and, appropriately also, as chairman of your committee on statistics, I now present this proposal of the Washington conference for your consideration. Before leaving it with you for discussion let me make four comments in order to make the situation as clear as possible.

In the first place, the Washington conference proposal is not in the least degree unfriendly toward this association's standard plan. On the contrary, that plan was there recognized as the only one available and in use both by public and private agencies, and the one whose use should be extended. The proposal to study the question of revision was solely with a view to making it more widely useful, if possible.

Secondly, while the Washington resolution proposed taking up the question of revision, not only with this association but with the American Engineering Standards Committee, I have taken the responsibility of deferring any approach whatever to the latter agency prior to action on the proposal by this association. That is not only because it seemed to be the most practical course as a matter of procedure but because it seemed clearly to be due to this association, under whose auspices the standard plan was originally developed.

In the third place the course suggested to this association by the Washington conference has the approval of four members of your committee on statistics, including representatives of the United States Bureau of Labor Statistics (Mr. Baldwin), Ohio (Mr. Beasor), Pennsylvania (Mr. Maguire), and New York (Mr. Hatch), all of whom were members of and participated in the discussions of the Washington committee.

Fourth and finally, for this association to utilize the services of the American Engineering Standards Committee is not a new thing at all. The association has already sponsored development through that agency of four different industrial safety codes. The present proposal is only to utilize the same technical machinery for development of standard accident statistics as a tool for accident prevention which has been found highly important in the making of and securing best results from safety codes.

DISCUSSION

Mr. HATCH. That is the report of the committee for the record. What it does is to lay before you this proposal of undertaking a study of some revision of the standard plan for accident statistics, with a view to bringing it up to date, getting the benefits of the fruits of experience, and if possible extending its use.

One of the most interesting things and a thing in which I think this association may take some satisfaction was the fact that while that conference represented the State departments, such as are represented here, it also very widely represented insurance companies and private employers and safety organizations.

Personally, I was pleased to see that when it came to statistics the standard plan was regarded as the thing to use, as far as it could be used. But the question of whether there ought to be some revision of that plan, possibly an amended form of it as an alternative to the full plan, and which would be more widely used, seemed to be a very important and a very practical one. In the discussions of this temporary committee at Washington the question was raised as to the best way to do that.

The committee on statistics of this association is made up of men in charge of statistical work in various States. Like all of you commissioners, every one of us is a pretty busy man at all times. We usually think we have a little more to do than we can do with the resources given us. The matter of revising the standard plan, on which five years' work was spent before it was completed by the committee on statistics, is one that can very easily be laid at the door of the committee on statistics and lie there until it freezes. It is too big for any one of us to tackle.

May I interject that we are under a tremendous debt of gratitude to the late Doctor Downey, of Pennsylvania, who personally went ahead and blazed the way for all that work, at tremendous sacrifice of time and energy.

The American Engineering Standards Committee is the technical agency which is doing the technical work in the way of developing safety-code rules for uniform purposes throughout the country.

Why not now ask that agency to establish a sectional committee under the sponsorship of this association to work out one of the tools necessary to making safety rules and to securing accident prevention, namely, proper accident statistics? There is every reason to believe that if we should study the problem of revision through that agency the plan of this association would become—what it is to some extent already—the standard plan of private agencies as well as of this association.

I received last week a letter which sets forth the attitude of the most important private agency dealing with accident prevention with regard to that plan—a letter from the director of the National Safety Council. It feels that the classification of industries which it uses is a little bit unsatisfactory and out of date. It wants to revise that classification. What it proposes to do is to use whatever revised industry classification may be adopted as a part of the standard plan. The director of the National Safety Council frankly asked, "Can you give me that revision at this time? We propose to adopt it." The National Safety Council is using the standard plan to-day. Its plan for individual plants is the standard plan of this association, as far as it is necessary for an individual plant.

I have taken the responsibility, without submitting this thing to all the members of the committee, but speaking for three other members of the committee as well as myself, namely, the representatives of Ohio, Pennsylvania, and the Federal Bureau of Labor Statistics, to propose that we take up the question of possible revision through this channel. I do not know whether the Engineering Standards Committee will take up the matter. I am not informed as to whether it would undertake this particular thing, but I do not want to approach it unless this association thinks best. But if this thing were taken up, we would be fully represented on the committee that did the work, and would also get the cooperation of all organizations interested in statistics of accidents for all purposes. When the work was done, it would come back to this association, which could approve it or reject it as it saw fit.

I am confident that this is a good move toward further progress with the standard plan for accident statistics which this association has the credit of establishing in this country.

What I should like to do is to ask for a full discussion of this matter, either at this time or by the committee on resolutions, to which I should like to submit a resolution along this line.

Mr. STEWART. I want to supplement Mr. Hatch's report upon two points. In the first place, upon the remarriage of widows, I have again asked each one of the commissions to give me a report of its widows and the remarriage of widows. I have received only one report during the whole year, and that was from West Virginia. It came in just before I left and I am having it classified and tabulated.

As that work grows, it becomes to my mind a more complicated question than we imagined at the beginning. Adopting, as we have done, the Dutch remarriage table, which is worthless, we have assumed that if we had 10,000 widows, with their ages—with no question as to the number of children, no question as to the occupation of the husband—a certain percentage would remarry.

So far as we have gone in this country, our figures do not work out that way at all. The occupation of the husband has a great deal to do with the matter. It is astonishing to what extent it is a factor. I am thoroughly convinced, Mr. Hatch, that we can not afford to ignore the question of the occupation of the husband. The widow of the coal miner is three times, and in some instances five times, as apt to remarry as the widow of a man in any other occupation. For coal-mining States there will have to be a different table than that for the manufacturing States. The widow of the railroad man outmarries the widow of the machinist and the carpenter and the bricklayer. There is every indication also that the race and nationality of the widow and of the deceased husband affect the remarriage of widows so materially that these elements will have to enter into and be given due weight in our remarriage rate table. Even if it should take a year or two longer I want to see the remarriage rate table of the association the best it is possible to make. It seems to me that the States must begin to keep those facts and get them ready for us. We must get together a vast volume of figures as to the remarriage of widows.

Another thing we have assumed is that the number of children was going to affect the remarriage of widows. So far as we have gone, we have not found that is true. A widow with two, three, or even five children remarries in a greater number of instances than the widow with no children at all. There may be something wrong with those figures. If there is anything wrong, it is because of the lack of enough cases in each class.

I am saying this to show you the importance of sending in to me a transcript of your experience with widows. Unless we can have a large block of figures to base our rates upon we can not guarantee to you that when we are through those rates will be any better than the Dutch tables, which are a mere guess.

So far as the other question is concerned, I am a member of the American Engineering Standards Committee—a member of the main committee and a member of the executive committee. If it comes before the executive committee, of course, I would vote that it should take the matter up. I believe it would be a good thing, but we do not want to forget that this association must be the sponsor of that code from first to last.

The CHAIRMAN. Is there any further discussion on this report of the committee on statistics and costs?

Mr. LANSBURGH. It seems to me very important that the suggestions embodied in Mr. Hatch's report be adopted by this association either at this meeting or at some subsequent time. Inasmuch as the suggestions of the other reports have been adopted at the meeting at which they were reported, I move that the suggestions made by the committee of which Mr. Hatch is chairman be adopted by this association and that Mr. Hatch be instructed to get in touch with the American Engineering Standards Committee, with a view to having it assist in the revision of the standard accident cause code.

[The motion was seconded and unanimously carried. It was also moved, seconded, and carried that the committee be continued.]

The CHAIRMAN. Next we will have the report of the committee on legal aid organizations, which will be presented by W. H. Horner.

REPORT OF JOINT COMMITTEES OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS AND THE NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS, 1926

Last year your committee submitted a joint report with the committee representing the National Association of Legal Aid Organizations. This report reached the conclusion that cooperation between the local organizations of the two associations was desirable. It was decided that the member organizations be requested and encouraged to cooperate with each other in handling workmen's compensation cases. To that end the committees were continued.

This year it seems appropriate to point out the methods of that cooperation, so that a start may be made.

POINTS OF CONTACT

There are various stages in the progress of a workmen's compensation case at which the cooperation of the State compensation authorities and a legal aid society may be helpful. These are listed as follows: (1) The establishment of the first contact; (2) advice without litigation; (3) litigation; (4) disposition of the funds awarded.

ESTABLISHMENT OF THE FIRST CONTACT

When an industrial accident occurs the first step in successful disposition is to see to it that the injured person or his dependents have knowledge of their rights and of the necessary action to be taken. This is accomplished in several ways: (a) By notification on the part of the employer; (b) by assistance given by the State compensation authorities; (c) by general information acquired by the applicant from insurance companies, lawyers, or others.

The aim is to see that every accident is disposed of under the law. In many States this is a fact. In others it is possible that a negligent applicant or an unscrupulous employer or an indifferent insurance company may prevent this preliminary contact from taking place.

Here is a large field for legal aid activity. Every legal aid organization should make it a rule to see that every applicant presenting a case which comes under the general scope of the workmen's compensation statutes shall be brought in touch with the proper authorities immediately.

ADVICE WITHOUT LITIGATION

In States where all cases are disposed of by the workmen's compensation authorities there is little need for legal aid at this stage of the game, because the State authorities will care for the entire work.

But where settlement is allowed without the approval of the State authorities further action is necessary. The applicant needs to know what papers to fill out and the amount of money payable to him under the law. He needs to be protected from premature acceptance of offers made by the employer or the insurance company, and he must often be guarded so that the payment is actually made to him.

The fact is that sometimes representatives of insurance companies do not deal honestly with the injured workmen and attempt to defeat the purpose of the act by not obtaining true statements of the facts in the case and this can usually be stopped immediately if the legal aid society which discovers the unusual practice will report it to the State compensation authorities, who generally can be relied upon to take prompt action.

To accomplish such results both workmen's compensation authorities and legal aid societies should be on the alert. When the State authorities can not see to such matters themselves they should call upon the legal aid society to advise the applicant, fill out the papers, and conduct the negotiations and ultimate payment of funds.

If such procedure becomes customary, it will be quite simple for every poor person in such cases to consult the legal aid society before taking action. The State authorities can readily refer cases direct to the society, and fewer will be lost by the wayside. This is already being done in many cities.

LITIGATION

A certain number of cases require litigation; that is, a hearing before a referee or the board or commission, and at times an appeal to the board or commission. In such cases it is becoming more necessary to-day than in the past that the applicant be properly represented. The function of a legal aid society in such cases is to institute a thorough examination into the facts of the accident; secure a careful examination by a duly qualified physician who is willing to appear in court and testify; prepare an adequate brief on the law, which is becoming more technical day by day.

If the referee, commission, or board will make a practice of notifying the legal aid society of all cases where the claimant should be represented by counsel, much may be gained. The case will be honestly represented, as the fees set in the case of a legal aid society which charges fees will be so low that little or no hardship will be caused to any poor litigant. Fewer spurious claims will be brought to the referee, board, or commission for determination, because the legal aid society will be jealous of its reputation before the State authorities and will present only cases in which it believes the workman is entitled to receive compensation.

Medical testimony will be of a better order, because the legal aid society will be able to arrange for the examination of its clients by physicians who will be willing to do the work for a moderate fee or upon a contingent basis, agreeing to take only a small fee in the event that the case is won. Finally, points of law will be presented for the applicant by a trained lawyer who is as much of a specialist as the counsel for the defendant.

DISPOSITION OF THE FUNDS AWARDED

The intention of most statutes providing for workmen's compensation payments is that the workmen should be put to a minimum of expense. To deduct large attorneys' fees and expenses of transmittal is to give the injured employee or the dependents only a part of what the law proposed.

It is sometimes difficult for the board or commission to make or direct distribution of the funds. It is sometimes necessary that an investigation be conducted to determine the person or persons entitled. Sometimes this requires investigation in foreign countries. Legal aid societies should not fail to cooperate to the full extent to see that the funds paid over in industrial-accident cases are properly used. This applies especially to lump-sum settlements. In such cases the legal aid society is in a position to offer valuable assistance to the board or commission.

THE NEXT STEP

It is obvious that no progress will be made unless some one takes the initial step. Services of the kinds enumerated above are within the jurisdiction of the legal aid societies. If the individual society is to do its duty in filling completely the need in the community it should inaugurate the proceeding.

The first step is to have some duly authorized representative of each legal aid society communicate and hold a meeting with representatives of the workmen's compensation bureau, board or commission, point out to them the points of contact, the sanction of cooperation given by the two national bodies and arrange a plan which shall be adequate for local needs.

This is the present recommendation of your committee.

Respectfully submitted.

International Association of Industrial Accident Boards and Commissions:

W. H. HORNER, Pennsylvania,
Chairman.

ETHELBERT STEWART.

National Association of Legal Aid Organizations:

RAYNOR M. GARDINER.
JOHN S. BRADWAY.

[It was moved, seconded, and carried that the report be received, approved, and placed on file and that the committee be continued.]

The CHAIRMAN. Next will be an address on "Workmen's compensation in Mexico," by Canuto A. Vargas, labor attaché of the Mexican Embassy, Washington, D. C.

WORKMEN'S COMPENSATION IN MEXICO

BY CANUTO A. VARGAS, LABOR ATTACHÉ MEXICAN EMBASSY, WASHINGTON, D. C.

In response to the kind invitation of your association, the Minister of Labor, Commerce, and Industry of the Mexican Government asked me to appear before you as his representative. Allow me, therefore, first of all to present to you his personal greetings and his wishes for the success of your deliberations. He is, as you all know, a man very much interested in all movements and in all organizations which have for their object the improvement of the lot of the workingman. Your organization is one of such. It is of still more interest to him because it is composed, in the majority, of men who represent the governmental authorities of the various States from which you come in the administration of labor legislation,

It is a new experience for me to appear before a group of men gathered from several parts of the United States and Canada to discuss workmen's compensation acts from the technical side of the question and with the knowledge that is acquired only by long years of study and practical experience in their application. My associations in the past have been entirely of a different nature. It is true I have sat in conferences in past years for the purpose of drafting workmen's compensation acts, but I know very little of their administrative value.

So I am not going to read a technical paper, nor even to discuss the technical side of workmen's compensation. I am simply a layman in that respect. I am going to confine my few remarks to general information of what we are attempting to do in Mexico in regard to workmen's compensation acts.

First, I want to impress upon your mind that before 1917 there was nothing in the laws of Mexico with regard to labor legislation. If you hear or anyone tells you about labor legislation in Mexico, that has come about only within the last eight years. So you can very readily see the tremendous amount of work that is yet to be done. We are just beginning to enact legislation.

There is that famous constitution of 1917—it has become famous all over the world for reasons which this is not the time nor the place to discuss. That constitution has an article 123 which in Mexico we know as the labor charter. It has six different sections dealing with relations between employer and employee. One establishes the principle that the employer shall be liable for injury to the workman, but that is as far as the constitution goes; it only establishes the principle. The legislators who drafted that constitution left it to the different States to enact legislation intended to enforce the provisions of that article. For many reasons and because of many circumstances in the past eight years, it has been quite impossible in all of the different States to get to the workmen's compensation act, and such legislation has been enacted in only a few States.

Just to show you that we are only beginning, I am going to give you a short description of the laws enacted in two of the States—Coahuila and Chihuahua—which will explain to you better than I could what a tremendous amount of work we have yet to do in that respect in Mexico.

The salient features of the Coahuila law are: For permanent total disability compensation shall be paid equal to the full salary of the workman during his probable life—that is, according to the age and salary at the time of the accident. This means that the younger the man is at the time of the injury the more money he will receive.

There is in the law of Coahuila a table of life expectancy. It begins with the age of 10 years. At the age of 10 years the life expectancy is 40.8 years. I rather like that part, because that would prevent employers from employing children 10 years of age. If a boy of 10 years is permanently and totally disabled, he will get compensation equal to 40 years' salary. Then the life expectancy decreases gradually until at the age of 85 he gets compensation for an amount equal to only two years' salary, which is his life expectancy. I brought that out because it is something unusual.

The State of Chihuahua grants for permanent total disability about 25 per cent more than in the case of death, which is, of course, something unusual.

This will show to you, as far as workmen's compensation is concerned, that we are just beginning. I hope that your organization will be of very great help to us in this respect. I have been in Washington this past year, and on my own initiative I have been requesting information to send to the several governors in Mexico concerning workmen's compensation and other legislation. The one thing about which I am particularly interested is the administrative end of it.

Mr. McSHANE. Mr. Vargas, would you kindly tell the association the limit of your compensation in Chihuahua? What do you pay?

Mr. VARGAS. For permanent total disability, 175 weeks; for the death claim, 150 weeks. The beneficiary receives more if the man is permanently disabled than if he dies.

The provisions of the constitution to which I referred a while ago also provide for the establishment of what we call boards of arbitration and conciliation. There are no workmen's compensation boards or commissions like you have in several of the States in this country. We have simply a general commission. That commission deals with all possible claims under the labor legislation of the State, including workmen's compensation acts. It is somewhat odd that the only thing we have is what the constitution provides. It seems that in Mexico the national congresses have a weakness for taking their time about matters that are important to the people. I am sorry to say that the National Congress of Mexico has not acted to enforce the provisions of the constitution in regard to the labor legislation section.

Something curious happened in the Federal district. It seems that Congress did not pass legislation to put into effect the constitution, so the workingmen's organization, in conjunction with the employers, have acted, and you will find in the Federal district that the largest employers have entered into an agreement with the workingmen's organizations, which includes complete tables of the payment to be made in case of accident.

That is also true of the territory of Lower California, which also comes under the Federal jurisdiction. One of the biggest mining companies has an agreement with the miners' organization as to the relation between employer and employee, including workmen's compensation, we might call it. It has a complete table of compensation to be paid in case of accident and injury.

In the session of Congress now meeting we hope that a bill that was introduced at the last session will be adopted. That is a complete regulation of article 123, covering all of the different sections of that constitutional provision. Not knowing whether Congress will pass it, I think it is rather useless to go into details about this bill. Suffice it to say that the bill has the backing of the Mexican Federation of Labor, which is the strongest labor organization in the country; in fact, the bill was drafted by three members of the council of that organization.

Whether Congress will pass it depends on the make-up of this Congress. The chances are very good that it will pass, because

the workmen's organizations have in the Chamber of Deputies 46 of their number, whereas they had only 5 at the last Congress; so you see that they have very good prospects of passing it within the next two years. It is the intention of Congress to make that a model bill for all the States in the Republic of Mexico, with a view to preventing such extremes as I have pointed out exist in the laws of Coahuila and Chihuahua.

The chairman of the committee that presented the bill to Congress made ample use in drafting this bill of a compilation of workmen's compensation acts in this country which Mr. Stewart was kind enough to give me. I have hopes not only that this bill will pass Congress, but also that it will then be adopted by all of the States in the Mexican Union. Perhaps that may not be within the next two years, but I shall be satisfied if it takes place within the next four.

In the meantime, if you who administer the compensation laws have any suggestions that may prove helpful, I will appreciate it if you will forward them to me or get in touch with me at Washington. I shall be glad to forward them to Mexico, for it is only through cooperation that we progress.

DISCUSSION

Mr. STEWART. Mr. Vargas, in the States where they have passed such legislation, what is the form of administration?

Mr. VARGAS. They have boards of conciliation—State boards and district boards—and any claim of a workman against the company which is based on the workman's compensation act goes before the board. These boards are composed of two representatives of the employers, two representatives of the workers, and a representative of the Government, so they can make a pretty fair settlement when a case comes to the board. That, of course, would not be the ideal way of settling such cases. The ideal way would be to have a commission expressly for that purpose and for nothing else. We will get around to that after a while.

You must remember we have been in this work only eight years, and there is a lot of work to do that can not be done in eight years. We require time, and with the help of all organizations interested in this work we will be able to make more progress than we have been making.

Mr. ROACH. I should like to ask what classes are included in the workmen's legislation. Is every class included?

Mr. VARGAS. All classes, except servants, are included in the workmen's compensation act.

Mr. McSHANE. I was very much interested in your talk. I should like to know whether in your system of administration in the States of Mexico that have acted, you base the compensation that injured men receive on full salary or fraction or percentage of salary?

Mr. VARGAS. It differs; it is not uniform. I cited two cases to show that.

Mr. McSHANE. Some pay the entire wages and some pay a fraction of the wages?

Mr. VARGAS. Some pay even less.

Mr. McSHANE. May I ask you another thing? Has any Mexican State placed an artificial maximum? For instance, in my State a man may be earning \$250 a month as an engineer. The law provides he is to receive 60 per cent of his average weekly wage, but not to exceed \$16 a week, which really takes all the joy out of the whole thing, because that man's social conditions are entirely different from those of a man earning \$40.

Mr. VARGAS. There is no limit fixed as to salary.

Mr. McSHANE. We have three artificial factors in our legislation.

Mr. WILCOX. I should like to ask if the provision for the payment of full wage loss applies to all other cases as well as to permanent total disability.

Mr. VARGAS. Only to permanent total disability. Only a percentage of the wage is given in the other cases. That is true in that one State.

Mr. WILCOX. In the ordinary accident case, do you pay on the percentage basis, even in that one community?

Mr. VARGAS. Yes. That law, which provides 175 weeks for permanent total disability, has a complete table for other temporary disabilities.

Mr. WILCOX. If there is actual 100 per cent wage loss, is there a limitation of 175 weeks?

Mr. VARGAS. Then the percentage decreases according to the injury.

Mr. BYNUM. We have some trouble in Indiana in getting depositions in the case of death in which dependents are back in the old country. We have quite a large Mexican population in our Calumet district around the lake in the State of Indiana. For instance, a man may be killed there and there is a claim that his wife, who is a dependent, lives in Mexico. Now then, could we refer the matter to your boards of conciliation and have the testimony of that wife and that of other persons taken down there?

Mr. VARGAS. I think you could do that.

Mr. BYNUM. I should be pleased if you would give me a list of those persons.

Mr. VARGAS. If the district board can not make the investigation, I should like to have you write to me, and I will transfer the matter down there and they will be very glad to take it up. In those States where no boards of conciliation are established, the labor bureau of the Ministry of Industry, Commerce, and Labor has inspectors and they take up the duties that would correspond ordinarily to those of these boards; so it would be an easy matter to locate anyone you wanted or the relatives.

Mr. McSHANE. I should like to ask you a question with reference to your form of carrying the insurance. Just what form of insurance is carried? Here we have State funds that are competitive and exclusive, and self-insurance.

Mr. VARGAS. The employer pays and is made to pay. The law says he is liable. Where he is going to get the money from is a matter that is up to him.

Mr. McSHANE. Isn't he required to put up a bond?

Mr. VARGAS. The laws that have come to my attention do not have that provision.

Mr. SINCLAIR. There is a matter which I have not got through my head. You say that a boy 10 years old has a life expectancy of 40 years and that he would get paid the full amount of his wage during that 40 years. As I understood it, compensation was limited to 175 weeks.

Mr. VARGAS. That was in another State. I reported two different laws just to contrast them.

Mr. BYNUM. I am sure the conference, Mr. Vargas, is very much interested in your State and in your problems. I will say on behalf of Indiana that if you ever come out there I shall be more than glad to take you around the State and you can then see our law in action.

The CHAIRMAN. I do not like to make distinctions, for we have enjoyed each speaker's talk here, but it does seem to me fitting and proper that this association should express its gratitude and feeling of satisfaction for the courtesy of the Mexican Government in taking part in this meeting.

[It was moved, seconded, and carried that the association extend to the Government of Mexico the thanks of the conference for its interest, its kindness, and its courtesy in sending a representative.

Meeting adjourned.]

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WEDNESDAY, SEPTEMBER 15—MORNING SESSION

**CHAIRMAN, JAMES J. DONOHUE, M. D., MEMBER CONNECTICUT BOARD OF
COMPENSATION COMMISSIONERS**

MEDICAL SESSION

The CHAIRMAN. We have an unusually interesting program this morning. During my ten or a dozen years' connection with this organization, I do not recall a time when we have had a more interesting program, and that is saying considerable, because we have had some very fine programs during our various meetings. We have some men of high standing throughout the State and country, and I am sure you will all be benefited by the papers which you will hear this morning.

I do not need to make any introductory remarks concerning Dr. Samuel Harvey. He is connected with the Yale Medical School as professor of surgery. I think he needs no special introduction to this gathering. Doctor Harvey is to read a paper on "The after effects of injuries of the cranium," a subject which gives us considerable concern at times.

THE AFTER EFFECTS OF INJURIES OF THE CRANIUM

**BY SAMUEL C. HARVEY, M. D., THE DEPARTMENT OF SURGERY, YALE UNIVERSITY
SCHOOL OF MEDICINE**

If Bailey¹ in 1898 could write that "we live in an age of accidents," how much more true is it to-day. At that time railway catastrophes with their sequelæ of "railway spine" and "railway concussion" were prominent in discussion. To-day the automobile with its concomitant insurance and the expansion of industry with widespread enactment of compensation laws have made the problem many times more important. Six years ago Dana² estimated the number of accidents to workmen in this country at 2,500,000 per year, and there were 288,441 such accidents in the State of New York alone for the year 1919. Of those applying for relief some two years after the accident about 15 per cent complained of nervous symptoms, many of whom had suffered from injuries to the head. About 10 per cent of war wounds involved the head and adjacent structures, and it is safe to say that by and large an equal number of the present-day civil wounds likewise result in injuries to this portion of the body. Certainly the number of such cases admitted to any general hospital with an active accident service is appalling, particularly when one bears in mind the large percentage of these which will suffer from some fairly permanent disability.

These disabilities are most bizarre in their possible variations, but in large part are referable to injury of the brain and meninges rather

¹ Bailey, Pearce: *Diseases of the Nervous System Resulting from Accident or Injury*. New York, 1900.

² Dana, C. L., in *Archives of Neurology and Psychiatry*, 7920, Vol. IV, p. 479.

than to damage to their surrounding tissues, whose functions are largely those of a protecting envelope. Nevertheless exceedingly important structures traverse the bony wall of the cranium, and it is well to consider for the moment the injuries that may occur to these.

Injury to such structures is but very rarely direct, usually being caused by an extension of a fracture line across the base of the skull, for all the important vessels and nerves take their entrance or exit there. The great vessels, the carotid and vertebral arteries, are but rarely injured, or if they are, death usually rapidly ensues. Nevertheless, the internal carotid is occasionally ruptured at the point where it emerges within the skull to traverse a large venous plexus, the cavernous sinus, and here it may form an arterio-venous aneurysm giving rise to the clinical picture known as a "pulsating exophthalmos," the term being sufficiently descriptive of the condition. Such a lesion untreated leads to a permanent and fairly complete disability of the patient by reason of the deformity, the constant roaring of the blood traversing the aneurysm, and the loss of vision in that eye, as well as subjective complaints of headache and dizziness directly referable to the lesion. Occasionally it is self-resolved, but if so within a few weeks, while ligation of the internal carotid artery, a measure which is frequently curative in its effect, carries with it a certain danger from deprivation of the brain of its blood supply.

The middle meningeal artery, a vessel of much less importance anatomically than the preceding, because of its lengthy course within a groove in the temporal and parietal bones, is liable to rupture as a result of a fracture of these bones. It is clinically of the greatest importance, and if a lesion of it is unrecognized may lead, if not to the immediate death of the patient, then to most disabling sequelæ. This vessel runs in the dura mater so that when torn it bleeds either within this membrane, exerting a direct pressure upon the adjacent brain, or between the dura and the skull, forcing the former in upon the brain with an equally disastrous effect. Because of its size the hemorrhage is only slowly progressive, but because of its location in respect to the brain the clot usually presses first upon the motor areas and thus leads to a paralysis of the opposite side of the body, a hemiplegia. Nearly 10 per cent of all severe head injuries produce this lesion, but it is not always recognized and operated upon by which means full recovery may be obtained. When not recognized, and when the patient does not succumb, the resolution of the clot is at best but slow, and indeed it may be converted into a cyst, which may cause further trouble many years later. Such a condition, in addition to muscular weakness of the hemiplegic type and at times difficulty with speech, may also produce epilepsy of the Jacksonian or focal type, or if less severe in its effect lead to incapacity from headache and the train of symptoms to be dealt with in more detail later in the paper. It is important, then, for many reasons to recognize this form of intracranial lesion.

The nerves of importance which are subject to injury in their respective exits from the skull are the great somatic nerve, the spinal cord, and the cephalic or cranial nerves, some 12 in number. Injury of the former leads at once or rapidly to death through abolition of the impulses going to the respiratory muscular mechanism, and of

the latter to some of the most distressing and persistent sequelæ with which we have to do. These will be taken up seriatim.

The first or olfactory nerves, together with the olfactory bulb, are so situated in the anterior fossa of the cranium beneath the frontal lobe as to be protected in large part from direct injury. They at times suffer in contusion of the frontal lobe from force applied contrecoup, but more frequently from a fracture running across the cribriform plate, the area of the skull through which the olfactory nerves make their exit. An injury sufficient to interrupt the majority of the pathways is likely to lead to a cerebrospinal fluid leak, meningitis, and death, while one less severe is unlikely to affect a sufficient number of fibers to result in so great a disturbance of the sense of smell (interpreted by the patient many times as a loss of the sense of taste), as is necessary to cause any serious inconvenience to the patient. English² found such permanent deficiency in 3 out of 100 patients who had suffered from a fracture of the skull. This would rarely be an incapacity affecting the ability to earn a livelihood.

The second or optic nerve is likewise so situated that it is rarely injured by direct violence and then only in a traversing wound, usually a gunshot wound inflicted with suicidal intent. A fracture line running through the optic foramen at the apex of the orbit may cause compression or even a section of the nerve and thus lead to complete and permanent blindness in the eye affected. Two instances were discovered by English² in 100 cases of fracture of the skull. This is to be distinguished from transitory or incomplete loss of vision, which requires careful investigation in order to establish its relationship to an antecedent injury. So, too, errors in refraction or accommodation are presumptively not explicable on the basis of an injury to the cranium.

Permanent injury to the nerves (third, fourth, and sixth) governing the movements of the eyeball are exceedingly unusual. A fracture at the base occasionally produces sufficient hemorrhage about the sixth nerve temporarily to compress it, and this may also occur in a generally increased intracranial pressure from hemorrhage or a block in the normal outflow of the cerebrospinal fluid. The result is double vision and strabismus, usually temporary. The relationship of these phenomena when permanent to an antecedent injury requires careful investigation for they are more typical of certain diseases unrelated to injury.

The fifth or trigeminal nerve, which supplies sensation to the face and motor innervation of the muscles of the lower jaw, is rarely injured in the main trunk or at its points of exit from the base of the skull. The sensory disturbances of the face following injury are nearly always related to fracture or dislocation of the bones of the face while neuralgia or other interference of the function of the main trunk of the nerve is probably due to disease unrelated to an injury.

The seventh or facial nerve, which supplies the muscles of expression of the face, is peculiarly subject to damage in fracture of the skull because it traverses, from apex to base, the wedge-shaped bone, known as the petrous portion of the temporal bone. In fracture of the base of the skull the fracture line frequently crosses this

² English, T. C., in *Lancet*, 1904, Vol. I, pp. 485, 559, 632.

area and so may injure the facial nerve and lead to paralysis of the muscles of the face on the side of the injury. In 4 out of 100 cases of fracture of the skull which English³ reported this was present. This direct injury is to be carefully distinguished from paralysis due to pressure upon the brain from a blood clot or to a laceration of the cortex. The latter type is incomplete (involving the lower half of the face) or accompanied by paralysis or weakness of other muscles on the same side of the body and is prone to recovery if the patient survives. The former is complete, comes on at once after the injury, and has little tendency to resolution; that is, it persists as a permanent deformity. It is to be distinguished from an idiopathic paralysis of the facial nerve known as Bell's palsy, which has no relationship to a preceding injury.

The eighth or auditory nerve has a double function, that of hearing and that of determining the orientation of the body in space or the function of balance. It likewise lies in the petrous portion of the temporal bone and is therefore frequently exposed to injury from a fracture. Deafness is a common complaint and frequently persists as a permanent defect. English³ observed 12 cases in 100 fractures of the skull. The defect, however, is frequently the result of injury to the middle ear rather than to the nerve. A careful examination by an otologist and appropriate treatment is of aid in some instances, while such assistance is always necessary where there is any cause to suspect malingering. Injury to the internal ear or that portion of the nerve which has to do with balance is followed by dizziness, which is accentuated by any movement and together with it there appears rapid lateral movements of the eyeballs, known as nystagmus. This is nearly always a transitory phenomenon and does not constitute a permanent disability. Vertigo which persists and noises in the ear (tinnitus) are usually referable to central damage and will be discussed later.

The remaining cranial nerves (ninth, tenth, eleventh, and twelfth) are those which control the movements of the tongue, the larynx, the throat, and certain shoulder muscles as well as having a distribution to certain other portions of the body. They are never ascertainably damaged in their exits from the skull; at least they are not permanently impaired in their functions in any way that can be readily determined.

So far only those structures have been discussed which may be injured during their course through the bony framework of the cranium. More important still are the injuries to the contents of the skull; that is, the brain and the meninges. In the beginning of this paper it was stated that fractures of the skull per se were rarely of any importance aside from the occasional cosmetic defect. It is necessary now to call your attention forcibly to the fact that absence of fracture of the skull does not in the least imply absence of damage to its contents. English,³ to whose Hunterian lectures we have already frequently referred, examined, at a time distant to the cranial injury, 200 patients, of whom 100 had fractures of the skull and 100 evidence of intracranial injury without fracture. Of the former group 19 and of the latter 10 had disability sufficient to prevent their working. It is then of great importance to examine

³ English, T. C., in *Lancet*, 1904, Vol. I, pp. 485, 559, 632.

the injury to the brain and its envelopes irrespective of the condition of the surrounding calvarium.

From the viewpoint of injury we may consider the meninges as consisting of two layers, the pachymeninx or dura mater and the leptomeninx or arachnoid pia mater. The former merely serves as the inner lining of the bony case, being closely attached to it and has very little function of significance in this connection. If its continuity is impaired it readily heals the defect. Between it and the leptomeninx is a potential space; that is, the two membranes are not adherent nor do they normally inclose fluid. The arachnoid pia mater, however, is of the greatest importance, for it incloses the cerebrospinal fluid in places in a loosely woven mesh, in other places in large spaces. This flows from the ventricles within the brain posteriorly until it emerges through the fourth ventricle between the two layers of this membrane. It then passes forward and over the surface of the cerebrum to be discharged into the large venous sinuses. Now, injury to this inner membrane readily leads to the formation of adhesions, to the outer envelope on the one side and to the cortex of the brain on the other side and frequently blocks in part the flow of the fluid so that isolated collections are formed, which press upon the brain beneath. Such injury may be done by a traversing missile, the fracturing inward of the skull, or by the severe commotion or shaking up of the contents of the cranium with resultant bleeding into this membrane, or lastly by an inflammatory process resulting from an infection. Where such an accumulation of fluid is local and over a portion of the brain, compression or irritation of which produces signs, then there will be a definitely recognizable disease. When the block is more widespread or over "silent" areas of the brain the disturbances are subjective and difficult of analysis. Undoubtedly many of these vague and troublesome symptoms which produce disability of serious import are due to such lesions.

Damage to the brain itself may be direct, as by a gunshot missile, or by fragments of the skull being driven into it. It may be indirect, as by compression from depressed bone, from hemorrhage, from encysted cerebrospinal fluid, or by contusion and laceration from the impact of the brain against the skull, an injury which is frequently opposite the point of impact—that is, by contrecoup. The symptoms and signs produced are dependent upon the portion of the brain injured. A laceration in the motor area produces paralysis, in the visual area in the occipital lobe a particular type of blindness, and so on. In general these effects are more marked shortly after the accident and tend to clear as time goes on. All hope of spontaneous improvement should not be abandoned for less than six months—perhaps, better, a year. When the injuries to the brain occur in a "silent" area, then there may be no recognizable effect, and it is remarkable that so extensive damages may occur with so little apparent impairment of function.

The late effects of such localized injuries are not confined to the loss of function, however. If a missile or fragment of bone from a compound fracture is retained, then the danger of the formation of an abscess is persistent over many years. Likewise the scar in the cortex, with the meninges adherent between it and the overlying

skull or scalp, may serve as the "trigger" point for the induction of attacks of epilepsy; and this is particularly true if the lesion is in or adjacent to the motor area.

Epilepsy is one of the most common and most disabling sequelæ of a cranial injury. The incidence is high where there has been a definite wound of the cortex, as was usual among the injuries of the head during the recent war. Lenormont⁴ has reviewed the literature on this phase of the topic.

In a summary of nearly 12,000 such injuries about 11.5 per cent were found to suffer from epilepsy. The onset was relatively late. Holbek,⁵ who followed 65 wounds for two years, noted 6 epileptics after four months and 19 after two years. In 1916, Marie and Chatelein⁵ found 5 per cent of epilepsy in cranio-cerebral wounds; in 1917, 8 per cent; and in 1919, 12.1 per cent. This may, then, be a fairly late sequela.

Epilepsy also occurs in injuries to the brain where there is not a compound wound, but with much less frequency. In 114 instances of commotion alone Braun⁵ found 2 epileptics; in 126 fractures at the base, 10; in 20 fractures of the vault, 1; and in 31 gunshot wounds, 1. Neumann,⁵ in 108 cranial injuries found 3 epileptics. Grandon and Wilson⁵ in 530 fractures at the base reported 14 with epilepsy. English³ in 100 cases of fracture of the skull found 5 of epilepsy and in an equal number of the group of concussion, commotion, and laceration, 2. Seven of 21 were the result of compression definitely proven, while the other 14 remained inexplicable. In general, then, one might estimate the incidence of epilepsy after compound cranio-cerebral injuries as 10 per cent; in fracture of the skull alone, 5 per cent, and in the brain injuries unaccompanied by fracture, at 2 per cent.

Wounds of the parietal cortex (in the neighborhood of the motor area) are much more likely to give rise not only to focal epilepsy but also to the generalized form. Thus, according to Béhague and Voss,⁵ over 50 per cent of gunshot wounds following epilepsy are of the parietal region, about 25 per cent of the frontal, and 15 per cent of the occipital. Béhague⁵ states that of the parietal wounds 70 per cent lead to the focal or Jacksonian type of epilepsy, of the frontal 15 per cent, and of the occipital and temporal about 30 per cent.

The future of these cases is exceedingly problematical. Occasionally the attacks may disappear or become so infrequent that they are not troublesome; usually they do not, but rather increase in frequency, and in some instances may be sufficiently severe and numerous to lead to mental deterioration. Even the rare attacks may deprive the person of the opportunity of earning a livelihood in the trade which he has learned (such as a chauffeur, a house painter, etc.).

The indications for operative treatment are fairly definite. When the attacks are focal either at the onset or completely so, exploration should be done of the area indicated. At times pathology is found which can be corrected and a cure obtained, but this is not usually so.

³ English, T. C., in *Lancet*, 1904, Vol. I, pp. 485, 559, 632.

⁴ Lenormont, C., in *Journal de Chirurgie*, 1921, Vol. XVIII, p. 577.

⁵ Quoted from Lenormont, C., in *Journal de Chirurgie*, 1921, Vol. XVIII, p. 577.

So far we have been discussing the sequelæ resulting from fairly definite and ascertainable anatomical damage. Unfortunately for the ease of our understanding, these represent only a relatively small proportion of the after effects of head trauma. The usual results are concerned with psychic manifestations which are at the best difficult to correlate with structural alteration in the brain. For instance, Michael⁶ investigated 100 cases of cranial injury, of which 40 were gunshot wounds, 31 cranial fractures, and 3 concussion. One might expect in this series disability chiefly referable to gross injury of the brain and to a certain extent this is true, for 36 of these patients suffered from epilepsy. However, there were only 8 with no subjective complaints, while as far as earning capacity goes 18 were totally incapacitated, 35 were largely handicapped, and 37 were incapacitated in a lesser manner, leaving only 10 able to work as previously. These disabilities were largely such complaints as headache, dizziness, general instability, insomnia, restlessness, shakiness, black spots before the eyes, generalized weakness, loss of appetite, nausea, palpitation, impaired thinking capacity, etc.

This rather chaotic grouping of symptoms following injury has been recognized for a long time; in fact, since the introduction of railroad transportation on a large scale. One of the first writers on this subject, Erichson,⁷ supposed that there was a "molecular disarrangement" of the cord in railway spine, but this was soon objected to by Page,⁷ who classified these injuries as purely functional and not dependent upon a pathological basis. Dana² in 1884 summed up the opinion, which has remained largely authoritative until the present time, to the effect that these symptoms are a result of "mental shock and physical bruising" and may be classified under "traumatic neurasthenia," "hysteria," and "hypochondria."

In 1889 Oppenheim⁸ suggested that those cases in which the symptoms did not correspond to "traumatic neurasthenia" or to "traumatic hysteria" be grouped together under "traumatic neuroses," thus adding a fourth group which many authors have not considered to be sufficiently distinctive to justify its creation. In 1900 Bailey¹ expressed the consensus of opinion in a classification which consisted of "traumatic nerve neurasthenia," "traumatic hysteria," and a third group of unclassified forms. Hypochondria was included under "neurasthenia" as one of the forms it might take, and many cases might show symptoms of both of these major divisions. To-day Oppenheim's term of "traumatic neuroses" has come to be a common expression for both nerve "neurasthenia" and the "hysterical syndrome."

This all undoubtedly sounds very confusing, and indeed it is, even for the more sophisticated in diseases of the mind. Perhaps we can arrive at it more clearly by first considering those disorders of the mind which can be most closely correlated with structural damage of certain portions of the brain. It may be understood at the start

¹ Bailey, Pearce: *Disease of the Nervous System Resulting from Accident or Injury*. New York, 1900.

² Dana, C. L., in *Archives of Neurology and Psychiatry*, Vol. IV, p. 479.

⁶ Michael, J. C., in *Journal of the American Medical Association*, 1923, Vol. LXXX, p. 1047.

⁷ Quoted from Bailey, Pearce: *Diseases of the Nervous System Resulting from Accident or Injury*. New York, 1900.

⁸ Oppenheim, H.: *Lehrbuch der Nervenkrankheiten*, Siebente Auflage. Berlin, 1923.

that interference with pathways running to and from the cortex merely interrupts the communication of the cortex with the sensory and the motor apparatus of the body—the contact of the mind with the outer world is gone. This is illustrated in certain diseases involving partial destruction of the basilar centers. However, when irritation or destruction of the cortex or the pathways of association between various portions of the cortex occurs, then there is overactivity or underactivity or loss of balance in the functions that are carried on by these pathways. So we may have a tumor at certain points in the association pathways running to the occipital lobe which may produce hallucinations of vision, another in the temporal lobe may produce hallucinations of taste and smell, or one in the frontal lobe may be characterized by changes in character, disorderly habits, loss of memory, and retardation of mental response. Such phenomena may be caused by a cranial injury, but are usually present only in the more acute phases, from which the patient dies or fairly rapidly recovers. The tendency of most traumatic lesions of the brain is to clear, while that of the true mental disease is toward progression, and this is one essential difference to keep in mind.

A second difference is the characteristic grouping of symptoms in what we customarily term insanity. In some instances, as in the various forms of syphilis of the central nervous system, these are correlated with definite ascertainable changes in the structure of the brain; in other instances, as in the group of dementia precox, there are no discernible anatomical changes, although we may assume that they are present but beyond our powers of investigation. Such grouping of symptoms, when they are characteristic of the customary types of insanity, are rarely if ever produced by injury. In other words, it seems impossible from mechanical damage to bring about the correlated alterations of the brain structure necessary to produce such types of mental disorders. If, then, a patient is suffering from a progressive mental disease of a grave nature which fits in with one of the known clinical syndromes it is highly improbable that an antecedent injury had anything whatsoever to do with it.

On the other hand, we do of course consciously or unconsciously establish changes in our reaction to our environment. We become fatigued, so that our kinesthetic mechanism responds more sluggishly and our threshold of sensitivity to outside impressions becomes lowered so that usual sensations rush in upon us in greater volume and those previously not noted are now a source of annoyance. From this may come the whole train of symptoms which make up neurasthenia. Now, some people are constitutionally disposed to this condition and succumb rapidly to the repeated minor shocks of their environment, while others are constitutionally not susceptible but are overcome by the stress and strain of a severe life. A most recent example is the so-called "shell shock" of the war. Lastly, what is more to our point, some, whether constitutionally defective or no, suffer the mental shock of an injury and are affected with this functional disease. To this shock may be added the worry of impending economic disaster from loss of earning power in conjunction with indebtedness incurred because of the injury and accentuated by the uncertainty of indemnity by way of insurance or

compensation. The wish is father to the thought, and consciously or unconsciously the syndrome is accentuated until doubt is cleared away by a settlement.

That this condition may occur unconsciously and without motivation must be conceded. It is essentially a "fatigue neurosis" as Dercum⁹ terms it. That it may also be conscious and motivated can likewise not be doubted, and then the patient may be classed as a malingerer, but to determine that to be such is frequently a matter beyond our power of analysis.

Closely related to this group, yet forming a fairly distinct entity, is the condition of hypochondria. The normal person whose psychic reflexes are well conditioned to his environment dwells but little upon physical disability until it is forced upon his attention. Sometimes as a result of fatigue, more often as a result of suggestion (frequently from his medical adviser), and occasionally from the shock of an injury, his normal balance is upset and his mind comes to dwell upon supposed abnormalities of his physical economy. This conviction of disease may amount to a delusion so depressing in nature that it leads to complete incapacity. The prodromal stages of the mental disease melancholia are sometimes difficult to differentiate, and this misinterpretation should be guarded against. Traumatic hypochondria is unusual and when it does occur is rarely consciously motivated toward compensation.

On the contrary, the third group of functional disorders induced by trauma, that of hysteria, is frequently, I am convinced, at least unconsciously so motivated. In general, the manifestations of this disease are impairment of sensory and motor functions, corresponding to the patient's idea of disease but not true to the syndrome of the disease which he attempts to simulate. Loss of hearing, deficient vision, and more frequently changed sensory responses in the skin, pseudo-paralyses, as in loss of the voice, inability to swallow, paralyses of the extremities are all of such a character that they do not correspond to the necessary criteria of the corresponding structural disease.

These diseases, usually termed functional, are not in any sense characteristic of injuries of the head. They may occur as a result of injury of any part of the body; in fact, they do occur following no injury at all but merely from the mental shock of being witness of some appalling spectacle. That they occur more frequently in connection with head injuries may be true, for the sensation of being rendered unconscious even for a few moments is probably more frightful than any other type of injury.

Certain mental symptoms which may occur in the "traumatic neuroses" are worthy of more detailed mention, inasmuch as they frequently appear as isolated symptoms referable to actual structural damage to the brain.

Disorders of behavior, such as lead to criminal acts, are, when the injury happens to the adult, and when present, usually the result of ascertainable and formidable damage to the frontal lobes. In childhood less extensive damage seems to lead frequently to an arrest of mental development. Sometimes the intelligence remains at a low rating, more frequently the behavioristic reflexes to the social

⁹ Dercum, F. X.: *A Clinical Manual of Mental Diseases*. Philadelphia, 1918. 2d ed.

environment are not properly formed and the criminal class is recruited in part in this fashion. Juvenile delinquency is referable in 3.5 per cent of the cases studied to previous brain injury according to Healey;¹⁰ and Taft and Strecher¹¹ feel from a study of this group that the injury is an important factor.

Less striking are the minor changes in character and cerebation, such as we usually see in tumors of the frontal lobe. Increased irritability, lack of concentration, impaired memory, lowering of moral standards, untidiness in habits, and many other similar changes may be directly referable to such injury, although similar symptoms are also characteristic of the "traumatic neuroses."

Certain of these symptoms occur so consistently that one is forced to believe them to be the result of structural damage. The most important of these is headache, which is exaggerated by moving about or by stooping or by any muscular exercise. It is almost constantly present immediately after any brain injury and usually clears within two or three weeks. It is frequently accompanied by a sense of dizziness, and in some instances, particularly if the patient is not kept at rest for a proper length of time, it persists over several months and is incapacitating. This seems to be accentuated if there is a defect in the skull so that the brain is subject to rapidly induced changes in intracranial pressure. Of the 30 children whom Taft and Strecher¹¹ examined, 80 per cent suffered from headache and vertigo was present in approximately a third of these. Both the headache and vertigo were related to physical activity. English³ found in 112 cases of brain injury with symptoms at a late date that headache was present in 101. Vertigo was associated with it in about a third of the cases. With the headache comes insomnia, increased fatigability, and all the other complaints that are common to "traumatic neurasthenia" in general.

It is quite impossible that this "head syndrome," as Dana² terms it, is assumed. It is present in children who have no compensation motivation, and it occurs with such consistency that Dana² remarked that it was as if there was "an underground school for the education of those who have been hit on the head and desire permanent total disability compensation."

The distant effects of head trauma are then by and large frequent and serious. They range through a wide gamut of organic and functional disabilities. English's³ figures are fairly representative of what obtains at the present time. In relation to the working capacity of patients who had sustained fairly severe cranial injury these figures read as follows:

	Number	Per cent
No marked effects -----	115	70.1
Did lighter work -----	19	11.6
Only able to do a little work -----	11	6.7
Gave up trade -----	10	6.1
Totally disabled -----	9	5.5

Then, in nearly one-third of all head injuries which are more severe than transient concussion, there will be some impairment of

² Dana, C. L., in *Archives of Neurology and Psychiatry*, Vol. IV, p. 479.

³ English, T. C., in *Lancet*, 1904, Vol. I, pp. 485, 559, 632.

¹⁰ Quoted from Taft, A. E., and Strecher, E. A., in *Archives of Neurology and Psychiatry*, 1925, Vol. XIV, p. 25.

¹¹ Taft, A. E., and Strecher, E. A., in *Archives of Neurology and Psychiatry*, 1925, Vol. XIV, p. 25.

working capacity, and in about 20 per cent serious interference, with a total disability of 5 per cent.

The accurate diagnosis in these cases often taxes the powers of the most skilled neurologist, psychiatrist, and surgeon. It is needless to say that the treatment requires equally great skill. They should not be discarded as so much wreckage until they have the benefit of such diagnosis and treatment, for their lot even at best is many times but a hapless one.

DISCUSSION

The CHAIRMAN. I am sure we all appreciate Doctor Harvey's paper and his discussion very much.

One of the interesting things he said was that in 5 per cent of the cases of head injuries where there are no definite organic lesions 2 per cent develop epilepsy—if I am correct in my figures; I think that is something which all of us who are administering compensation laws should bear in mind—the fact that you do not always have a definite organic effect which can be cleared up on diagnosis but still may have a very prominent disability. I think that is something which should be borne in mind. You can not always prove why a man is disabled, and yet he is disabled.

We will now open the paper for discussion. Possibly there are some of you who want to ask questions of Doctor Harvey.

Mr. STEWART. I should like to ask Doctor Harvey a question which is not exactly related to accident in the ordinary sense of the word. What I refer to is the trouble with the hearing of boiler makers when there is no actual fracture, but there is a continuous and eternal and everlasting pounding at the ear until the fellow can not hear anything but the pounding.

In the Bureau of Labor Statistics we have been trying for several years to establish some relation between the boiler maker's deafness and injury. That is only a type of other cases of deafness that are beginning to manifest themselves—among the clerks along the line of the elevated railroads in Chicago and in New York, for instance; are there any statistics and is there any literature on the subject? Upon what ground can we establish this boiler maker's deafness as an accident? It is an occupational injury which we can not always call a disease, although I think perhaps we ought to. I should like to know whether Doctor Harvey has any opinion to express upon that subject.

Doctor HARVEY. I am afraid I have nothing to contribute on that subject. I am not familiar with the condition from personal observation. In searching the literature for this paper I have not chanced to run across any references to it. I can not help but feel that it is not an organic lesion, that it is not an anatomical damage. I am inclined to believe that it may be partly imagination.

I am led to feel that partly from personal observation in the case of dictaphone operators who seriously object to the dictaphone, particularly if it involves any additional work or change in method of operation. When the operators become accustomed to the dictaphone they no longer object to it. In other words, the disability they suffer from is a functional one, but in the instances you cite

that might be so severe and persistent that as far as compensation goes it is a thing that deserves attention.

Mr. McSHANE. May I ask Doctor Harvey a question? In administering compensation laws we frequently have men come to us who have sustained head injuries from which other complications result. I was wondering whether you have any statistics regarding certain disabilities due to head injuries which do not follow immediately after the injury. Sometimes a man comes in after we have felt that he was surgically healed, and at a time when the validity of his claim is in danger, when it is about to be outlawed, claiming serious disability to his head, setting up his claim as the result of that disability or head injury that occurred some weeks or months previously. I wonder if you could tell us something in a general way about that question.

Doctor HARVEY. There are certain definite injuries, of course, that are apparent at the time of the accident; for instance, blindness, as the result of injury to the optic nerve. That is a thing that occurs at the time of the accident. Any blindness which a patient claimed came on several months later would in all probability have nothing to do with the accident.

However, there are other things that undoubtedly come on very late; the question of epilepsy, for instance. From statistics secured during the war it was shown that if you examined a group of men who had head injuries three months after the injury the incidence would be relatively low; if you waited, say, eight months or a year, the incidence would be quite appreciably higher; if you waited two years the incidence would be at the maximum. In other words, epilepsy at the outset may be deferred six months, a year, a year and a half, perhaps even two years, and in some cases even more. That is one group which would be referable to a preceding accident, I think.

Then, in the whole group of neuroses, of course, the maximum does not necessarily occur—in fact frequently does not occur—directly following the accident. It is usual for them to reach the maximum two or three months after the accident, and then frequently by a coincidence or by the added mental trauma at the time the case is being brought before the compensation commission. It is a very difficult thing to disassociate the trauma due to the accident and the trauma that is due to the attempt to get compensation. That is a thing, I think, the physician will have to leave to the commissioner.

The CHAIRMAN. What would you say would be a practical rule for us to follow—to insist that in all cases of head injury a head plate be immediately taken?

Doctor HARVEY. I think a head plate should always be taken in the case of a head injury. It is of relatively little assistance to the physician for the reason that a fracture of the skull may show on an X-ray plate and yet there may be no intercranial damage apparent and the man may suffer no after effects. We follow that routine in the hospital nevertheless.

I distinctly recall a year or two ago that two patients with scalp wounds were admitted one night into the hospital. Skull plates had not been taken, so we got them the next morning. Some of the

house staff were quite indignant because the men were admitted at all. Both of these men with minor scalp injuries showed definite fractures of the skull by the X-ray plate. That might well be of some legal significance later on. The men were perfectly well and were shortly discharged from the hospital, having no serious intercranial damage.

On the other hand, a man may die from intercranial defects with no fracture of the skull whatsoever, and where nothing could be discerned with the X-ray plate.

So far as the treatment in handling the case from the physician's standpoint is concerned, those data are not of great importance. I can well appreciate that when the case at a later date comes into the hands of the court such data may be of importance. I therefore think that such plates should be taken as a matter of routine. It is done in our hospital.

The CHAIRMAN. What is your practical experience with the instrument which reads the pressure, showing whether there is increased intercranial pressure?

Doctor HARVEY. That, again, is in much the same situation. Usually the increased intercranial pressure will produce symptomatic signs, such as headache. It is quite possible to have a person with temporarily marked increased intercranial pressure who will have no persistent after effect. I do not believe that that would be of a great deal of routine value as regards ascertaining at a later date whether or not the patient had suffered a severe injury. It is something like finding blood in the spinal fluid. A man may have a severe injury without blood. He may have blood in the spinal fluid without any serious after effect. In fact, we have no way, at the time of the injury itself, of ascertaining with any definiteness whether or not the man is going to have persistent after effects.

The CHAIRMAN. I did not make myself clear, I guess. We will assume that a patient who is apparently normal and reasonably industrious suffers some head injury, nothing that a plate would show, but after a few months he develops signs of a psychosis of some sort. Is it wise for such a person to go to somebody who can do a lumbar puncture and measure the pressure?

Doctor HARVEY. Any patient with a mental psychosis should have a lumbar puncture, because one of the most common causes of psychosis or vague mental symptoms is neurosyphilis—syphilis of the central nervous system. One way of establishing the diagnosis is by a lumbar puncture. I think probably that particular disease is one of the most confusing things in this group of cases. The only way it could be ruled out would be by a lumbar puncture.

The case that had had a severe trauma and a minimum trauma and then developed mental symptoms as the result of that trauma would not necessarily show symptoms in the spinal fluid. So that would not rule out the fact that trauma had been the cause of these mental signs, but would rule out the large group of cases of neurosyphilis.

The CHAIRMAN. Does anybody else wish to ask questions?

Mr. McSHANE. You spoke of nerve lesions at the base of the skull, or those nerves that control the senses of smell, taste, etc.

Of course, we have the general understanding that their regeneration is rather slow. What would you consider the maximum period for the regeneration of a nerve, such as the brachial plexus? I have a case in mind; that is why I am asking this question. Over what length of time might we expect a regeneration in a real nerve lesion of the brachial plexus?

Doctor HARVEY. All the nerves have their own time element, so to speak. The optic nerve never regenerates. In general, nerves which do regenerate show some evidence of it within six months—very definite signs within a year. If there is no evidence within a year, the probability is very great that it never will regenerate.

With the brachial plexus it depends somewhat upon the type of injury. Nerves torn out, with injury to the cord, have very, very slight chance of regeneration. If something has not appeared within a year, the chances are very slight for regeneration.

Mr. McSHANE. In this case there is the appearance of regeneration, but it seems long deferred, and I wondered to what extent we might expect that regeneration to continue and whether we might expect a full recovery?

Doctor HARVEY. In general, the rule is that the later the regeneration starts, the less will be the amount regenerated. If a brachial-plexus injury starts to regenerate late, the amount recovered will be relatively small. On the other hand, if it starts within two or three or four months, it begins very promptly, and the recovery may be complete.

The CHAIRMAN. I think we all appreciate Doctor Harvey's willingness to answer questions. Now we have another leading surgeon who is going to discuss a very live question at the present time; that is, "Relation of trauma to malignant tumors." I think the medical profession in general is very much interested in that subject to-day, and the world in general is concerned with the progress of the malignant tumor, which seems to be growing all the time. Dr. George M. Smith will talk to us on this subject.

RELATION OF TRAUMA TO MALIGNANT TUMORS

BY GEORGE M. SMITH, M. D., OF WATERBURY, CONN.

As everybody knows, nothing approaching a victory over the problem of cancer has been gained; yet the day may not be so far distant when this most vital and tragic of human questions will find its solution.

All medical knowledge moves along three principal highways in its progress toward complete understanding. These paths are: First, clinical or bedside observation; second, post-mortem study of diseased tissues; and third, information gained by laboratory experiment. Our knowledge of cancer has been enriched by the scientific labors of countless medical workers in all three of these directions. At the present time we are looking toward the experimental researches on cancer for our greatest hope in solving the many problems relating to cancer, and it is gratifying to note that experimental studies during the past few years have resulted in interesting and fruitful advances.

With the main causes of cancer still unknown, it becomes particularly difficult to discuss the importance of trauma as a factor in the production of tumors; and yet it is an occurrence of increasing frequency that cases of cancer apparently following accident or injury come to our notice. By trauma in this connection is meant the effect on the tissues of the body of a single, or several, blows, lacerations, crushes, or strains, and not the effect on the tissues of numerous mild injuries from lesser mechanical, chemical, or inflammatory causes commonly referred to as chronic irritation, which properly belongs to another phase of the cancer question.

Although cancer has been produced under a variety of experimental conditions, it may be safely stated as a striking fact that malignant tumors as yet have never followed direct trauma of tissues experimentally performed. Much work has been done along these lines, but utterly without result. Apparently tissues experimentally bruised, lacerated, or crushed, or even displaced by transplantation and thus subjected to the trauma of new environment, do not produce tumors. Tissues traumatized in this fashion will heal promptly in a relatively short time and no tumors are formed on the healed scars.

On the other hand, under clinical conditions it would seem that trauma actually may exist as a factor in the formation of malignant tumors, especially sarcomas; but true instances of such new growths developing as a result of a blow or crush are probably extremely limited in number when compared with the total number of malignant tumors produced by as yet little understood causes that can not possibly have trauma as a contributing factor.

Prof. W. G. MacCallum,¹² of the Johns Hopkins Medical School, states that "single severe injuries such as blows or fractures have frequently been followed by the development of sarcomatous tumors, although rarely by a carcinoma. Thousands of such injuries have no such result, however, and it may well be questioned whether the connection is not an accidental one." There exist records, of course, of injuries producing scars, such as those caused by burns, where cancers have sometimes formed in the scar. MacCallum believes that although we discuss every sort of injury in general as a possible cause of tumor growth, we can not conceive of any one of such injuries which could have this result without assuming some abnormal character in the tissue itself.

Loewy,¹³ in an observation of 26,389 injured persons, found 37 malignant tumors attributed to trauma either as a primary or contributing factor. As Ewing¹⁴ points out, even if genuine, this number of 1 per 700 injured persons is not much greater than the instances of cancers in uninjured people or the death rate from cancer in certain localities, which may be as high as 1 per 1,000. It is unfortunate that in all statistical studies of the relation of trauma to tumors it has often been difficult to apply extremely critical methods establishing the authenticity of the injury; and frequently, from the very nature of things, it has been almost

¹² MacCallum, W. G.: *A Textbook of Pathology*. 1921, pp. 1037, 1048, 1103-1114.

¹³ Quoted in *American Journal of Surgery*, February, 1926, p. 16: "Relation of trauma to malignant tumors," by James Ewing.

¹⁴ *American Journal of Surgery*, February, 1926: "Relation of trauma to malignant tumors," by James Ewing.

impossible to determine the point that no tumor existed prior to the injury.

On the whole, however, Ewing¹⁵ has shown that cancer has been clearly traced to lacerations by rough instruments, rusty nails and pins, thorn pricks, insect bites, surgical wounds, and to blows without visible destruction of tissues. Injuries that have caused hemorrhage are especially apt to predispose toward development of tumors, such as the fractures, contusions, and lacerations of deep tissues and injuries to the skull.

Of interest in connection with fractures followed by sarcoma is the case reported by LeWald,¹⁶ where a sarcoma developed in a fracture united by means of a Lane plate, while a previous X-ray plate taken at the time of the accident showed absolutely no tumor present.

It has always been difficult from a medical standpoint to separate the cases where tumors develop as a result of trauma from cases where a blow may have only stimulated or aggravated growth in a small preexisting tumor. It is well to remember in this connection that although a single blow, crush, or strain has probably only a limited effect in aggravating the growth of such a tumor, often merely calling attention to the presence of the growth itself, yet repeated blows or crushes might have a very bad effect on a growing tumor, not alone speeding up the rate of growth but also tending to displace cells so as to allow secondary or metastatic tumors to develop in distant tissues and organs of the body.

In this brief discussion of trauma and cancer, special emphasis should be paid to the evidences that are necessary to establish the relation of trauma to tumor. These are fully described in the splendid treatise on Neoplastic Diseases by Prof. James Ewing, of the Cornell Medical School. Some of the important issues referred to by him may be grouped under the following headings:

- (a) Authenticity and sufficient importance of the trauma.
- (b) Microscopical proof of the existence of a tumor.
- (c) A reasonable time relationship between the occurrence of the trauma and the development of the tumor, with a continuity of pathologic changes and symptoms in the injured part and the appearance of the tumor.

With prevalence of tumors so widespread and probably on the increase and the true explanation of cancer still a matter of speculation, it is important that extreme caution be exercised in attributing trauma as a real factor in the etiology of tumors. It is therefore essential, in my opinion, to stress particularly the last of the above criteria in forming an impression of such cases; that is, the existence of a continuity of pathologic changes and symptoms in wounded or injured parts and the appearance of the tumor.

To illustrate this phase of the problems of continuity of pathological changes from a benign to a malignant condition following trauma, I will refer to two cases in my own experience.

¹⁵ Ewing, James: *Neoplastic Diseases*. 1922, p. 109.

¹⁶ Quoted in *American Journal of Surgery*, February, 1926, p. 20: "Relation of trauma to malignant tumors," by James Ewing.

The first of these patients, a middle-aged man, received a serious bite by a horse in the muscles of the upper arm near the elbow. The wound healed slowly and in the course of three months an epithelioma developed directly in the margins of the wound with axillary metastases, necessitating amputation of the arm at the shoulder. The second patient, a 19-year-old football player, received a severe kick in the region of the muscles of the lower third of the back of the thigh. A large blood clot, or hematoma, formed in the tissues, which later gave rise to a sarcoma of extraordinarily rapid growth, resulting in the death of this young man in the course of seven or eight weeks.

Cases such as these just cited leave little doubt about the possible association of injury in the formation of some tumors. Unfortunately, the early beginnings of many of the deep-seated tumors can not be followed by known clinical methods.

It may be said that in certain tissues and organs of the body where chronic irritation or chronic inflammation are well known to act as exciting factors to tumor growth, it is the opinion of many students of cancer that but very little importance should be attached to single trauma as a factor influencing the formation or progress of a malignant tumor. Thus, in carcinoma of the breast, the tumor very frequently develops on the base of a chronic cystic mastitis; in carcinoma of the stomach it develops on a chronic gastric ulcer; in carcinoma of the gall bladder, chronic inflammation of the walls of the gall bladder from gallstones leads directly to growth of the tumor—rather than from any sudden injury of the tissues.

It is becoming more and more evident that careful analytical methods applied to the study of cancer cases in recent times has done much to do away with the impression created by earlier and uncritical statistics which gave to trauma such a very important rôle in the causation of cancer.

A study of the life history of different tumors shows that they vary over a wide range in their virulence, rate of growth, tendency to form secondary growths. Of special interest are the tendencies to irregularities in the rate of growth of certain tumors which may exhibit at one time an almost quiescent state and at another a pronounced activity without apparent reason. For instance, a cancer of the breast may take years to reach an alarming size, and yet the secondary growths developing in the liver will grow at an enormous rate and produce death in a few weeks. It is well known also that cancer cells, after radical removal of the tumor, say of the breast, may remain latent for years and then for apparently no reason at all take on an active growth to form readily recognizable recurrences. It is not unlikely that this phenomenon of latent tumors taking on active growth so as to become recognizable has led at times to the mistaken idea that they have actually been caused or aggravated by some form of injury arising out of employment.

Sometimes even careful post-mortem studies may find great difficulties in explaining the sequence of events leading to death in those suffering from malignant disease. I will refer very briefly to an extremely puzzling instance of such a case, the post-mortem studies of which came under my direct observation. A man of about 40 years, while traveling in a railroad train, fell over a dress-

suit case left accidentally in the aisle of a Pullman car. From the date of this alleged accident he had pain in his right arm. Well-known physicians and neurologists attended him and every attempt was made to help him. The unbearable pain became progressively worse and completely wore him out physically, and he died about five months after the accident from pneumonia. Studies of tissues after death revealed a rare condition entirely unsuspected during the life of the individual. A small flat endothelioma (a form of cancer) was found at the very apex of the right pleura at the root of the neck. The tumor had provoked a pleurisy and later a fatal pneumonia. A microscopic extension of this growth a few inches upward had progressively involved the neighboring large nerves of the brachial plexus, situated deep in the neck, causing the excruciating pain. There was in this case, then, no relation between a possible trauma and coincidental pain, or tumor, or fatal issue, although the clinical and legal evidence during the patient's life seemed almost overwhelming in its favor.

The authenticity of accidents is of paramount importance. In the 11 years between January 1, 1915, to January 1, 1926, the accidents arising out of employment in the two companies of the brass industry with which I happen to be associated reached a combined total of 228,792 consecutive cases without the unfortunate complication of a malignant tumor forming in a single known instance to date in connection with the injury. These injuries naturally have varied from very mild to very severe types. It is a strict rule of both companies that all accidents are reported to the foreman of the department and are at once referred to the plant hospital for treatment, where a careful record of the character and location of the injury is made. This procedure does not leave a very wide margin for vague, imaginary, or delayed claims.

Every case involving the intricate and complex question of trauma and tumor is of utmost importance and merits a most searching and critical study, not alone in the interest of the compensation laws but also in the interest of the science of medicine and the solution of the cancer problem.

DISCUSSION

The CHAIRMAN. We all appreciate Doctor Smith's paper very much. The connection between tumors and injury is one which the commissioners are up against continuously. I see that the Doctor throws considerable doubt upon the old theory, the question of irritation upon the tissue to produce a malignant growth. I think the medical profession is making rapid strides toward the discovery of the cause of malignant growths, and also, I hope, toward the discovery of a cure. Maybe I am a little too optimistic.

I think some of the experimental work which is being done by the Rockefeller Institute—I believe that is the institution working on it—leans very strongly toward the nonfilterable virus with which they seem to be able to produce sarcoma. They have produced it in chickens and mice, but they have not yet been able to discover the organism which probably exists in that virus. Doctor Smith knows far more than I do about this probably, but this is a line of thought

which impresses me greatly, because one of my own family happens to have had a malignant growth, and I am naturally interested in all the progress that has been made and is being made in that particular line.

If we can produce sarcoma by this nonfilterable virus, it does seem to me that sooner or later we will be able to discover the organism which probably exists in that virus. There undoubtedly is an organism which is the cause of the cancer or sarcoma and will produce it. It is probably ultramicroscopic; in other words, at the present time we probably have no microscope which is able to discover that organism. I think that we will eventually isolate it. If we isolate the germ which produces that malignant growth, I think we will then be rapidly on the road to finding a cure for the disease.

I hope that in the near future we will make some progress along that line, and I feel rather strongly that we are on the road toward discovering the cause and the cure. The paper was very interesting to me and has given us some very valuable information.

I should be glad to hear from any of you who would like to ask Doctor Smith questions. I am sure he would be glad to answer them. This is a very live subject for compensation men, and we would be very glad to hear from any of you who would like information upon it.

Mr. STEWART. If there are no questions, this ends the morning's program. I should like to say that I received a cablegram through the War Department that Porto Rico would have a delegate at this convention. It came too late for us to put the delegate on the program. I would like to suggest that we hear from the delegate from Porto Rico if he is present.

WORKMEN'S COMPENSATION IN PORTO RICO

BY RAMÓN MONTANER, CHAIRMAN PORTO RICO WORKMEN'S RELIEF COMMISSION

It is a great honor for me and for my little island in the West Indies to be represented at this convention. This is the second time we have been represented here.

Porto Rico is deeply interested in workmen's compensation. We began the study of this matter in the year 1910. It was at that time that the different labor organizations started a campaign, principally at the instigation of the American Federation of Labor, for enacting a workmen's compensation act. After fighting with the employers, who did not want to have a workmen's compensation law in the island, in the year 1916 we obtained the first workmen's compensation act. It was not a compulsory act; it was optional. In one year only 149 employers came and asked for protection under the workmen's compensation act. Only about 4,000 cases were heard during that year. But the results to the labor classes were so palpable that the Legislature of Porto Rico amended the law and made it compulsory. We have had a good law since the year 1918. We work under the State fund system.

Several amendments have been made to the law lately, making it more liberal and correcting several defects that were noticed in its practice. At the present time we are working under different cir-

cumstances. I say that we are working under different circumstances because in the last five years our law was attacked by the employers in the courts through injunctions. We had 40 injunctions in the United States District Court for Porto Rico from the most important employers, representing about \$300,000 in premiums for a year. At last the decision of the United States Supreme Court establishing our law as constitutional compelled all of these employers to act again under the law. Now we have them all in.

MR. WILLIAMS. Will you tell us approximately what your population is?

MR. MONTANER. Our area is 3,600 square miles; population, a million and a half.

I will give you a little idea of the different aspects of our law. As I said, we are working under an exclusive State fund. The commission fixes the different premiums annually in accordance with the experience during the previous year. Our rates in Porto Rico are higher than those you have in the States. You will find that is reasonable, on account of the low wages that are paid to laborers there.

Our most important industry, if it can be called an industry, is farm labor. We have the sugar industry, the tobacco industry, and the coffee industry as our three most important industries. They pay at least two-thirds of the premiums that come into the funds of the commission. For farm labor we have a premium of 1.5 per cent at the present time. For the manufacture of sugar—that is, mills—we have 3 per cent. In the tobacco industry it runs down from 1.5 to 0.3 per cent, depending on the risk. These premiums are collected by the treasurer of the island just the same as all the other taxes imposed upon employers.

As to the compensation coming to the laboring men when they are injured, we have a waiting period of seven days at the present time. Men who are injured get half their wages during the time they are under treatment. This is different from other laws, and I will explain it to you.

On account of the ignorance of the laborers—most of them are illiterates—we had trouble with them in fixing up compensation for wages lost. For instance, a man gets injured while he is working in a sugar-cane field with that very long knife called the machete, used for cutting sugar. Instead of reporting his case to his employer, he pays no attention to that injury. He takes the leaf of a plant or anything he can get hold of and puts it over his wound and keeps on working. In practically every instance that results in infection. Then, perhaps 10, 15, or 20 days later, or sometimes a month after the injury, he comes to the doctor and that case takes a very long time to get well. Sometimes it results in permanent partial incapacity. Now, by not paying compensation to this man if he is not under treatment, we make him go to the doctor as soon as he gets injured.

For permanent partial incapacities we pay up to \$2,000. We have a fixed table, just like that in the State of Washington. For permanent total disability we pay from \$2,000 to \$4,000. For death cases also we pay from \$2,000 to \$4,000. We also cover occupational diseases; at least they are in the law.

The law is administered by a commission composed of six members. Three of these members are appointed by the governor of the island, and three of them are elected at the general elections every four years, each of the different political parties in the island being represented. The three members appointed by the governor have charge of the administration of the law, and have to give their full time to the work. The three members representing the three political parties only come to the meetings that are held for the adjustment of claims.

In general, I should say that workmen's compensation is entirely different in Porto Rico from what it is in the States, on account of the conditions, the environment, you find down in my island.

In Porto Rico we still have many laborers who go barefooted, who are illiterate. They get very low wages. That is one of the reasons we have more cases reported to the commission in comparison with any other State in the Union.

One feature that we have which I do not believe you in the States have is that the Government of Porto Rico does not help the commission in its administrative expenses. Our commission is self-supporting. We have to pay our administrative expenses from the premiums we collect. In previous years the administrative expenses went up to 28 and 30 per cent, but last year we were able to reduce them to 18 per cent of the income.

I believe I have given you a general idea of the work we do in Porto Rico and of our compensation law. If there is anything else you are interested in, I shall be very glad to answer any questions.

DISCUSSION

Mr. ROACH. Does your commission inspect workshops?

Mr. MONTANER. We do not have a safety law in Porto Rico. I did not expect to have Mr. Stewart call on me this morning, so I was not prepared to speak and did not bring with me some pamphlets I had the intention of distributing among you. But at the afternoon session I will hand to each one of you a copy of our last annual report, in which you will find a summary of our work last year, also a review of the history of our law.

Doctor McBRIDE. You mentioned that the average wage is low. If high wages are paid, is the same amount of compensation paid, or 50 per cent?

Mr. MONTANER. Our average wage there does not reach a dollar a day.

Doctor McBRIDE. Not by any class of worker?

Mr. MONTANER. Unskilled labor. Skilled labor gets up to \$4 a day, but we have a restriction in our law covering that. We do not cover laborers getting more than \$1,500 a year.

Mr. STEWART. You spoke of a percentage of your people going without shoes. I do not get the connection. Was that simply to illustrate the poverty, or, since you include occupational disease, has the fact that they go barefooted anything to do with the hookworm disease? Do you cover the hookworm disease in your compensation law?

Mr. MONTANER. No; we do not cover the hookworm disease. I merely mentioned that to illustrate the fact that the workers are ignorant and always more liable to accident. A man who goes without proper clothing is liable to accident to a far greater extent than a man who is properly clothed. Our average number of cases annually is 15,000. We have to handle that many cases.

Mr. ROACH. Was any agitation ever started to make workshops safer than they are now?

Mr. MONTANER. We started something like that two years ago by appointing an engineer to inspect the different shops in the sugar mills, although we are not authorized by law to do so. That is something we have in mind—to see if we can get the next legislature to give us authorization to enact a safety code.

Mr. BROWN. You spoke of the three commissioners appointed by the governor and the three elected. You stated that the three elected met only when there was compensation granted. Do I understand, then, you have periods in which you grant compensation instead of granting it in each individual case as it comes up?

Mr. MONTANER. Oh, no; we take each individual case as it comes up. The commission meets three times a week, but this permanent committee, as it is called in the law, is composed of the three members appointed by the governor to study the cases. They draw up a resolution and then take it to the meeting of the commission, which these three elected members attend. The resolution of the committee is the resolution of the commission when it is passed upon by the whole commission.

Mr. BROWN. How often does this whole commission meet?

Mr. MONTANER. Three times a week. If there are no other questions, I want to thank you very much for this opportunity of speaking to you.

The CHAIRMAN. I am sure that we have all enjoyed the outline the delegate from Porto Rico has given of the workings of the compensation law in that country.

Mr. McSHANE. Inasmuch as no questions were asked Doctor Smith on his scholarly presentation of the "Relationship of trauma to malignant tumors," I assume that he covered the ground in such a thoroughgoing manner that we did not have any questions to ask after he got through; that is, the part of it that we could understand. I think we got most of it.

Personally, I want to say that I appreciated the paper very much. I noted the very large number of cases he has treated and come in contact with. I should like to ask him about the hospital treatment. I think he said he had had 200,000 cases under observation in two or three different institutions. That is a wonderful experience for one man. I think he could give us something more along the line of what they are doing in the hospitals. I should like him to elaborate, to particularize a little bit more.

Doctor SMITH. I simply used these statistics available for the brass industry as sort of negative evidence relating to this tumor evidence. It is a very easy matter when a patient comes into a hospital and is interviewed by the physician or by the interne in

regard to the causes of his trouble to set his mind upon some definite form of injury that may have caused a tumor growth or any other disease.

Here, by using a large number of cases where we know definitely the character of the injury and exact location, we find that these tumors do not develop, except very rarely. Our own hospital now is pretty well organized to handle these industrial accidents. The method of treatment is well standardized, and I should be very glad to send out some of our forms or our hospital catalogue to anyone wishing to learn about the exact details of this work.

I think this number of accidents, of course, a very large one. On the other hand, I do not think it is unusually large when compared with the accidents, for instance, in the steel industry.

I am afraid if I went into a discussion of the hospital method and treatment it would lead me into a very intricate and technical field. So I would rather leave the issue in this way, that I would be very glad to send some of our hospital catalogues to anyone who may be interested along these lines.

CHAIRMAN, FREDERIC M. WILLIAMS, PRESIDENT I. A. I. A. B. C.

ORGANIC DEFECTS AND NEAR-PSYCHIC CONDITIONS

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

In discussing the subject which I have chosen, my remarks will have to be more of a general than a technical nature.

Organic defects, ordinarily, are of such a definite character that there remains little room for dispute, but there are certain organic defects in which there is a combination of real defect and functional disturbance. These are the types which produce the difficulties for the medical examiner and the specialist as well as the commissioner.

For want of a better term, I have classed this type as the "near-psychic" conditions, and in that group I have placed the litigation hysteria, the pension hysteria, and the simulators, the exaggerators, the hypochondriacs, the malingerers, the psychoneurotics, the imaginers, and feigners, and psychasthenics.

Litigation or compensation hysteria, with which we are confronted, is produced neither by fright nor by trauma. A claimed injury is simply an excuse for producing this condition, and it resists every form of treatment. The more medical examinations the more pronounced will be the hysteria and the nervous symptoms. They will tell you that "previous to the accident they were entirely well." This seems to be the coined expression which comes to them automatically. The lure of money and the desire for a vacation are the all-important factors entering into this class of cases.

Of course, there is always a preexisting neurodegeneracy and a susceptibility to morbid suggestion among this class, coupled with self-sympathy, thoughts of material gain for injury (feigned or imagined), impending medico-legal inquiry, or litigation.

With the possibilities of gain and pecuniary reward eliminated, symptoms soon subside. Windshied, an authority upon this subject, has said that "when there is no claim, there is no traumatic neurosis," and this is true to a very considerable extent.

Discussion of a patient's symptoms by sympathizing friends and unwise or designing doctors, as well as lawyers, always lays the groundwork for claims made by this character of individuals.

In making a comparison between Germany and Hungary, after the passage of the compensation laws in Germany, a tremendous increase in traumatic neuroses showed itself; while in Hungary, where there was no compensation law at all, there were practically no neuroses—a very significant fact, and one which confirms the opinion of experts on this subject, that the lure of pecuniary reward and desire for idleness were always strong factors in the production of this class.

A personal degeneration, morally and mentally and physically, is bound to occur when there is much catering to the caprices and whims of certain classes of psychoneurotics. While it must be used with care, the use of a strong arm will occasionally be found to be extremely useful, but it must be used with caution and care, giving due consideration to the old saying that it is better that ten guilty men should go free than to hang one innocent one.

At one time in Germany pension hysteria acquired the dimensions of a nation-wide disease. Care must always be exercised in treating the worthy, and caution must always be used in eliminating the unworthy among this class.

It is a well-established fact that these cases exist—not because of an injury, but because of a claim, and a settlement is the treatment, all symptoms soon disappearing after the case is disposed of. Statistics show that in various series of cases, followed up and watched carefully after they have been settled, practically all disability ceases.

A preexisting tendency exists in this class of individuals who show these symptoms. Severe injuries are not the ones which produce the neuropsychic; in fact, the injury is more imaginary than real. The more elaborate and technical and drawn out the examinations of doctors and the questioning by lawyers the more a neurotic will magnify the complaint, which of course continues until his case is adjusted. The symptoms are not dependent upon the injury but upon the compensation litigation, assisted by the suggestions of relatives and friends. The greater the train of symptoms, the better they believe their chances of success in establishing a claim. One expert has said, "Deny compensation and you will have no compensation hysteria or neuroses." That may be putting it a little strong, but nevertheless it shows the belief of a man of wide experience in dealing with this class. They do not suffer from the injuries claimed, but from the false ideas as to their legal rights, which are always exaggerated.

It has been said that "imagination creates what it imagines," and there is considerable truth in it, but we are also interested in the measures which are necessary to cure the imagination which produces practically the reality in these cases.

Concussion of the spine, or "railway spine," with its psychic or hysterical manifestations, was shown by Charcot to be a functional disturbance with no pathology, produced largely by autosuggestion. These terms to-day are practically in the discard, only to be replaced by such phrases as "traumatic neurosis," "traumatic neurasthenia," etc.

Generally speaking, definite physical injuries are sufficiently evident to cause little dispute except as to degree, but on the other hand the near-psychic class are of a type where there has been little or no physical injury, but where a train of symptoms, nervous and mental, has developed, which lays the foundation for great dispute, and which baffles etiological classification as well as treatment.

Many of our back conditions have both the organic and the psychic elements in them. The vast majority of the back conditions which we are called upon to deal with are due to an arthritis of the spine, traceable to some focal infection. It may be bad teeth, tonsils, or any tissue which has developed a pathological bacteria. The spine is a mass of joints, subject to the same diseases which joints in other parts of the body are; so when you have a persistent back condition it generally means an arthritis, and a careful examination should be made for some focal center. If found, the cure is simple—remove the cause. Arthritis of the spine is a disease rather than an injury, which the human race seems to be heir to with a tendency most strongly after passing the age of 40.

There are many back conditions which have been treated as organic when, as a matter of fact, they are simply functional conditions. A proper environment is essential for success in their treatment. Institutional care is often necessary. In order to eliminate these conditions and complaints, fatigue must be avoided—fatigue of brain and nervous system, and of the endocrines and heart. Without taking into consideration the element of fatigue, it will be absolutely impossible to bring about a recovery. Unbalanced diets (causing constipation), with improper assimilation (lowering nutrition and resistance), are causative factors in many of these functional cases. Rest is needed for the mental and physical fatigue by properly selected work, such as occupational therapy, in order to get the mind and body working well together. Improper postural positions must be corrected. Many of these postural positions are traceable to atonic muscular conditions, abdominal ptoses, sagging of the abdominal muscles, what we would call "belly sag," the dragging of the weighty mass of intestines upon their seat of attachment, prolapsed uterine conditions in the female. Take off the strain by keeping the intestinal tract clear, and so ease off the abdominal ptoses. Postural exercises, to redevelop the muscles with lost tone, physiotherapy, and hydrotherapy, are great assistants in shortening up the period of recovery.

The actual and real malingerer is not frequently found, but that class of cases which we call the "near-psychic," the class which is desirous of obtaining pecuniary reward for injuries, imaginary or real, by exaggerating their condition, is quite common. This tendency has increased considerably since the advent of compensation laws.

The fractures, dislocations, and amputations that are definite and visible generally give little trouble to the administrator of compensation laws, but that class of cases where the special senses play an important part in the examination, and where the examiner has to depend on the veracity of the patient to a large degree, present quite a different proposition for the examiner, the medical attendant, and the commissioner.

Generally speaking, the psychic element seldom comes from those severely injured. In other words, when the employee has a fixed

and definite injury he knows very soon what he is to receive in the way of remuneration for his injury, and there is little left for the imagination to elaborate upon and run riot with.

In the case of the psychoneurotic the injury may have been nothing more than a confusion or a shaking up, or a jarring, and all the trouble arises out of the thoughts of what might have been a serious injury, and from the hopes of what may be received in the way of recompense for the injury. All this, added to by self-sympathy and suggestions of sympathizing friends congratulating him on the fact of being alive, and all enabling him to magnify the symptoms, which, though slight at first, soon after being revolved in the mind allow him to become self-centered and introspective to such a degree that pain and other subjective symptoms become practically a reality. Mind has a great deal of influence over matter, and as I have previously said, "imagination creates what it imagines."

With symptoms of fear, apprehension, resentment, suspicion, exaggeration, a morbid tendency fixes itself, and the patient makes no effort to help himself; he simply sits down and sympathizes with himself for the injustice and the injury which he has received, or imagines he has received, and so magnifies it out of all proportion to what has actually occurred.

One of the greatest obstacles in the treatment of this type of cases is the unconscious resistance of the patient's mind. With the reasoning portion of the mind he may be willing to give cooperation, but the subconscious mind puts up an uncontrollable resistance.

The abnormal man with the psychic neurosis has been likened by one author to a normal man with a grievance which he wants to remove, and when he has done so he is not happy, but looks around for a fresh one. He is happier with his grievance than without it. The normal man understands the nature of his grievance; the abnormal man with the neurosis does not. When the neurotic is cured he misses a lot in life. He misses the sympathy of his friends and the attention which sick persons get, and then (but not the least of all) it dawns upon him that he will be brought face to face with the stern realities of life, and, most important of all, he will have to go to work.

The treatment for the psychoneurotic is to get rid of his complexes, and when they can be brought out so that he can see them in their true light, they no longer trouble him. This has been likened to a child terrified by some object in the dark; when the light is turned on he recognizes something familiar; his fear has been dispelled. The treatment then is to discover the troublesome complexes disturbing the patient, explain their nature and meaning—very easy to do, but not easy for the patient to follow. Without the proper mental attitude it is impossible for the patient to improve. To cure a case of this type, it is necessary to draw the line of demarcation between what is purely physical and what is purely mental. The physical can be handled surgically with much more satisfaction than the mental. The mental feature is another and far more difficult proposition. The trouble with the mental is that the patient has nourished and cultivated a train of symptoms which he has acquired through continuous thought and rehearsal, until he has become irritable and fatigued, suspicious and resentful of every effort by anybody to assist him. The mind becomes hostile and the reasoning

defective and faulty. Such a person becomes noncooperative, self-centered, with a powerful tendency to exaggerate everything in connection with his injury and his inability to obtain justice at the hands of anybody who attempts to assist in his cure and settlement of his case. With this mental attitude, cures are difficult or impossible.

In questioning these cases, the greatest harm can be done and the least information gained by asking leading questions. The dishonest man falls in line with any suggestion that will bolster up his claim, while to the psychoneurotic it supplies new symptoms to dwell upon and entertain until they become realities, for, as said, "It is nothing but thought—when you think you have pain, you have not." If they would go along this theory, the cure would be simple, but the mind generally works along the other way. If they would accept the suggestion of the late Dr. Coué, "Day by day, in every way, I am getting better and better," after a few days of this line of thought they might be in such a mental state as that suggested in one case where a man had followed this line of thought for three days and on the fourth day was able to say, "Oh, hell, I'm well." These patients have no pain, but they think they have, and so long as they think they have, they have, as far as effecting any cure or relief is concerned. This type of cases may have the brains and mind, but the power to control the mentality seems to be lacking.

The exaggerator and the malingerer also are not the easiest types to deal with. By closely watching and scrutinizing their actions, they can often be quite readily exposed. By asking such a person a line of leading questions which he unsuspectingly answers, he thinks he is confirming his disability, when as a matter of fact his answers will fit no category of injury or disease, and he makes his case an absurdity.

The man with the real injury is generally definite in his description of his trouble; the other class often have such a mass of symptoms that none of them are of much account from a physical standpoint, and you must then look further for the trouble, which proves to be mental. In looking over this class some will present an air of honesty, and often the observer or examiner will be deceived in this way. They are ready to submit to any kind of an examination, while others of this same type will assume the opposite attitude. They will oppose an examination of any kind.

The expert claimer always has one substantial symptom which he never fails to use to its fullest extent—that is the claim of pain, not always easy to prove or disprove. Pain in the back is one of the never failing subjects of dispute, and the claimant soon learns that it is not easy to disprove, and, of course, this is a fact. Where the dishonest claimant falls down in his effort is in the fact that he overstates and exaggerates everything—his disability and his symptoms—so as to get them out of tune with sound diagnostic principles. If there is a real injury, the point of pain is generally fixed and localized and in a definite place, and it is very apt to remain there. For instance, with a back injury, if the point of pain is marked with a pencil, get the patient's attention diverted to some other features of his examination, and get his mind entirely free of this particular center of pain, and then later come back to this question

as to where the pain is in his back; and if there is a real injury, the point of pain will again be found as first indicated; but almost always in the case of an exaggerator or malingerer he will never be able to locate the point of pain as first indicated.

In true pain complaint is uttered as soon as pressure is applied, but in the neurotic type he often shrinks and groans even before he is touched at all. Then again there will be a distinct interval between the pressure and the indication of pain. The pupils dilate and the pulse increases in true pain, but this is not a constant symptom, as it does not always occur. Skin sensibility is sometimes increased and sometimes diminished. In true pain it bears a definite relation between nerve injury and nerve supply. In the neurotic the painful area is inconsistent with nerve supply.

Motor paralysis is less liable and less easily made the subject of a claim by a malingerer. Certain muscular and reflex tests quickly throw this class of claims into the discard.

In the definite organic injuries there are many marked deformities which produce very little disability, and likewise there are many organic defects which are not demonstrable by X ray or other scientific means, but still they produce definite disabilities. There are many organic back defects and pelvic defects which are devoid of proof, and still they may be quite disabling. The organic defects, with the exception of the sacroiliacs and spinals, are a fairly reasonable proposition to deal with. To separate the real from the unreal in the spinal and sacral injuries will tax the skill and caution of the most astute. Even where the injury or lesion is definite or organic, treatment is very unsatisfactory when the psychic element enters into it to complicate matters.

Many times neurotics have been made by inexperienced medical men treating back conditions as organic lesions when they are simply functional conditions. If a proper diagnosis were made and corrective measures applied, they would never have gotten into the realm of this class of cases.

The human factors important in producing the neuropsychic are the doctor, the lawyer, and the commissioner—the first through ignorance, or intent, or desire of his fee; the lawyer for reasons not dissimilar; and the last, the commissioner, through his desire to be humane and err on the side of liberality if he must err, also because of his being influenced by poor, but well-meaning, medical advice.

The greatest asset the workman and the employer and the commissioner can have in dealing out justice in cases of this type is the most skilled medical attention which can be found; the greatest good will accrue from the employment of the best medical services that can be secured.

In the treatment of the back cases, often the most skilled treatment is far from satisfactory. The sacroiliacs, in the hands of some experts, can be manipulated into position, and more or less immobilized for a reasonable period, after which it becomes useless to bother with appliances. Experience has shown that after four to six months under the use of the brace, if little improvement occurs, it is just as well to discard the brace, as you always have the danger of making a neurotic out of a back-injury case. The

arthritic spine after a reasonable time stiffens and becomes ankylosed of its own accord, and by so doing really cures itself.

I have touched upon various phases and methods for detecting and treating those subject to accidents. You can get cooperation from the claimant, this ago we were having a safety effecting a cure. If all your effort steel plant which had had a successful a pretty definite diagnosis, as you might assume from looking over attempted. The use of steel. In the course of about five years the absolutely necessary, and insured from about \$4,000 a year to something of the desired cure. You had a was over a 300 per cent increase. There was first, but subsequently the plant to show that there were extraordinary useful citizen of the machinery guarding was almost standard, and a situation would standard machine guarding does not produce accidentality. was not of a tremendously dangerous character. But the really one of thing positively uncanny about the continuance of serious sometimes accidents in this plant. compensation

This particular noon I was on top of a machine, talking proper or 500 of these fellows. I noticed one man began to look measures air in the most extraordinary and disconcerting way. We and admit that my speeches are pretty bad at times, still it was a friend, usual thing to have the men lose their reason during that kind of entertainment. This fellow began to talk to himself and point in the air.

When the talk was finished, I conversed with the foreman and asked him about this fellow, and he said, "Oh, that is an eccentric fellow." He did not say it quite that way, but that is the gist of it. I looked over the caliber of the men and I thought I could detect quite a few eccentrics of that type in the plant. If I had been an insurance carrier, instead of representing a State department of labor, I am sure I would not want to put that kind of risk upon the books of any company I represented. I can see nothing in the world to be done in a place of that kind except to employ a better class of men, and, if possible, to eliminate that other type of worker.

If medical science is exact enough to detect that type of case, then I will say that in the future plant medicine will have a responsible place in accident-prevention work.

Mr. HATCH. I can not talk on this matter as a medical man at all, but from the statistician's standpoint I am interested in how many malingerers there are per thousand cases of traumatic neuroses. It is, of course, a very difficult thing to get at, and I do not know of any way to measure statistically the extent this thing enters into the administration of compensation laws.

However, I want to make a little test, if Doctor Smith will lend what aid he can. Doctor Smith has had an extensive experience in hospital practice in a large plant with a very large number of compensation cases. I wonder if men like Doctor Smith and medical men who have been handling compensation cases have gathered any impression on that question. Out of the average thousand cases of accidents to workmen, what number of actual malingerers are there? Doctor Smith, out of your experience, would you say that one in a thousand workmen injured actually does attempt to malingere, or one in ten thousand, or one in a hundred thousand?

which will still be ~~identity~~ problems to solve in spite of any suggestions yet made by any medical mind.

The first and foremost object to be attained under compensation laws is the restoration of injured workmen to useful employment. How the cure can be most quickly and effectively brought about is our greatest consideration. The payment of compensation to the unworthy is a mistake, not alone because of penalizing industry unjustly, but, more important than that, because it is prone to make useless citizens out of individuals who should be contributing a productive part to society, and also contributing to their own health, well-being, and usefulness. The payment of compensation is a great mistake, also, when the individual should be rehabilitated and returned to usefulness in industrial employment.

I have endeavored in this discussion to bring to your attention some of the means and methods by which this restoration can be brought about, and in all cases the utmost cooperation is necessary between all of the parties concerned. The doctor, the lawyer, the employer, the insurer, the commissioner, and last but not least, the employee himself must each play his part in the plan of cooperation to bring about the desired results. Useless and unwise compensation payments are a poor substitute in comparison with a restored and rehabilitated workman.

DISCUSSION

The CHAIRMAN. There was one diagnostic feature which Doctor Donohue did not mention, and I do not know that I ought to, but I hope it will not become general. I sent a patient I thought was crazy to a gentleman who has been professor of nervous diseases at Yale Medical School for a number of years. He thought the man was crazy, but he wondered whether that condition had any connection with an injury the man said he had had. That was what the professor was trying to find out.

The man would write me letters from time to time saying he was not crazy. Then I got a letter from this professor saying that he had received a letter from this patient inclosing a copy of an original poem which he had written—one of the most valuable pieces of information he had to size up this particular pathological case. He then threatened to send me a copy of the poem. The patient appeared to be the sort of person Doctor Donohue describes, but the tragic part of it was that a few weeks later he killed himself, so I think there really was something the matter with him.

This paper is now open to discussion. It is a very practical paper and it calls for some discussion.

Mr. MONTANER. I have heard the papers that have been read at this convention and have considered all of them very interesting, but the most interesting to me has been Doctor Donohue's on account of the situation we have in Porto Rico. We have lots of malingerers and claim experts down there. Due to the congestion in the population in the island and the lack of employment, lots of claimants would rather claim that they are sick than to go and look for employment, because employment is not so steady there as it is here. Our laborers do not work steadily with a definite employer; they go around to different places; and we have many malingerers in Porto Rico.

Mr. ROACH. I wonder if it would be possible for the medical bureau in a plant to detect this mental type before such persons are employed in the plant. I am not a bit sure that that kind of worker is not more subject to accident than the normal type.

Some months ago we were having a safety meeting one noon in a good-sized steel plant which had had a succession of very serious accidents, as you might assume from looking over their compensation rate. In the course of about five years their premiums had increased from about \$4,000 a year to something over \$17,000 a year, which was over a 300 per cent increase. There was nothing visible about the plant to show that there were extraordinary hazards there. The machinery guarding was almost standard, and sometimes sub-standard machine guarding does not produce accidents. The work was not of a tremendously dangerous character. But there was something positively uncanny about the continuance of serious and fatal accidents in this plant.

This particular noon I was on top of a machine, talking to 400 or 500 of these fellows. I noticed one man began to look up in the air in the most extraordinary and disconcerting way. While I admit that my speeches are pretty bad at times, still it was not the usual thing to have the men lose their reason during that kind of entertainment. This fellow began to talk to himself and point up in the air.

When the talk was finished, I conversed with the foreman and asked him about this fellow, and he said, "Oh, that is an eccentric fellow." He did not say it quite that way, but that is the gist of it. I looked over the caliber of the men and I thought I could detect quite a few eccentrics of that type in the plant. If I had been an insurance carrier, instead of representing a State department of labor, I am sure I would not want to put that kind of risk upon the books of any company I represented. I can see nothing in the world to be done in a place of that kind except to employ a better class of men, and, if possible, to eliminate that other type of worker.

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Doctor DONOHUE. I do not think that is a fair question, for the class of which I speak is practically a nonentity. The element we are after is those who exaggerate, the psychoneurotics, who are willing to lay off and take a little time—in fact, take a year if you will let them. That is the class I refer to.

Mr. HATCH. I realize that is correct, but I want to start with the class which is the most clean cut of all—one which I personally believe hardly exists as a real problem—the man who is consciously trying to beat the compensation commissions. A great deal is being said as to whether or not compensation laws are becoming too liberal. We are told that industry is being robbed by the malingerer and the near-malingerer, or the psychoneurotic type.

As a statistician I recognize that is a difficult problem, a most important problem, and may have far-reaching effects, according to the way those cases are handled. Nevertheless, just as a matter of measuring, I always wonder how many there actually are, first, of the clean-cut malingerer; and second, of this type of psychoneurotics, the one who exaggerates his case or is actually of a hysterical character so that he is doing the same thing. Since there is a medical man here, I thought I would raise the question.

Doctor SMITH. That is naturally a very difficult question to answer. The malingerer, I should say, is a very rare individual. I believe that it would be very hard to give a statistical estimate, but I should say the real malingerer is extremely rare—one in a thousand, probably; perhaps a little bit higher than that. On the other hand, the near-psychic individual, as Doctor Donohue has so well pointed out in such an interesting way, is very common. A near-psychic in his own sphere varies from a very mild case to a very extreme one, but I believe the near-psychic is very common.

I think the malingerer is rare because malingering does not work—that is all. He is so easily exposed and his reputation as a worker in the community in which he happens to live and in which his family resides is injured, so that he becomes a marked man. For that reason he would not care to do that sort of thing more than once. It works against him also in getting new employment.

After all, the main thing in his mind is to have a real job, especially if he has a family dependent on him, and he is not going to let anything interfere with his keeping that job if he can help it. On the other hand, in the case of the near-psychic condition, there is probably an inherent weakness in the individual, and it does allow for a large number of cases.

The question was asked by Mr. Roach whether it would be possible to devise means of eliminating this element of the near-psychic individual. I do not believe we have reached the stage at present where this is possible. We have got to take that into consideration in employing men and women. But we are working along a new line, which I think will lead eventually to great results; that is, we are subjecting new employees to psychological tests, going on the assumption that psychological tests will give some index of the man's mental capacity and of his reaction. We are finding this a very good practice. Not only does it affect the turnover, but it also allows us to place individuals in the proper sphere of work, where

they are happy, where they are contented, where they can do the work well, and where they are deriving an income sufficient for their needs if they work along the lines of least resistance. I think this preliminary psychological determination which is now going on, and very effectively, will do a great deal to solve this problem, Doctor Donohue.

We have another scheme to eliminate the near-psychic. The man who comes in after an illness is reexamined. If he is out more than two weeks, he is very carefully examined when he returns. He has to make a statement of the injury or the illness from which he is suffering, and that again is taken into consideration in giving him his reinstatement and reemployment. It goes down in black and white on a waiver—a statement telling just what he has had. We know about it. I think many of the psychic conditions have been lying more or less dormant, the result of some previous trouble which lays the foundation for those conditions. If we know what has been the matter with a man and have it down in black and white, he is not going to bring up this question later on and make a claim based on this psychic state.

All these are new developments. We are still working in the dark. I really think it will become a general thing, because the big industries of America in using this method of preliminary psychological examinations will slowly lead us to a correct determination of this near-psychic condition.

MR. ROACH. Do you reject men because the psychological examination shows this near-psychic condition?

DOCTOR SMITH. We do reject some, but we try to place them where they are effective. We have very interesting workers from the big universities. We have a Columbia student who is very clever, indeed. A person comes in, is examined psychologically, and placed. A year later, or six months later, we will get a rating by the department which coincides with the preliminary impression. This proposition is being sold to the foremen of the department. We can almost tell now whether a man or woman is going to be a success in his or her work by this test. That, of course, is a new development in industrial medicine.

MR. STEWART. I have read Doctor Donohue's paper with some care. I think it is due to Doctor Donohue, who is an administrative commissioner of compensation laws and a physician, I think it is due to the physicians whose papers from time to time have been read before this association, and it is due to the association itself, that there should be something in the printed reports of this convention to indicate the percentage of men whose cases come before the commissions who are looked upon as straight, honorable, truthful men and whose stories of their accidents and how they happened and what happened and what the results are can be depended upon.

Doctor Donohue has dealt with a number of phases of conduct on the part of applicants for compensation benefits. He has not stated what percentage of the total come within each or all of these classes, nor has he anywhere referred to the number with whom it is safe to deal as honest men, or what proportion these bear to the other men.

Suppose some organization opposed to workmen's compensation laws—and there are a number such, as we were informed yester-

day—should employ some one to examine the published proceedings of this association. I think you will agree with me, that this is not an unthinkable situation at all. It is due to everyone who has stressed the questionable side of the claims of workmen for compensation that there should be something in the proceedings to indicate what proportion of injured workmen we are talking about.

The cases of practically 1,600,000 workmen come before compensation commissions of the United States in a year. These are the nonfatal cases. As to the fatal cases we will assume it will be taken for granted they are not malingerers. But of the 1,600,000 cases how many of them come within each or all of the classes discussed by Doctor Donohue?

Take the State of Connecticut; while it makes no accident reports, we will say that it probably has 25,000 nonfatal cases in a year. What percentage of those cases which reach the compensation officials of this State comes within the scope of these scathing criticisms in this paper? Putting it another way, what percentage of the claims submitted are fair and square, open and aboveboard, with no suspicion on the part of the commissioner of any objective or subjective attempt to be unfair? I think we ought to know.

The CHAIRMAN. For the record I wish to state that the secretary's remark that we make no accident report is not exactly accurate. We are required to publish once in two years a very complete report of our doings, and the last one is available if you have not got it.

Mr. STEWART. I am not talking about compensation cases; I am talking about accidents.

The CHAIRMAN. All accidents are reported.

Doctor DONOHUE. I want to say first of all, in regard to Mr. Stewart's remarks, that we come up here as representatives of compensation boards and pat ourselves on the back and parade ourselves as the great friends of humanity and that we are all here for the sake of the workingman. We are. But there is no need of handing out money to men when it is doing an injustice to the employer.

Regarding the statistical feature, we have no statistical board in Connecticut. However, as I stated in my remarks, the class is not large, but nevertheless it is a class, and it is a class we want to stop from taking money it should not have. That is the class we want to head off. It is all right to peddle out the other fellow's money and be liberal with it, but we are not appointed for that purpose. Our purpose is not to make delinquents. We should make men who are producers, and the quickest and the best way is to get them back to work as quickly as we can do it. If you peddle out compensation sufficient to keep them going, such men after a while will think they are living under a paternal government and that they are entitled to their living. We are not here to throw away money that belongs to some one else just because we want to be generous.

I think the thing to do is to see that every man who is entitled to a cent justly shall get it, and nobody will go farther than I to give it to him. But there is an element which my paper strikes; unfortunately, I have no statistics on it, but, as I have said, the percentage is not large. Nevertheless, it is a definite element.

As Doctor Smith, who has done a great deal of industrial surgery, has said, there is a substantial element who are not malingerers but who are exaggerators. Malingers are an almost unheard-of quantity. I do not know that I have seen more than one or two in my experience, but I have seen a lot of exaggerators. I call that type the near-psychic case, an element willing to take the vacation and get paid for it. I do not think that the purpose of the compensation commissioner is to keep paying out money when he can put that man back to work and do him a service.

Mr. STEWART. I have succeeded in all I wanted to do. The number is not large. What I wanted was to get that into the record, because there is nothing in the printed paper to that effect. Because people are objecting to compensation being paid to cranks, I think that the records should show that we are talking about a very small percentage of the total number of men whose cases come before these commissions. I doubt if there are any decimal fractions small enough to give the percentage.

Mr. MCGILVRAY. May I get off this interesting phase of the paper and ask Doctor Donohue to enlarge on something he said incidentally, having to do with arthritis? We have some such cases, and they bring up a perplexing problem. Doctor Donohue has said, and I have been waiting for a long time to have some one say, that arthritis was a disease. I should like to have him enlarge on that, although it is a little technical for me, and have him tell me in what way it is a disease. It is very important to us in our State, where we have a very liberal statute that allows us to compensate a lot of diseases. Heretofore I have always understood it to be a condition.

The CHAIRMAN. Just a moment, Doctor Donohue, before answering that question. These statisticians like percentages. Would it perhaps be fair to say that the percentage of the class which you have been describing is approaching that percentage which is known to every American—one-half of 1 per cent?

Doctor DONOHUE. I want to say that it is considerably larger. It would probably coincide with the views of most of us here as to what percentage would be the approved one. Mr. Hatch spoke about the newspaper write-ups regarding the compensation boards peddling out money to people who should not get it.

Mr. HATCH. I did not quote any figures, but in reply I wish to say that in published literature to-day there is a vast amount of exaggeration as to the extent of the classifications of which you speak. I can show you literature seriously put out which intimates that the common practice is exaggeration. As Mr. Stewart has suggested, it is rather important for all concerned that some idea should be gotten before the public as to about what proportion of claimants under compensation laws are really in this class. I think it is high time this impression is corrected. It does not reflect credit on commissions that are administering compensation laws if they have allowed that kind of thing to develop. I do not believe they have. I believe those statements are totally misleading. The only way to correct them is by the expressed judgment of about how much in the total mass of compensated accidents this represents.

We have two statements here. One is that it is a very small percentage. Another one is that those cases are very common. Does it mean 1 per cent, 5 per cent, 10 per cent, or, as has been suggested, one-half of 1 per cent, or $2\frac{3}{4}$ per cent? I think it is very important, simply in the interests of truth, to determine this percentage, merely that the unthinking people shall not be misled.

Doctor DONOHUE. Mr. Hatch admits that there is a criticism, and that it is a public criticism, along the lines which he suggests. Then my paper should be interpreted as an effort to correct any criticism of that kind and to show to the public that we do not want such things to occur. That is what my purpose is, to prevent the occurrence of those conditions. If there are many—and there are many—my purpose is to check them.

Mr. PARKS. My object in rising was to stop the discussion taking place along that very line. Since Doctor Donohue got through 40 minutes ago, 30 minutes of that 40 have been taken up in discussing how many cases we have, and not with discussing the great, broad question of how to treat them. We have them; there is no question about that. We have them in Massachusetts, and we have them in every State in the Union.

The CHAIRMAN. What percentage?

Mr. PARKS. I do not know. I will wager no one knows. I do not believe the commission administering the law knows. I do not believe that Mr. Hatch in administering the law or Mr. Stewart in gathering statistics would know. We have been gathering statistics in Massachusetts along certain lines for 15 years, and I do not think they will help us in arriving at any percentage. What I am interested in is knowing how to treat these cases Doctor Donohue has mentioned. They are not many in number, but they give the commissions a great deal of trouble—more trouble than all the rest put together.

Doctor Donohue's paper is the finest of its kind I have ever heard—very interesting, indeed. It could have been given only by a man of experience, a man who has been dealing with these cases. He has talked about various things—about the lump-sum way. That is about the only way I have been able to get rid of these persons except when they have been discovered.

I was going to ask one question, whether he ever got any help from the neurological doctor. I want to say that I never got any help from the neurologist.

Mr. Hatch asked what percentage were deliberate malingerers. I could have told him that it was easier for a commissioner to tell a deliberate malingerer than any doctor.

I will give you an actual case I had in Massachusetts. A man presented himself before me who was unable to sit down; he had to lean against the side of the desk. What did I do? Did I have a doctor look him over? I suspected him. I sent an inspector to follow him everywhere he went. When he went into the street car he sat down like any other human being. When he got home he sat down on a box just like anyone else would. I concluded he was a conscious malingerer. I ordered that his compensation be stopped, as all disability had ceased. He asked for a review of his

case. A full board was impressed by the poor fellow's story and sent him to a doctor who said he had hysteria and a traumatic neurosis and put him back on a bonus. Under the rules he had to come back to me. I again ordered that all his disability had ceased. This time I got away with it and he is back to work.

That was my experience against a doctor's. The doctors do not help you in hysteria cases. They only complicate the matter by telling the man that he has hysteria and is totally disabled. The man reads that with glee. At last a doctor says he is disabled. He does not know what is disabled, but the doctor agrees with him that he is disabled. So I say we ought to devote a few moments of this discussion on how to treat these cases, not to spend a half hour or an hour in trying to figure out how many there are, whether one-half of 1 per cent, 25 per cent, or whatever percentage it may be.

Mr. DUXBURY. I was very much interested in the insistence of several members to find out the percentage of this particular classification. It seemed to me, in view of the difficulty of identifying the kinds of mistakes made by all of us, that it would be a physical impossibility to do so. There is no statistical method of making this determination.

It seems to be a case of what they call expert judgment—a dignified term for a guess. I will wager that if we got the expert testimony of every member of this body as to the percentage, those judgments would vary to a greater extent even than the variance of medical men in cases of partial disability. The thing can not be determined; it is beyond human possibility.

Mr. McSHANE. I think every member here appreciated Doctor Donohue's valuable paper very much. I think it is the best of its kind I have ever heard. Notwithstanding that phase of it, I do realize that if it is to be taken as it is written some people who are looking for propaganda may use it to further a cause in which they are financially interested. I believe that there is a very small percentage of the workingmen of this country who come before the various boards seeking compensation who are not honest in their claims. While Senator Duxbury has said that it is a physical impossibility to determine that with finality, I do not think that this association ought to let the matter pass without indicating whether there is or is not a very considerable proportion of dishonesty among the workingmen in their claims. My experience has been that they are practically all honest. But we do catch a few, such as Mr. Parks, of Massachusetts, caught.

I have no use for a man who is downright dishonest. One way to get rid of cases of that sort is to let such a man know that you think he is a downright despicable cur. If you have to use strong language to let him know about it, go right ahead. I think that is one of the remedies for that kind of fellow.

We did have an instance, a man who went blind through an electric flash. We had expert medical testimony on his case. We even had an expert from Austria give us advice with reference to this case. As usual with expert testimony, the opinion was divided. You know, of course, that you can go out and get almost any kind of opinion you want if it is expert testimony. We had to resort to the practices to which Mr. Parks resorted. We first turned down his

claim after a reasonable period of temporary total disability. The man did suffer some little disability. The case was taken to the supreme court, and we won. The man came back for a rehearing with new expert testimony. We gave him another hearing. Then we said: "It is time for us to check up and get some testimony of our own."

We knew that he was a chicken fancier. He would come to us and tell us of the \$500 and \$600 and \$1,000 birds he was raising. We picked up the program of our State fair and found he was a judge there, that he could point out the particular mottle and the colorings on the chickens, and so on. So we put a man on his trail. We noticed how he would argue with the other judges and talk them out of their opinion. We sent a man to his place, and he took up the chicken catalogue and went through the coops. He gave us the list of the different kinds of chickens and the prices. It was about twilight, yet he wrote in the margin, without the aid of glasses, just what the bird was and what it would cost. We thus built up a pretty complete record on his case. I call that a case of downright dishonesty.

Mr. DUXBURY. There is such a creature as a malingerer; we catch them once in a while, but they are a negligible quantity. Nobody knows how many there are of them, and I do not think anybody this side of a mind reader can determine that. Of course, in a State where you have probably 20,000 cases of compensation there would not be a large percentage. But where many cases come up, even a fraction of 1 per cent would produce quite a number of cases. Most of those 20,000 are not contested. If you take the cases where there is a contest, you will, of course, find in this group a larger percentage, but of all the men who have asked for compensation this will be almost a negligible quantity.

Mr. HORNER. Within the past few weeks I completed the Pennsylvania report for a period of three years and five months, including June 1, 1926. That report showed that of in the neighborhood of 275,000 cases in which compensation was paid 97 per cent were paid by voluntary agreements between the employer and employee or insurance carrier and 3 per cent were contested before the referees. Of the 3 per cent contested before referees and disposed of awards were made in 61 per cent of the cases and 39 per cent were disallowed. That is Pennsylvania's experience.

Mr. HATCH. I do not want to say too much on this subject, but I want to say while I have a chance that my question was not in any wise in criticism of Doctor Donohue's paper. I think that was a fine exposition of what the problem is and the way it will have to be dealt with. We now have a general statement as to what this amounts to. I agree with Mr. Duxbury that we probably can not get any figures on the subject. I agree with him also that it is a matter of judgment of those who have had experience.

Mr. SINCLAIR. In reply to Mr. Parks, I might say that in Ontario we get the benefit of the occupational therapy school. People of whom we have some doubt we send there. We know that the occupations which are given them are occupations which two physicians say they are capable of holding. If they show resistance and

wish to get out of that kind of work which the doctors say they are quite capable of carrying on, we have a pretty fair indication that they are not cooperating to get better. We get a great deal of assistance. We have tried it only the last year, and have given the school cases in which we did not know what was wrong.

The CHAIRMAN. Have you any definite figures?

Mr. SINCLAIR. That is absolutely impossible, I think. Who is going to be the judge of whether or not a man is a malingerer? You can not say the board is the final judge and is absolutely right. Neither can you say that the man is right. I think you are talking to the winds so far as anything definite is concerned, because we have no idea of how many cases escape of which we have no suspicion. The degree of malingering may be very small. I agree that the definite malingerer, the 100-per-cent malingerer, is very scarce, but I feel that a great many small-percentage malingerers escape us entirely. So I scarcely think you can get any reliable statistics on that.

Mr. BROWN. I should like to hear the answer to that question by Mr. McGilvray on arthritis.

Doctor DONOHUE. I was asked by the gentleman from California whether arthritis was a disease or a condition. It can be both a disease and an injury. In the case of the back condition, that can be an ossifying myositis due to a focal infection from such infective center. Those conditions of arthritis in the back are very similar to arthritic conditions such as hardening of the arteries, etc.—conditions which come on in some people earlier than others. They may be due to some deleterious material which is in the system and deposits in the arterial coats and between the vertebrae, stiffening up the joints between the vertebrae, just like a calcareous deposit.

Mr. MCGILVRAY. What I had reference to was hypertrophic arthritis, not arteriosclerosis. Is that a disease or a condition?

Doctor DONOHUE. It is more of a disease than a condition, although possibly injury will produce it.

[Meeting adjourned.]

WEDNESDAY, SEPTEMBER 15—AFTERNOON SESSION

CHAIRMAN. JOSEPH A. PARKS, MEMBER MASSACHUSETTS DEPARTMENT OF INDUSTRIAL ACCIDENTS

The PRESIDENT. The Chair announces the following committees:

Auditing committee.—Fred M. Wilcox, of Wisconsin; L. W. Hatch, of New York; W. H. Horner, of Pennsylvania.

Those people will take note that the treasurer's report has already been referred to the auditing committee.

Resolutions committee.—H. M. Stanley, of Georgia; Miss R. O. Harrison, of Maryland; Mrs. E. M. Schofield, of Massachusetts; F. A. Duxbury, of Minnesota; John A. McGilvray, of California.

Nominating committee.—O. F. McShane, of Utah; F. W. Armstrong, of Nova Scotia; J. A. Parks, of Massachusetts; Edgar Fenton, of Oklahoma; James J. Donohue, of Connecticut.

Those committees will kindly meet at the earliest opportunity, taking care not to miss the papers that are to be read. Mr. Parks, of Massachusetts, will be chairman of this afternoon's session.

The CHAIRMAN. While I know it is not the function of the chairman to say anything except to introduce speakers, it is hard to restrain myself from saying how glad I am to be here after an absence of two years. I see a great many of the old faces, and I also note that some of the old faces are missing. We ought to keep the old fellows in the ranks if we can. I should like to see the time come—perhaps not in my day, because I might be accused of wanting to perpetuate myself in office—when commissioners will serve for life during good behavior if they so desire. I do not think they should be removed at the whim of politicians, because every convention we have shows the value and the worth of the long experience of the men who have been in office several terms of years. This was shown in Doctor Donohue's paper this morning. That paper was given from long experience. I hope the time will come when the commissioners of various Commonwealths will remain in office for life, like they do in Nova Scotia. Brother Armstrong, we know, will be at every convention as long as he lives. How glad we are to see him here, and what a great help he is, because he has this fund of information that he gets from long service. It is always dangerous for the man in office to talk about it himself, because people may say he is trying to keep the job. If I am ever off the commission—and perhaps I shall be before a great while—I shall agitate this idea with as much vigor as I possess.

I am going to introduce as the first speaker of the afternoon Dr. Walter R. Steiner. Doctor Steiner is a lecturer on internal medicine. He is an internist of repute, as well as a diagnostician. He is consulted many times in that branch of medicine, and he is a man well qualified to handle the subject which he has chosen, "The problem of the irregular practitioner and compensation."

THE PROBLEM OF THE IRREGULAR PRACTITIONER AND
COMPENSATION

BY WALTER E. STEINER, M. D., OF HARTFORD, CONN.

It is with great diffidence that I approach this subject and also with a deep regret that I in an unguarded moment accepted your gracious invitation to address you, for, strictly speaking, there should be no relation between the irregular practitioner and compensation. It is even hard at times to observe the relation between the regular practitioner and this subject. I often ponder over it and imagine that Bishop Butler's maxim "Probability is the guide of life" has no place in its consideration, as the phrase, "the most remote possibility," seems to be often substituted for probability.

Irregular practitioners, unfortunately, have existed since the early dawn of medicine and have preyed upon the curables and incurables for filthy lucre and thus "through greed the healing art's disgraced." In the Middle Ages it was no uncommon sight to note an irregular practitioner at a country fair, planted upon a cloth, carpet, or platform, with clown and orchestra accompaniment, selling to the credulous public his wares, said to be panaceas for all ills. His remarks concerning remarkable cures were generally prefaced by a statement of his own noble origin, or an enumeration of his claims to dispense these cures, protesting at the same time disinterestedness for remuneration and a profound interest in curing the onlookers of their various ills. The pity of it was seen, then as now, in that the public was easily gulled by all this. When the village was drained dry the irregular practitioner moved on to the next town, continuing to reap his harvest as he went along.

Thus Rutebeuf, 600 years ago, exclaims:

My good friends, I am not one of those poor preachers, nor one of those poor herbalists who stand in front of the churches with their miserable ill-sown cloak, who carry bags and boxes and spread out a carpet. Know that I am not one of these; but I belong to a lady who is named Madame Trote, of Salerno, who makes a kerchief of her ears, and whose eyebrows hang down as silver chains behind her shoulders; know that she is the wisest lady in all the four quarters of the world. My lady sends us into different lands and countries, into Apulia, into Calabria * * * into Burgundy, into the forest of Ardennes to kill wild beasts in order to extract good ointments from them to give medicine to those who are ill in body. * * * And because she made me swear by the saints when I parted from her I will teach you the proper cure for worms, if you will listen. Will you listen?

* * * Take off your caps, give ear, look at my herbs which my lady sends into this land and country: and because she wishes as well to the poor as to the rich, she told me that I should make pennyworths of them, for a man may have a penny in his purse who has not five pounds; and she told and commanded that I might take pence of the current coin in the country wherever I should come. * * *

These herbs, you will not eat them, for there is no ox in this country, no charger, be he never so strong, which if he had a bit the size of a pean upon his tongue would not die a hard death, they are so strong and bitter. * * * You will put them three days to steep in good white wine; if you have no white wine take red, if you have no red wine take fine, clear water, for many a man has a well before his door who has not a cask of wine in his cellar. If you breakfast from it for 13 mornings you will be cured of your various maladies. * * * If my father and mother were in danger of death and they were to ask of me the best herb I could give them, I should give them this. This is how I sell my herbs and ointments; if you want any, come and take them; if you don't want any, let them alone.

Finally the irregular practitioner increased so rapidly in England that Henry V passed, in 1421, an ordinance against meddlers with physic and surgery. Despite this, however, the irregular practice of medicine still prevailed, so that Henry VIII required an examination of anyone wishing to practice medicine in London and in 7 miles around, or in the country. This examination, if in London, was to be conducted by the bishop of the capital or Dean of St. Paul's, assisted by four doctors of physic, while in the country the bishop of the diocese or his vicar-general was to take charge. Unluckily a revulsion of feeling soon took place so that the statute of 1511 restored the irregular practitioner to his former position and he flourished as before. To prevent the further spread of irregular practice laws were finally enacted in England, and the Royal College of Physicians and the Royal College of Surgeons were established.

In this country also, in its early history, the irregular practitioners flourished. There were no regulations for the practice of medicine in any State until Virginia, in 1736, passed "An act for regulating the fees and accounts of the practicers of physic." In this act those who had studied and graduated in any university were permitted to make a higher charge than those surgeons and apothecaries who had served only an apprenticeship, but "any man at his pleasure could set up for physician, apothecary, or chirurgion," for the candidates were not "examined, licensed, or sworn to fair practice." In Connecticut I have elsewhere traced the evolution of medicine and have tried to show that the impetus to an improvement was lent to our science and art by John Winthrop, who gave to it a dignity and a love of learning which were of lasting benefit. Then 11 Norwich physicians endeavored, unsuccessfully, to arouse the legislature to pass an act to regulate the practice of medicine. Their efforts bore fruit, however, later by the formation in New Haven County of a medical society to raise the standard of medicine in Connecticut, and to improve the knowledge of its members. The medical profession in this society, still conscious of their own delinquencies and anxious to better the condition of medical education in Connecticut, were led to band themselves together with Yale College in 1814 and form the Yale Medical School. Irregular practice then was somewhat laid low, but not entirely abolished, so that 79 years later the legislature passed a medical practice act which permitted only those to practice who had been examined and approved by one of three medical examining boards. It was then thought that fraud could be pretty exclusively eliminated by these means, and that the public would consequently be protected from irregular practitioners. Unfortunately one of the three boards in this State (regular, homeopathic, and eclectic) have licensed many but ill qualified to practice the healing science and art, so that we have irregular practitioners who may be called upon as witnesses or experts in compensation cases. It is often hard enough for the honest and regular practitioner to see how, in God's name, a certain so-called injury or claim could ever have been conceived of as being granted compensation. When dishonest and irregular practitioners exist the chances of bizarre injuries and claims are multiplied and the likelihood of their being allowed proportionally increased. In

fact, this danger, being realized, has compelled some manufacturers in this State to require an examination of all applicants for employment so as to rule out, as far as possible, future unheard, impossible, and absurd claims which might be later brought forward. On this account, also, many would not receive employment who, although possessing disabilities, are yet able to be capable and efficient wage earners. For example, if a man has a useless eye and loses his only seeing eye during his employment, he receives compensation for the total loss of both eyes.

The chief danger in compensation, in my way of thinking, lies in a claim of disability of an individual being allowed which bears no possible relation to his employment. This claim of disability may have been suggested to the individual by an irregular practitioner, and the compensation commissioner, of his own volition, or aided by bad advice from incompetent sources, may grant it. Thus the purposes of the law may be defeated and accident and health insurance may replace compensation insurance. I do not mean to imply that it is impossible for the regular practitioner to be dishonest, but I certainly think there are less chances for dishonesty in him than in those who are irregular in their methods of entering the medical profession. The danger of irregular practitioners in relation to compensation is really twofold. I have already spoken of the first, and the possibility of this class of practitioners urging employees to seek dishonest compensation is not to be cast aside. The second danger lies in the possibility of the compensation commissioner taking advice from the irregular practitioner when the latter is ill prepared to give it. The commissioner might also take bad advice from a regular practitioner, but he is not as likely to get it from this source. The danger of the compensation commissioner's judgment being thus warped by incompetent advice might make it advisable for the State medical society to prepare a list of honest and competent physicians who could give trustworthy testimony or advice before the commissioner. Of course, the irregular practitioner would even then have to be admitted to the compensation court if he was the physician of the individual who was seeking compensation, and this might suggest the appointment of a regular practitioner from the above list who would serve as a competent adviser to each compensation commissioner.

I have refrained from speaking of irregular practitioners apart from the medical profession, but there are those who might be included in this class belonging to other sects and cults who think themselves competent, with little adequate knowledge, to appear before a compensation court and give so-called adequate testimony. I have often thought that we doctors know little enough, despite our years spent in training at a medical school and hospital. Frequently I think the prayer of Jacob Horst, the medieval physician, can still find a place amongst us to-day when he exclaims: "Oh Lord, open Thou Thine eyes and behold the poverty of our art." Appreciating this fact makes us realize all the more our limitations and recognize the matchless effrontery of other sects and cults whose little knowledge is a dangerous thing—a constant menace to the health of any community.

The irregular practitioner, then, has no place, in my opinion, in the compensation court, but if he does appear he should come only as the individual's physician. When this does occur the commissioner, properly to safeguard himself, should have a competent medical adviser who would serve as an expert and prevent unjust and excessive compensation being granted.

DISCUSSION

The CHAIRMAN. You have heard this splendid paper of Doctor Steiner. Does anyone wish to ask Doctor Steiner any questions or make any comment?

Mr. WILLIAMS. I should like to ask Doctor Steiner to state his opinion on a subject which I frequently hear discussed, though it has not yet reached the dignity of an agitation, and I trust it never will. But there are those, and very well-meaning people, too, who have a high regard for the sanctity of the confidence and trust reposed by the workman or anybody else in his regular family physician. There are worthy and well-meaning people, fortunately not a great many of them, who think that the provision, ordinarily existing in workmen's compensation laws, that the employer or the insurance carrier who has the doctor bill to pay should have the privilege of selecting the doctor should be changed. That is the ordinary rule now, and I hope it always will be. The rule on that subject is perhaps more thoroughly laid down in *City of Milwaukee v. Miller* (144 N. W. 188) than anywhere else. I would ask Doctor Steiner to give his views as to what would probably happen, not to the man who pays the bill but to the man who is injured, if he elected to have his own doctor, either on the ground that he knew him or that the man could talk his language.

Doctor STEINER. As I understand your question, Mr. Williams, you ask what would happen if the man who was hurt chose his own doctor. Of course, it would depend on the man's choice. If his choice were very poor, if he chose a doctor to give testimony who was dishonest, that doctor might in consequence be dishonest in making a mountain out of a molehill and suggesting compensation where none should be given. It seems to me that is a very important question. That is where a medical adviser to the compensation commissioner would come in—that is, if the commissioner were not a physician—who could give proper advice as to the man suggested by the workman. If the doctor were absolutely incompetent to appear before the court, he ought to be thrown out, and you ought to have somebody to decide whether he is to be thrown out. Often the compensation commissioner could not decide the way the medical adviser to him could decide.

Mr. WILLIAMS. I failed to make myself clear. In the great majority of those cases when a man gets hurt the thing he needs more than anything else is proper and adequate medical and surgical treatment, but if the choice of a physician is left to his judgment, he may select as his adviser his own physician, either because he speaks his own language or because he knows him.

Doctor STEINER. That, again, would depend on his choice. If he made a poor choice, the case might be long continued and eventually result in a cure, but probably he would get well in a shorter period if he were efficiently treated. There, again, the appointment of the medical adviser would remedy that more quickly than any other means. That is my own opinion, however.

Mr. BYNUM. Doctor Steiner, I am going to come up against the proposition Mr. Williams has brought up for discussion. Labor is going to ask in Indiana that the injured workman be permitted to select his own physician. I have very decided views on that point, and I want something in the record from you. I realize this, that the laborer, possibly living on the outskirts of the city and taking a doctor from the locality in which he lives—because we do business that way—will very likely select a physician whom he knows but who is not competent. Other than that, there is the objection, of course, that the employer must have some check upon the physician's side of an accident. I wish you would express yourself freely before this board, because I want to use your opinion at the next session of the Legislature of Indiana.

Doctor STEINER. That is a very important question. You have said that the employee might select a very poor doctor and that his diagnosis might be very defective. Thinking of that before I wrote this paper made me suggest the possibility of having the State medical society prepare a list of competent doctors and surgeons who could not only act as advisers if they wished to the compensation commissioner but also be selected to see certain cases, especially if the case had chosen an incompetent physician. In other words, if you had an adviser to the compensation commissioner and an employee selected a certain doctor and that adviser knew that that doctor was incompetent, the doctor might not be admitted to the compensation court, another being chosen in his place. But if the employee named a physician whom the medical adviser thought competent, then I think it would be all right to have that doctor admitted.

Do I make myself clear? There ought to be some check. It seems to me the employer ought to have some check upon the doctor if he is incompetent. The check I suggested in my paper was to have an adviser to the compensation commissioner.

Mr. McDONALD. In the State of North Dakota the injured man has the right to choose his own doctor. We have had no trouble whatever for this reason: we have a check on him. We can order the man examined by any physician we designate. If the two physicians do not agree we can call in a third one. If he agrees with our physician that the man's physician is not giving him proper care, we have the right to take the man away from that care and put him where we want to. But he always has the right of choosing his own doctor in the first instance. We have had very, very little trouble. I believe it is the right of any man who wants to to call his own physician. North Dakota is a State-fund State.

Doctor STEINER. That method certainly would raise less objection.

Mr. HATCH. In view of the very practical problem which Indiana has before it I will tell of my experience. I had occasion some little time ago to give considerable thought to the matter, on the particu-

lar point which has been raised here, as to whether or not the free choice of physician by the wage earner was desirable.

I think the statement was made by the doctor, and we have the same testimony from North Dakota, that unchecked free choice is a dangerous thing. I will venture to say that compensation experience the country over has demonstrated that fact. Free choice as a right is perhaps due the individual. That may be arguable on various grounds, but practically and actually the wage earner may make very serious mistakes in his own interests in such a case, so that some kind of check or supervision that will insure that the selection he makes is a good one, has been found by actual experience to be very acceptable. I think I am correct in saying that, generally speaking, this has been found necessary.

Mr. McSHANE. As a matter of principle, I think that the injured man is more interested than any other individual in his recovery. In 99 cases out of 100 I think he will make a good choice if he is permitted to select his own physician or surgeon. It is the unanimous opinion among doctors, among compensation administrators and all who are acquainted with these kindred problems, that the cooperation of the injured man is of vital importance in his recovery, and if you give him a doctor or a physician and surgeon not of his liking and one with whom he will not cooperate, I am inclined to think that very likely you will make a serious mistake and prolong the period of disability.

On the other hand, there is something to be said for the man who pays the bill—the employer. So we are confronted with this very practical problem that Mr. Bynum has raised. That I think has been partially answered, at least, by Mr. McDonald. There may be abuses if an employer has the right in all instances to select the physician who is to attend the injured workman, which may get to the point where he contracts for such services. If he gets contract service, he is going to get contract treatment. Our experience, somewhat limited, has not been favorable for that kind of treatment. In the State of Utah three years ago we eliminated entirely all contracts and we think we did a mighty good job when we did it.

Another viewpoint is this: The physicians and surgeons of the Nation have made great advances in their science and art. If you were to ask the State Medical Society of Connecticut to give you a panel of competent physicians and surgeons, I do not doubt but that it would hand you an alphabetically arranged list of every doctor in the State. I understand, of course, that there will be personal differences. Lawyers, you know, have constitutional objections to lawyers going to jail, and doctors have objections to coming out and facing a problem sometimes, and for good reason. Of course, if you have an incompetent man, you do not want him in. But that was answered here when the doctor said that such a man should be thrown out. That man should not be given the privilege to practice his arts and experiment upon injured workmen.

To get down to the question, I think it is proper for the injured man to have the right to select his physician and surgeon, with a restriction that in case there is not proper recovery within a reasonable time some agency will change the doctor and give the man

into other hands. You have to do that in special cases. You will find some men eminently qualified to treat one injury who are not qualified to treat another. In Utah we reserve the right, upon application of either the employer or the employee, where recovery is not being made, to change the doctor.

My only purpose in making this somewhat lengthy statement is that the injured man is the one whose recovery is of most vital concern to himself, and it ought also to be of vital concern to his employer. I believe there will be very few injudicious choices made if you have a proper check and a proper law governing the practice of surgery in your State.

I think if we can give the man the right to choose his own physician, with the safeguards thrown about him for consultation—any employer in Utah has the right to have consultation if the man chooses his own physician—that that will work out satisfactorily. Also, the man has the right to consultation if the physician is sent him by his employer. In either event they have an appeal to the commission, who will determine the question after advising with the medical advisory committee appointed by the State medical society as to what course to pursue. That is the procedure in Utah.

Mr. BROWN. Suppose that the injured man asks for a chiropractor to cure a broken leg?

Mr. McSHANE. Utah prohibits chiropractors from entering the field of surgery and medicine. If a man has an arrangement with a chiropractor to treat a case that causes strain or trauma, he pays his own bill.

The CHAIRMAN. Chiropractors are allowed in Massachusetts. Then you would have to lay down a different rule entirely.

Mr. McSHANE. The first thing to do in a case like that is to change the law.

Mr. BROWN. Some few months ago in the Northwest we had occasion to have a conference on matters of this kind with the three States of Washington, Oregon, and Idaho. We thrashed over this problem and came to conclusions which I wish to give you. I should like to ask the doctor if he considers them wise:

1. We determined that no physician would be recognized by the board who was not a recognized physician by the medical societies of the three States.

2. In special cases, as a complicated eye injury, an abdominal injury, or other injuries requiring necessarily a specialist, no general physician would be permitted to treat the individual, only a specialist being allowed to act. We did that because we believed that often the first man who had to do with the injury would be the most effective in bringing about recovery.

In Idaho we made this part of our stipulation and put our schedule on this basis and are proceeding in that way. Certainly, our law prevents the individual who is injured from choosing his own physician unless he does so at his own expense and allows the employer's physician to be present at any time and to make any examination at any time. We have no trouble whatever with the insurance companies in Idaho, together with the State fund, in having the physician present whom the injured man desires. In most cases that

physician is allowed to take the case, as our societies will not allow any physician who is not competent to practice in the State. We felt that in this way by limiting the care that the general practitioner would have charge of to matters that would not generally be given to the specialist we could control the affair.

Mr. SCANLAN. Our experience in Illinois causes me to have a different view on the question Mr. McShane brought up. About the only time I get rough and hard-boiled, as they call it, is over the applicants who insist on having their own physicians, often of the same nationality. It is altogether too late to wait until this neighborhood surgeon has seen the case before another is substituted. The time to do it is at the inception of the injury. My experience has been that the employers and the insurance companies have the best physicians. It is to the interest of the insurance company to restore the injured that he may go back to work as soon as possible. The sooner he is restored, the sooner it quits paying compensation.

We have more trouble about allowing the applicant to choose his own physician than about anything else. We have so many different nationalities in Illinois. So many times the injured man calls his neighborhood physician of the same nationality, who is engaged in general practice but who is not the proper one to treat his particular injury. His treatment may prolong the disability.

We have had a little of the contract phase of the question in Illinois. In the final analysis, it is up to the commission as to how such a contract is performed. I suppose the basis of those contracts is that the physician is paid according to how cheap he can get the employer out of the case. We have not had much of that except on a few occasions. At one time we called on one of the boards of physicians to advise us whether or not the particular case under consideration was properly treated, whether the man had actually been treated, and whether any further treatment was indicated, and things of that sort. Mr. Bynum said that in Indiana the law was going to be changed so that the applicant could choose his own physician. I think that is a mistake in the long run.

Mr. McSHANE. Not for the purpose of prolonging the discussion, but in explanation, I wish to say that in Utah every physician or surgeon into whose hands a case comes is required to make a report within seven days—during the first week—and if the disability continues beyond that time, he is called upon to give a rather detailed report of the nature and extent of the injury and the necessity for treatment after that time. At that time, if the insurance company does not wish to exercise its prerogative, the injured man may appeal to the commission for change of doctor if he feels disposed to do so. But we are having very little trouble. There is hardly an insurance company operating in Hartford that is not operating in Utah, and we are not having any trouble with them on that score. We are getting people back to work within a minimum period with complete recovery. There is no trouble over our practice. I do not know what local complications might bring about in other States.

Mr. MCGILVRAY. The only trouble Brother McShane has is in collecting the bills. I am in hearty accord with what the gentleman from Illinois has just said. Out our way we have no difficulty

along those lines. We find that the insurance carriers invariably will cooperate with us. They want to get the men back and they get the best men they can in the communities. They are the first to point out the irresponsible practitioner to us.

I want to call your attention to a little side line. They say a lot of things originate in Kansas and California, and this happened to originate in California. At the last session of the Legislature in California one day very innocently a certain gentleman representing the Christian Science faith proposed an amendment to our act which would allow all Christian Science practitioners the same privileges as physicians and surgeons. Immediately the physicians and surgeons got busy and it did not become a law. But these people are coming back next year and they are going to insist on that provision. It may come East. If it does, you will have another problem to contend with.

Mr. HUBER. You talk of only one State—the State in which you are operating. I work in six different States, with the doctors of six different States. In 1920 and 1921 we had company doctors. We abolished those, put them on the shelf, and allowed our men to select their own doctors. I have had no trouble in Oklahoma, because in Oklahoma we do have doctors. I have had trouble in Kansas, Texas, Louisiana, Arkansas, and Missouri. The only objection I have to the workman selecting his own doctor is that I sometimes find a trace of the family bill in the doctor's account when it comes to me. That is one objection I have.

I related to Mr. Stewart to-day a genuine Christian Science case, in which a string of doctors insisted on amputating a boy's limb. He wanted to go home to his mother in Kansas, and we shipped him home. When we delivered the boy at the mother's door, she refused to let the doctor come in to amputate the boy's bad foot. If gangrene had set in, it would have killed him. Under the Kansas law there could be no amputation until we got permission. It was necessary for us to pay a doctor bill. In place of that limb being amputated, the woman knew how to clean it and it got well of its own accord.

I am the only man in Oklahoma who paid a Christian Science woman for curing some of our men. It was the best investment I ever made in Oklahoma. When the men have bones that need careful dressing I send them to the mother healer and they come back the next day ready for work. Once in a while I tip the old lady a little bit and I have good results. I find that half of the man's cure is in his head. As the man said, "Hell, I am cured." If the mother healer can make a man believe he is cured and he comes to work the next morning, what do I care?

What do I care if a chiropractor puts a man on a board and lays out his feet so that one foot is shorter than the other and then gives him a couple of taps and tells him the leg is longer and he has done a miracle? What do I care? All I am interested in is having that man come back to work. I find that we have fewer losses since we have done away with company doctors.

Mr. WILCOX. I think we ought to keep in mind that a different type of plan of administration is necessary in a State-fund State than in a State in which insurance companies insure the liability.

In the State-fund States, it must be remembered, there can never be adopted as a policy which will stand public test one which says that the selection of the doctor who is to treat an injured person shall be made by somebody else than the man himself; that is, in the administration of the funds conducted by the State itself, all the doctors who are licensed to practice in that State have a right to share equally with every other doctor in this matter of treatment of an injured workman.

When you get into those States in which insurance companies are covering the risks, or where the employer takes care of the liability direct, then a new problem is present. The thing to be determined, as I see it, is how may this injured man have the best character of treatment.

I am perfectly sure in my own mind that he can have the best kind of treatment—and I am talking about treatment alone—for his relief by doctors who are selected by the employers.

An injured man, our records indicate, sustains an injury once in 20 years, or one out of every 20 employees is injured each year. He knows little about the requirements for his relief, his cure. He probably has not consulted with a doctor in all his lifetime. The only time the doctor comes to the home is at confinement time, or for something of that sort. We expect the injured man to decide in case of emergency, when he must act on the moment, who is going to take care of him. I submit that it is not within his ability correctly to select the man who shall attend him.

But here is an employer who is literally having hundreds of cases, here is an insurance company dealing with those cases in great numbers, who comes to know who are the men who will take care of the fractured limbs, who are the men who are going to restore injured eyes, who are the men who are going to be able to cope with such cases under all circumstances. The employer has his plans all thought out in advance. He knows just who is going to attend this man when injury occurs. He knew weeks before, months before, just what he was going to do. The injured man was the last person in the plant who thought he would ever be injured, and he has thought nothing of who is going to take care of him in case of injury.

I submit that there is no trouble in any State with the employer's selection, so far as the cure is concerned. Is there any State in which medical selection by the employer has proved to give poor medical attention? There is none. Year after year in the legislature we have had to face the situation Mr. Bynum is going to have to face in Indiana. At the last session of the State legislature I put the question up to the State federation of labor as to whether or not it knew of any appreciable number of employees in that State who had not received good, square, skilled treatment from the physician selected by the employer. The president of the State federation of labor got up before the legislature and admitted that it was perfectly contented with the employer's selection of the physician, as far as treatment was concerned.

I come to this other point, that the only trouble you have with the doctors is on the matter of disability. There is the point on which the employees are becoming disturbed and why they want to

get out from under the system. It is because the man whom the employer has selected to take care of them comes in afterwards and aligns himself on the side of the employer or the insurer—or at least that is the way the employees feel. So they are disturbed. Their way of getting away from it is to have the doctor who attends the injured man from the beginning one of his own selection.

If we can have better medical attention by employer selection than otherwise, that is the thing we ought to have, because the first and most important consideration is how to cure and relieve this man and not the question of measurement of his disability. If the employees go after it and keep after it long enough they will finally procure for themselves the right to select their medical attention unless we stand out against it as a group. I think it is a thing that ought to be put down, because I do not think it is for their best interest. I think employers and the administrators of compensation ought to stand out boldly against it.

I think the thing for us to concern ourselves about is how to put aside this disposition on the part of doctors to appear not impartial in the determination of the extent of the disability. In Wisconsin we have undertaken in a way to reach that. Wisconsin is the only State in the Union, according to a research made by the Manufacturers' Association of the United States, to have a medical panel. We provide for employer selection of medical attention through a list of accredited physicians; that is to say, the employer or the insurer may set up a panel of competent, impartial physicians to treat the injured worker. When he sets up the panel the worker has the right to take his doctor from any of the members on that panel. He feels immediately that he has some little measure of choice as to who is going to take care of him.

It was not so much the fact that he was not getting good, fair, square treatment, but the feeling that if he was denied anything he ought to have it. I submit that, after all, a lot of credit is due to the employees of this country for the readiness with which they have responded to this matter of having somebody else pick out the doctor for them—a man to treat them, to furnish them medicine, to cut off their limbs, if need be; in fact, do anything to them—a man they had never seen or heard of before. I submit that the man who is going to do that inside the plant and have that right has to keep faith with the employees always, or else he will disgruntle them and they will not stand for it.

This panel provision really gives them something approaching a choice. That satisfies them. But, better than all, it takes away from the doctors who are on that panel the disposition to be partial, because the law provides that the injured man may pick his own doctor unless the doctors on this panel are impartial. If one of them is not impartial he is to be relieved from further service on the panel, another physician provided, and the expense charged back to the employer or insurance carrier. It does produce a feeling which I think is worth while.

Mr. McSHANE. Do you not think, in case a large employer of labor lets it be known that his employees can select their own physicians and surgeons in case of industrial injury, that in nine cases out of

ten, or even a greater percentage of cases than that, the injured employee will go to one of the company surgeons?

Mr. WILCOX. Yes. They then believe that the employer will give them fair treatment in recommending a physician. A name is called to their attention which they have never heard before. They do stop and talk it over and then decide that that is a pretty good doctor and go to him rather than to some man in the other section of the city. One employee will say, "Doctor So-and-So took care of me and he is a good doctor." If they get the idea that the company doctor is a "butcher," or some other term that they often use, it is next to impossible to get the man to go to that doctor.

Mr. MCSHANE. I agree thoroughly with what you have said. As I said in my opening remarks, as a matter of principle that right ought to be given. Then there ought to be some safeguards. I want to tell you one thing: There are more employees than employers. We could not ride a horse if he knew his strength. We can not ride the employees if they feel they are having something withheld arbitrarily. That is what causes our trouble. I do not anticipate any trouble in giving them the right to choose their own doctors in many instances.

Mrs. SCHOFIELD. In Massachusetts the employee has the right to choose his own physician if he wishes. I think what one of the other speakers has said is quite important: That the cooperation and the mental attitude of the patient is so important in his recovery that if the patient has no confidence in his physician and feels antipathy and antagonism toward him his recovery is retarded.

In Massachusetts the insurance company pays the medical expenses for the first two weeks—the first two weeks after the injury or the first two weeks after disability begins—except in unusual cases. If the case is an unusual one the insurance company pays the medical expenses the length of time the case remains disabled. If the insurer has reason to believe that the employee is not progressing properly because of the inadequate care he is receiving from his physician, the insurer has a right to have a hearing on the question and to present his evidence on that point. Of course, if the employee is receiving compensation he must go to the insurer when he requests it and be examined by the insurer's doctor, although the employee's own physician may be present at this examination.

Then in Massachusetts we have the system of impartial doctors; that is, the employee may request that one of the boards impartially reexamine him, or the insurer at any time may request that the board appoint one of the board's impartial physicians to examine him. In that way the Massachusetts industrial accident board has a chance, from the reports of these impartial physicians, to get an impartial report regarding that employee's condition.

It is true that the insurance company with all its money has a chance to furnish the employee with the most expert care. I should say that in the great majority of cases if the employee would put himself under the guidance and treatment of these splendid experts he would have a much more rapid recovery. Of course, the idea is to get the employee back to work as soon as possible.

I think the point the previous speaker made is a good one: That the cooperation and the mental attitude of the patient is important in his recovery, and if he is constantly irritated and feels uncooperative because he is obliged to be treated by a doctor not of his choice, his recovery may be retarded.

Doctor McBRIDE. That this is a controversial question goes without saying. I was interested in what Mr. Bynum, of Indiana, had to say. We have debated this question in New Jersey, though not so much the workmen themselves. The doctors in the State rather feel, I believe, in common with the people generally, that a person ought to have the right to select his own doctor. We demand that right for ourselves, of course. There are a great many physicians who are perfectly competent to treat people who know little or nothing about industrial surgery. Thereby hangs a tale. I believe if the injured person knew whether or not the doctor whom he might select was competent to treat his particular condition, all would be well. Unfortunately, many people do not know that; they have not the knowledge. We doctors do know that many men are engaged in treating industrial accident cases who have had little, if any, experience. Often as a result of that inexperience cases that might through other care recover with very little permanent disability result in permanent disability. For that reason the doctors thought that possibly we had better go slow about giving the injured person the right to select his own doctor.

In parts of New Jersey some of the carriers do not always select the most competent person in that district to take care of these cases. They often select men who take cases away from other men much more capable than themselves. For that reason, the question is a very serious one. In all of our compensation area in New Jersey we have our own doctors for cases that come in for hearings, whether formal or informal. We have no difficulty, of course, in obtaining an impartial decision as to the degree of disability the man has. The doctor has no reason to give any other than his best judgment. I question very seriously whether or not it might be better to leave a question of that kind to the medical societies of the State to deal with. It is very true that some people will recover from minor accidents without any difficulty at all, whether or not they receive much treatment—Christian Science and the mother healer, or things of that kind. Fortunately, not many cases drift into that channel.

It is a very serious question and admits of the most open discussion. Out of that will come the best solution. The carrier is supposed to furnish medical treatment or surgical treatment if needed. In most instances we find that the doctor selected by the injured person himself, if he be competent, will go right through the entire course of treatment, the carrier having the right at any time to have his doctor go in and check up. That might be all that is necessary. I believe it is a controversial question and that we ought to think carefully of how we should go on record regarding it.

Mr. DUXBURY. I am surprised that there is so much controversy over this question. I had come to believe that experience with the administration of compensation laws had brought nearly every person to the conclusion that it was very dangerous to permit an

injured employee the free privilege of selecting his own physician, for reasons which Mr. Wilcox, from Wisconsin, so well stated. For reasons which were demonstrated by the paper which was read, the ordinary person would still patronize those traveling doctors if they were permitted to go around, and he would select some of those fellows to take care of his industrial injuries. That same tendency still persists among humanity.

Then there is another thing. We have heard of ambulance-chasing lawyers, but there is a possibility of creating a brood of ambulance-chasing doctors that would be almost as pernicious, if that situation existed. I think we ought to insist upon some proper control of the selection of doctors to treat these cases, because the people who suffer are wholly incompetent to make a wise selection and the interest of the employer or carrier is identical with that of the injured workman. The most important thing is to get the best possible result from the treatment.

With us, we have unlimited medical expense. The employees are entitled to everything that can possibly be of benefit to them. The carriers are interested in getting the very best possible results from the monetary point of view. It will cost them less for temporary compensation and less for permanent disability. They are interested and they are informed about what men are likely to get the best results. It is altogether more likely, from that one point of view if they had no other motive, that they are going to pick out the man who will get the best result, whereas the fellow without experience is going to be the victim of quacks and people who may have been regularly admitted to practice but are not of a very high type, and the results of that kind of treatment are going to be bad for the injured workman himself, expensive and everything of that kind. We are rather hard-boiled in Minnesota and we give the men to understand that it is the privilege and right of the employers and insurers to select their own doctors, but the employers and insurers generally understand it is important that they get someone who is satisfactory to the injured man, and in very many cases he actually does select his own doctor. They would not force somebody on him whom he does not like, because they understand as well as anybody that the results of that sort of situation might not be desirable. It works out practically that whenever the man is not satisfied and insists on going to another doctor, he has the remedy that the physician may be changed, either on application of the physician or employee. With that remedy, we have very little difficulty and the truth of it is these men are treated by the highest class of doctors—specialists, etc., when they are in need of special attention—because we believe that in this way we get the best results.

Mr. BYNUM. I want to say that the injured workman does not know any more about selecting a doctor than he does a lawyer, and I appeal to you lawyers here for verification. The man who is injured will go to an ordinary physician who has no right to touch an eye. For that reason I believe that the insurance carrier, or the self-insurer, has the right to pick the physician, because he alone, as Mr. Wilcox pointed out, is interested in getting the man back to work, the one interested in getting the best medical treatment there is. I want to go on record right now that in Indiana they want

to extend the right to the workman to select his physician, but I stand for the employer picking the physician.

Mr. DUXBURY. With the right of restriction.

Mr. BYNUM. We have that right of restriction. Indiana has jurisdiction in emergency service where the employer does not furnish the physician and where the employer furnishes improper medical attention.

The CHAIRMAN. All these discussions show how short our sessions are. I have the pleasure this afternoon to introduce to you Mr. Brosmith, the general counsel and vice president of the Travelers Insurance Co. I will say for the Travelers Insurance Co., that as far as Massachusetts is concerned, in my experience with them for the past 15 years they have always been cordial and always been fair, and it has always been a pleasure to work with them. Mr. Brosmith will talk on "Compensation insurance."

COMPENSATION INSURANCE

BY WILLIAM BROSMITH, VICE PRESIDENT AND GENERAL COUNSEL THE TRAVELERS INSURANCE CO.

Compensation insurance, although usually considered a distinct kind of insurance, is in principle accident insurance applied to groups of employees in the States wherein compensation benefits are limited to traumatic injuries, and disability insurance applied to such groups where such benefits are granted for occupational disease as well as for traumatic injuries. Ordinarily accident and sickness insurances, or disability insurance, which is a combination of both under a single policy, are issued to individuals at their own instance and personal cost, whereas the insurance required by the compensation laws is furnished to the groups of employees at the instance of the employer and wholly at his cost. However, before the compensation principle was adopted in this country certain employers furnished gratuitously to their employees accident, sickness, or disability insurances and not an inconsiderable number of employers do so now. This voluntary grant is now made as an addition to the compensation required by law so as to protect employees against the accidental injuries sustained or disease contracted in ways and conditions foreign to the occupational hazard. Some employers give this supplemental protection wholly through motives of philanthropy. Others are induced to do so partly through this motive and partly because they consider it to be a good business economy. These are the same reasons or motives which actuate so many employers at this time to furnish at their own cost, in whole or in part, group life insurances for the benefit and protection of the dependents of employees who may die during the period of employment.

Notwithstanding the fundamental identity in principle to which I have referred there are conditions and regulations peculiar to compensation, the propriety of some of which may not be reasonably questioned, which make the underwriting of compensation insurance exceptionally difficult. There is no other kind of casualty underwriting which involves more detail or which presents daily so many perplexing problems. No other kind of insurance, with the possible exception of insurances upon lives, arouses more true sympathy or

inspires and justifies greater efforts to make of it, as the supporting factor of compensation, as perfect a system for the distribution of insurance benefits as is humanly possible.

Obviously during the period of less than 16 years since the first compensation law was enacted in this country, both in the development and operation of the compensation plan in its relation to millions of employees, with schedules and scales of benefits changing from year to year, difficulties had to be encountered. Mistakes were made by all of the parties affected and preconceived views as to the merits and demerits of procedure have been found to be faulty. The wonder is that industrial accident boards and commissions, insurance carriers, employers, and employees have been able in so short a time to overcome the faults and evils of the former system and to bring to so high a degree of efficiency the administration of compensation laws in all of their parts.

The change from liability to compensation was not brought about solely for the benefit of industrial workers, although the latter were directly and immediately the greatest sufferers. Legislators must have had in mind the well-being of the State and the interests of the employer as well as the interests of the employees. My conviction is as strong now as when the compensation principle was first discussed in this country that underlying all of the sections of the various types of compensation laws is a purpose not only to remunerate in a substantial degree disabled employees or their dependents but to conserve life and limb and reduce accident frequency for the common good and to enable industry to be carried on free from every element of danger which right construction, careful supervision, and rational direction can remove. True enough, there will always be accidents pure and simple, beyond the power of the human mind to foresee or to prevent, but the latter, under the proper administration of these laws, will constitute but a small percentage of that dreadful toll which by reason of its frequency and country-wide distribution instead of being appalling sinks, and we should be ashamed to say so, to the level of the commonplace. Much has been done by your boards and commissions, with the cooperation of carriers and employers, in the matter of accident prevention and for the removal of the conditions which foster occupational disease. More may be done but it is not for me to enlarge upon the ways and means. Others can do this more accurately and effectively. My use of your time will be repaid if I can bring to you a practical suggestion as to the ways and means by which the insurance adjunct may be administered more economically and more nearly in accordance with the intentions of the lawmakers.

Granting that insurance carriers of compensation risks deal with all of the parties in interest with that fairness and consideration which in all other lines of insurance have built up the reputations of the underwriters and the reputation and strength and influence of the carriers to a degree unparalleled in any other country, why is it that on the one hand we find employers complaining of the heavy cost, which must eventually be distributed to the consumers of their products, and on the other hand the carriers complaining of the inadequacy of the premium rates? With service at least equal in quality and value the casualty insurances granted to

individuals may be transacted with a reasonable underwriting profit. And whatever may be the kind of insurance or the type of the carrier and whether the underwriting gain be distributed to stockholders or returned in whole or in part to the insured, the premium must be adequate for the risks assumed and provide a reasonable profit. We must look for the answer elsewhere than in the nature of the insurance risk assumed in compensation, for that is substantially the risk assumed by carriers in connection with disability insurances granted to individual applicants. Nor does it suffice to say that the trouble is with the statutory regulation alone. There is no difference of opinion as to the propriety and necessity for governmental regulation of insurance and all carriers are subject to such regulation in every department of insurance. Perhaps we may get at the answer by contrasting the regulatory and other procedure in casualty insurance generally with that involved in relation to compensation.

Insurances as to individual risks, of whatever kind, are transacted under the supervision of the State insurance departments. Compensation insurance as well is subject in many respects and in a number of jurisdictions to supervision and regulation by industrial boards and commissions. Fire insurance carriers generally are required to use a statutory form of insurance contract. Carriers of other kinds of insurance, including life, must incorporate in their policy contracts certain provisions in the words and order prescribed by law and may not insert certain other conditions which the laws prohibit. As the States in which there are statutory requirements as to these insurance provisions are among the most important in size and influence many insurance carriers use the same forms of policy contracts in each of the States, with only such variations as may be necessary to correspond to particular laws. In this respect perhaps the carriers of compensation risks are more favored, for the universal standard compensation policy, which by the way was conceived and drafted by an officer of a well-known insurance company, has been approved by the supervising officials, and by industrial boards and commissions having jurisdiction in all but two or three of the compensation States. Carriers enjoy the privilege of the selection of individual risks but the compensation carrier, while it may exercise the right of selection as to an employer, must take for better or for worse all of the risks pertaining to the industry of the employer and all of the employees regardless of questions as to moral hazard, personal habits, physical conditions, or impairments. In some States the compensation carrier must assume not only the obligations imposed upon the employer by law as to the business or industry declared in the application for insurance but carry the same obligations as to any and every business or industry in which the employer may engage within the State. This is an interesting instance of the loss of right of selection. An applicant declaring himself to be a mason or a builder might be acceptable with an appropriate premium rate but undesirable if it developed as well that he was engaged in the business in another part of the State of dynamiting rocks and tree stumps. Nevertheless the employees injured in the dynamiting operations must be compensated as fully as those who may be injured in the course of

the business declared by the employer. This same coverage follows a business or industry taken on by the employer during the term of the insurance. In such cases the carrier may be able to collect a premium upon the pay roll for the additional exposure but manifestly this privilege is hardly a remedy.

The carriers of individual risks, barring the statutory prohibitions against rebates and discriminations, are wholly free in determining what the premium to be paid for the insurance shall be for each class of risks. The compensation carriers, however, are subject to a diversity of statutory and governmental requirements concerning the adequacy and reasonableness of premium charges and the methods by which they may be ascertained and adjusted. The carrier of individual risks may say what will be granted in the way of insurance benefits and for what period of time the risk shall be carried and, if necessary, may terminate further liability by cancellation of the policy contract in advance of the expiry date. The power to terminate coverage, either prior to the expiry date of the insurance or even at the expiry date in some States, is limited as to compensation insurance and may be exercised only in accordance with statutory or departmental requirements. The compensation carrier must cover the obligations imposed upon the employer and as well any increases in the benefits which may be conferred by amendments of the law during the term of the insurance. In the matter of adjustment and payment of claims for insurance benefits the carriers of individual risks are free from direction or control other than the ethical rules of right conduct and subject, of course, to the final words of the courts of justice. The compensation carrier must investigate, adjust, and liquidate claims for compensation benefits, medical, surgical, and hospital care and treatment under the direction and to the satisfaction of the industrial accident boards and commissions.

These differences in control and procedure are all well known to you but they are stated to emphasize the fact that they spell additional cost to the carriers and necessarily a higher premium to the insured employers. In so far as the cost of maintaining and operating industrial accident commissions and boards, State rating bureaus, the National Council on Compensation Insurance and the company organizations which collate experience and promulgate rates for the approval of supervising officials, in the year 1925, the last year for which complete figures are obtainable, a single carrier expended \$234,595, hence you will realize that the cost to all of the carriers must have been enormous. Of course, the single carrier referred to transacts a large volume of compensation insurance but the figures quoted, plus what may be reasonably assumed to be the cost to all other carriers, fairly illustrates, in part at least, one reason for the heavy cost of compensation insurance. When we take into account that there are 16 different organizations scattered throughout the United States, busying themselves with the ascertainment and promulgation of compensation premium rates, is it not reasonable to suggest that everything pertaining to rate making and classification may be more satisfactorily and scientifically handled by a smaller number of agencies or by a single agency operating at the cost of the carriers, if you will, but under governmental di-

rection and control? It is doubtful, assuming that the suggestion is practical, if there is anything in the laws which would interfere; but should that be the case, does not the importance of the matter justify an attempt to make the compensation laws uniform in this regard? Under such an arrangement the rights of a particular State to consideration in connection with a volume of experience to justify a differential, as against the combined experience of the whole country, would be safeguarded. Naturally, we might expect that such a plan would meet with opposition on the part of those who may be comfortably placed in the existing bureaus and agencies, but their opposition should yield to the common good. Moreover, a single agency of this kind would prevent the complications which have followed proposals for changes in rates in several States in the past two years. The contrariety of views expressed as to these changes, the pure premiums, the loadings and the adequacy and reasonableness of the rates proposed were disturbing to the employers as well as to the insurance carriers. What is more serious, they have weakened public confidence in the rate-supervising officials and in the accuracy and dependability of the rate-making agencies.

Again with respect to the investigation and adjustment of claims the cost of the varying procedures which now obtain may not be measured by the cost of operation or maintenance of the several industrial accident boards and commissions, heavy as that cost may be, or by the cost in dollars of the maintenance of the claim departments of the insurance carriers which, as in the case of rate making, reaches annually an enormous sum of money, but we must also enter in the account quite a considerable sum to represent the direct cost in dollars to disabled employees and their dependents in presentation of claims and something more to represent indirect cost which may be due to delays in adjustment and liquidation. It is not unreasonable to assume that a further sum should be entered in the account to cover the expenses of employers voluntarily incurred and apart from any legal obligation.

The popular conception of compensation is that it is a piece of legal machinery constructed solely for the purpose of liquidating the claims of disabled workers in business and industry. The very words used in the titles of the compensation acts lead to this conception and obscure the further and equally beneficent underlying features of the compensation plan. Beyond doubt the remuneration provided for disabilities is the sustaining factor and the compelling inducement to safety and the amelioration and removal of conditions which tend to accident frequency or cause occupational diseases. Nevertheless, and wholly without regard to popular approval, it is the duty of all who are concerned to see to it that these laws are administered effectively and economically and that the compensation benefits are distributed speedily, regularly, and with a minimum of cost and technical procedure. This duty, indeed, is declared in the laws.

Now, while it is true that since the beginning of the compensation era the payments of compensation have benefited the working classes beyond the power of words to express and these laws have also operated to the great advantage of business and industry, have we done

all that is possible to facilitate the payment of benefits, to simplify procedure and to lessen the burden upon business and industry? A study of the proceedings of this association, the reports of the accident boards and commissions, and the reported adjudications of the courts in compensation cases must impress us with the fact that there is too much machinery, too much formality and too many inexcusable delays in the investigation and adjustment of claims. Much of the latter is due to formal requirements and procedure. Allowing for the differences in the waiting periods, why should it happen that in one State the payments of compensation begin regularly after the end, or within a day or two of the end, of the waiting period and in another State are delayed for several days and even in unfortunate instances, and where there is no appeal or controversy, for several weeks after the expiration of the waiting period? Why should one State require for the proper investigation and liquidation of claims, 22 different printed forms, another for the same purpose 39 different forms and another again a total of 58 forms? The difference in population or in the nature and extent of business and industry is not an answer. In one very important State but a few years ago more than 200 forms were used in claim administration, of which over 100 were forms intended for the use of insurance carriers. After a conference by the State officials with a number of men who had wide experience in claim work all but 16 of the forms for carriers and more than 100 of the other forms were discarded and I fear the number now in use is too great. Here again is an opportunity to serve the common good, simplify procedure and reduce expense. At present there appear to be more forms than are essential. They differ in makeup and requirements, when without sacrificing anything in principle they might be brought into uniformity. You may say that to reduce the number and simplify the matter would effect but a small saving in a particular case but we have to deal with an aggregate of many hundreds of thousands of claims annually and the aggregate of such a small saving would make a very considerable sum in dollars. It would do more than this. It would make it easier for the disabled worker to get his compensation and it would make it easier and less expensive for the employer and the carrier to make payment.

Concerning your action in a judicial capacity in passing upon the merits of claims, is it unfair or unethical to suggest—

First, that claimants, employers, and carriers be required, in the event of a controversy, to prepare and present the facts as promptly as possible and that adjournments of hearings be granted only for grave reasons? Each adjournment adds materially to the expense to be borne by the claimant, the employer, and the carrier, whether the claim be with or without merit.

Second, that there is room for improvement in the presentation of medical and surgical testimony? Very likely the triers of compensation cases have been influenced in this regard by the practices which have obtained in the courts of justice. But these practices have been severely criticized by jurists and are fairly subject to such criticism. If we grant this, is it not feasible to adopt a uniform practice which will preserve the value of the testimony of those who are qualified by scientific study and experience and full acquaintance with all of

the material medical or surgical facts in a given case to give an opinion which will be worthy of credit? The instances are few and far between in which the material facts and circumstances involved in a controversy as to the physical condition of a claimant at commencement of the disability and the pathological conditions, if any, which develop thereafter are not easily ascertainable. These may be presented by the parties to the controversy to some member of the medical profession, designated by the industrial accident board or commission, expert in the particular department of medicine or surgery involved in the controversy. Such an expert, without bias for or against either party, after hearing the evidence and after a physical examination of the claimant, when necessary, is qualified to aid the trier in reaching the right conclusion. A practice of this kind would neither take from nor relieve the trier of any of his judicial obligations but would safeguard him in the performance of his duty against the attempts to influence his judgment by the opinion evidence of the so-called expert, given in some instances with but an imperfect knowledge of the subject or of the facts and always as a paid advocate of the party for whom his testimony is given. Whether this suggestion be viewed from the standpoint of right judgment or from the standpoint of cost it is of great importance. In the end the fees which would have to be paid for a real and impartial expert would be more than counterbalanced by the value of his evidence and the saving in fees now paid for very unsatisfactory opinion testimony. Here again a saving would be reflected in the cost of the insurance.

Third, that the old saying of lawyers that hard cases make bad law applies to adjudications in compensation? There appears to be a disposition upon the parts of some boards and commissions and in some jurisdictions upon the part of courts of justice to strain the law in the matter of awards so as to furnish relief in cases which are not compensable. In every case the terms of the law should be given a liberal construction but that does not mean that the construction should be forced. It is not easy to appreciate that the legislature intended the compensation law to require the employer to furnish insurance protection or pensions for injuries which did not arise out of and in the course of the employment and for diseases not occupational in character and which were contracted before the employment began. It is more than difficult to appreciate the propriety of an award to hold the employer responsible for compensation to the dependents of an employee who, with a well-established family history of insanity and while insane, committed suicide, even though it be alleged that the particular phase of insanity which preceded the suicide was possibly due to the worries and responsibilities of the deceased while serving as a librarian in a small country town. The permanency and integrity of the compensation principle with the present scope of the laws will depend upon the fairness and justice accorded to all of the interested parties.

Although in several other directions suggestions might be offered for the improvement of conditions and for the practices of economy, I have laid stress upon the three which appeal to me as the most important. I am not unmindful of your interest and purpose to do all in your power to improve administrative situations and con-

ditions and to fulfill all of the requirements for fair judgments. I realize that the very points which I have made are but reflections of your own thoughts presented in a different way. They are submitted with the sincere purpose to be helpful in relation to a system to which I have given hearty support from the time when it was first proposed for adoption in America.

DISCUSSION

The CHAIRMAN. I enjoyed every bit of that paper, as I guess everybody else did. It was well prepared and well presented. I know that Mr. Brosmith will be very glad to answer any questions and explain any points he has made.

Mr. STEWART. I want to express my gratitude to Mr. Brosmith for some of the points made by him in his paper, especially the suggested criticism of the methods of procedure in many States. Most of you remember Carl Hookstadt. That was one of his hobbies. You might almost say that the methods of procedure, particularly the public-hearing system, were an abomination to him. He could never get through roasting the States that took up so much time in hearings. I do think that our whole subject of procedure needs revision and study.

I think also that if we could get the committee on statistics and costs to take up what I tried to take up in Salt Lake City, but which you sidestepped—going into this question of administrative costs in the various States—by so doing we would get a method of comparison which might open our eyes to some of the unnecessary practices. I am delighted to have such a paper as this put into our records. I hope the matter will not stop there, because I think that we have reached the point where a reexamination of methods is essential.

The CHAIRMAN. I should like to express my gratification to Mr. Brosmith on the many points he made, particularly the one about compiling so many reports. I recall a visit I made a good many years ago to one of the States which, for obvious reasons, I do not care to mention. I did not make myself known. I was in the capitol building, to which the employee had to go to secure his rights. I saw various employees going from one office to another, and I observed one man who was hobbling on a crutch. I spoke to him and said, "Are you claiming compensation?" He said, "I am." "What are you doing now?" I asked. He said, "I have to go to various places. I am on my way to the seventh place now."

That the procedure required the employee to go through all that rigmarole seemed foolish to me. I can not imagine why any claim should require 58 forms, as Mr. Brosmith has said. I think that we ought all to take that home. I know if it were my Commonwealth I would do my best to remedy a situation of that sort. The supreme court of our State has said in one case, and keeps reiterating it, that the procedure should be summary and simple so that the humane purposes of the act may be put into effect as speedily as possible and that every legal obstacle should be taken from the path of the injured worker so that if he has a bona fide case he can get his money as quickly as possible.

Another thing that Mr. Brosmith said—and he seems to find fault with it—is that in some States the procedure holds up the settlement of money by the insurance company when it is waiting to give the money. Of course, that is another situation that ought to be remedied wherever it exists.

In Massachusetts we have the direct-settlement system. When the man receives an injury, he reports it to the insurance company, who reports it to our board. The board, through its clerical force, sends out a post card to the employee reminding him of his rights. The insurance company, under the law, is obliged to get on the job and see to it that he gets medical attention and whatever he needs. Then it has to give him his compensation as soon as he is entitled to it. If there is any delay, the burden is on the insurance company, not upon the board. The complaint or criticism that Mr. Brosmith makes would be wiped out if that system were in vogue in the various States.

I am glad that we have a man here of his type, who views the situation from the paying side of it, so that we can meet him and hear what he has to say. I think we ought to discuss this matter.

MR. BYNUM. I have no quarrel with the insurance carrier. In Indiana we have competitive insurance. I want to say now that the Travelers Insurance Co. stands very high in Indiana.

However, I want to take exception to some of the remarks made by Mr. Brosmith. Possibly Indiana is the State to which he referred as having fifty-odd forms. We do have fifty-odd forms. They relate to self-insurance, exemptions from compensation, etc. But in Indiana we require payment of compensation upon the fourteenth day. The first seven days are excluded. I should like Mr. Brosmith to say as to what his record is as to paying upon that fourteenth day. Certainly the commission of Indiana puts no obstacle in the way. It is up to the insurance carrier.

MR. BROSMITH. I did not have reference to Indiana as the State which had a large number of forms. In fact, I referred to the States as a whole in the paper simply for the purpose suggested—that it is entirely feasible to reduce the number of forms in every State.

I have learned as a lawyer that legislation is periodically revised, the purpose being to simplify the practice in actions of law and equity. When such a law is passed, a great deal of improvement is observed in a short time. The practice is more simple. The rights of litigation are well protected and justice administered more quickly. But in the course of time again, by reason of questions submitted by counsel and equally ingenious questions propounded by judges in courts, the procedure begins to clog up; so that it is necessary at rather frequent intervals for the legislature to take a hand in court procedure, practice, and pleadings, to make sure that substantive law and the rights of the parties shall not be subordinated to scientific accuracy in technical procedure.

I am assuming that all of the industrial commissions, the carriers, and everybody interested, have been so busy in the last 16 years in developing the practice that they have lost sight of many opportunities for a more simple procedure, and that without intending to criticize any particular State. It would be a good thing if all

of the boards and industrial commissions would occasionally review their forms and procedure, to the end that where there is anything of a burdensome or unnecessary nature that would interfere with the prompt settlement of claims, those defects would be removed and the procedure perfected.

I know that it can be done. I know that the company with which I am connected has to be ever on the guard to keep the procedure up to date in handling our business in its various departments. Periodically we go over the forms and methods of bookkeeping, accounting, claim files, policy contracts, and everything else and discard that which may properly be discarded without in any way interfering with the efficiency of our service or the policy of our policyholders.

Mr. DUXBURY. Most of the older members of this association remember the work of the committee referred to by our secretary, which attempted to get some improvement in the forms of procedure. As I remember it, at that time one of its chief embarrassments was the fact that the compensation laws of the different States had different provisions with reference to procedure, so that any sort of uniformity was almost impossible. I have thought that it was probably a mistake to inject into the compensation laws too many provisions with reference to procedure. If that feature of the law gave the power to prescribe the procedure to the administrative bodies, then we could hope to get some uniformity. But, as it is now, we have in one State requirements in the law, which must be observed, different from those in other States, and different all the way down the line.

I have some doubt about whether a legislature is the proper body to prescribe rules of procedure. We are coming to recognize that fact in the courts, that one of the chief mistakes with reference to procedure is that there is too much of it prescribed by the legislature in the statutes. If the power to prescribe rules and procedures were vested in the administrative bodies, the courts could, as their experience indicated, modify the rules and make them more practical. It seems to me that the same thing would apply to compensation administration. We should eliminate from our compensation laws particularly provisions with reference to procedure, and then when power is vested in the administrative department we can take advantage of our experience and probably better the procedure.

Mr. LANSBURGH. There is one point in the paper that I should like to take exception to; that is, that it is cheaper to have one central rating bureau for compensation rates throughout the United States—a consolidation of rating bureaus. It seems to me that if the accident-prevention work in the various States is to amount to anything, there must be a direct and immediate benefit to the employers in the individual States through betterment of their individual accident record. It may be that differentiations could be established which would satisfy employers in a particular State that they were getting the full benefit of their efforts.

Most of us in Pennsylvania doubt that most Pennsylvania employers would be satisfied with such a provision. We have a compensation rating bureau dealing with Pennsylvania experience and main-

tained by the insurance carriers doing business in Pennsylvania, as well as by self-insurers, and the rates set by that bureau in most classifications are considerably under the rates set by the national bureau. Whether or not those insurance companies doing business in Pennsylvania are making as much profit as they desire under those rates, I can not tell, but I do know that the two largest mutual companies operating in Pennsylvania paid for some years an average dividend of 25 per cent under those rates. It does not seem expedient, therefore, to some of us in Pennsylvania to link our experience with the experience of other States. Furthermore, it does not seem to me that the administrative cost would be less. After you get to be a certain size and have a certain number of industries and a certain number of accidents, you begin to get an organization which is large enough to run with a very small overhead, and the addition of that experience to a national rating bureau would merely mean the addition of that overhead, or more, in the national bureau.

There is one other point in the paper that I would like to bring up just for a minute, and that is the matter of delays in the payment of compensation. In Pennsylvania we have the agreement system. I would like to ask the same question that Mr. Bynum, of Indiana, asked, whether, not a particular insurance company, but most of the insurance companies operating in the State, pay promptly on the date the first compensation payment is due. We have rather accurate statistics and we do not find that payments are made on the date due, and there is nothing to hinder such payments under the agreement system. In other words, although the various commissions have red tape in procedure, so do the insurance companies.

It seems to me that we should all get together in cutting down the red tape, in order that payments may be made when due. The greatest difficulty we are having at the present time is the tendency on the part of some large self-insurers and most large insurance companies, when they have disputed cases that come before referees, to endeavor to make court cases out of them—to endeavor to bring into the compensation system the procedure of the court—when as a matter of fact the State department would rather handle the cases in a more or less informal way.

When I point out to you that to-day it is not the individual case or the outstanding case, but the usual thing, to have a hearing last several hours, and then to have postponement asked by the attorney for the insurance company or the self-insurer, in order that more witnesses or more evidence may be found, and after that to have that second hearing postponed because of the fact that the attorney has a court case on and can not appear, and then, after all oral argument has been ended, to have that attorney submit a 50 or 75 page brief to the referee, you can get some idea of what the situation is, that all of the cutting down of procedure does not have to be done by the commission. Some must be done by the insurance carrier.

Mr. HATCH. On this matter of adjourned hearings I want to add just an item of information—first the moral and then the information. The moral of it is that nearly everybody concerned with compensation procedure can find something to do in improving conditions. For instance, in the State of New York we have data for the last year of the number of adjournments and who instigated

them. What we find is that the referee and the claimant and the carrier, or the self-insured employer, all had a hand in adjournments, and in about equal measure, as far as the adjournment is concerned. But one of the most interesting things is that the reason for adjournment is several times more often because the claimant does not appear at the hearing than on the instigation of any other party in the case. In other words, as I said first, everybody has a hand in that matter.

I want to second Secretary Stewart's proposal. It is a most interesting and helpful suggestion that after a dozen years of experience it should be possible to review the whole matter of compensation procedure and get improvement, all of which will benefit everybody and can not hurt anybody.

Mr. WILCOX. I should like to ask Mr. Hatch this question: Is it not a fact that you have so large a percentage of employees failing to appear at hearings because of the special New York requirement that all cases must be disposed of on a formal hearing? Would you have that experience if hearings came before you only because parties had joined issue?

Mr. HATCH. Perhaps I did not make it clear that what I was talking about was controverted cases. In formal controverted cases the claimant must come to a hearing. Our system of having every case come to the procedure of hearing is not involved at all. These are the disputed cases, and in them we find a large proportion of adjournments due to the failure of the claimant to appear at the hearings, a greater proportion than for any other one consideration.

The reason for that is pretty obvious. In the State of New York and in the city of New York the wages per day are so high that sacrifice of a day's pay by a wage earner is a considerable financial proposition and frequently he does not feel that he can afford to sacrifice that much. Of course, that is merely explanatory of the fact. I am not criticizing.

My point was that the thing is complex. There are four different possibilities as the cause of adjournments. The moral, as I tried to emphasize, is that unquestionably it is possible by a study of these things to get at what is happening more accurately than we have it now. Undoubtedly, if we could get statistics, a good deal might be done toward expediting procedure without loss of justice or right, thereby expediting prompt determination of the payment of compensation.

Doctor DONOHUE. The gentleman from Pennsylvania remarked upon the amount of time consumed at hearings by what we would call the respondents or the carriers. Of course, each party to the dispute has a vital interest in it.

I want to cite a case we had very recently in Connecticut, the one which Mr. Brosmith commented upon; that is, the suicide and insanity case, which I unfortunately had to decide. I want to say that in that case the shoe was on the other foot. The claimant's attorney in that case had 10 medical experts, and I had to hear all of them and their evidence. In that case it was not the insurance company that took up all my time, but rather the respondent, because Mr. Brosmith's company had but 2 experts and on the side of the claimant there were 10. While I was very glad to be able to decide

against Brother Brosmith's company, still the supreme court did not decide I was right. I think there is a fair chance I was wrong, but I thought there were substantial grounds upon which I might base my decision.

I was very much interested to hear Mr. Brosmith speak about abridgment of the forms. I think there is a great chance for improvement there. The Travelers and some of the other companies I could mention are very careful about producing very short, brief forms, something that can be filled out briefly by a doctor or by a claimant. But there are other companies who have men in the home office who are paid by the yard for getting out forms; no doctor will fill them out, and I do not blame them for not doing so. They are unnecessary. There is a maze of ridiculous questions which no one ought to waste time trying to fill out.

I think some of those companies have a fine opportunity to cut down their forms and get them into shape where they can be much more quickly handled. I appreciate Mr. Brosmith's paper and I enjoyed every bit of it, even though we disagreed.

[Meeting adjourned.]

THURSDAY, SEPTEMBER 16—MORNING SESSION

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

The CHAIRMAN. The program this morning is very interesting, and I am sure that much profit will accrue from the very excellent papers that are on the program, particularly as they are by men so able to give us information. "Agreement settlements," of course, is a very important topic, and I am sure that Mr. Lansburgh, the first gentleman on the program, will have something worth while to offer on that important topic.

Mr. LANSBURGH. I am particularly glad that Commissioner Hamilton, of New York, is also going to discuss the matter of settlements this morning—a fact I did not know at the time I prepared this paper—because in looking around for a State which had a little different method of making compensation settlements, I contrasted the procedure in some respects in Pennsylvania with that of New York, which is our neighboring State and has in size some of the same problems with which to deal. I do not feel that at the end of our program this morning we will be any closer to accord on agreement settlements than we were at the start, because this is a matter which has been discussed for some years. I know this is not the first paper which has been read before this association on this matter, and I think it is one of those matters on which we all go home with the same ideas with which we started, although we are very much interested in listening to the other fellow's point of view.

In Pennsylvania we have the agreement-settlement system, and we believe in it. I am going to tell you why this morning. But, as I say, I have not much hope that I am going to convince anybody who has not the agreement-settlement system that that system is the better.

AGREEMENT SETTLEMENTS

BY R. H. LANSBURGH, SECRETARY OF LABOR AND INDUSTRY OF PENNSYLVANIA

In discussing settlement of compensation cases by supervised agreements I will necessarily confine my remarks to Pennsylvania procedure, with which I am most familiar, although certain comparisons with procedure in other States will be necessary to bring out points at issue. In discussing the merits of agreement settlements it will first be necessary to trace procedure under agreement settlements in the State of Pennsylvania, which is as follows:

Cases first come to the attention of the bureau of workmen's compensation through the filing with it of an accident report covering the accident; that is, we receive accident reports for all accidents causing disability of 2 days or more, whereas under our law accidents causing disability of 10 days or more are the only ones com-

pensable, except in certain specific injuries, such as loss of finger or phalanx, in which there was perhaps no time lost.

Supplemental reports are received which indicate whether or not the accident has caused disability of sufficient duration or of such character as to make the accident compensable under the law. Supplemental report forms are sent out from the bureau of workmen's compensation with names and file numbers already typed in, so that the reporting agency need merely indicate whether the disability was such as to make the accident compensable. We feel that that is a point of progress, it having been but recently adopted; instead of relying on the supplemental report to come from the original source of report, when we receive the accident report we make up the supplemental report form, so that when we get the supplemental report we can always relate it to a particular case.

Accident reports which indicate that cases are compensable are placed in a follow-up file to await receipt of the forthcoming agreement for the payment of compensation. In case this agreement is not forthcoming, the bureau writes to the employer or the insurance carrier to ascertain the difficulty, and in all disputed cases the injured employee is informed of his rights under the law and is assisted in filing claim petition if that is necessary. In all cases coming to the attention of the department, where accident reports are not received, adjusters of the bureau of workmen's compensation see that the proper claim petitions are filed. All claim petitions or other petitions filed in disputed cases take the case out of the agreement system and place it before a referee.

In approximately 94 per cent of the cases in which compensation is paid the payments are made voluntarily by agreement executed between the injured employee and the employer or the insurance carrier under the provisions of the act and never come before referees for adjudication of any kind. In 3 per cent more of the cases there is an agreement executed but reviewed by a referee for cause at a later date. These agreements, in order to be legal, must be approved by the department and they are carefully checked before being approved in order to determine whether the injured person is securing full benefit of the law. The effectiveness of the agreement system is dependent upon the effectiveness of this checking. I may say, in passing, because of some discussion yesterday afternoon, that the approval of the agreement by the department in no wise delays the payment of compensation, because the first compensation check has probably been passed over at the time the agreement was signed, regardless of whether or not it had as yet been approved by the department, because the approval by the department would affect only the length of the period over which compensation was payable, unless, of course, the exact wage was in controversy or some other similar matter.

In cases of dismemberment, charts of the member affected are sent by the bureau to claimants for checking where any doubt exists as to the exact character of injury or the extent of dismemberment. These charts are of such a nature that the claimant can indicate readily thereon the extent of dismemberment; for instance, a hand chart of this character [indicating] is sent to the claimant to indicate the exact point of amputation. The bureau can then determine whether the agreement was drawn in accordance with the law.

The filing of the agreement does not terminate the possibility of the case becoming disputed. Cases in which dispute arises while compensation is being paid or in which payments are arbitrarily discontinued are investigated by adjusters connected with the bureau, and wherever possible proper adjustment is made without bringing the case before a referee. Usually these adjustments can be secured, but frequently the cases come before referees for modification or review of the agreement or termination of payments.

In fatal-accident cases the compensation which is due is always calculated by the compensation bureau and the agreement which is submitted is never approved until the amounts provided to be paid under this agreement are checked. There are frequent investigations by adjusters in the bureau who check to see that all possible dependents under the law are covered by the agreement; that is, in drawing an agreement for fatal compensation one of the parties might forget dependent grandchildren through inadvertence or otherwise, so that it is necessary to have frequent check to see that all possible dependents have been included.

Receipts covering all compensation payments must be filed with the bureau of workmen's compensation, and the final receipt is required when disability terminates or statutory periods expire and compensation payments cease. The final receipt must give the date when disability terminated, the total amount paid, and the wage at which the injured person returned to work. The claimant thus has the opportunity of checking the data on which the case is finally closed in the records of the bureau. With this information at hand, the bureau may determine if the injured person has received the full amount of the compensation payable, and whether there is any liability on the part of the employer for the further payment of compensation, due to partial disability because of the loss of earning power as a result of the accident.

In cases where compensation has been paid under the terms of the agreement properly executed and approved, and final payment has been made, the case can be reopened within 500 weeks after the tenth day of total disability, should there be a recurrence of the disability due to the original accident. As is indicated above, agreements for the payment of compensation do not become binding until approved by the compensation bureau. Approval notices are mailed to the claimant and defendant in all compensation cases where executed agreements are approved.

The questions at issue concerning the desirability of such a system are largely the following: First. Is the injured employee adequately protected? Second. What is the cost of administration of such a system as contrasted with the system where all cases go before referees or similar officials for consideration?

Consideration of the first question brings to light several variables that must be kept in mind in arriving at a final decision. It is manifest that an agreement system which does not provide for adequate checking of the agreements is likely in the long run to result to the detriment of the individual employee. He manifestly is likely to have less knowledge of the provisions of the workmen's compensation law and the governing decisions under it than large employers or insurance carriers. On the other hand, if there be

spread throughout the State the very definite knowledge that there is State machinery for reconsideration of payments under the compensation act, with numerous offices conveniently situated in which any complaint will receive prompt attention, it follows that the injured employee need have no detailed knowledge of the compensation act, but merely knowledge of the point to which he should bring his claim or complaint. Furthermore, when large insurers and insurance carriers realize that every agreement that is prepared is carefully scrutinized by the State department, and that means are provided by the State department to bring up for review any case which seems to have been settled contrary to the law or facts, it is unlikely that there will be very many attempts to cause employees to sign agreements which are contrary to the provisions of the law. Of course, there is always the difficulty of securing sufficient appropriations to provide for the necessary checking clerks and adjusters satisfactorily to operate the agreement system, but in view of the fact that the agreement system is less costly than other systems, it is necessarily true that such funds will be secured more readily than will the funds to provide the personnel for the more costly system.

The costs of a referee system are extremely high. In Pennsylvania in the year 1925 about 6 per cent of all compensation cases were brought before the referees on some type of petition; that is, brought before the referees either originally or after the agreement was signed. The cost of rendering decisions on this 6 per cent of the cases was about the same as the cost of handling the other 94 per cent. If hearings are to be adequate, they will always be costly, because they will be held before high-salaried men and because high-salaried expert stenographers must be available to take testimony and transcribe it. Hearings held less cheaply have all the disadvantages of the agreement system and other disadvantages besides, not the least of which is the expense to the claimant and to the defendant. Particularly important is the cost to the claimant in loss of wages in attending hearings in cases where compensation is slight. Furthermore, compensation in self-evident cases can be paid much more promptly under the agreement system.

Perhaps one test of the efficiency of the agreement system is the percentage of cases which go before a referee. Another test is the percentage of cases in other States which are appealed to higher authority after having been heard by the first official. It is interesting to note that in the State of New York, in the year 1925, 7 per cent of all cases heard were appealed to the industrial board, the higher authority; whereas in Pennsylvania, where only 6 per cent of the cases were heard by referees, there were still 8 per cent of this 6 per cent appealed to the higher authority, the workmen's compensation board, after hearing before the referee. It will thus appear that about the same percentage of referees' decisions are unsatisfactory to one side or the other, regardless of whether they be decisions which are made in the first instance or whether they be decisions in contested cases only.

In determining the relative cost of agreement systems and other systems, I have decided to compare the State of Pennsylvania with the neighboring State of New York, taking the year 1925 as a

base. There is intended no criticism of the State of New York; it is being used only as a basis of comparison of the cost of the two systems. In the State of New York, in the year ending June 30, 1925, according to the report of the industrial commissioner, there were closed 116,542 cases. The cost of administering these cases, taking into account only salaries, was slightly over \$588,000,¹ or slightly over \$5 per case. This does not include the cost of appeals to the industrial board, as the cost of appeal cases is left out in both instances.

In the State of Pennsylvania in the same year there were approved compensation agreements or awards in 80,261 cases under the provisions of the Pennsylvania compensation law. The cost in salaries was \$186,567 for the operation of the compensation system in 1925, exclusive of the cost of final appeal to the workmen's compensation board, analogous to the New York Industrial Board. This is an average of \$2.33 per case, as compared with \$5 per case in New York. However, the average cost of salaries of the 5,800 cases heard before referees in Pennsylvania was \$16.63; hence 6 per cent of the cases, those which were disputed because of the thorough hearings which they were given, cost 50 per cent of the pay roll of the system.

It is thus seen that under the agreement system funds are readily available to consider with the utmost thoroughness all cases where there is real dispute. The \$16.63 referred to does not even include the clerical cost of the bureau in turning the cases over to the referees for action and following up the cases later, which cost can not be readily separated from the other cost of operating the bureau. It is the straight salary cost involved in hearing the cases.

The total amount of expense in connection with the administration of the workmen's compensation law in New York State in the year ending June 30, 1925, was \$933,103.91,² as contrasted with the total cost, including all items, in Pennsylvania of \$272,348.90.

The CHAIRMAN. Mr. Lansburgh has presented the agreement side of the question very well. It seems that the Pennsylvania contested cases cost more than those of New York do. We are going to hear the other side. We are very fortunate to have with us Mr. Hamilton, of New York, and I am sure he has much of enlightenment to present to us.

AGREEMENTS AND LUMP SUMS

BY JAMES A. HAMILTON, INDUSTRIAL COMMISSIONER OF NEW YORK

This association undoubtedly has as its basic idea the thought that in matters of workmen's compensation administration, experience is a most valuable teacher. The members of this organization come together annually chiefly in order to compare notes on their varying experiences under different laws and modes of procedure, to the end that each may profit by what others have found to be sound and desirable by the convincing test of actual practice.

Accordingly, it is proposed in this paper to recount New York's experience and the conclusions which it has arrived at out of its

¹ New York. Report of the Industrial Commission, 1925, pp. 30 and 31.

² Idem, p. 33.

experiences on the two matters which together have been assigned to this paper. The two will be considered separately, however, as they are quite distinct and have little necessary connection with each other.

AGREEMENTS

On the subject of agreements New York has had some very definite experience and arrived at a pretty well settled practice as a result. Its history on this is worth setting forth rather fully.

Under the first operative statute for workmen's compensation in New York, the law of 1914, agreements, or "direct settlements," as they came to be styled, between employer and injured employee or his dependents as to amount of compensation were not provided for. On the contrary, the extreme in the opposite direction was required. Not only was every case to be made a matter of adjudication and award by the workmen's compensation commission, which was to administer the law, but payment of the compensation was to be made not directly to the employee by employer or insurance carrier but by the latter to the compensation commission and then by the commission to the injured person or dependents.

This method continued in force for only a year. In 1915, under an amendment of the law, it was abandoned and in its place was set up what went largely to the opposite extreme. This second plan permitted employers and injured employees to make signed agreements as to what compensation should be paid, requiring, however, that these agreements be filed with the commission for checking and approval. This was known as the direct settlement system. It continued in force for four years, until 1919.

This direct settlement system did not survive the test of experience. Complaints developed under it to the point where it became the subject of a public investigation by direction of the governor of the State. The special commissioner appointed to look into the matter filed a report in the same year which unqualifiedly condemned the system. This report recorded such findings and conclusions as the following as to what had developed in practice under the system. On the basis of examination of a number of agreement settlements it was stated in a preliminary report that "it was immediately apparent that many of the claimants had been treated with gross injustice." Accordingly the compensation commission was requested to reopen and hold hearings on a number of cases, and these resulted in discovery of underpayments under the agreements and the making of additional awards. Out of 1,000 agreement cases covered in the investigation, in 114, or over 10 per cent, reopening of the cases led to additional awards. In these 114 cases the report stated "the amounts paid under direct settlements * * * amounted to \$13,712.40. The industrial commission, as a result of the rehearings, awarded additional compensation in these cases amounting to a total of \$52,279.84 * * *. The underpayment averaged about \$450 per case."

Immediate abolition of the direct settlement system resulted from this investigation. Indeed, that occurred before completion of the investigation. A preliminary report having made public a part of the above findings while the legislature was in session, the law was

at once amended changing the system as to direct settlements. This amendment was passed unanimously and the final report of the investigation records that "the conditions revealed by this report [the preliminary report] were such that * * * not a voice was heard in the State of New York in support of the direct settlement plan." This amendment did not prohibit agreements, but it added as a requirement concerning such agreements that they must be promptly reported to the industrial commission and expressly required a hearing in such cases after due notice to the parties.

The requirement of a hearing after notice to the parties in every compensation case or claim for compensation has continued to be the procedure in New York ever since the amendment in 1919. This, it should be pointed out, does not mean that payment of compensation in all cases has to await such hearing. On the contrary, the statute and procedure have always contemplated and encouraged the beginning, at least, of such payment without waiting for adjudication of the State where there is no controversy over the right to compensation.

In order to complete this outline of New York history as to agreements, there is one further change in the law touching that matter to be noted. This occurred in 1922. Its general effect was to confirm the abolition in 1919 of direct settlements by agreements of employer and employee. It eliminated from the statute any reference to such agreements. At the same time it confirmed and developed the provisions of the statute under which in the absence of controversy compensation payments are to begin promptly and continue regularly "in like manner as wages," as the law now phrases it and as it has from the beginning always definitely declared by specific requirements of prompt report of such payments or their suspension. It is not necessary here to go into these provisions as to payment and reporting thereof, as they are a separate matter from that of agreements, in which it is primarily a question of method of adjudicating compensation claims and not one of payment of compensation when agreed upon or adjudicated.

Recapitulating this sketch of New York experience, its history has embraced first of the agreement system subject to later check of records, and second of the agreement system subject to later hearing in every case. Experience led to abandonment of both as not sufficiently certain to safeguard all the rights of injured employees. So far as manner of adjudication is concerned, New York's conclusion as embodied in law and settled practice to-day is against the agreement system and for hearing in every case before a State adjudicating officer or board.

There is one further very practical point to be noted in connection with this New York experience. This is that it is entirely practicable to carry out the procedure of a hearing in every case even in a large State. That has been demonstrated to be true in New York State and certainly that means a large enough experience to be convincing. In New York every claim for compensation that on the face of the employer's, physician's, or claimant's reports, has the appearance of being possibly compensable is put on a calendar for hearing and award by a referee. In the year ended June 30, 1926, there were in New York no less than 156,541 such cases, and hearings by the referees of whom there are 28, numbered 369,886. In

the same year the referees made final awards in 167,060 cases. The size of the task of having a hearing on every case need be no insuperable obstacle anywhere. The thing is being done successfully in New York State.

One word of comment on the New York experience with direct settlements may be made in order that an impartial view of that experience may be assured. This is that it is possible to argue that the unfortunate results which developed in the early years may have been due in some degree to the fact that those first years were close to the days of the old employer's liability system with all its habits and traditions of sharp practice in settling claims and also when public methods and machinery for close check of settlements were less well developed, and that better results might be possible now after more liberal views and practices with regard to claimants have developed under compensation systems and when public officers have acquired experience in supervision of such matters. But the best argument possible along that line can not offset the unfavorable impression which that early experience created, and in any case loses most of its appeal as against the fact that later experience has tended only to support the view that any advantages which the direct settlement system purported to offer can be attained without it, and that whether or not the former experience with it in New York was exceptional, there is real danger of abuses under that system.

LUMP SUMS

For the sake of clarity it should be pointed out at the start in considering the subject of lump sums that two kinds of lump-sum settlements are to be distinguished. The first and cruder type consists of lump sum agreed upon or awarded as the result of what is virtually a bargaining process, in order to close cases in which ultimate extent of disability or exact amount of compensation due under the law is not clearly ascertained; the other form consists simply of commutation into one present lump-sum payment of future installments of definitely determined amounts of compensation due. The two are distinctly different in character and are of different significance as to advisability.

New York has had experience with both. Concerning the first type that experience was quite similar to, and indeed was an accompaniment of, the direct-settlement system. It was a subject of inquiry in connection with the 1919 investigation of the latter. Concerning this kind of lump-sum settlements, the special commissioner's finding was that they had proved in many cases "a travesty on justice." This was based on an investigation of 80 cases which had been closed by lump-sum awards. A new medical examination of the claimants in these cases resulted in rehearing of 45, of which 25 were found to have been fully compensated but 20 were discovered to have been underpaid. The lump-sum determinations in these 20 cases had amounted to \$29,618.67; the awards on rehearing amounted to \$52,086.97, or an increase of over 70 per cent.

Such findings and report naturally left only one course open, which was to discontinue such lump-sum settlements of the first type as above defined. This was not a matter of amending the law, since such settlements had developed as a matter of administrative prac-

tice under the general power to commute future installments of compensation and the direct-settlement provisions of the law. That practice may fairly be characterized as a product of the early days of development of compensation administration when not a little experimentation in methods was more or less inevitable in any State. It bore, indeed, some of the earmarks of being a survival of the old claim-compromise method of employers' liability days then not far behind. The lesson of it, however, remains the same, namely, that such bargaining settlements by lump sums are dangerous and on general principles do not belong in the modern compensation system. That conclusion from the lesson of early experience has by subsequent experience tended only to be confirmed.

Turning now to the other kind of lump sums as above defined, which represent only an accurate commutation of future installments of compensation previously and separately determined on the basis of ascertained extent of disability, these the New York law has always provided for and still does. But here again, while the general power to make such commutation has remained practically unchanged, experience in practice has taught some useful lessons. Perhaps these may be summed up in two main points.

In the first place, the general lesson had been learned that much caution and care must be exercised in the allowance of such commutations. There is always a good deal of demand for it. But a claimant's or his beneficiaries' desire for it has been proven by experience to be useless as evidence of its desirability for his or their own good. Discussions on this subject in the former conventions of this association indicate that New York has had the same experience as other States in this matter. Too many cases have occurred in which lump sums which satisfied the insistent wishes of the beneficiaries, and which even seemed to promise helpful results for them, have only been frittered away or lost through misfortune or ignorance, to warrant any other conclusion than that the greatest care must be exercised, independently of the views of the beneficiaries, to make sure that the hoped-for advantage of an immediate large sum in hand over future certain, even though modest, installments for an extended period shall be realized. At the very best lump sums involve the element of substitution of uncertainty for certainty in a financial matter. It may be the uncertainty should be risked for a possible greater advantage, but the public, which in the last analysis assures the relief and pays the bill, has a right and a duty, both to the beneficiaries and to itself, to require that the administrative authorities who represent it in the matter shall make every effort to reduce that uncertainty to a minimum. "Proceed with caution" is the only slogan when dealing with the lump-sum problem.

Coming to the second point to be noted here on this subject, it follows logically from what has just been said that the important practical question is, By what means is maximum assurance of advantage to the beneficiaries by lump-sum allowance to be acquired? Here the teaching of experience in New York seems to be corroborated by that of several other States, to judge again by discussions recorded in former convention proceedings, to the effect that the agencies which have been developed to handle the work of vocational rehabilitation, whether in compensation cases only or in others as well, offer

the most appropriate and effective means of determining the advisability of lump-sum commutation.

A moment's thought reveals the fact that essentially almost the only justifiable reason for lump-sum allowance is to assist the beneficiary in financial rehabilitation, which is simply one phase of vocational rehabilitation in general. At least the fundamental aim of both is the same, and there are other reasons as well why the rehabilitation agencies are in the best position to advise on lump-sum proposals. Aside from the purely mechanical consideration that lump-sum applicants, because they are usually the victims of more serious injuries, are quite likely to be already under the supervision of rehabilitation officers, is the more important one that the knowledge of the circumstances of the injured person and of his personal characteristics which a rehabilitation agency must have is to a large extent the same kind of information needed to pass upon the advisability of lump-sum commutation.

Not only such general considerations but practical experience as well have carried New York along the line of utilization of the State rehabilitation agency in adjudicating lump-sum applications. First tried out in one district of the State (Buffalo) two years ago, the method was found to work so well that it was extended throughout the State, where it has also been found successful.

It is true that lump-sum applications in death cases, where it is not a question of rehabilitating a crippled workman, are not so closely related to vocational rehabilitation problems. However, such cases are not numerous relatively, and many of the items of information about the beneficiaries are so nearly the same as those required to handle rehabilitation problems, that it is entirely practicable to have them included under the same general procedure.

An interesting aspect of New York's experience in this matter is the fact that the State bureau of rehabilitation is not a part of the department of labor but of the department of education. In this respect the New York situation differs from that in some other States where the rehabilitation agency is under the same administrative control as that handling compensation. Notwithstanding this separation of machinery, however, it has been found entirely feasible to secure the necessary interdepartmental coordination in the handling of lump-sum cases, especially as a large degree of such coordination is required and provided for by law for the work of rehabilitation in general.

DISCUSSION

The CHAIRMAN. I think we are all grateful for the very splendid paper just delivered by Mr. Hamilton. Both the papers this morning have been very ably presented. The discussion on these papers will be opened by Charles Kleiner, member of the Workmen's Compensation Commission of Connecticut.

Mr. WILCOX. Before he proceeds, I wonder if it would not be well to have the question of direct settlements discussed separately and then close our discussion on that before we go on to the subject of lump sums. Otherwise we will be talking at random.

The CHAIRMAN. If there is no objection, that will be the procedure.

Mr. KLEINER. I take it, from the fact that both of the able papers presented simply state the conditions in each State, that it is not intended that in this discussion one is to criticize any of their conclusions. As a novice before this body—this being my first appearance before it—I take it that your best method is the odious one of comparison. I will attempt from the Connecticut point of view to compare our method with theirs. In order to do so, of course, you have to have some understanding of our law and what can be done by the commissioners.

In Connecticut we have a board of five commissioners, not acting together in hearing cases in any way whatever. They have a general control of procedure. We have five separate districts. The commissioner in each district determines every matter that arises in that district. There is only one appeal, and that is to the higher court on pure questions of law. Once determined by the commissioner the fact is final.

In the first case before our supreme court, Appeal of Hotel Bond (89 Conn. 143, 93 Atl. 245), the court went so far as to define what a compensation commissioner was in Connecticut. It said the commission was not a court, and while the commissioners have duties which are quasijudicial, the commission is wholly an executive and administrative body, and that the commissioners are the advisers of all and act as an umpire between the disputants. So that in Connecticut we play ball. Until there is a dispute there is nothing for the commissioner to do.

We have the agreement system which I shall shortly define to you. Largely, I think, our results are similar to what the Pennsylvania result has been. We have, however, no examiner; we have no adjuster; we handle no money. All we have to do is to hear the disputes between the parties. Under our law a claim may be made by a claimant within one year from the time when he is first disabled for seven days. That time may be extended to not more than two years. After two years we can do nothing about it.

Coming to the question of agreements, our act provides for a form which we use [illustrating] and along with it there goes the one concerning the injury, in cases in which that is resolved, sent in by the physician. Those agreements, under the law, must be submitted in writing. We generally have four copies, the original with three copies attached, the original being filed in court and becoming practically a judgment. One copy is kept by the commissioner and one each is sent to the claimant and the respondent. Those agreements provide not alone for total incapacity, but also for partial incapacity and for specific injury, together with the bills and other things involved.

Before a commissioner can approve one of those agreements he must find that such agreement conforms to the provisions of the act in every respect, so that with this system without any checking these agreements are really checked when they come into the offices of the various commissioners. If we find or think they do not in any way conform, we so notify the parties in the hearing.

My impression is that somewhere about 85 to 90 per cent of the cases arising in Connecticut are terminated by agreement. We have no psychoneurosis in Connecticut for statistics, so we have no definite

system by which we figure this out. Much has been said here about statistics. I have seen many that I thought were money wasted. We do not go into that in Connecticut.

Under the Connecticut law agreements can be made not alone for these matters, but also, by a legal representative only, in fatal cases. In the three years I have been a commissioner I have never known of such a one coming in. As a rule in fatal cases the parties come in, we hear the facts and determine them, and make the award. In Connecticut the widow generally gets all there is during her period of 312 weeks unless she remarries. We do not necessarily determine at that time who the dependents are. When that question arises we determine it. By a recent decision of the supreme court, although that may not be determined, the question of the original injury and the cause of death can not again be reopened.

As to the lump sum, I know of such provision in only two States, and there is no provision for commutation where there is a provision for lump sum. We have none in Connecticut, although we do occasionally get lump-sum agreements. We sometimes approve them, but we are very careful about that. Most of those cases are psycho-neurosis cases, where we want to cure the man, and we find very often the best cure is to give him what the commissioner determines is reasonable and fair, and he goes back rehabilitated and to work. Very seldom outside of that, except once in a while in cases where there is a disputed question of fact, do we approve lump-sum settlements. They are very uncommon. But we have the commutation provision in Connecticut. The commissioner, when he finds it just or necessary, may commute. That is only in cases where there is a fixed period of time. I have no right to guess how long a widow will remain unmarried or live, and therefore can not commute the award to her.

In one of our cases which went to the supreme court the facts showed that the man would probably be sick for a year and a half. The commissioner made an award for a year and a half, but that raised the question of law, which our supreme court upheld: that you can not guess whether a man will be sick for a year. So a commutation can be made only when a specific term is set forth.

Commutation is made comparatively seldom. Our experience—and my personal experience in the short term I have been in office—has been that when you give a man not accustomed to handling money a large sum it seems inexhaustible to him.

I remember one case, that of a colored man who had a specific injury, where the amount was commuted. He wanted to go back to his home in Baltimore. I think I commuted \$200 of that amount and had the rest deposited in the bank subject to the order of the commission. That man had barely got down to Baltimore before I received a communication that he was in need. As the answer came back, he had found a gun which belonged to his family and got it out of hock, and then taken a chum of his down there with him. They were both living in a hotel and paying a large sum of money per week—when his compensation amounted to only \$10 a week.

I know of an instance in which an amount was commuted to a man with a large family. He took that money and left his family a public charge on the city of New Haven.

I also know of a case where the money was commuted for the purpose of buying real estate. These cases did not happen in my day. The widow, I think it was, invested the money in real estate with a mortgage and could not pay her interest and the mortgage was foreclosed. So, with the experience of those results, we are very careful in commuting awards and giving people money which we feel satisfied they are unable to handle.

I can but say, in conclusion, that it seems to me that the lump-sum settlement is not an advisable one and that commutation should not be made unless found necessary and just, because it is not just to take a 4 per cent commutation, as we do in Connecticut, when, as the insurers tell me, they have to pay more money on it and give the benefit of the speculation.

Brother Williams calls attention to the fact that our supreme court decided in one case where an amount was commuted by misrepresentation or misunderstanding and the commissioner had not found it was just or necessary that the case should be reheard and reheard properly.

The CHAIRMAN. The discussion will now be continued by Mr. Fenton, of the Industrial Commission of Oklahoma.

Mr. FENTON. Both of these papers have been very interesting, and Mr. Kleiner's discussion as well. Both, I think, have emphasized what is the most important feature of any system that might be devised for the administration of workmen's compensation—that no system is desirable unless it fully and adequately protects the injured employee. I am not convinced that a hearing in every case is necessary fully to protect the interests of the injured employee. I wonder if a system might not be devised that would operate automatically upon the happening of an accident, so that the machinery of administration could be set in motion, medical attention promptly provided, and compensation started at the time the injured employee was entitled to his first payment, with very little expense for administration. Such a system, of course, would be the desirable system.

An agreement system without supervision will, of course, have few disputed cases for hearing. The chief reason for that is that the injured employee, with his lack of knowledge of the law, his position of being unable to deal on an equal basis with the employer or with whomever he makes his agent to make his adjustment, would receive less than the law would entitle him to, and in a great many of those instances there would not be a contested case.

With a law similar to that of Oklahoma, which imposes sufficiently broad powers on the commissioner, I can see no reason why what is usually referred to as an agreement system can not be operated which will fully protect the injured employee, and at a much less cost in the administration of the act. It is the compensation boards and commissions of the country upon whom the duty rests efficiently to administer compensation with the minimum of expense. In a case where there is no controversy and where the commission has sufficient power, and can in that way protect by having proper enforcement and proper investigations, I can see no reason for a hearing before a referee or commissioner, bringing the parties in—causing the injured employee, who in many instances has returned to work, to

lose more time, and creating an expense for counsel and for witnesses.

If the hearing system were made more general, it seems to me it would impose upon industry, and ultimately, of course, the consumer, a much higher cost for compensating industrial accidents. I think, too, that every time an unnecessary cost is incurred it means ultimately that much less protection and that much less compensation to the injured employee. Finally, industry and the consumers can stand just so much. If more expensive methods are employed, the result will be that the injured employee will be less adequately protected.

We have in Oklahoma a system that might be called an agreement system. Under a provision of our statute and a decision of our supreme court, it became necessary for the commission very carefully to prepare forms designed to protect the interests of the employees in the operation of this agreement system. It amounts to a stipulation of facts, and since our statute contemplates an award in every case, a formal award is entered without a hearing where there is no disputed fact and the report requires the commissioner's check. Approximately 80 per cent of the cases in the State are settled under that system. It is not perfect, of course, but it is the best one we have yet been able to devise.

Of course, I do not anticipate that this discussion, particularly anything I might say, will lead those from other jurisdictions to contemplate changing the system in effect in their States. I can realize that what might be entirely suitable to our conditions in Oklahoma might not be suitable to a great industrial State like New York. But I am inclined to agree with the gentleman from Pennsylvania that where such a system can be safeguarded by requiring complete and proper information, and where there is actually no dispute, where the facts are that an employee is free to sign or to refuse to sign the stipulation or agreement, then the agreement system is the desirable system and will work out better for all concerned.

The CHAIRMAN. The discussion on the papers just read will now be continued by Mr. Wilcox, of Wisconsin.

Mr. WILCOX. I wonder if I may ask Mr. Kleiner just a question or two before I proceed with my discussion. I should like to know whether payments of compensation in Connecticut may start prior to the signing of the agreement?

Mr. KLEINER. There is no provision in our law covering that, but they frequently do. Very often payment is made before the parties come to us.

Mr. WILCOX. If the agreement is approved, I should like to know whether, before the case is finally closed, you have any further detailed report from your doctors?

Mr. KLEINER. We have none. The case is not finally closed, so far as our records are concerned, until his incapacity is run.

Mr. WILCOX. If the agreement is approved and no complaint is made by the injured man or the employer or insurer that the agreement did not recite the facts, then the case is closed as a matter of course.

Mr. KLEINER. In a case like that you have quoted we reopen the matter and rehear it legally.

MR. WILCOX. I think the statement that Mr. Hamilton made in his paper, that the probable reason for many of the shortcomings of any system introduced in our jurisdiction was that it followed so closely on the heels of the old common-law system of adjusting liability, is very apt.

When we started to administer compensation in Wisconsin we tried to call up before us the two groups with whom we had to deal. We found, on the one hand, an employer and his insurer. The insurance company was always represented by either a skilled adjuster, a man of great experience and as much or more shrewdness in the matter of disposition of claims than a lawyer ever possesses, or an attorney. That was one side of the picture.

On the other hand, you had workmen and working women who came from the four corners of the earth, a large percentage of whom could neither read nor write nor understand the English language, and who had never had any experience with law or orders or compensation, and who had been told many times never to sign their names to anything concerning the company.

Those were the two groups we had to think about. So we concluded at the outset that the thing for us to do was to depend upon employers and insurers to protect themselves. We did not have to verify our conclusions that they knew how to do it.

I do not want anybody to get the idea that I am indicting employers, because I have the highest regard for them. My only concern for them and about them is that they proceed as the law requires they shall—that and no more. The thing we should be concerned about is to make certain that the injured man is not overreached.

I have no sympathy with this idea of hearings in all cases, with all due regard to Mr. Hamilton and the New York experience and the New York plan. I refuse to be stampeded by the idea that the New York Legislature hit upon the most satisfactory plan of administration of compensation as the result of the findings of that investigating committee. Quite as often as otherwise investigating committees get a lot of joy out of muckraking and baiting a lot of people charged with responsibility. The experience they dug up in New York was unsatisfactory. That everybody must agree to, but that did not mean that they needed to go to another system of administering compensation in order to do the job and do it effectively.

I believe that the way to proceed is to proceed by the direct-payment plan, and in that I am irreconcilable in my notion that there is no advantage in the agreement plan, notwithstanding the very high regard in which I hold Mr. Horner and his assurance that they are getting profit out of it. I do not think any injured man ought ever to have to sign anything to get the amount of money that a legislative act says should be paid him. What earthly excuse lies for the requirement that a man sign an agreement that he should get what the law requires that he should have, when he, as you know, is not able to understand the law under which the amount of his compensation is to be paid to him?

I think there is another reason why this agreement is not desirable. It is bound to delay the payment of compensation unless you do as Mr. Kleiner says is sometimes done in Connecticut. We pay it in advance. An insurance man in this State told me that it is the

common practice to send out the stipulation, the agreement settlement, with the first check and the release, all to be signed at one time.

Mr. WILLIAMS. That is routine work.

Mr. WILCOX. Which means there was no reason to have a settlement to begin with. If it has any advantage whatever, it is to know something of the facts that surround this man's case. You ought to get that in the accident report and in the supplementary report from the insurer from time to time as to what is going on in that case.

I have no quarrel with Pennsylvania or any other State that has a settlement agreement. Such States may continue with it if they find it is the best method of handling the matter. I am not urging that we get away from it necessarily, but I do not think that in our State we have to have any such procedure to do business and do it decently and efficiently.

I find in our experience in Wisconsin that the so-called temporary disabilities form the great bulk of these cases. Statistics are worth while, notwithstanding the suggestions of Mr. Kleiner. In some States you have the requirement that you shall get a report of every accident that occurs in the State if it causes lost time. Notwithstanding that you have a waiting period, no compensation being payable for the first week, or two, as the case may be. That sort of an agreement may mean for Pennsylvania, and for some other States, an advantage in that you will be able to distinguish the one class of cases from the other, and that offers a reason why the advance agreement is perhaps desirable.

Mr. WILLIAMS. May I interrupt you a moment, Mr. Wilcox?

We had a man come in about a week or two ago who said he had been disabled about a year before. We asked him, "Why didn't you come around before?" He said that he was not disabled until the week before. If I could turn to my files and find that the employer had reported the injury, he could not come around and say that was the first he had ever heard of it.

Mr. WILCOX. You will have a few of those cases, but I feel we ought never to interfere with the policy as to the great body of injured workers. It would delay or hinder their rights to worry over some fellow who did not get around to let us know something about his case. When the accident report comes in, as it should come in if the disability is a compensable one, immediately we write a letter to the employee and tell him of his rights under the compensation law, give him a report of the weekly compensation that is due him for his injury according to his wage, and tell him if that is not the correct wage to let us know about it. We put all that in the letter we write to him, so that we will not have any misunderstanding as to what employer he is working for or the cause of the accident or the spelling of his name, etc. We tell him to let us know if he is not being compensated on the right basis.

You would be surprised at the number of replies we get from that notification. I think that is just the decent obligation of every administrative department, that you shall make your immediate contact with the man himself direct from the commission, instead

of requiring somebody else to do it, telling him what his rights are and advising him to keep in touch with you and letting him know you are there to serve him if he is not being compensated.

Mr. BROWN. May I ask a question? Your waiting period is seven days?

Mr. WILCOX. Yes.

Mr. BROWN. And you require reports made after seven days?

Mr. WILCOX. Any disability occasioning loss of time of more than a week following relief from duty is to be reported to the commission.

I find that for the year 1925 there were 30.56 per cent of all of the compensable cases, causing disability of more than a week, that were actually back at work at the end of two weeks, with a week or less of compensation, and that 59.83 per cent additional had nothing but temporary disability, which means that over 90 per cent of the accidents did not result in any permanent impairment. Of those that caused disability of two weeks or less, the average days lost were 9.67; for all temporary disabilities, 24.88 days. Those temporary disabilities that lasted beyond two weeks averaged 32.64 days.

It will perhaps be interesting to hear that the average of all temporary disabilities during the last six years ranged from 24.65 to 26.02 days. That was the range we got from our tabulations of temporary disabilities.

Mr. PARKS. What has that got to do with the making of agreements?

Mr. WILCOX. Just this, that in temporary disabilities this matter of direct settlements is of very great importance. The volume of your temporary disability means that any type of settlement which occasions any undue activity on the part of a worker or of a department or of employers or insurers is uncalled for. Just that.

I think, under the plan of hearings, if you are going to see all of these injured workers, you will require a large number of people to come before you who have nothing coming to them and for whom you have reports that they went back to work on a certain date. You have your contract with them, or could have had, and that ought to satisfy the situation in a large volume of cases. There is no need for them to appear before the board. As Mr. Lansburgh has said, it is too expensive a proceeding. The worker does not want to take a day off to come. After all, such a hearing is not going to be convincing to anybody. Referring back to the figures that Mr. Hamilton gave, I find that the average referee hears 44 cases a day. He makes awards averaging 20 every day, according to those figures in New York. If those are real hearings, if that includes all of these disabilities, then it can not be done. No man can sit and hear and determine intelligently that number of cases in any one day.

As to the other end of the case, the last end of it, I can not understand how any State will close any case that causes any extensive disability without having some additional report from somebody at the closing time. In our State we require not only a report from the employer and the insurer as to all the details of that

adjustment with this man, the extent of his disability, and the day he returned to work, but also require the doctor who attended him to make a report as to whether the disability had anything permanent in character; or if the disability is continued for more than three weeks, then they have to make a report to us, and we require the doctor to give us a report. We follow it up. If any man comes to us after the report is filed by the doctor and shows a permanent disability, when the doctor's report says there is no indication of permanent disability, off the panel the doctor goes. The employer and the insurer are told plainly that a doctor who can not report these things as they are does not belong on any insurance panel. We demand an explanation as to why it is this man was reported to be without a disability when he had one.

If we start out with the assumption that we must do whatever is necessary to protect the man and not burden him with a lot of hearings he does not want and keep our cases open, I think it will work out satisfactorily. I think our limitations statute is the worst thing imaginable. What is the excuse for limitation statutes for any of these men? The only advantage of limitation statutes would be for the fellow who does not get around, like the one Mr. Williams cited, and drags around, like an old cow's tail, two or three years after with some complaint. You can take care of him through the question of whether or not his case is properly corroborated. You will probably find reason to handle his case on some other score than on the question of limitation. A man who is entitled to be paid should be paid, no matter what time he gets around to let you know about it. I think that is all I care to say on the matter of direct settlement.

Mr. BROWN. You made a statement which I wish to have explained for my benefit. You said that when a doctor's report did not show disability and the facts later showed that the man did have disability you put him off the list of doctors. I should like to have you explain to us how you determine whether his report was correct or incorrect.

Mr. WILCOX. If that case comes to us, by a hearing. We can hear every case, like Mr. Hamilton does in the State of New York, whether it is 1 day or 100 days. That can be heard any time.

Mr. BROWN. Upon what evidence do you base your decision?

Mr. WILCOX. I had a man from one of the zinc companies of our State come in not over three weeks ago. I had in my files a report from a doctor saying that he was returning to work on a certain date, without any permanent disability. He did go back to work on the day he said. He has worked every day since, but his leg is an inch shorter, resulting from a fracture of both bones below the knee. In the joint he has a callus sufficient to make that leg nearly twice the size of the other just below the knee—one of the largest calluses I have ever seen. He suffers from restriction of motion, so that he can not completely extend the knee; it is flexed a bit at the knee, permanently. He can not flex it more than 10 or 15 degrees. This doctor has a lot of trouble ahead of him. There is no doubt about his knowing of the case, because he knew this man could not possibly return to work on that date without permanent disability.

Mr. BROWN. Are the usual cases as outstanding as that?

Mr. WILCOX. No.

Mr. BROWN. Do you determine upon your own examination or upon that of a physician?

Mr. WILCOX. We conduct our hearings. The claimant brings in his briefs; they bring in theirs. We have the authority to send out to an independent examiner and get his report in any instance in which it is necessary.

Mr. HATCH. How did you discover this man's case?

Mr. WILCOX. He came into my office.

Mr. HATCH. Do you have any system whereby those cases surely turn up every time?

Mr. WILCOX. No.

Mr. HATCH. This man just happened to come in?

Mr. WILCOX. We would have got him some time or other. Such men always come in eventually; at least, men with that type of injury. Do not worry about that. They come in, unless you have a limitation statute that cuts them out.

Mr. PARKS. Suppose he did not?

Mr. WILCOX. Then he would lose the compensation. No; there is no way of finding out; but just the same they will turn up some time or other if they have that kind of injury.

Mr. BROWN. I should think it would be a difficult matter to know which doctor was the wiser in his conclusions.

Mr. WILCOX. You determine that as you would any other fact. I do not mean to say because there is a variance in the estimate as to the extent of disability that we hold him in contempt because of it. Not at all. But if the physician reports no disability in his knee when it is an inch shorter and has the other limitations I speak of, he has no day in court.

Mr. BROWN. That is clear.

Mr. WILCOX. We send out to independent examiners and have them give us a report as to what they find, and send a copy of that to the parties and give them an opportunity, if they want to, to examine it, just as you would do in your jurisdiction in the determination of disability.

Mr. HUBER. I came here for this part more than for anything else. Who is to determine the end of disability? That is the greatest trouble we have. Who can determine the end of disability?

Mr. WILCOX. The parties will determine the end of disability. The man will determine it, first hand, by the date on which he returns to work. That will be the first thing. If he did not go back to work at the time the doctor of the insurer said he was able to, you have an issue immediately, have you not? Then you have to determine it like any other case, and the commission finally decides it.

Mr. HUBER. Mr. Wilcox, I put the question that way because I had a very strong case on that point. A man was injured in his back. We had eight doctors, including specialists from Kansas City, to examine him. They reported that there was nothing wrong

with the man, that he could go back to work. He said he could not work, and he did not work. He died, despite all those doctors' reports that he was able to go to work.

Mr. WILCOX. What happened? Did they decide it in that jurisdiction?

Mr. HUBER. The man said he could not work, yet all the evidence was that there was nothing wrong; but he died. He died of that very same thing. He lay in bed, with nothing wrong, but he died. Who is to determine the disability?

Mr. WILCOX. If what you want to know is whether he got back to work, I would say on your statement of facts he did not. If the reason for his not going back to work was one attributable to the injury, the board in that State will have to determine it. We have those troublous cases in any jurisdiction, but never get carried away by the unusual case.

Mr. BUTTLES. I should like to ask if this ignorance of the English language and of law and procedure, on the part of the injured man, that you have referred to does not militate very strongly against these parties coming to your office in the cases of which we have spoken.

Mr. WILCOX. I do not think so. They do not come to our office to begin with. We hold hearings in every one of the principal cities of the State of Wisconsin, more than 50. We hold them in every county seat in the State and in some counties we hold them in several cities. Perhaps 100 would come nearer to the correct number. I am there, or my colleagues or some examiners are there, conducting hearings. If we know there is some dispute between parties, we write them letters and tell them that on a particular date we will hold the hearing. We proceed with genuine informality, and we have established a real contact with the workers of the State, so that they feel free to come and talk with us.

Mr. PARKS. You said very dramatically, Why should a man have to sign an agreement to obtain what he is entitled to under the law? What evidence have you got that he is receiving his compensation, that he is receiving what he is entitled to according to law?

Mr. WILCOX. I wrote him a letter telling him that his wage was reported at a certain amount per week, and that on that wage basis he was entitled to so much.

Mr. WILLIAMS. But he can not read. If he can not read the agreement, he will not be able to read the letter.

Mr. WILCOX. He can find friends in whom he has confidence who can read it. Then he will not be dealing with somebody who is antagonistic to him in his position.

Mr. PARKS. Then what does he do when he receives your letter?

Mr. WILCOX. He gets his compensation from the insurance company or employer.

Mr. PARKS. Does he write to you?

Mr. WILCOX. If he gets his compensation, no. For this reason we require the employer or insurer to make a report to us monthly on a form showing the date on which compensation is paid and the

manner of disability, and if the man has returned, the date on which he returned.

Mr. PARKS. What benefit is that if he has not seen the agreement?

Mr. WILCOX. He has had compensation.

Mr. PARKS. How do you know?

Mr. WILCOX. Because we have receipts in the record.

Mr. PARKS. You have nothing with his signature?

Mr. WILCOX. Yes; receipts for the money he got.

Mr. LANSBURGH. Mr. Wilcox, in the first place, I want you to see we are almost in complete agreement, despite the fact you do not think so, on this agreement question. It seems to me you are putting more emphasis on the signature on the original agreement than you really should, because that signature can be negated at any time by reopening that case before a referee. The signature on the original agreement is not only a signature as to the amount of compensation which that man is willing to receive under the law, which we agree with you he knows nothing about, but is a signature as to his physical condition and the cause of the accident. Furthermore, the original agreement, with not only his signature on it, but also that of the employer and the insurance company, it seems to me, does exactly what you said was necessary to have done; namely, places the employer and the insurance company pretty definitely on record as to what they have done under the provisions of the law.

We feel that is by far the most important part of the agreement. The signature on the agreement does not mean very much; it can be reopened. But no employer or insurance company is going to send in an agreement as to an agreed state of facts with misstatements on it if it can help it. Therefore, if they can not get the man to sign, the case is immediately disputed and comes before a referee.

It seems to me the advantage is not in having a signature but in having consideration of the agreement at the time, something similar to that when you or I go before a notary public and swear to something. There is no notary public signature on the agreement, but the thing is that somebody has given consideration to its statements.

After all, what does it amount to for you or me to go before a notary public and swear to something? It means only that there has been real consideration. It seems to me that is the real feature of the agreement.

Mr. WILCOX. We stress more than anything else the filing of the accident report, with the details covering everything, among them the date of the accident, the wage, the nature of the injury, and those things that give you an understanding as to what this man has coming to him. Then we immediately notify him that that is what he has coming to him, and the money goes to him, and all he does is sign the receipt for it.

I think I have said all I need to say on this question of direct settlements. I do think that it is essential—and I emphasize that again—to have some detailed report from the doctor at the end of the settlement.

We have in our State a waiting period of a week. If you are disabled for more than three weeks or have any permanent impairment,

then you are entitled to compensation for that first week. You pick it up at the end of the third week and pick it up in all cases where there is permanent disability.

It is a well-recognized fact that more people will return to work on the ninth than on the tenth day, and so on. In other words, as the days go on, the number of people who are returning to work becomes fewer, because disabilities are major instead of minor. When you get into that last week—for example, from the fifteenth to the twenty-second day—it is a significant thing that reports of doctors will indicate more people ready for work on the twenty-first day than on any other day in that week, which means that there is a tendency to shave off on the extent of the disability as against the injured man.

That has to be counteracted in some way, and I think it can be done only by eternal vigilance. You must keep at it, in order to make certain that there is not that partiality that approaches collusion for the taking away of something this man ought to have. So I think you have to check up at the last in order to make certain as to what this man's injury was. Demand that the report shall set out the date on which he actually went back to work. That gives you a good check.

As to lump-sum matters, I have been appalled at the apparent fear some people have at acknowledging their belief that there are times when lump sums might be granted. I know that granting lump sums is going on in your State, as it is in mine, very much according to whether or not you think it is a desirable thing to do. I do not think there is any reason why any one of us should be ashamed of it. I submit that a man or a woman who can sit and determine the momentous questions that involve an injured man under compensation ought to be able to determine whether or not it is to his advantage or disadvantage to get his money in this way or that way. Let us not be afraid of facing the music on a thing of that sort. If it is best, it is best, and there is nothing else to it; so let us do it. If it is not, let us not do it. That is my idea on the question. We have lump-sum settlements in Wisconsin, and I want the record to show that we have. We make such settlements when we consider it the best thing to do under the circumstances.

In determining lump sums I appreciate that administrative bodies must first make a conclusion as to just what shall be the reason underlying the granting of a lump sum. When you decide, are you going to take into account the interests of the insurance carrier and the employer? Is the question as to whether or not the employer or the carrier can make more money out of having the money in his use and holding it out through the disability period going to be a consideration? It is not a consideration in Wisconsin. By law this matter is to be determined solely upon the question of whether or not it is for the advantage of the injured man or his widow or the injured woman and none other. We dispose of it absolutely on that score and without any interference from any insurance carrier or any employer, and we permit no employer or insurer to lump the amount of settlement, using as a part of the consideration the fact that we are going to pay it in a lump. That is not for the employer or the insurer to determine; we determine that for ourselves.

Mr. SCANLAN. In Wisconsin, when you have made a lump-sum settlement, can the injured workman petition for more compensation if there is a recurrence of the disability?

Mr. WILCOX. In 1925 a law went into effect that in a case where an injured workman was given a lump sum he had the right to follow that up with a subsequent petition showing disability. The case is always open for consideration, for six years at least, perhaps longer.

Mr. SCANLAN. Does the fact of whether or not the man is aware of the disability enter into the negotiations?

Mr. WILCOX. Understand that all of these questions of lump sum come directly before the commission for determination. The question of determination between the employer or insurer as to the amount of compensation is a matter that is determined absolutely independent of that.

Mr. SCANLAN. These settlements usually accompany the lump sum. In fact, one of the negotiations is to have the insurance carriers consent to the lump sums. That changes the situation in our State, as you can see.

Mr. WILCOX. The insurance companies understand they are not to do it. One of the companies working out of your State, officing in your city, sent in an agreement showing that a medical examination had been held and the man was to be paid \$4.36 over a considerable period of weeks. He wanted the money paid at the rate of \$8.72—just double the amount stipulated—in half the length of time. So the insurance company sent in a stipulation in which it attempted to reduce the gross amount from \$2,300 to \$2,000, the consideration being that it was increasing the weekly payment.

We entered an award, in which we held open the question of how this money should be paid per week, and awarded him the full amount of the compensation. The insurance company came back with the inquiry as to whether or not its agreements were not to be recognized. We simply told it we had the facts, and that is all we cared about. We would decide how the money was to be paid.

So we do have lump sums. We try our best to make it a practical thing. Unless we can get some other corroborative proof, we do not grant a lump sum where the amount exceeds \$300 unless we have some formal hearing. In that regard, we take into account the financial situation of the family, whether they are spendthrifts or otherwise, what the debts are, the occasion for the debts, the purpose for which the man wants to use the money, and all that sort of thing.

We have in our State what I believe ought to be the provision in all States: the right to resort to whatever means you may think necessary in order to secure the use of this money for the purposes for which it is lump summed. So we may tie it up in any way we see fit. If the money is to be invested in interest-bearing securities, the payment from the insurance company or the employer is made direct to a bank, and we do not vary that procedure. We have had only two cases, as I recall it, in the last year in which we have varied it. One was the widow of the superintendent of Fisk Rubber Co., who had a large estate and large insurance holdings, and the amount

was awarded to the widow in lump sum. I ought to remark that whether or not the question of remarriage makes a difference in the amount of compensation to the dependent always varies the situation in a State. I am talking for a State where that does not make any difference, so we lump sum to widows as to anyone else.

The other was a case of \$86,000 in bonds and stocks, assessed value by the trust company. The home was all paid for, and it was a frugal type of family. One child was of age and a graduate of the State university. We lump summed that amount to her without any restriction.

Aside from those, if the money is for investment purposes we require that that money shall be employed by a bank or trust company selected by the employer, and we can direct the purposes for which it is to be used, whether mortgages or bonds, or whatever it may be, which we require to be left in the bank or the trust company for safekeeping, subject to the order of the commission for the disability period. We know that is not going to be frittered away.

Upon the purchase of real estate, the deed is left with the trust company, unrecorded. If the family moves, there is no danger of the title being lost. We know the deed and have looked up the property in advance, and we know that the widow is not going to be able to sell or mortgage that property because she has no recorded title to it. We resort to whatever seems to be necessary to make certain that the money is used for the purpose for which it is commuted. It involves some work, but I believe it is a worth while work.

A study in our State showed that by lump summing large amounts of money have been earned, while, if the compensation had been paid in weekly installments, it would simply have disappeared. You can understand that if the money is coming in to you at so much per week, you can never get ahead enough really to make a suitable investment. If we are commuting for a widow, or someone who has had serious disability, we make that person follow a budget. We do not allow investing the money one day and selling the securities the next to get money to live on. We try to make decently sure that there will not be any mishap on that.

I do not agree with Mr. Hamilton, either, as to using very extensively the rehabilitation department in the matter of determination as to whether lump sums shall be paid. We cooperate with it, just as is done with the educational function in all States excepting New Jersey. We cooperate with it to the fullest extent, but only a small percentage of these cases are rehabilitation cases. For that reason I claim for myself and for each one of the compensation administrators the ability to determine whether a lump sum should be granted better than a rehabilitation man who works in the service, because he has never had and never will have the kind of contacts that the industrial commission will have.

Mr. STEWART. I promised myself, and I think I have promised a number of the delegates who seemed very much worried about the matter, not to discuss on the floor of this convention the question of lump-sum settlements. I intend to keep that promise, but I would like to ask permission to read into the records a quotation from the proceedings of the National Conference on Vocational Rehabilitation of the Disabled Civilian. This conference was held in Cleveland,

Ohio, September 29 to October 2, 1925. The commissioners here represented will realize the special interest that the vocational education boards have in lump-sum settlements; perhaps they are the most persistent pleaders for such settlements because the lump sum aforesaid is spent on the rehabilitation of the injured person. On page 38 of the report referred to, J. F. Marsh, director of rehabilitation of West Virginia, makes two statements which I would like to read into the record. First, he says:

I caution those of us engaged in the rehabilitation service that we give no advice about lump-sum settlements unless we feel very sure that we have information that is superior to the information possessed by the compensation department, because we are likely not only to lose our own reputation by giving haphazard advice, but may do injury to the person receiving the compensation.

Later on Mr. Marsh says:

I might close by reminding you that the best example of the disaster coming out of lump-sum settlements is recorded in the Bible itself, because you remember a certain man had two sons and one of these (the younger one) said unto his father, "Give me a lump-sum settlement," and he secured that settlement and went into a far country and fell among thieves, and robbers, and swine, and real-estate agents, and he spent his substance in riotous living and finally the rehabilitation agent came to his assistance and took him back to the place from whence he started, and advised the old man to get him another job or to restore him to the original job, and never again to give a lump-sum settlement without a careful survey. So in general I am against the principle of lump-sum settlements.

The CHAIRMAN. That was splendid. The papers are now open for general discussion.

Mr. PARKS. I hesitate to stay in my seat, particularly after hearing Mr. Hamilton, from New York, tell about the direct-settlement system becoming a failure. I have been on an industrial accident board perhaps longer than any man here, having been on one since July 1, 1912. I helped to frame the act that placed on the statute books a direct settlement act. Contrary to the experience in New York, in Massachusetts it has been an unqualified success. We are operating under it now and will continue to do so.

The only answer I can make as to the failure of the New York law is that perhaps it was due to lack of proper supervision. I am not unmindful of the troubles of New York. It has had many investigations and many changes. It seems to be the custom there that when a new governor comes in he orders an investigation. Of course, the investigators always find something wrong with the administrative body and a new one is created.

We do not have that situation in Massachusetts. We have a situation similar to that in Pennsylvania, except that we do not have all those papers to fill out. In our Commonwealth we have no papers for the employee to fill out. The only time he may have to file a claim is when there is a dispute. In order to cover his rights, under the decision in the Levangie case (228 Mass. 213, 117 N. E. 200), which made it necessary for a claim to be filed, we ask him to file a claim. We send it to him.

That is the only paper he is asked to fill out. What does that do? It is a plain, simple thing; any schoolboy could fill it out. Many, many times a fellow will come into the office or go to a lawyer who does not know what to do with it. He thinks it is a legal document

and runs around trying to find out what it is, and finally lands in a lawyer's office. The lawyer, anxious to earn all the money that he can, makes it look like a mountain and says, "Come in later and I will have it all filled out," and hands it to the stenographer. When the fellow gets it back he finally lands in our office. That is nothing but a claim—a plain, simple piece of paper.

The agreement which Mr. Wilcox is so fearful of was originally placed in the Massachusetts act for the purpose of protecting the employee. After 14 years and 3 months, to be exact, we feel that it has redounded to the benefit of the employee, because it is the only thing we have. It comes in after the employee has signed. The only things on it are the average wage, the statement of injury, if possible, and what happened to the employee, and it comes in and is scrutinized by our clerical force. Before that agreement comes in, the man is receiving his compensation in every case. He does not have to wait for its approval. The man is receiving his money. That is why Massachusetts is the most prompt—although that may be disputed by some commissions. The insurance companies get right on the job and pay the compensation. The agreement follows later, and it is gone over by our force to see that it is O. K.

Then we have a rule which requires the insurance company from time to time to file a report of the man's physical condition, etc. That is all gone into.

Just a word on the hearings that Mr. Hamilton talks about having in New York. Like Mr. Wilcox, I was doing some computations, although he is more of a statistician than I am. That makes 46 cases in a day, or 230 in every week, 52 weeks a year. Of course, everybody here knows that no referee can hear 46 cases a day, for a week of five days. He does not hear them.

I do not know whether the system has changed, but I happened to visit the great Empire State in 1919. Since then the direct settlement has been abolished. At that time I saw them having those hearings in a large room and a man like the clerk of a court reading them: "Mr. Williams v. Traveler's Insurance Co. Any controversy? Any objection? No objection. Forty-four weeks awarded." The commissioner, at the time I was there, never saw the man. He might have had a bird's-eye view as he looked on the crowd of 500. What good is a hearing like that so far as seeing the man and explaining his rights to him is concerned? You can not do it. You could not hear 46 cases, or even talk casually to that many injured men. So that the hearings they talk about as being for the great benefit of the workingman do not in truth take place. They do in theory, but that is all.

The only cases that they really hear are those that are controverted. Each one steps in for his hearing, which is done very hurriedly because of the great number of those cases. They are turned out like meal out of a hopper. There is none of that calm, judicial way that is apparent when most of the commissioners sit and hear one case, the only people present being those who are interested in that one case, and each one gets up and tells his story in a calm, thoughtful way and is questioned by the commissioner, and so on. Then you get somewhere with a case.

I should like to say just a word about lump sums—to tell the story of a case I had in Springfield only last Tuesday. As a commissioner I will say there is great danger in the granting of lump sums. There are some benefits to lump sums, and we can tell of some very startling benefits which have accrued to injured men by getting lump sums, but they should be supervised very, very carefully. Our system is to have a commissioner sit down with the party claiming a lump sum and talk to him—investigate him ourselves. Then he is referred to an inspector, who goes out into the highways and byways and gets all the information he can about it, and then the case comes before the entire board. It is a process that may take two or three weeks, or perhaps a month.

To show how careful we should be in scrutinizing the claim, this case was that of an Italian fellow who had a badly crippled hand. He was receiving compensation and wanted a lump sum. I asked the nice, young lawyer for the man what his reason was for the application. He said:

“The man wants to go to Italy.”

“Why does he want to go to Italy?”

We decided that if he wanted to go, we would see to it that he could go, would put him on the boat and send the money to a bank in Italy for him to withdraw when he got there.

Then we asked if this man had any family in Italy.

“Yes,” he replied, “he has three children; one is 16, one 18, one 19.”

“Is his wife here?”

“Yes; his wife is here, and they have some children here, too.”

Then the lawyer said something to the man and found out he could talk English.

I asked, “How long have you been in this country?”

“Eighteen years.”

“Have you ever been back since you left?”

“No.”

“Has your wife been back in those 18 years?”

“No.”

Then I said, “Then tell me how you happen to have children 16, 18, and 19 over in Italy?”

The last I saw of him he said: “I will go out and ask my wife.”

I told the lawyer I could not consider the case. My good wife, who happened to be with me, said that she had seen his four little children, the oldest of whom was not more than four years. The lawyer had been hiding all that from me. Those cases make one fearful of the lump sum. You can not always tell when you are being fooled, and the applications can not be scrutinized too thoroughly. At that, there are great benefits to come from lump sums, if properly supervised, in the way of rehabilitation.

Mr. HORNER. After listening to the arguments for and against the agreement or direct-payment settlement, I am reminded of the saying, with which no doubt most of you are familiar, though I do not want to go on record as saying this statement is true, either, “Convince a woman against her will, she is of the same opinion still.” I am inclined to feel that that applies when we attempt to determine which is the best plan in making compensation payments.

I am willing to admit that there is merit in the system followed in every State. A few years ago it was my privilege to visit a number of States, to make a study as to how they were handling compensation cases and the promptness with which accident claims were settled and payments made. I came back to Pennsylvania to find that under the agreement system accidents were reported just as promptly and compensation payments made just as promptly as in States having the other system. After all, the promptness with which accidents are reported and compensation payments made depends largely on the efficiency with which the law is administered.

Mr. WILCOX. I should like to ask Mr. Horner what percentage of the agreements made in advance they later have to modify.

Mr. HORNER. The percentage is comparatively small. I want to say that in Pennsylvania we receive excellent cooperation on the part of the insurer and insurance companies. The cases in which it is necessary to modify the agreements are, as a rule, instances in which the status is changed, probably when compensation is paid for a permanent injury or perhaps for partial disability. But the percentage of cases in which the agreements do not provide for the amount which the act requires and need to be corrected is comparatively small.

Mr. WILCOX. The only thing done in the original agreement is to fix the wage basis?

Mr. HORNER. We check that against his wage to see whether the compensation is correct. Of course, in Pennsylvania, where we have a maximum of \$12 per week, which is low, in most cases the maximum applies.

Mr. WILCOX. That ought to be taken into account, too, because in the low wage paying State, wage never becomes an element; you are always paying at the maximum. In the other States where the maximum wage is high, the wage is an important factor.

Mr. McSHANE. I recall that at our previous convention we discussed the lump-sum settlement question for an hour, I think, and rehashed all the arguments that have been advanced pro and con over a period of several years, and we finally came to the conclusion that we all had a mental picture of what a lump-sum settlement really was. No board or commission is going to be so dense as to refuse a settlement to keep someone from a home in which he has a substantial equity. We came to the conclusion those were not lump-sum settlements. There are necessities here and there that call for the advance of partial lump-sum settlements to take care of immediate needs. I think we came to the agreement that those were not lump-sum settlements, and that lump-sum settlements per se should be gone into very carefully.

I might say that our State makes no lump-sum settlement to any man unless he is back at work. When he is back at work and physically rehabilitated and makes a good showing, after careful investigation of those facts we have no hesitancy in letting him have his money. In the case of widows, if children are involved, we never make a lump-sum settlement because the compensation belongs to the children in case of her remarriage.

With reference to these various methods of administering the law, I believe it is only fair to say that I agree thoroughly with Mr. Horner, of Pennsylvania, that there is merit in all these systems. I think in the final analysis that the success or failure of any system depends upon the man or the men who are administering that particular law. I can see success in Pennsylvania under their system with the boys that I know from Pennsylvania. I can see success in Massachusetts under Mr. Parks and his associates, and also success in New York under the plan they have there. So I think, after all is said and done, that it does not matter so much what the system is, unless it is a ridiculous one, so long as it is honestly, efficiently, and snappily administered. The main thing is to do something. Industrial commissioners are in the position of having to pass judgment and pass it quickly after the facts are presented, but they should be very careful they have the facts before they come to a definite decision.

There are several questions I want to ask. I want to ask if there is any State having the agreement system which stipulates that that agreement is final, if that agreement has been properly executed by the parties in interest, has been approved by the commission, and is required—as it is in Connecticut—to be filed with the court as a sort of abstract of judgment.

Mr. WILLIAMS. If some one has made false statements, the agreement is not final. If changed conditions of fact have arisen or the agreement was procured by fraud, it is not final.

Mr. McSHANE. I want to know if in the ordinary case there is a bar to further consideration of the case.

Mr. WILLIAMS. If unforeseen facts develop, then we find out about them, or if there is a changed condition of the man. If a man comes in with a lacerated finger, and I run my finger over his hand and find he has a fractured bone in two fingers, that agreement is not final.

Mr. McSHANE. In our State, as a matter of fact, there is no finality even in the formality of filing an agreement.

Mr. PARKS. It is exactly the same in Massachusetts. The cases are always reviewable.

Mr. SCANLAN. You are not including lump-sum settlements in that, are you?

Mr. McSHANE. Of course, I did not want to talk about lump sums. I understand that you have a statute which bars even a changed condition. If a man enters into a hard and fixed agreement with the employer or insurance carrier and he is paid off, your State prohibits him from reopening his claim even though there may be changed conditions?

Mr. SCANLAN. Yes. The lump sum is approved, the man paid, and application is barred for another hearing.

Mr. McSHANE. That is a pretty hard rule.

Mr. SCANLAN. The experience in our State has led us to believe that is a wise provision.

Mr. BROWN. I do not wish to make an address. Idaho has merely been absorbing from these States who know so much about it. We do not have these difficulties in such great measure because we are a baby industrially and have fine cooperation. I realize that such States as Massachusetts, New York, Pennsylvania, and so on, have more industry and more experience. I merely wished to ask as a favor that before this discussion closes we hear again from Mr. Hamilton, of New York.

The **CHAIRMAN.** Does anyone else wish to say anything on these papers? If not, I am going to ask both Mr. Hamilton and Mr. Lansburgh to make their concluding remarks.

Mr. HAMILTON. I stated very clearly, I thought, in my paper just what the experience of New York State had been. I have been very happy to listen to the comments from the representatives of other States. I feel that our case has been presented; I do not believe there is anything further I would care to state. This was simply a matter of the presentation of the actual facts in so far as they relate to the experience through which we have lived in the State of New York.

Mr. LANSBURGH. I have nothing to add to the agreement situation, but I should like to correct one impression Mr. Wilcox has left with us, to the effect that New Jersey was the only State where the rehabilitation bureau had any connection with the department of labor.

I want to agree most heartily with the New York experience in using rehabilitation men in investigating lump-sum settlements. We got the idea from New York from its Buffalo experience, and for over a year now in Pennsylvania the adjusters of the bureau of rehabilitation have been making the investigations for the workmen's compensation board before the board approves the settlement. They have not approved the settlement, but they make the investigation. In a very large percentage of the cases the rehabilitation men are already in touch with the case, know the whole case, and it is futile to send out a compensation man to retrace the steps. In those cases where the rehabilitation men have not already been in touch, they should be in touch. On the basis of a year's experience, we feel that the proper person to make the investigation, not the award, for the workmen's compensation board is the rehabilitation man of the department of labor and industry.

In fatal cases we do not follow the New York practice, although there is no reason why rehabilitation men can not investigate the status of a widow and children as well as the compensation man.

Mr. SCANLAN. I think all compensation boards approve too many lump-sum settlements. We have tried to keep the number down. We know the reasons they advance and the pictures they paint. But in our State, since the amendment of July 1, it is more necessary that we exercise care than ever before. Under that amendment, when the injured workman receives his compensation in a lump sum and that is approved by the board, he is barred from ever filing a petition alleging recurrence of disability. That causes the employers and insurance carriers to change their position on lump sums, because in the past a lump sum might be agreed to and approved and paid, and within a week or two the condition would change and an appli-

cation would be filed petitioning alleged increased disability. That meant trouble and expense to all these insurance carriers. Now, they know that a lump-sum settlement wipes the slate of that particular claim.

Therefore, we must inquire if the individual thoroughly understands the provision that if he accepts the agreement his rights are thereafter barred. We must also try to find out from him whether that has entered into the negotiations between the insurance carrier and the employee whereby they arrive at the agreed-upon limit of disability.

Our disposition is to tighten up on lump sums. We do not have much sympathy with applicants who come in and say they want to get their money to invest it in stocks and bonds. We feel that the best possible investment is the compensation payment of the responsible insurance company or employer. On the other hand, if the employer or insurance company is not financially very strong, we think perhaps the applicant can handle the money as well as the employer we are in doubt about. In all other cases we are tightening up. I think the compensation boards ought not to allow lump-sum settlements except in those cases where they can not avoid it, because compensation was intended to take the place of the wages of the injured workman.

On the other hand, speaking on the experience of Mr. Parks, whenever a man who is a native of some other country comes to us with an injury and wants to return to his country, we help him back. We think it is for the best interests of this country to get him back. We arrange for his passport, send the money to a bank in the other country, and help him out.

Mr. DUXBURY. I presume if any jurisdiction is absolutely satisfied it has the best system, it will not profit very much. As far as I am concerned, we do not have a perfect system in Minnesota, and we have been profiting very much by this discussion. One of the benefits of this association is that we can come here and check our systems with the systems of other States and get suggestions by which we may improve our own, because when we get to the point where we think we can not better our system, we ought to resign and let somebody get in who can. I have heard many things here in which I am convinced we have a better system; I have heard many things suggested here by which we can better ours. I think this has been one of the most profitable meetings we have had.

So far as the hackneyed lump-sum question goes, we have talked that until it is threadbare, and I have concluded that the summary of that is that the only fellow who ought to be permitted to dispense those lump sums is the proverbial fellow from Missouri who is hard-boiled and has to be shown.

[Meeting adjourned.]

THURSDAY, SEPTEMBER 16—AFTERNOON SESSION

CHAIRMAN, HARRY C. MYERS, MEMBER OKLAHOMA INDUSTRIAL COMMISSION

The **CHAIRMAN**. We have a number of very important questions before us to-day. The first one is by Mr. McShane, of Utah, with reference to the carrying of self-risk. I believe that most States make some provision for that.

UNDER WHAT CONDITIONS SHOULD THE SELF-INSURING PRIVILEGE BE GRANTED, IF AT ALL

BY O. F. M'SHANE, CHAIRMAN UTAH INDUSTRIAL COMMISSION

The manner in which the subject is stated indicates that there is perhaps some doubt as to whether or not the self-insuring privilege should ever be granted to an employer of labor. We have but to refer to the proceedings of this association and other gatherings at which social insurance problems have been discussed to verify the fact that there is a division of opinion among interested parties and that some very able authorities have differed. In some instances their differences have been very sharply drawn. Considering the standing of some of those who have given expression to an opinion and the almost universal respect with which their opinions are accepted, I have some hesitancy in attempting a solution of the question. We find at the outset some consolation, however, in an examination of the business relations of those who have spoken. In most instances we find them occupying important positions with some insurance company or they are safety engineers or managers of the welfare associations of large employers of labor enjoying the privilege. Our comfort is not found in the fact that these gentlemen are not eminently qualified by both training and natural endowment to speak upon the subject. Their superior qualifications have given them the place which they occupy with their respective employers and as authorities on the subject. We must therefore seek the comfort spoken of above by investigating further. It is plain that these men have business connections which are antagonistic and therefore it is to be expected that they give expression to views somewhat colored by their personal interests. The insurance man is interested in selling his wares; the safety engineer of the self-insurer does not use this class of merchandise. His employer's interest is to avoid the heavy expense loading required by the insurance carrier in order to do business. In view of the interests which these antagonistic schools have, we may without offense discount in a large degree their usual stock arguments and charge them up to shop talk; so, when Mr. Rowe, formerly of the Aetna Life Insurance Co., unceremoniously brushes aside the idea of the self-insuring privilege in discussing the "merits and demerits of

the various forms of carrying workmen's compensation insurance" by stating—

Self-insurers, or rather noninsurers—

(a) Fail to qualify at the outset, as in only a comparatively few instances have they sufficiently dependable financial strength;

(b) By financial inability of 999 out of every 1,000, they must be discarded as a safe and secure method of securing the payment of long-deferred compensation losses¹—

we must discount his conclusions in proportion to his direct interest, which is a very considerable amount. So, also, when Dudley R. Kennedy, of the B. F. Goodrich Rubber Co., states that self-insurance has reduced or entirely eliminated delay in compensation payments, we are justified in making the inquiry: "Is this statement in accordance with our experience as administrators of compensation laws?"

The late Carl Hookstadt seems to have given a "solar plexus" to Mr. Kennedy's conclusions, as in commenting on this point, after an extended survey covering 22 jurisdictions of the United States and Canada, he stated: "Strange as it may seem, their record in this respect is no better than either the State funds or private companies."

As a matter of fact, this subject has been thoroughly aired by past discussion in and out of this association. The pros and cons as originally stated, have been argued and reargued until they are threadbare, yet little, if anything, of value has been advanced recently. There seems to have been no serious study of our changing industrial conditions or of the experience of compensation boards in dealing with the subject. It therefore seems that some good may result from another airing of the question. It may be that our convictions of five years ago should be modified in the light of our present-day experience.

You will all recall a time when every employer of labor knew practically all of his employees by name; when he was more or less familiar with their family life; when he knew their aspirations and sympathized with them in their struggles to carry on; when he offered advice and sustained their ebbing spirits by a word of encouragement and a slap on the back. Then something of a stunning nature happened—the sudden expansion of our industries, the consolidation and enlargement of our plants. This was the fruition of American inventive genius coupled with the business acumen of our captains of industry. We find employers having in service thousands who formerly employed by scores. These employees were isolated, and, magiclike, all contact with their employers was lost. The human element and happy interrelationship of the past seemed to have been lost in the shuffle. As these employers advanced in years and their business grew, as their duties increased and they became weighted down with their cares, they seem to have become more calloused and impatient in dealing with the frailties of their employees. Business seems to have been the all-important thing. Interest in and sympathy for the employee were entirely lost and the employer became a dictator. The result was the logical sequence of the employer's lack of interest in his employees. His nobler impulses were stifled by his selfish purpose to grasp the maximum profit at

¹ U. S. Bureau of Labor Statistics, Bul. No. 212: Proceedings of the Conference on Social Insurance, Washington, D. C., Dec. 5-8, 1916, p. 69. Washington, 1917.

the minimum cost. Local labor unions began to multiply and federate.

The battle was on between capital and labor and was bitterly waged with varying degrees of success on either side until this Nation (in 1917) found itself engulfed in the great World War, and for the first time labor gained definitely the upper hand and became master of the situation. It is perhaps fortunate that the Nation's peril at that time was so great as to have a sobering effect upon all classes; so much so that the value of an understanding was realized by the wise of both groups. This feeling has progressed to a point to-day where no employer or employee is so dense as to ignore the value of a return to the old relationship. While the former close personal contact is impossible, due to the increased numbers, it may be approached in a measure through social and welfare units developed in the compensation department of the self-insurer who has caught the spirit of compensation legislation. We find many large employers to-day giving careful thought to the health, safety, and welfare of their employees and bringing forth substitute systems of social insurance for the compensation laws of the jurisdiction where they operate. I may say here parenthetically that we have one such employer in our State. Under our law we are permitted to accept his system in lieu of the compensation law, and we have done so because his system as a self-insurer and the plan of social insurance that he has outlined are more liberal than the law which I have the honor to administer. In most instances these plans offer benefits far in excess of those provided by the compensation act to which they are subject. While these employers are prompted primarily by pure altruism, they are not long in discovering a cash return, as the employees become more loyal and efficient. Labor turnover is reduced to a minimum; wastage due to breaking in new workmen is eliminated; and the spirit of contentment which pervades the works has a direct influence in reducing accidents, increasing production, and reducing costs.

Whatever doubt may be indulged in by others, it would seem that the various legislative bodies that have dealt with this subject have been converted to the view that the self-insuring privilege should be granted, as only a half dozen jurisdictions in the United States are silent on the subject, while 31 have made specific provision for it. As to whether or not the solons have reached their conclusions on the subject after careful study and consideration, or have been carried off their feet by organized lobbies, I leave you to judge in the light of your own observations and experience. I do not flatter myself that what I may say upon this subject will be either new or convincing, but if I can excite helpful discussion I shall feel some degree of satisfaction.

I do not wish it to be understood, however, that I want to disturb any existing condition where a self-insurer under any other plan has been granted the privilege and is carrying his burden and properly discharging his obligations to his employees. What I say is to apply to new employers seeking the privilege.

Among the matters that should be given very careful consideration when an application for the self-insuring privilege is being considered are:

1. The number of employees and the pay-roll exposure.
2. Whether or not the applicant is a foreign or a domestic concern.
3. Financial ability of the applicant to pay direct the compensation in the amount and manner and when due as provided by law.
4. The nature of the business, as, for example, its permanency, chances of failure, etc.
5. Motive of the employer in seeking the privilege.

Unless there be a sufficient number of employees and the pay-roll exposure is large enough to warrant the management in setting up an organization manned by experienced people to handle all compensation problems, the privilege should be denied on those grounds, as under such conditions claim settlements will not be promptly made.

An administrative body should not grant the self-insuring privilege to a foreign applicant on the same showing that would warrant it granting the privilege to a domestic enterprise, as much delay in compensation payments will be experienced where the employer is a foreign concern, for the following reasons:

(a) Frequently the claims agent of a foreign employer will wish to refer to his home office in some far-distant jurisdiction matters that could be settled more expeditiously were the employer a domestic concern.

(b) When disputes arise between the compensation board and the claim department of a foreign concern enjoying the self-insuring privilege, the Federal courts will not infrequently be resorted to by the employer instead of the courts of the jurisdiction. In short, foreign concerns are not so likely to submit to the jurisdiction of local courts as are domestic employers; at least that is our experience. If time permitted I could give you some very interesting sidelights on that one phase of the case.

(c) Foreign corporations frequently have but a handful of employees and a negligible pay-roll exposure in the jurisdiction, but when viewed as national concerns are of gigantic proportions. By playing up their national rather than their local figure, compensation boards have been permitting such employers to slip through, when as a matter of fact the self-insuring privilege should have been denied.

(d) If the applicant is a foreign concern, you will not have as close contact with the management nor as satisfactory means of determining its financial standing as you do with a domestic employer, and as a result a worth-while opinion of its financial responsibility can not be formed.

(e) It is more difficult in case of contest to get service on the process agents of foreign corporations.

(f) Because of the remoteness of the seat of real authority claim settlements are slow.

Unless an employer of labor has a business permanent in its nature, where large numbers are employed, with a pay roll suffi-

ciently large to warrant the setting up of a compensation department manned by an experienced personnel, the privilege should not be granted. Unless the business is sufficiently permanent in its nature, the pay-roll exposure and the number employed large enough to justify the employer in creating a fund based upon the premium rates charged by State funds or mutual associations for the same class of employment, said fund to be used exclusively for the payment of compensation as it matures, the applicant fails to qualify. Should the fund be created, as above indicated, it should never be mingled with other funds of the employer and should at all times be subject to actuarial audit at the employer's expense under the direction of the State agency whose duty it is to deal with matters of compensation administration.

Financial ability, while not the most important, is still a major matter to be considered. It is my opinion that in the past too much importance has been attached to this requirement and that in a majority of jurisdictions it has been the principal test. Compensation is usually paid over a considerable period of time, which in some instances extends for years into the future. In view of this fact, every safeguard should be thrown about the beneficiary to see that the payments are properly secured. You can not rely upon the employer's financial statement, as it does not in all instances reveal the true situation, though a very substantial surplus may be shown on the books. This point is so well illustrated in one case that came before our board that I feel justified in stating the facts, which are matters of record in our offices. A certain company in Chicago sought and secured the self-insuring privilege in Utah. Its financial statement showed a surplus of \$2,812,958.25. However, a careful analysis of this statement disclosed that an item of \$12,000,000, given as an asset, was listed as good will. Eliminating the good-will item, this company actually had an adverse balance of \$9,187,041.75. It is not at the present time a self-insurer in Utah. It must be ever borne in mind that the business affairs of large corporations may be so manipulated that assets are easily dissipated without making provision for the payment of compensation which matures over a period of years.

Last, but most important of all matters to be considered, is the motive of the employer in seeking the privilege. If it be found that the privilege is sought for the purpose of bringing the employer and his employees into a closer and more harmonious interrelationship; for the purpose of establishing safety and welfare organizations in order better to serve his employees; for the purpose of placing the plant in better physical condition by the removal of accident hazards, through cooperation with his workmen; for the purpose of enabling him more carefully to select and place his prospective employees; for the purpose of reducing noise and confusion to a minimum in order to protect the high-strung and nervous; for the purpose of eliminating the spirit of discontent; for the purpose of providing for and giving superior medical service and hospital attention; for the purpose of creating within his own organization employment for those who are convalescent, as a part of the medical treatment; for the purpose of taking care of those who suffer permanent partial disability by providing employment suitable to their impaired physical condition; for the purpose of eliminating

or shortening the time between the date of the accident and the beginning of compensation payments by eliminating third parties—then, I should say, the applicant should be passed for motive.

There are certain classes of employment where the hazard of bankruptcy and the failure to meet compensation payments are greater than in others. It would not be possible in this paper to discuss at length the various classes to which objections might be urged as unwise because of the nature of their operations. I would say, however, that the financial ability of contractors, together with their record in the past and their present system of operating, should be carefully gone into before the privilege is granted. Contractors are susceptible of sustaining great losses because of unexpected difficulties which arise during the course of their operations on a particular job; as for example: (a) Labor trouble; (b) increased cost of material; (c) weather conditions; (d) difficulty in establishing proper commissary facilities without great expense; (e) necessary but expensive equipment on a particular job. There is also the hazard of men engaged in the contracting business trying to beat the other fellow's bid. There is also the tendency to take the gambler's chance and bet that materials will be lower and that the weather will be fine, etc. The contractor is also tempted in many instances to take a job where the margin of safety is negligible in order to keep his organization intact and his equipment in use. It must also be remembered that there are many men engaged in or entering the contracting business who are without sufficient experience to make them safe risks. In view of the foregoing facts, we may conclude that their bids are not always made on the basis of intelligent estimates. The major reason, in my opinion, for studying critically the right of a foreign contractor to the privilege is that he may be coming into your jurisdiction to perform a single job, after which he may wind up his business affairs and retire. If his experience has been bad, he may leave thousands of dollars in compensation to be paid to maimed workmen in your jurisdiction over a period of years. It is the practice in Utah never to grant the self-insuring privilege to a contractor who comes into the State to do a single piece of work.

For the reasons hereinbefore stated, I would suggest that very thoughtful consideration be given to all applications involving the privilege to contractors and concerns with a like degree of dependability.

Perhaps the most cogent reason thus far advanced for granting the self-insuring privilege may be summarized as follows:

1. It serves as a great impetus to accident prevention. By virtue of this impulsion, employers of vision develop safety units among their employees and capitalize the organizations by intelligent direction.

2. It is an inducement to put their places of employment in the best physical condition.

3. Great care is exercised by the employment agent in selecting and placing new employees. For example, physical examinations are given, not for the purpose of selecting only the physically fit, but to enable the foreman intelligently to place the men. Those with varicose veins are not placed on jobs where they are likely to bump their legs; those with weak hearts or potential hernias are

not set at tasks where they are required continually to exert themselves; weak eyes are protected against dusty places, etc.

4. Noise and confusion are eliminated as a protection to the high-strung and nervous.

5. Superior medical skill and hospital service are provided because of their economic value.

6. Light employment is provided as a part of the medical treatment in convalescent cases; thus wages instead of compensation are paid. The patient makes the maximum recovery within the minimum period of time, thereby effecting a material saving in dollars and cents to the employer, a quicker and better result to the injured man, and great saving to society in man power.

7. Provision is made for regular employment of those who suffer permanent partial disability.

8. Much time is saved by dealing direct with the injured man instead of through a third party.

9. When the matters hereinbefore referred to are realized there is a friendly reaction on the part of the employee, which feeling spreads to the entire personnel of the plant and finds expression in increased production at reduced cost.

It will thus be seen that what at first blush would indicate increased costs, in reality is a decided factor in increasing production and reducing unit costs.

Some of the most important objections to the self-insuring privilege may be stated as follows:

1. Improper motive of the employer in seeking the privilege, as when he is controlled entirely by financial consideration and ignores the closer relationship. In such case the employer will provide for strict physical examination and accept into his service only A-1 physical risks. He will in selecting employees favor foreigners when the statute provides less compensation to them than to citizens, and single men rather than men of families, thus creating, by his method of eliminating the physically unfit American citizens and men of families, an industrial scrap heap whose burdens must be borne by society at large if they find themselves incapable of bearing their own. This class of employer uniformly brings forth a contract providing for medical and hospital benefits in addition to those prescribed by law. Deductions are made from the wages of the workmen to meet the added cost. Compliance with this regulation is made a condition precedent to employment. The agreement provides for treatment of both industrial and nonindustrial cases by contract doctors. The funds contributed by the workmen are mingled with those contributed by the employer. The cost of industrial cases as compared with nonindustrial cases can not be determined for the reason that no accurate system of accounting is provided, the moneys being spent indiscriminately in all cases as they arise. This is a source of much dissatisfaction on the part of the wage earners, as they believe that they are paying a considerable portion of the medical cost in industrial accident cases that should be borne by the employer. These complaints may in many instances be groundless. Of this fact the wage earner remains unconvinced and is constantly irritated by the doubt in his mind. The employer will insist that the agreement is mutual and in the interest of his

employees. Whether or not such agreements making acceptance on the part of employees a condition of employment possess that mutuality which is necessary to harmonize with the spirit and purpose of compensation laws is a matter of grave doubt. Technically it may be so construed. In a broader and more humane sense mutuality seems to be entirely lacking. In the interest of harmony I doubt the wisdom of employers making pay-roll deductions and mingling the moneys derived therefrom with the funds which the employer puts up to pay for medical and hospital treatment in industrial cases. If such deductions are made, the fund thus established should never be mingled with the company's money and should be controlled by a committee of workmen selected from the ranks. Such a course would remove all cause of trouble from this source.

2. His inability to carry out good intentions even when prompted by proper motives. Even though the employer be prompted by humanitarian considerations alone to seek the privilege, he is not in a position to handle the compensation problems personally. He must rely upon another. He therefore sets up a compensation department and places an agent in charge who, because of the fact that his job is always at stake, is anxious to make good. His best showing, in his opinion, will be reflected in the compensation account when substantial balances indicating saving are disclosed by the ledger. This leads the agent to hide behind every technical defense; to contest every possibility; to minimize injuries; to shave the compensation; to contract the disability period by putting the man to work before he is surgically healed; to get favorable settlement for permanent partial disability; to give medical service by employing contract doctors whose judgment is often colored by the nature of their employment. In his anxiety to make good he has even been found to interfere with doctors' reports and to become a bill collector for his employer at the company's store, boarding house, etc.

3. The third and most serious objection is that the law can not get the compensation to the man. He has to get it through the administration channel. A claimant for compensation will not press his rights with the same vigor when the employer pays the bill direct as he will where the compensation is payable by a third party who has assumed the employer's liability for a fixed consideration. Especially is this true where the employee has a desirable job with the possibility of advancement or when he is advanced in years and his employment elsewhere is uncertain or, during seasons of industrial calm, when jobs are scarce.

4. You must also recognize the fact that large employers of labor are as a rule engaged in business where the hazard of financial failure is ever present. They are eager for substantial profits and are ever taking chances to accomplish these ends. They set up no reserves on a scientific basis with which to liquidate outstanding claims at maturity; they are not subject to actuarial audit by governmental agency to determine their solvency, and they are at all times exposed to great losses through a change in market conditions, trade wars, etc.

When comparing a self-insurer with a stock company as regards security for long-deferred compensation payments, the findings are not favorable to the noninsurer for, whatever may be said con-

cerning the excessive expense loading of premium rates by independent carriers, it must be admitted that they are operating on strictly scientific principles and are therefore less susceptible to insolvency than almost any other business. Being permanent in their nature and being conducted on up-to-date lines they set up a standard which it is difficult for the would-be self-insurer to approach.

After carefully reviewing the literature on this subject, taking into consideration the experience of others and checking it against my own as an administrator, I am of the opinion that self-insurance should be granted large employers of labor (not as a matter of right but as a privilege revocable at any time by the proper supervising agency) if upon investigation it be found:

That the motive of the applicant is controlled by a sincere desire to establish a more harmonious relationship with his employees and to render them a service superior to that given by funds, mutuals, and stock companies; that the employer really wishes, by an exercise of the self-insuring privilege, to arrive at a better understanding with his employees, to bring them to realize a mutuality of interest; that he desires, by elimination of third parties and establishing of social and welfare units within his plant, to return to the desirable interrelationship of former years; that he is desirous of giving superior medical service to his injured employees and of getting compensation payments started with less delay than would result were he relying on other agencies; that he is desirous of taking care of his permanent partials by a systematic reeducation within his organization and will not upon one pretext or another cast them off to become confirmed objects of charity; that the employer sincerely desires to do these things for the purpose of establishing a better feeling with his workmen and not to lessen compensation costs, and has met the other requirements hereinabove mentioned.

However, in granting said privilege the following conditions should be strictly complied with:

1. That an up-to-date compensation department is organized with full power to do and authority to act in all matters; such department to be in charge of a personnel who understand the purpose and spirit of the compensation law.

2. That superior medical and hospital service is provided for the injured workmen.

3. That a reserve fund be provided equal to the reserve which would obtain from compensation premiums based on fund and mutual rates, said fund not to be mingled with other funds of the corporation and to be subject to actuarial audit at the employer's expense, when deemed advisable by the State agency administering compensation matters.

4. That an indemnity bond, guaranteeing the employer's liability, has been purchased from some dependable security company, approved by and filed with the administrative body of the jurisdiction.

5. That the applicant understand that if at any time the terms and conditions hereinabove referred to are not met the privilege may be canceled without notice or hearing.

6. A self-insurer should pay the same premium tax that an insurance carrier would pay, said premium to be estimated for tax purposes on the basis of mutual or State-fund rates.

7. That no pay-roll deductions be made from wages of employees for benefits in addition to those provided by law if the moneys thus collected are mingled with company funds.

The CHAIRMAN. Before calling on the next speaker I wish to make this observation with reference to self-risk and at the same time explain to this delegation Oklahoma's attitude.

As commissioners of the industrial commission, we grant certain industries the privilege of self-risk after making a thorough financial investigation or receiving their deposits of bonds and securities, but only for compensation and not for death, as we do not have jurisdiction over death cases. They can very easily carry the compensation for temporary or permanent or partial disability.

Last January we had a coal-mine explosion in which 94 men lost their lives. This company had been granted permission to carry its own risk. We had only one case of temporary disability, and that extended over a very short period of time.

Just a few weeks ago we had another explosion, in which 16 men lost their lives. This company had permission to carry its own risk. I think that we had only one or two cases that came within our jurisdiction.

Either one of those companies would have been ruined if they had been permitted to cover death cases. The dependents would have had to go into the different courts to get any sum, and I do not think they could get much, because the company was almost ruined by the explosion. There was no death fund to cover that.

Mr. McGilvray, of California, is going to tell you about the fund for these explosions of which I have just spoken.

CATASTROPHE FUNDS

BY JOHN A. M'GILVREAY, CHAIRMAN CALIFORNIA INDUSTRIAL ACCIDENT COMMISSION

At the outset let me say that the problem discussed by this paper is primarily one of insurance, and deals with proper reserves to protect losses arising out of industrial accidents and death. These losses include not only the normally expected losses but also those caused by catastrophes, or the unusually severe loss. A "catastrophe" has been defined as an accident which involves at least five deaths or permanent total disability cases. But such losses, also sometimes called "shock" losses, may arise from accidents involving fewer than five persons, as where workmen's compensation laws are liberal, and where benefits to even a single employee may exceed the cost of five fatal cases. For example, in our own State not long ago a young man 20 years of age lost both arms and both legs in an accident, and under the provisions of the California act he will receive \$18.20 a week (65 per cent of his average weekly wage) for 240 weeks, and thereafter \$11.20 a week (40 per cent of his average weekly wage) for the rest of his life. If he lives out his normal expectancy he will receive from the insurance company \$25,900.

Although the general question of security of compensation has been discussed at previous meetings, this is the first time, so far as I am aware, that the matter of catastrophe funds has been brought before this association as a topic of discussion, and I am sure it is of great importance to every person engaged in compensation work.

Catastrophe funds or catastrophe reserves are intimately connected with adequate premium rates and adequate reserves to meet losses sustained. In the early days of compensation laws there was no satisfactory experience upon which to base premium rates. The only experience in this country was the old employers' liability experience, and this was unsatisfactory. European compensation experience could not be applied to American experience. The insurance companies, suddenly called upon for schedules of rates, were forced to base them upon their "underwriting judgment," and the rates issued were in general too high. Through the pressure of rate cutting, and particularly the competition of State funds, rates were reduced to a scale more in accordance with the real hazards of industry, and in some cases rate cutting produced inadequate reserves and, subsequently, insolvency.

As early as 1915, Robert K. Orr, speaking before the Casualty Actuarial and Statistical Society of America, criticised the then existing laws and methods for determining the proper reserves to be collected in liability and workmen's compensation insurance, and said: "It is almost an axiom that inadequate premiums will under our present laws produce inadequate reserves, this, of course, being due to the fact that the reserves are computed as a percentage of the premium. It is possible under our present laws and methods of computation for a company to be absolutely insolvent, yet legally in good financial condition. It would seem to be high time for the various States to wake up to the fact that our reserve laws are inadequate and need immediate attention, otherwise we will certainly have some insolvent companies and some unpaid compensation claims."

Mr. Orr was a true prophet. Within a few months after making the above statement the Commonwealth Bonding & Insurance Co. went into the hands of a receiver. California claimants received not a cent from the company, and the State legislature was called upon to appropriate over \$60,000 to meet the liabilities to injured workmen that should have been paid by the insolvent company. Four other insurance companies doing business in California also became insolvent, but the compensation claimants here fared somewhat better. One company paid all of its compensation claims in full. Another, although becoming insolvent nine years ago, has still some claims unpaid. The cause of the insolvency of some of these companies was ruinous rate cutting; of the others, poor underwriting practice in the choice of risks.

Under the universal standard workmen's compensation policy in general use in the United States the carrier is obligated to pay promptly to any person entitled thereto, under the workmen's compensation law and in the manner therein provided, the entire amount of any sum due and all installments thereof as they become due. This obligation refers to the employer's legal responsibility for payment of compensation. As compensation benefits are strictly set forth in workmen's compensation statutes, the obligation as respects the liability arising out of the injury of a single employee is limited, although the various State laws differ a great deal in the amount of compensation allowed. There is, however, no limit as to the number of claims which may result from a single accident. This, then, is

where the "catastrophe" or "shock" losses originate. A mine explosion or fire, the fall of a building, a gasoline explosion in a refinery, and other occurrences of this type involving the possible death or disablement of numerous employees, create hazardous situations for the compensation carrier and incidentally the industrial accident commissions. This danger is not limited to any field of operation, for while the chance of catastrophes is greater in some industries than in others, it is even in the industries of lowest normal hazard a potential source of trouble, as instance the falling of a dirigible into a bank in Chicago, and the Triangle Waist Co. fire in New York, with its 145 fatalities.

This leads to a situation where even with the most careful underwriting the workmen's compensation carrier assumes obligations which involve serious possibilities. Some protection is offered in "prohibited lists" in that they permit the carrier to avoid extra-hazardous lines, but the catastrophe hazard exists in a measure even though the operation of the carrier is limited to industries which have a low normal hazard.

The ordinary hazards can be met by adequate premium rates and adequate reserves. Such rates and reserves can now be established with a fair amount of mathematical certainty. At first we did not have any table in this country which would enable underwriters to foretell with any certainty just what experience could be expected from a definite number of accidents. The first standard accident table, which is to the compensation field what the mortality table is to the life insurance field, was compiled from European data by Dr. I. N. Rubinow. This table was compiled in the early days of compensation. Attempts to compile a standard table from American statistics were unsatisfactory, since the statistics of the various States varied so much that they could not be combined, and the statistics of any one State were too limited for dependability. When the National Council on Workmen's Compensation Insurance took up the work of revising the compensation premium rates in 1919, data obtained from Schedule Z was available, and Miss Olive E. Outwater, of the Workmen's Compensation Service Bureau, used the same data in compiling an American accident table. This table is published in the Proceedings of the Casualty Actuarial and Statistical Society of America under date of November 17, 1920.

With the statistics accumulated through the use of Schedule Z and the distribution of accidents as represented by the accident table, the National Council on Workmen's Compensation Insurance revised compensation rates in 1920 and included an allowance for the catastrophe hazard. The rates compiled are expressed as so much per \$100 pay-roll exposure and vary with the hazards of the industries and occupations in the manual classification. Such rates must not only be adequate to meet the losses arising within the manual classification, but also must meet the expenses of the carrier and allow a certain amount for the catastrophe hazard. The National Council made an allowance of 1 cent in addition to the gross rate of each manual classification. The gross rate is made up of the pure premium rate, or what is necessary to meet the losses incurred or to be incurred, and also the expense loading, which takes care of the carrier's expenses of administering insurance.

In establishing the basic pure premium certain classifications normally have a catastrophe hazard, such as mining and those industries which have an explosion hazard. This catastrophe hazard is reflected in the pure premium. In addition to this normal catastrophe hazard it was recognized that there is also a catastrophe hazard even in industries having a low-rated hazard, as heretofore mentioned. Since the frequency of these catastrophes can not be foretold, and since they may occur to any classification, a flat loading of 1 cent was added to the normal rate.

The National Council is a federation of most of the rate-making boards and bureaus, and has offices in New York City. Its fundamental objects are "to cooperate with rate-making organizations and public officials in all States in the determination of equitable premium rates for workmen's compensation insurance, and to promote a true public understanding concerning the establishment of such rates."

The council's results are advisory only; the various bureaus and boards may accept or reject them. It does, however, have considerable influence, and its recommendations carry much weight because of the completeness of its statistical data and the reputation and ability of the members of its technical committees.

Not all States accept the recommendations of the National Council. There are approximately 22 States for which the rates are made by the council, subject to the approval of the respective responsible State official. In 6 States, the so-called anticomcompact States, there are laws prohibiting the insurance companies from pooling their experience or promulgating uniform rates. These States require insurance companies to practice open competition. Some of the States have their own rating bureaus, part of which cooperate with and accept the advice of the National Council.

The loading of 1 cent per \$100 of pay roll may not be sufficient to meet all catastrophe hazards. Unusually severe loss experience may deplete the reserves without the occurrence of any catastrophe. Unless the catastrophe loading is set aside for catastrophe losses there may be no catastrophe reserve to call upon. Most of the State funds are required by law to set aside 10 per cent of the annual premium income as a catastrophe reserve until such reserve equals \$100,000, and 5 per cent thereafter until the reserve is considered sufficient to cover the hazard and guarantee the solvency of the fund. The California State fund, though not required by law to do so, has a catastrophe reserve of nearly \$2,500,000.

But State funds do not monopolize the compensation field. There are also the competitive insurance companies and the self-insurers to consider. Security of compensation is important to both employer and employee. The insurance carriers should be under strict regulation of the States as to the adequacy of their rates and reserves. No company can engage in cutthroat competition and survive. State regulation is necessary to protect the compensation rights of employees and maintain the solvency of the carriers. Some supervision is also required over self-insurers. When employers are authorized to carry their own risk they are usually required to furnish satisfactory proof of solvency and ability to meet present and future compensation payments or to deposit adequate bonds or other security.

There is no reason why self-insurers should not be subject to the same supervision and regulation as to security and reserves as are imposed upon the regular insurance carriers. Industrial commissions should have full authority to grant, refuse, or revoke permission to self-insure if satisfactory cause is shown. In California all self-insurers are required to deposit security. The minimum amount required is \$20,000. A self-insurer must also file a financial statement showing his assets and liabilities. The industrial accident commission has the power to revoke any self-insurer's permit to self-insure at any time for good cause after hearing, and has complete power of investigation.

Coincident with rate regulation there should be supervision over reserves. Rates may be adequate to maintain solvency under normal conditions. But a long period of excessive losses or a catastrophe resulting in hundreds of fatalities may endanger the solvency of the carrier unless sufficient reserves have been maintained. The Argonaut mine disaster in California cost the State fund \$76,888, but the catastrophe reserve was ample to prevent any shock to solvency. What constitutes adequate reserves depends upon the nature of the risks and other factors. They may vary from 65 per cent of the previous year's losses to more than 100 per cent of the premium.

Speaking now of my own State particularly, and analyzing our situation with relation to this question, let me point out that in California no insurance carrier may issue, renew, or carry insurance for employers or employees under the workmen's compensation, insurance and safety act at premium rates which are less than the rates previously approved or issued by the State insurance commissioner for all insurance carriers as adequate for the risks to which they respectively apply. If the insurance commissioner shall have previously approved or issued a uniform system of schedule rating (or merit rating, so called) insurance carriers may apply the same to any risks subject thereto, but basic rates no less than the rates previously approved or issued by the State insurance commissioner, and any reduction therefrom on account of the application of such system of schedule rating shall be clearly set forth in the insurance contracts or indorsements attached thereto.

In estimating the financial condition of any insurance carrier the insurance commissioner must charge as liabilities all outstanding indebtedness of such insurance carrier and the unearned premium reserve. The outstanding indebtedness represented by the loss reserves shall be 70 per cent of the earned compensation premiums, less all loss and loss expense payments made in connection with such claims. In estimating such reserves a three-year period must be covered, and for the first year of such three-year period the reserve must not be less than the present value computed at 4 per cent interest of the determined unpaid compensation claims under policies written during such year.

Whenever in the judgment of the insurance commissioner the liability or compensation loss reserves of any insurer under his supervision are inadequate, he may in his discretion require such insurer to maintain additional reserves based upon estimated individual claims or otherwise.

Each insurance company must make an annual statement to the insurance commissioner, and shall include in such statement a schedule of its experience in such form as the insurance commissioner may require.

Following the experience of insolvent companies in the compensation field, the California Legislature passed in the session of 1917 an act to provide for the protection of beneficiaries of workmen's compensation insurance policies against the default or insolvency of insurance carriers issuing such policies by requiring such carriers to provide security for the payment of such compensation.

Every insurance carrier, except the State fund, transacting compensation insurance business in California must file in the office of the insurance commissioner a bond in favor of the insurance commissioner as trustee for the beneficiaries of awards of compensation rendered by the industrial accident commission, executed by the carrier and some surety company approved by the insurance commissioner. The bond must be in an amount not less than the reserve for outstanding losses of the insurance carrier, calculated as required by the laws of the State, and for not more than twice the amount of the said reserve, and in no case less than the sum of \$100,000.

The bond must provide that in the event the insurance carrier fails to pay any award which the industrial accident commission renders against it, the surety will forthwith, to the extent of its liability under the bond, pay the said award to the insurance commissioner as trustee for the beneficiaries. The bond must further provide that in the event the insurance carrier becomes insolvent or a receiver is appointed the surety will, within 30 days from the date the award of the industrial accident commission becomes final, pay said award to the extent of its liability without regard to any proceedings for liquidation or reinstatement of the insurance company. If the insurance company fails to pay an award of the industrial accident commission the commission may make its award against the surety company in favor of the insurance commissioner as trustee.

A new bond must be filed annually, in an amount not less than the amount of the reserve for outstanding losses on compensation business in the State as of the 31st of December of the preceding year. The insurance commissioner must satisfy himself of the financial ability of any surety to assume the obligations imposed thereby. The insurance commissioner has the right to require additional bonds if the amount then on file is in his judgment insufficient to cover the carrier's liability for compensation.

Any insurance carrier may, in lieu of the above-mentioned bond, deposit with the State treasurer, through the insurance commissioner, from time to time as demanded by the commissioner, cash or approved securities equal to the reserves required.

The insurance commissioner has the power to revoke the certificate of any compensation insurance carrier failing to comply with the security act of 1917.

In conclusion, I believe the best way to prevent the risk of insolvency of insurance companies through inadequate reserves is to have more strict regulation and supervision by the responsible official or bureau in each of the respective States. Not only should the rates be regulated as to adequacy and antidiscrimination between employ-

ers, but strict supervision of reserves should be had, so that at no time would an insurance company be in a position of being unable to meet its normally expected losses. Also, I believe that the legislature should require insurance carriers as well as State funds to set aside a definite catastrophe reserve. This reserve might be made a certain per cent of the total premium income, with a certain minimum limit. The legislatures might even go so far as to require that this reserve be deposited in the offices of the State treasurer, the same as California now requires the various insurance carriers to deposit with the State treasurer securities equal to the reserve for outstanding losses on compensation business, or to file with the State insurance commissioner a bond for the same amount.

In the preparation of this paper I have been materially assisted by R. E. Haggard, superintendent of our permanent disability rating department, who has made considerable study of the problem.

DISCUSSION

Mr. STEWART. I should like to ask Mr. McGilvray one question, if I may. The theory of compensation, of course, is that the employer is liable to his employee for the damages the employee sustains through an accident. The employer shifts that responsibility, as far as he himself is concerned, by taking out insurance. But in case an insurance carrier fails, does that relieve the employer? Can not the injured employee come back on the employer?

Mr. MCGILVRAY. I can speak only from the California viewpoint, because I am not familiar with the provisions of the other States. In California if insurance has been taken out in a company that is solvent, the burden has been passed from the employer to the insurance carrier. The question of its insolvency might raise that question, although I do not think it would, Mr. Secretary.

Mr. STEWART. It seems to me that the employer is not absolved by shifting his responsibility to an irresponsible third party.

Mr. MCSHANE. I should like to state that in our State the employer is primarily liable and remains so. If the insurance company becomes insolvent, the employer is required to make good. I should like to know in how many States the same provision exists.

[There was a show of a dozen hands.]

Mr. MCSHANE. In Utah the employee can bring joint action against the employer and the insurance carrier, so I think that is really the rule in the various jurisdictions.

The CHAIRMAN. I think that is the general rule.

Mr. WILLIAMS. May I ask Mr. McShane a question? I was very much interested in your paper on self-insurance and I sometimes study statistics myself. Have you ever reached any conclusion in your own mind as to the minimum number of employees needed to make the self-insurance proposition a feasible one?

Mr. MCSHANE. We adopted a policy on the self-insuring privilege that sets that out, not in exact numbers, because the pay-roll exposure must also be taken into consideration. There are some employers who have a large pay-roll exposure and may also have a considerable

number of employees, and still the privilege would not be granted them. I could not say any specific number, whether 10, 50, or 100—I do not think anybody could. I think Mr. Williams knew I could not answer that question when he asked it.

Mr. WILLIAMS. I had reached the conclusion that the employer would have to have 200 or 300 employees before he would be considered for self-insurance.

Mr. McSHANE. I think you are about right.

Mr. PARKS. Referring to Mr. McGilvray's paper, I was a little surprised to find there were some other States where if the insurance company was carrying the risk and failed the employer was directly responsible for the payment of the compensation due. We do not have that proviso in Massachusetts. I should like to ask those States that have that provision what steps they have taken to be sure that the employer is also solvent.

Mr. MCGILVRAY. Supplementing that, the theory under which the legislature made the appropriation in that bonding company case was that the State by licensing the carrier had provided proper protection to the employer when he took out the security, and he was absolved from any further liability. Recognizing that principle, the legislature appropriated some money to take up those compensation claims.

Mr. SCANLAN. In Illinois if the insurance company does not pay, action is brought directly against the employer, although the statute does provide that the applicant may join the insurance company.

Mr. PARKS. What provision have you to show he is solvent?

Mr. SCANLAN. There is none. It is physically impossible to show that the employer is able to pay and also that the company is able to pay. You have to take a chance somewhere along the line.

Mr. PARKS. If there is such a provision in any act, I should like to see it.

The CHAIRMAN. We have a man who has been put on the program to discuss this. It is possible he may answer most of your questions.

Mr. WILCOX. I do not believe I understood the gentleman's question.

Mr. PARKS. If the employer insures and the insurance company fails, is the employer then responsible? Is there any such provision in the Wisconsin act?

Mr. WILCOX. The statutes provide that every employer shall make payment in case of injury. It provides further that he shall insure the risk unless the commissioner authorizes him to carry his own liability. The proceedings are against the employer by the employer when the insurance company fails to make good. We conduct the proceedings all the way through against the two parties.

Mr. PARKS. Does the employee collect from both?

Mr. WILCOX. From the insurance company, because the insurance company assumes the risk.

Mr. PARKS. If the insurance company does not pay?

Mr. WILCOX. Then there is no provision that you can collect from the employer. There is no provision in any State that undertakes

to see that the employer is solvent any further than to require that he shall insure his liability. That is the end of it all.

Mr. PARKS. Then in Massachusetts we have as much as you have in the other States.

Mr. BROWN. Perhaps you would be interested in the experience we had when the Associated Employers' Liability failed, which caught Idaho with a large number of claimants who had not been paid. The action of our board, immediately upon notice that the company had failed, was to demand of every employer that he pay his claims. We saw to it that those claims were paid by those who were able to pay them. If the employer was not able to pay, then the claimants were through, unless the case later showed that there were funds sufficient to pay the claims. We have \$25,000 still in the treasury of the State which will not go out until the courts demand it shall be given as a guaranty for a part of this payment.

When we realized that situation we immediately became more drastic in the matter of securities from insurance companies. Our law is the same as that of California in that respect. Consequently, no insurance company now can do business in the State without first depositing \$25,000, to begin with, either in securities or bonds. Subsequently, an inventory is made every six months of its liabilities, and upon notice of our commission it deposits an additional bond if it is shown that its incurred liabilities demand it.

The CHAIRMAN. We will now hear from the man who has been placed on the program to discuss this subject. I feel that after he has completed the discussion he will have answered a great many of your questions. No convention of industrial commissioners would be complete without the presence of Fred Armstrong, of Nova Scotia.

Mr. ARMSTRONG. I was rather hoping that the discussion would get so hot that it would not be necessary to call on me at all. As to the question of catastrophes, the problem in different States and jurisdictions varies as to the form of insurance that is allowed. In some States you have stock companies, in some you have competitive State funds with competitive stock companies, in others you have monopolistic State funds.

The question of the liability of the employer has been discussed. We do not have that problem in Nova Scotia, and I will not bother with that particular phase of it. The most I can do is to give you an idea of what we do in regard to catastrophe funds in my own Province.

No matter what form of insurance is carried, it should always be adequate to carry the risk, with something laid aside for catastrophe reserve or disaster reserve. The rate should always reflect the hazard plus the question of disaster that might occur.

In starting out, our State fund in Nova Scotia, by rule of thumb, decided that we would lay by 10 per cent of the total income each year for disaster reserve. That was continued for five or six years. Then, in some of the classes, it was cut down to 5 per cent and literally dropped altogether.

The class in which there is the greatest chance of disaster is in our coal mines. Probably 50 per cent of our income comes from coal mines. That and the navigation class are the two in which

we are still laying aside 10 per cent for disaster reserve. The others are left practically where they stood, because we found that the question of disaster in these other classes was not a big factor.

I am merely discussing that from the viewpoint of probable disaster. The question you have been discussing so far is another matter altogether, and that can be taken up later on. I do not think there is any question but that a disaster reserve should be accumulated in every instance where there is a State fund. The amount that should be placed there is a very debatable question. In Dawson's report on the Ohio State fund some years ago the statement was made that the disaster reserve fund should be sufficient to cover any four probable disasters. That is very well where the disasters are small. We are referring particularly to coal mines. Our mines in Nova Scotia have quite a large number of men. In one we have 1,200 men working, in another maybe 600 or 700. If there should be a disaster in that mine and 1,200 men should be killed, a very, very large amount of money would be required to pay the claims. I should say that if 1,000 men were killed the amount required would be over \$4,000,000. That is merely a rough estimate.

You can see that it would require about a \$16,000,000 disaster reserve in a small State to cover that. Of course, you could not do that very well. We had a large disaster in our coal mines (which was not paid for out of the disaster fund because we had none at the time) in which the claims amounted to \$420,000, and in that case only 88 men lost their lives.

I want to congratulate Mr. McGilvray on his very able paper. I think there will be quite a lot of discussion in regard to it, because there are phases of it to which I do not wish to refer at all.

The CHAIRMAN. The next paper is on "Working partners," by Commissioner Brown, of Idaho. The supreme courts have written some decisions on working partners and will probably keep on writing them, so that it becomes a very important question to know just what jurisdiction we have over the working partner. In our State the supreme court is handing down various opinions on the working partner and has reversed itself about as often as it has handed down opinions, so I shall be interested to hear what Mr. Brown has to say.

Mr BROWN. When I was assigned this subject I did not think there was much in it. When I began to investigate I found it was too big for me to handle. I have written this paper, therefore, expecting that the man who is to discuss it will give the real merits of the case.

WORKING PARTNERS

BY JOEL BROWN, CHAIRMAN IDAHO INDUSTRIAL ACCIDENT BOARD

Before entering into the discussion of this subject, I wish to call your attention to some of the laws that have been passed by some of the States on the question of "working partners."

As late as April 6, 1926, the Legislature of New York amended its law, as shown in chapter 258 of the Laws of 1926, so that any employer, regardless of whether or not he performs manual labor, may voluntarily secure compensation for himself. This new legis-

lation provides for election apparently by each individual partner or corporation officer.

In Ohio no special provision has been made in the law to govern the situation; nevertheless, where a copartnership of workmen of a particular class engaged in the prosecution of some enterprise returns its pay roll, paying premium thereon, and it can be shown that the time of all such parties is devoted to the industry, the reimbursement of the individual members being a division of net proceeds rather than a regular weekly allowance or wage, it is entitled to come under the provisions of the workmen's compensation act.

The North Dakota law was amended in 1923 so as to extend insurance coverage to the employer regardless of whether the employer is an individual or copartner.

Washington has a provision whereby any employer who desires to come under the provisions of the act may do so by advising the department of labor and industries of his intention to come under the act and by reporting himself on his pay roll at a wage not less than the average wage given in such pay roll. This provision includes partners.

The Oregon board has repeatedly held that partners could not be considered as employees. However, it seems that the people of the State believe that the law should include "working partners," since a case recently rejected by the board, the board being upheld by the district court, is now pending in the supreme court.

Michigan, in its workmen's compensation law, the act of 1921 (Public Acts No. 173), provides that members of partnerships receiving wages, irrespective of profits, come under the application of the act. The Michigan law defines an employee to mean "every person in the service of another under any contract of hire, express or implied." In the case of *Gallie v. Detroit Auto Supply Co.* (195 N. W. 617), the Supreme Court of Michigan said:

It is somewhat anomalous to say that a partner may, as a member of a firm, be an employer and as such come within the compensation law, and then if he works for the firm for wages be also an employee within the meaning of the act; but the compensation law so provides, and is evidently based on the holding that a partner may, by special agreement, be entitled to wages for services rendered the firm, even though such compensation must be worked out in an accounting between the partners.

In *Oklahoma*, in the case of *Ohio Drilling Co. v. State Industrial Commission* (207 Pac. 314), the court said:

We think that the construction of the workmen's compensation act, that a member of a partnership who works for the partnership, and who while so engaged is injured, is not an employee within the meaning of the act, is an exceedingly narrow construction of the act where the sole reason therefor is that stated in the British case, *supra* (*Ellis v. Ellis Co.*, *supra*), that a member of the partnership can not place himself in the position of being a workman employed when he is one of the persons giving employment. * * * We see no reason why the members of a partnership can not jointly or severally perform the work or labor incident to the success of the joint undertaking and at the same time draw wages from the earnings of the partnership.

The Wisconsin law provides (sec. 102.07, par. 4) that "a working member of a partnership * * * shall be deemed an employee within the meaning of sections 102.03 to 102.35, inclusive."

The California board seems to have wrestled with the problem longer and succeeded in giving a slant to the question more comprehensive perhaps than elsewhere.

In 1916 the case of *Eva L. Cooper v. Bunker Hill Mines Syndicate* came before the supreme court (reported in 203 Pac. 95). Eva L. Cooper came before the industrial accident board asking compensation for the death of her husband, who was killed while working as a partner in said company. The industrial accident commission denied the claim upon the sole ground that at the time of his injury and death said W. L. Cooper was a member of said copartnership and was therefore not an employee of the copartnership within the meaning of the workmen's compensation act, and that the commission was without jurisdiction over the parties. The case being appealed to the courts, the decision of the commission was upheld by the supreme court, which relied as a basis for its action on the case of *Ellis v. Ellis Co.* (1905) (1 K. B. 324, 7 W. C. C. 97), the decision being in full accord with the law as first written in England and with the original acts of the States of the United States. It seems that this decision of the Supreme Court of California was not satisfactory to the people, for subsequently in 1917 the law was amended (sec. 8, ch. 586 of the Laws of 1917), said law now having this clause:

A working member of a partnership receiving wages irrespective of profits from such partnership shall be deemed an employee within the meaning of this section.

In 1921, the case of *W. L. Williams v. Green & Williams*, copartners, was before the Supreme Court of California (203 Pac. 95). In this case the industrial accident commission, basing its decision upon the power granted by the amended law, awarded compensation. Upon appeal, the supreme court reversed the commission, holding that Williams was not an employee. In this case it seems that Williams as a copartner was not receiving any wages, participating only in the profits of the partnership.

Later the case of *Johnson et al. v. E. B. and A. L. Stone* came before the commission. In this case the commission followed the decision of the supreme court in the *Williams v. Green* case above cited and denied compensation. The case was appealed to the supreme court and was heard February 25, 1926. In this case Johnson was not only a partner but was receiving as wages \$150 per month. The court in this case says, "This court can not hold that a working member of the partnership receiving wages irrespective of profits from said partnership shall not be deemed an employee within the meaning and scope of the act without doing violence to both the constitution and the provision of the act itself." The court ordered that the case be remanded for further proceedings before the commission in keeping with the views of the court.

From the above, it appears that the tendency is to include in workmen's compensation "working partners." It seems clear that the people of the United States are demanding that this class of workmen be covered. It also seems that the commissioners who have been intrusted with the administration of the law are coming more and more to the opinion that "working partners" should be included.

However, it is just as clear that the basic principle of workmen's compensation does not include "working partners." To me it is very difficult to distinguish between admission of "working partners" to the benefits of the law and the admission of the independent contractor, who also does manual labor. The question, therefore, which seems to confront us is whether or not we shall hold to the original idea of the law, or whether we shall make new laws to fit a situation which seems to be growing in favor more and more.

Law has to do with the regulation of the conduct of society and laws that have to do with one phase of society can not be independent of laws that have to do with other phases of society. Our fathers had no automobiles; hence no speed laws or traffic regulations. Whether appropriations should be made for the construction and maintenance of army planes was not discussed by the Continental Congress. The introduction of compensation laws was but a step in progress from the laws formerly made by and for the benefit of the ruling classes, first by the kings to rule and exploit their vassals, then by the masters to rule and exploit their servants.

In Germany in 1884, where and when the compensation laws had their birth, the masters hired servants and only the latter worked. The laws were framed to meet the existing conditions, but in this country where the free schools and compulsory attendance therein prevail there has resulted a citizenry with an equal opportunity of intelligence whether the childhood was spent in a family of wealth or of poverty. With such a citizenry and where more machinery is used and higher wages paid a very different situation has arisen. To-day, with us, man is or should be his own master and all are servants. One is not superior because he is employer or employee. The master man to-day is the one who succeeds in rendering the most helpful service to mankind.

Formerly the word "gentleman" did not apply to any man who performed manual labor, but to-day, in this great land of ours, the term applies to him only who serves worthily and well, whether with the pen or the spade, whether in the office or in the shop.

The master-servant thought has produced two great classes—we might say castes—each with no desire to mingle with or have any interest in the other, the one representing the man who supplies the wealth and the other the workmen. In too many instances the capitalists have too little interest in the welfare of the workmen. They strive to secure the largest number of hours and the least possible payment per hour; while, on the other hand, much too often the workmen have no interest in the property or output of the capitalists, striving for the smallest number of hours and the largest possible pay per hour. Our wisest economists and the great captains of industry tell us this condition can not continue if industry is to survive.

Do not understand that I am opposed to either organized capital or organized labor. In many enterprises the amount of capital necessary is beyond the one-man supply. Cooperation of men of means is desirable. The greater the capital, wisely managed, of a given industry, the less the overhead. The workingmen have had a rocky road to travel ever since they started to cooperate, but many of the difficult problems with which they have had to wrestle have been solved. As Abraham Lincoln was the emancipator of the black man,

so organized labor is the emancipator of the workman. These organizations are here to stay and to grow, and they should stay and grow, not, however, as antagonistic but as cooperative organizations.

Our efficiency experts tell us that the contented man is the best workman; but contentment and poverty were never in wedlock. Eight hours of work, eight hours of leisure, and eight hours of rest should be the heritage of every workman. No more does the owner of the plant depend upon its prosperity for his dividend than does the employee for his pay envelope. The old order of selfishness, arrogance, and antagonism could never produce the contented workman. It could never give him the shorter hours that he might spend more time with his wife and the kiddies. The old plan, too, furnished only a very lean pay envelope. It is readily seen that a change of matters with which society has to deal is before us. There must of necessity be a change of regulations.

We are to-day using a different term—industry—a term that belongs alike to the employer and the employee. Each succeeds only when the two cooperate. The interests of the one are the interests of the other.

Such men as Judge Gary and Henry Ford have found that much of the wealth necessary to carry on business may be supplied by the employees, so the latter are becoming more and more part owners of the industry. They have also discovered that when the workman is part owner of the industry he becomes more efficient in handling the machinery and more careful to protect it.

We have quite satisfactorily solved the safeguarding of machinery, but the fact that now about 83 per cent of the industrial accidents are due to the negligence or carelessness of the employee causes us to believe that part ownership would create in the workman a frame of mind that would go far toward eliminating that trouble. It stands to reason that a partner working as an employee would have a more intense interest in doing the work well, and certainly would more carefully observe safety rules; also, being interested in the profits as much or more than in the wage he might at the time be "pulling down," he would have a greater influence with the employees who are not partners. This view seems to be taken by a very large number of employers to-day; hence the growing tendency to interest as many employees in the business as possible.

When we consider this tendency of industry to combine the interests of employer and employee, who are more and more becoming joint owners, thereby making the places of employment safer and more sanitary, and making for greater efficiency, and when we consider that the tendency of the courts is to broaden the act, so as to cause it to be an avenue for the relief of any disability to a workman regardless of its cause or nature, we wonder whether the continuance and enlargement of such procedure may not prove destructive to the compensation laws.

Compensation for an injury is not accident insurance. The employer must pay to the employee. It seems anomalous to order the employer to pay compensation to himself. When we place the working partners under the compensation law we have broadened the act. Where shall we stop? What must be the character then of its administration? Can industry assimilate this increase and ever-growing burden and survive?

The position taken by the Utah board, namely, that partners either incorporate or provide accident insurance, might be the remedy. However, the tendency of the legislatures is to include working partners, and this condition we must meet. I am led to believe, therefore, that those who are most interested in the compensation laws of the several States should give this subject most careful attention, and if amendments to include working partners are proposed in the legislatures that they endeavor to have the amendments so worded as best to conserve the compensation laws.

DISCUSSION

The CHAIRMAN. Is there any discussion?

Mr. STEWART. When I sent out a circular letter asking for suggestions for subjects, some one suggested the subject of working partners for discussion. I thought it was one of the most foolish things I had ever heard of. When the program committee met I read the suggestion, and the other two members at once jumped at it, saying, "That is an important subject. Let us put it on the program." So we did.

Since that time I have heard of a case in which a man was injured who was one of two partners. He was awarded compensation for his injury. He has since bought out the other partner and is now paying compensation to himself for an injury which occurred to himself while working for himself.

Mr. DUXBURY. As you all know, I was very much interested in the paper despite the fact that, like the secretary, you probably thought the subject was almost in the realms of absurdity. I think we are all under obligation to Mr. Brown for the very able paper he has presented and the information which the paper contains. So far as I am personally concerned, I was almost entirely without information on the subject. The ramifications of the subject would occupy more of your time than I would feel warranted in using at this time. It seems to me that it divides itself into two parts: 1. What is the law in your particular jurisdiction? and 2. What ought the law to be?

It seems to me that the name "workmen's compensation law" is really misleading. These laws are not really workmen's laws. They are not ordinarily and primarily intended for everyone who works, because in the larger sense we are all workers, or ought to be unless we are drones. There are many men, who work in certain relations, who are not included in these workmen's compensation laws. There is the independent contractor who ordinarily works with his men; there is the man who works in some other relationship than that where wages, technically speaking, are produced, such as partners. There is an immense amount of work done in the relation of parent and child, and in very many relations people are performing work. In the beginning these laws were never considered as applying to those classes of people, but were limited to the conception of master and servant in the common law, or employer and employee as we have modernized it.

In Minnesota and some other States the law is made applicable only to the contract of employment. Unless you can find that contract of employment and that relation of master and servant, and the

work is done in that particular relation of master and servant, our workmen's compensation law, so called, has no application.

I think we feel that when a person is injured during the performance of his work he ought to receive some sort of indemnity for it. The word "compensation" is misleading. It is nothing but an indemnity, an accident indemnity for a particular relation. Who will undertake to say that what you pay to a man for the loss of an eye is compensation for that eye? Who will undertake to say that what you call the schedule compensation for the loss of a leg is compensation, so that the man is made as good as he was before in a monetary sense? It is an arbitrary accident indemnity to the employees for accidents arising out of or during their employment. That is fundamentally what it is.

The suggestion comes as to whether we ought to extend that peculiar benefit to other relations. We have some laws that have been passed because of this desire to extend some of these beneficent provisions to other relations. For instance, in Wisconsin, where they are ordinarily quite accurate in their use of language, they say, "A working partner receiving a wage shall be considered an employee."

A working partner who receives a stipulated payment for services which he performs for the partnership does not technically receive a wage, because "wage" is the technical name for the consideration of the contract of employment—wage or salary. When you speak of a wage, that belongs to the consideration of a contract of employment. What they possibly meant was that a partner who, by the articles of partnership, receives a stipulated amount of money may have the same benefits as an employee who receives a wage. Anyway, that is the way the courts construed it.

I have no fault to find with that. If any legislature thinks that that is a wise thing to do, of course it can be done. That particular indemnity may be extended to a worker in another relation if it is thought wise to do so. I am not saying whether or not it is wise. But, when you get started, where are you going to stop? What is the reason, if any, why any man working for himself should not be provided with an accident indemnity when he is an individual proprietor as well as when he happens to be a partner? I can not see any particular reason why he should not be. Society is just as much interested in his being protected when he is the sole proprietor, working for himself entirely, as it is when he has a partner. One partner does certain things in consequence of the articles of the partnership—furnishes certain things; the other fellow furnishes manual labor, and as a result of their articles of copartnership he gets a stipulated amount, which is not a wage in the technical sense. We can extend that law so that finally we are all provided with accident indemnity, because we are all workers in a certain sense.

There is another thought that occurs to me. In the relation where workmen's compensation laws were established it was done because of the peculiar rules of liability which existed therein more than anything else. The social question had something to do with it. But to get away from the defenses involved in the contract of master

and servant—assumption of risk, the fellow-servant rule, contributory negligence, and that sort of thing—was the reason for the law.

Certainly there was a prime necessity for this class of law. We have not yet exhausted that primary field. We were talking here a short time ago about millions of men performing work in the relation of master and servant who were still without the benefits of that law. We have excluded domestic servants; in our State we have excluded the employees of steam railways; and we have excluded casual workers, not in the usual course of business or occupation of their employer.

We still have not covered our primary field. We are a long ways from covering that and giving this remedy to the relation which peculiarly requires it. It seems to me we do well to apply the law in the relation where it belongs. Let us keep ourselves there, complete our work in that field, and then possibly extend its beneficent provisions to some other relations.

I can see how it can easily be done in States like Ohio, which is conducting practically an accident indemnity insurance. I know lots of people do not like that name, but essentially it is that. It is an accident indemnity law and an accident indemnity company. The State can make provisions by which it can extend the benefits of the law to individuals in other relations upon proper payment of premiums to take care of that. But is it best for us at this time, in our present rather chaotic and undeveloped and primitive state of law, to apply this to other than the relation of master and servant? Is it best to go afield until we have completed it in the particular field where it peculiarly belongs and where it meets the conditions as aptly as it does?

These working partners are big enough to run the business; let them take care of their obligations. If they need accident insurance, let them pay for it, while we as administration boards attend to the particular field in which we belong until our work is completed.

I am making these statements only for the purpose of the thought. I have no fault to find with those States which have thought the condition would warrant and require them to go into some other fields; in other words, to redefine the relation of master and servant or employer and employee. The California decision was evidently, unquestionably and absolutely right. That decision, based on the *Ellis v. Ellis* case, was unquestionably right, because that law applied only to the relation of master and servant, and the disability of the injured did not arise in that relation. The second time the law was amended an attempt was made to bring what is known as the working partner under the provisions of the law, with the condition that by the articles of partnership he had a stipulated payment upon which a premium was paid as on the pay roll. In the case that came up the last condition did not obtain, so, of course, the man did not come within the terms of the law, and the decision was undoubtedly sound.

In studying these decisions as they were given in the paper it seemed to me they are all sound and can all be harmonized. Probably each one depended upon the particular provisions of the law under which it arose. In the State of Minnesota there would not be any question that a working partner, so called, would not be

entitled to compensation, because our law is simply made a part of the stipulations of a contract of employment. All contracts of employment are presumed to have incorporated in them as a part of their stipulations all the provisions of this law. That does not mean that if our compensation law, so called, is a part of the contract of employment, that it is likewise a part of a contract of partnership, as that is an entirely different contract.

We could not under any possible interpretation hold that a working partner, although injured in the course of the employment, was entitled to compensation. So I think that it is largely a question in each State as to what your law is—what relation it applies to—and then a question as to whether or not you want to extend that law into another relation before you have completed its application in the primary relation to which that kind of law applies.

Mr. SINCLAIR. In the Provinces we do not find any difficulty at all in extending the benefit of the act to employers as well as to employees. In Ontario any man who puts in a wage roll and asks to be covered must cover himself for not less than \$1,200 and not more than \$2,000. If he is willing to put himself on his pay roll for \$1,200 or \$2,000 and pay his assessment on it, we do not see any reason why he should not receive the same benefits from State insurance as the men he employs. More often than not the carpenter who employs one or two men is worse off than the men he employs. He is anxious to have the same benefits of the act as the employees. We cover such men right along.

The only difficulty we have run into is in connection with stevedores and longshoremen unloading boats. They take a contract to unload a boat at so much per bushel. They all work together; they have no head. We have to get them to give us a name. They will give us some such name as the Fort William Longshoremen. Then we try to strike an average basis and tax them on this basis in connection with their systems. We try to cover them because they are really all laborers, employees, although they work together under one head and do not take wages. We find no difficulty—and we do not reduce it to an absurdity—in paying the employers as well as employees.

Mr. STEWART. Who pays the premium in that type of trade-union, such as the longshoremen who take the contract rather than work under set wages?

Mr. SINCLAIR. They call themselves a cooperative association or some trade name, and we assess them under that name, and then they pay as a union. They are really all employees, although they take the contract in that way.

Mr. McSHANE. What about independent contractors?

Mr. SINCLAIR. We would insure them if they asked. We try to cover everybody who wants to be covered in that way.

Mr. McDONALD. In North Dakota we have a State fund. Whether or not insurance employers or independent contractors insure is optional. We set a State wage per week for them. The employer's wage is placed at \$40 per week; other classes, \$35. We have something like 300 employers within the insurance act. They sign a separate contract with us independent of their pay roll. They must

have a pay roll of their own. They can not come in if they do not have anyone working for them. They pay the salary of \$40 for contractors and \$35 for laborers.

Mr. PARKS. I can readily see where there is a great opportunity for fraud if working partners are going to be let in. We could not do that in Massachusetts under conditions as they are at present. There must be the relation of master and servant. A man can not be his own servant within the meaning of the law. The insurance company has to depend upon the report of the employer primarily for the information on an accident. What a wonderful opportunity for a dishonest working partner. There are some who are not strictly honest. I have met some of them. What a wonderful opportunity to send in a report of an accident to himself, by himself, to the insurance carrier, and then collect compensation for himself, on the story that he tells in his own accident report, upon which the insurer must depend. There is no one to correct him. He is the employer. He is reporting his own accident, and he can make it as complete as he cares to, in order to fit his particular case, and proceed to put himself on the pay roll of the insurance company for an indefinite period.

I sat on the case of a working partner in Massachusetts, and the lawyers attempted to show that it was a corporation and not a partnership. Of course a man could work for a corporation, because it is a distinct legal entity in the law, and a lawyer who was a shareholder in the corporation could be employed by it. I thought the lawyers had proved it was a corporation, but the supreme court disagreed with me and that case was thrown out. The supreme court called it a partnership. I can see that element in it; that there is a great opportunity for fraud on the part of an unscrupulous working partner in working up a case for himself.

Mr. McSHANE. I wish to supplement what Mr. Parks has said. It has been my limited experience in businesses that the way ordinary business is conducted in these modern days, if it is worthy of the name of a business, is by incorporation. It seems to me that if a man is not reporting to himself, he is probably doing it to a member of his family. As I have observed partnership arrangements the partnership is a family affair, because none except those in one family seem to be able to get along that way.

I am wondering whether this class is of sufficient size to give so much attention to. I do not believe that in the United States in a year there are 500 cases of a working partner being injured. I do not believe this problem amounts to much.

Mr. HUBER. Did I understand Mr. Duxbury to say that a subcontractor does not come under the compensation law?

The CHAIRMAN. We are speaking of working partners.

Mr. HUBER. I understood him to say that a subcontractor does not come under the law.

Mr. WILCOX. No; he does not. I think, like Mr. McShane, that after all this is not so serious a matter. I know the history of the legislation in our State. The insurance companies were doing very much what Mr. Sinclair says the State fund does in Ontario, covering a large number of so-called working partners. They were

always in difficulty as to whether or not they did not have to have a separate policy instead of regular workmen's compensation, as to the question of discrimination, rebating, etc. So it was desired that the matter should be covered and covered affirmatively.

So far as chance of fraud is concerned, there are not 10 per cent of the partnerships that are family arrangements. With corporations it is different; the wife and daughter are taken in in order to get three or four members according to statute, when as a matter of fact it is a one-man corporation. We use the term "working for wages" in order to make sure the insurance company collects premiums on an adequate wage, so that when these men recover they are getting paid for their covering. There are large numbers of partnerships and corporations in which only one man is concerned.

In the threshing industry in our State there is one man who bears the responsibility, while there may be half a dozen farmers in a community who own the threshing machine which they operate for profit. The one man exposes himself to the hazard. The others take the profit, if any, and the one man has all the hazard, with no chance of recovery. I think there is nothing inequitable in a partnership as an entity discharging its liability to the man in the partnership who actually exposes himself to the working hazard, takes all the brunt of the operation. Let us prorate to him.

The CHAIRMAN. We have a paper to be read by Mr. Hatch, of New York, which will have to be disposed of before the motion that was held over can be acted upon.

Mr. HATCH. I probably am not going to throw much light on the question of whether you should or should not adopt the report of the special committee on eye injuries. It is not the purpose of this paper to argue that question pro or con. What I have undertaken to do is to set before you some implications or some results that would follow from the adoption of that report—that is, the report of the committee of the American Medical Association.

WHAT SHALL WE PAY FOR AN EYE?

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

This association has on record, with an affirmative vote of indorsement (at the St. Paul meeting in 1923), a proposed standard permanent disability schedule² in which there is a rating for loss of an eye. This, like the other ratings in that schedule, is expressed in the form of a percentage of permanent total disability, with the rating for the latter on the basis of disability for life.

The committee on statistics, which prepared this permanent disability schedule, utilized all the material it could find (including existing foreign as well as American disability schedules in use) in formulating the standard schedule, but made it plain in its report that after all it had had to work under the handicap of much lack of desirable material needed for such an undertaking. The result was that the schedule was presented and was adopted more or less

² This schedule may be found in the proceedings of the St. Paul meeting in Bulletin No. 359 of the U. S. Bureau of Labor Statistics, p. 17.

as a tentative proposal, which means that any new light on the problem in general, or on any of the items in such a schedule, is highly important and a matter of interest to this organization under whose auspices the existing standard schedule was worked out.

It so happens that during the past year some very weighty evidence with which to test one of the most important items in the schedule, namely, the rating for loss of an eye, has become available, and having come to the attention of the writer it seemed that it would be appropriate and of interest to the association to lay the evidence before this convention. Although the writer is chairman of the committee on statistics, it should be understood that he is here speaking individually and not for that committee.

The new material bearing on the rating for eye injuries is in the report of the committee on compensation for eye injuries of the Section on Ophthalmology of the American Medical Association. This is the report presented at a late hour to the Salt Lake City convention but which went over to this meeting for report by a special committee and which has already been considered in general. What it is desired to do now is to bring out what its significance is with relation to the standard rating for loss of an eye and to what the various laws now allow for loss of an eye. More specifically, let us see what the compensation for loss of an eye should be when gauged by the method of measurement recommended by that committee, which by indorsement has behind it the authority of both the Section on Ophthalmology and the house of delegates of the American Medical Association.

Before taking up the specific subject of the value of an eye for compensation purposes, it is of considerable interest to note that the committee on compensation for eye injuries lays down a general principle as to determining compensation for loss of vision which is precisely the same as that in the standard disability schedule of your committee on statistics, namely, that compensation for loss of vision should be in terms of a percentage of permanent total disability. The eye committee's recommendation on this point reads as follows:

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. * * * 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.

It is difficult to see how any differentiation can be made between eye injuries and other permanent disabilities, at least those of the more serious sort, in the application of this principle. So that the advocacy of it by the committee for eye injuries supports its general application to permanent partial disabilities generally as is done in the standard schedule.

Coming now to the question of what value in compensation should be put on the loss of an eye, let us see what that value is when ascertained according to the method of measuring loss of vision recommended by the committee on compensation for eye injuries. To do this it is only necessary to measure by the committee's method the loss of vision resulting when the injured person has lost the vision of one eye entirely while that of the other is unimpaired.

By the committee's formula, in order to ascertain total vision remaining (or total "visual efficiency" as its term is) for the two eyes together, the percentage of vision in the more efficient eye is to be given a weight of 3 and that in the less efficient a weight of 1, in combining the two. In the case here in hand the percentage of vision in the good eye is 100 while that in the other is 0. Applying the weighting formula, therefore, the computation is 100 multiplied by 3, plus 0 multiplied by 1, equals 300, and this divided by 4 equals 75. The person who has lost one eye, therefore, still has 75 per cent of total visual efficiency left. Conversely he has lost 25 per cent, and he should therefore be awarded for loss of an eye 25 per cent of what is allowed for permanent total disability.

The weighting given to each eye for the purpose of arriving at a combined result for the two together is obviously all important. Concerning this the committee says in support of the weighting it chose: "The researches of the committee show that a weighting factor of 3 applied to the more efficient eye gives an efficiency 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."

How, now, does this rating by the eye committee method of 25 per cent of permanent total disability for the loss of an eye compare with the rating set up in the standard disability schedule of the committee on statistics of this association? The latter rating varies with the age of the injured employee, but at age 35 it is 21 per cent of permanent total disability. Age 35 is taken here because that was the median age of those who under the New York law were awarded compensation for permanent partial disability in the year ended June 30, 1924, the total number of such cases being 15,526, including 823 cases of injury to one eye.

It will be seen that the formula of the committee on eye injuries gives a rating considerably higher than that which was earlier adopted by the committee on statistics of this association, nearly one-quarter higher, in fact, at age 35. Considering the weight of authority back of the eye committee's findings and the more extensive study of this particular rating which they represent, it would seem that its rating of 25 per cent of permanent total disability for the loss of an eye should be preferred.

But most jurisdictions do not rate permanent eye or other injuries in terms of percentages of permanent total disability. Instead, the statutes fix a definite number of weeks of compensation to be awarded for each kind of injury according to the part of the body involved. So far as anyone can discover, the numbers of weeks so fixed have been derived only by copying from one law to another, with some modifications by amendments based on general estimates in some cases. At the very best they can hardly be said to represent better than more or less intelligent opinions and rarely anything like the results of careful investigation of actual loss of earning capacity resulting from such injuries.

In the case of eye injuries we now have very carefully studied ratings in terms of permanent total disability. If the rating for loss of one eye in that form can be translated into its equivalent in

the form of a fixed number of weeks of compensation, we shall be able to test the limits set in our laws for loss of an eye by the result. This can be worked out in the following manner:

An award of compensation at 25 per cent of permanent total disability would mean an award for life of 25 per cent of whatever a given law fixed as the compensation rate, which in most jurisdictions is two-thirds wages. The fixed numbers of weeks usually set in the statutes for permanent partial disabilities mean the numbers for which compensation at the full compensation rate is to be awarded. The problem then is to find what number of weeks to award at age 35 at the full compensation rate which will be equivalent to an award for life at 25 per cent of that rate. The key to the solution of this is evidently the expectation of life at age 35. This factor may be applied by using the tables for computing present values of awards, for the purpose of commuting future payments to a present lump sum, which have been established for that purpose under the New York law. Such tables are available both for permanent total and permanent partial disabilities. In both cases they take account in the same way of life expectancy as well as discount for interest earnings. At a compensation rate of \$20 (the maximum under the New York law) an award of 25 per cent of permanent total disability would be an award of \$5 per week for life. The present value of that at age 35, according to the New York tables, is \$5,062. That is almost exactly equal to the present value of \$20 per week for permanent partial disability for 277 weeks, the precise sum for the latter being \$5,060. In other words, at age 35 the equivalent of an award for loss of an eye of 25 per cent of permanent total disability is an award of 277 weeks as for permanent partial disability in the usual fashion.

Two remarks should be made concerning this computation. One is that the result would be the same if any other compensation rate than \$20 were taken. The other concerns the use of age 35 as here employed. Compensation is for loss of earning capacity. In case of permanent injuries the loss is obviously much greater at lower than at higher ages because suffered for a longer term of years. It must be assumed that any fixed number of weeks for a given injury is supposed to be fair for the average age of those suffering the particular injury in question. As above noted, age 35 was the average in New York for a year's permanent disabilities of all kinds. An average for eye injuries alone in that year would have represented only 823 cases, while that for all permanent partial disabilities was for 15,526 cases. An average for the latter is more dependable because representing so much larger a number of cases and is a fair one to use.

It will be seen that what we have found is that the conclusions of the committee on compensation for eye injuries support the view that if a law is to retain a fixed number of weeks to be awarded for loss of an eye, 277 weeks is a reasonable number for that purpose. I have not undertaken to check up exactly how this compares with what present laws in the several States provide. I believe, however, that I am correct in saying that no State has a rating for loss of an eye anywhere near as high as that.

The conclusion of this study of some of the implications of the report of the committee on compensation for eye injuries, which is

impressive for the care and time spent in preparing it and the weight of authority which supports it, is that the report practically challenges the soundness of existing compensation laws in this country on two points: First, the compensating of permanent partial disabilities for fixed numbers of weeks instead of as percentages of permanent total disability, and second, the adequacy under the fixed numbers of weeks method of present allowances for loss of an eye.

DISCUSSION

[It was moved by Secretary Stewart and seconded by Mr. McGilvray, that the report of the committee on the Black eye schedule be adopted.]

Mr. LANSBURGH. May I ask what this motion is, specifically?

Doctor DONOHUE. I want to say that as chairman of the medical committee I submitted a report, and that report I prepared myself, because the committee has never been able to get together. It is not Doctor Black's report; it is simply my report on Doctor Black's report.

Mr. LANSBURGH. May I ask Doctor Donohue if that recommendation includes that of this association going on record as approving the principle that eye injuries be compensated on the basis of a certain percentage of total disability regardless of the compensation rate in any particular State?

Mr. McSHANE. I made the motion. The motion was that we adopt the report of the Salt Lake City committee, which virtually adopted the Black committee report, the principle being that this convention go on record as approving the principle that loss of vision in eye injuries should be compensated on the basis of permanent total disability. I wanted to have it understood, though, that the test should be without the correcting lenses. In other words, I wanted the report accepted as it was, except that compensation should be paid without corrected vision.

Mr. HATCH. If I am correct in my reading of Doctor Black's report, when a man has total loss of one eye—that is, zero vision in one eye—and 100 per cent vision in the other, Doctor Black's formula works out so that he has 25 per cent total disability as an award for that injury, while the Black committee recommends that a man's vision should be aided by whatever lenses are practical and that then the total loss of vision thereafter should be compensated.

Mr. WILCOX. I think we ought to keep in mind that Doctor Black's tables have only an incidental effect upon compensation. He is not undertaking to say how much compensation should be paid to anyone, further than that the loss of vision shall be based on a percentage of what would be recovered for all permanent total disability and then to develop tables for the measurement of the extent of the loss. I think that Doctor Donohue is quite right in his 18.2 per cent figure, but that is only for one certain measurement. If everything is gone then that is 25 per cent. I think I am quite right in that.

[The figure was verified by Mr. Baldwin.]

Mr. WILCOX. I do think that as a group we ought to agree that we are going to come to some other system of measurement than that we are now using.

Mr. McSHANE. The report we have been discussing is on page 81 of the Salt Lake City convention proceedings. It was a report made by the Section on Ophthalmology of the American Medical Society after years of study. I believe that the principles that are set out in that report should be adopted by this convention. I know that the system in our State is very bad, and I want to go home from this convention with something that has the backing of this association and attempt to get a change in the law.

I move the adoption of the report of the Section on Ophthalmology of the American Medical Society as published on page 81 of the Salt Lake City convention proceedings in so far as the principles set out are concerned.

The CHAIRMAN. Your motion is out of order.

Mr. McSHANE. It was my motion and I have the privilege of restating it.

Mr. LANSBURGH. I do not want to seem to be opposing high compensation rates, because I am in favor of them in most cases. But as I understand this matter as worked out here on the floor, with a maximum compensation rate of \$20, which is the rate in several jurisdictions and other jurisdictions are striving to get the same or a higher rate, the loss of an eye figured on this basis would amount to somewhere around \$5,500 or \$5,600. I seriously question whether that is the proper compensation in most cases. I think the figure is too high.

Mr. McSHANE. How do you get that figure?

Mr. LANSBURGH. If you take 25 per cent of the total disability at \$20, that is what you get.

Mr. HATCH. It ought to be understood that that is the way it would work out under the standard tables for computing values used in the State of New York. The Danish mortality and Dutch remarriage tables are used. It does not make much difference what table you use; it will work out approximately the same.

The main point is that Doctor Black's committee says that after long study it thinks 25 per cent of permanent total disability is a fair and proper allowance of compensation for the complete loss of vision in one eye. That is the fundamental thing. How it works out from your different limits of compensation or methods of computing values is another thing. It would work out differently in different States. I worked out a proposition in New York because I had material handy for that. The question of whether or not Doctor Black is recommending too much for an eye can not be judged on the question of whether it would work out to be worth \$5,600, because in some States it might be \$2,000. What it will work out in terms of dollars and cents will depend upon the provisions of your law and various mathematical computations.

Mr. LANSBURGH. What we are trying to do in some States is to get something which we do not now have—that is, compensation for life in total disability cases. We have certain limits—500 weeks, for instance, in Pennsylvania. In Pennsylvania the 10-year period is expiring and we are finding men on the flat of their backs and unable to move a finger whose compensation is about to expire. It is my opinion that we can get through the Legislature of Penn-

sylvania a provision taking care of those men for life; that is, total disability cases.

I am sure that if we were to hitch to that another amendment providing for the payment of an eye on the basis of a fraction of total disability we would lose the whole thing, because, regardless of this committee's report or anything else, we know a man can continue working throughout his life without that eye; the two propositions are entirely dissimilar.

Furthermore, if we adopt this report, not only are we going to limit the efforts in those States to have compensation for actual total disability increased, but we are definitely going to hinder safety work and accident prevention work. The medical provisions of the report seem to be extremely fine, but this particular provision is not a medical provision.

All of us are trying to save eyes, and we want to compensate for them when lost. But you can save eyes by wearing goggles. In the State of Pennsylvania we have been conducting a campaign for saving eyes and in the year 1925 we had one-quarter fewer eye losses than in 1924. The first six months of 1926 show a corresponding decrease. There are many men who will be willing to take a chance for \$5,000 who would not take it if the compensation were at a considerably lower figure. I think the adoption of this resolution by the convention would very definitely have the tendency to make more difficult the struggle which we are putting up in practically every State to get men to wear goggles.

Mr. WILCOX. I do not want to have a part in trying to force upon any member here any figure or any plan by which we undertake to determine in advance or determine here the amount of compensation to be paid for anything in his State. I wonder if the following is not only a way out of this and yet one by which we will accomplish something definite. Is it not practical to decide here and now that we adopt the standard plan by which the American Medical Society rates eye disabilities, reserving to every community the right to determine the starting percentage for the loss of one eye—not binding ourselves to the percentage feature but just preserving that committee's plan of measurement? We can do that by just changing that factor.

Mr. McSHANE. That is the thought I have in mind. I had no hope of getting the States to pay \$5,000 for an eye. But I believe this conference can weight those factors differently for the good eye and get a compensation that is fair. We can fix it some way so there will be a maximum to which the legislature will adhere. I know those are details that have to be gone into carefully.

Mr. SINCLAIR. Just one point. I have been trying to determine where the 18.2 and the 25 per cent come in. So far as I can figure it out, while the loss of visual acuity is 25 per cent, his loss as a wage earner is only 18.2, because the loss at 25 per cent of visual acuity does not reduce his efficiency as a workman more than 18.2 per cent.

Doctor DONOHUE. That is right.

Mr. SINCLAIR. That is about the percentage we take in Ontario. For a complete loss of an eye we grant 16 per cent of total disability.

If the man's eye is taken out entirely and articulated, we give him 18 per cent, which takes care of supplying him with a glass eye and repairs for a year. I was merely trying to square those percentages. [Upon the request of Mr. Bynum the motion was restated by Mr. McShane.]

Doctor DONOHUE. It appears to me that Mr. McShane approves the resolution and then puts the scissors to it. I think Mr. McShane will have to change his idea on the glass question.

Mr. McSHANE. I eliminated that.

Doctor DONOHUE. I think the first part of your motion is all right, but if you go to work to try to cut it, to dissect it, and then touch it up in its various details, you are going to spoil the effect of your motion.

The CHAIRMAN. I would like to make this observation before Mr. Hatch speaks, that any action here would hardly bind any State or any legislature.

Mr. HATCH. I want once more to emphasize what I said at the start, that my paper was rather an illustration of how the report of Doctor Black's committee would work out and apply under the conditions that exist in New York State. I am talking about one State and certain conditions of computation of certain values in a certain State. The big thing to vote on is the general principles of the Black schedule. As Mr. McShane has suggested, the question of how you should apply it in your own law or procedure is a matter of detail for the State.

Mr. LANSBURGH. May I ask Mr. Hatch a question? Why do you feel that the determination of eye loss on the basis of the total permanent disability is a fundamental feature of this committee report? It does not seem so to me.

Mr. HATCH. All I can say about that is that the Black eye committee set out with a clean slate to investigate the whole problem of measuring loss of vision in eye injuries for purposes of compensation. What it arrived at was a principle as a basis for such measurement, namely, that eye losses should be measured in terms of percentage of permanent total disability, which is exactly the conclusion which the committee on statistics arrived at several years ago. So far as I know that is the proper basis for measuring any permanent partial disability.

If you will allow me to interject a word of history, that is the way permanent partial disability was rated under the first compensation law in Germany, and it is still rated that way.

There is nothing new or revolutionary in the conclusion of the eye committee. As I tried to make plain in my paper, the committee on statistics arrived at the same results some years ago (only by a different route), namely, that the principle of measuring permanent disability by an arbitrary number of weeks applied in all cases is absolutely arbitrary and has nothing in reason or justice to commend it, but is merely a good working way to get the matter settled. We found out how much loss of earning capacity a man had actually suffered; that was the loss he suffered for the balance of his life in permanent injury. That is what the eye committee said.

I happen to know the type of their investigation. The members of that committee did not just guess. They went into plants and investigated scores of cases of men who had suffered eye injuries, and their conclusions were based on careful investigation and measurement of what the man with a certain loss of vision was actually able to do. As far as my knowledge goes, their recommendation for measurement of eye injuries is the most intelligent recommendation and is based on more real investigation of facts than any other rating of permanent disability that I know anything about.

Mr. DUXBURY. I have been listening to see if I could get any understanding of what we are all talking about. I have not made very much progress, but have got far enough to ask a question. It does seem to me that this plan that we are proposing is based upon a schedule of compensation that corresponds to the schedule which was adopted by this association as the proper schedule for measurement of permanent partial disability; that is, that this is only another tool to work with on that plan.

So far as my information goes—I may be wrong about that—there is only one State in the Union that adopted that wise suggestion to change the schedule—the State of Wisconsin, I believe, adopted it in part. Are there any other States that have adopted it?

Mr. McSHANE. Wisconsin beat us to it.

Mr. MCGILVERAY. California has adopted some of it; not entirely, but partially.

Mr. DUXBURY. Then this resolution would perhaps help out in the first step, but to the rest of us who are still dragging along with our old-fashioned schedule of so many weeks for this, that, and the other, how would this help us?

Mr. PARKS. I am glad Mr. Duxbury has brought that up. I find he is in the same quandary as we are in Massachusetts. We pay a man according to the disability he has suffered in his particular line of work. For instance, if a man who is a laborer with a pick and a shovel loses an eye, he can go ahead and do pretty much the same work. But if a fine-tool worker loses an eye he is totally disabled for the rest of his life. So we pay according to the individual loss.

This resolution would be of no benefit to us except that it may be used in this way: When this dispute does come before a member of our board as to whether a man is or is not able to work, some wise insurance man will say, "You were at the convention when they decided that a man who had lost an eye lost only 18 per cent of his earning capacity. Therefore he still has 82 per cent left and is able to earn his living, so he is not disabled at all." That is the way it would work out with this resolution.

I offer as an amendment that this convention recommend that in those States that give a percentage of wages for a certain specific injury this schedule be adopted and leave the other States out of it. That is merely a suggestion. If the convention wants to take it up, all right.

The CHAIRMAN. I hear no second.

Mr. STEWART. I confess I am somewhat surprised that a delegate to this association can not see what a resolution passed by this association is going to do. If the action of this association means noth-

ing, then I think we had better adjourn sine die and stop the organization entirely. Unquestionably the action of this association would have an influence on the legislatures contemplating a change in their system. If we have no influence at all, we are spending a lot of time and money rather foolishly.

All this resolution does is simply to put the association on record as being in favor of a change of method of evaluation. You adopted a schedule of rates, which we published in Bulletin No. 276, and not 5 per cent of you have ever operated under the schedule that you agreed upon, and fewer of you are doing it now than was true when we adopted the schedule. Once in a while a legislature incorporates it in an amendment to the law; once in a while a new commissioner comes in, and in trying to find some change to make adopts the methods that we approve. Certainly you can not afford not to approve of a better method.

This matter has dragged along since the St. Paul convention. I do want to see it settled here this afternoon and wipe it off the slate.

Doctor McBRIDE. I heartily agree with the motion, with this mental reservation—I was wondering what effect it might have on the individual who was suffering without his knowledge from some disability which probably brought on the injury, whether trivial or not. That is the only thing I am concerned about. If a man loses an eye, I am perfectly willing to go all the way. But what effect would that have on the great mass of people suffering from defective vision, which would be disclosed for the first time when the accident occurred? How would it work out? Would that be disadvantageous to the people responsible for paying compensation or not?

The CHAIRMAN. We have about that same trouble now in determining the amount of vision lost when men come before us who have been that way for some time.

Mr. McCOLL. I have listened with a great deal of interest to the discussion which has been going on. I have heard the secretary say that this schedule would be an improvement. Possibly we are behind the times in Minnesota, but there we have a fixed sum for permanent total disability; that is \$10,000. Permanent total disability is described as loss of both eyes, loss of both arms at the shoulders, loss of both legs at the hips, and total paralysis. There has been some confusion in my mind as to whether you were going to figure that disability at 25 or 18.2 per cent. As I understand it, there is something in the report saying that a man is industrially disabled 18.2 per cent. Is that right, Doctor Donohue?

Doctor DONOHUE. Yes.

Mr. McCOLL. In Minnesota we pay 100 weeks for the loss of one eye and two-thirds of the wage, with a maximum of \$20; so that many men with the loss of one eye would get \$2,000 for the loss of one eye. If it were 18.2 per cent that was figured on our total permanent schedule, they would get about \$1,820 or \$1,900 plus, a little over; if 25 per cent, \$2,500. That percentage, I take it from the discussion here, is irrespective of the wage that the man earns. Of course, to get \$20 a week, in Minnesota, he must have earned \$30 or more per week. I take it that in the proposition here the

amount of wage earned is not considered the same as it would be in the other schedule. Am I right?

Mr. SINCLAIR. It is computed the same as partial disability.

Mr. DUXBURY. According to the rules applying in our State, it might result in taking a little longer to get it.

Mr. STEWART. It has been one of the misfortunes of this organization from the start, perhaps necessarily so, that it has been impossible for us to see the forest for looking at the tree. It seems impossible to grasp a principle, a general theory of a thing, for analyzing what each State does. If you are in favor of the principle, say so; if you are not, say so; and let us get this settled once and for all. It has dragged along four years now, and it is not much to our credit that we can not decide whether or not we want to adopt that report.

Mr. WILCOX. I would not want to see this convention say to the American Medical Society that we do not approve of the studies it has made on this matter of the determination of the extent of loss of visual efficiency. I am fearful that we are so at swords' ends here that we are going to do something harmful to ourselves. I want to see this principle the Medical Society has recommended adopted.

I wonder if we can not agree to this—if so, I am willing to make it as a motion: That it is the sense of this convention that the plan proposed by the American Medical Society for the rating of disability of eyes, in so far as it takes into consideration direct vision, depth vision, and field vision, and the muscular functions, shall be approved as the plan for the measurement of eye disabilities under compensation, reserving to each State the right to determine whether that shall be a system which takes a percentage of permanent total disability or otherwise.

[The motion was seconded by Mr. Williams.]

Doctor DONOHUE. That is really the approval of the report; that is exactly what we want.

Mr. DUXBURY. I do not think that this association should accept something which it is not convinced is right, merely because it has come from on high—we do not know what is the matter with it but we ought to give it our approval. That kind of approval will soon result in the recommendations of this association being a dead letter, as they ought to be.

If we can not understand what we are doing and know the merits in the case, we should not recommend it to anybody else. I think that no one should be chided for asking questions about this and trying to understand its merits, so that if it ought to be enacted into the laws of the States of this Union we can be intelligent advocates. That is my purpose in asking these questions.

I have been impressed with the thought, and probably others of you have, that in trying to make an award for an eye injury based upon our crude schedule of so many weeks and trying to determine the percentage of disability for that particular eye, we are doing it by unscientific methods, and are taking the crude guesses of men who do not know any more about it than we do; perhaps we may give one 50 per cent of total loss of the eye, or 75 per cent, and probably another 60 per cent or 30 per cent. It may not be quite so bad as that, but there ought to be some method of determining the

physical facts, as this report suggests, involved in the function of the eye, and then from the determination of those physical facts we could get a more accurate determination of what is the percentage of disability while we have to work under the schedules we have. Of course, when we get better schedules adopted, it will work out much more easily.

At the St. Paul convention, where this matter was adopted, I protested that this matter needed more debate. It was there suggested, in the spirit that it had been dragging along and we wanted to get rid of it, that it be adopted in order to have something definite. We do not want to get rid of anything that is worth while until we know how we feel in the matter. If we can not afford to spend that much time on it, if it is not worth while to comprehend it, we had better do as I have heard it said—when in doubt, vote “No” as a wise vote. It is a true saying, I think. Unless we are satisfied that the thing is worthy, that we ought to stand behind it, we have a right to oppose it until we can be made to understand its merits.

I am convinced this is a very valuable report. I have studied it considerably. Besides that, I will do with it as I have done in a great many other instances—I frequently adopt the conclusions of men who know a great deal more than I do, as I think we all do—and I will vote for this report.

Mr. McSHANE. I would like to withdraw my motion, with the consent of the second, and adopt the suggestion of Commissioner Wilcox, of Wisconsin, and second his motion; that is, that we adopt the factors set out in the Black report for measuring the disability or the loss of visual efficiency of the individual. I think I am perfectly safe in doing that, because at the St. Paul convention after two hours of debate we adopted the principle I am speaking about. [The second consented to the withdrawal.]

The CHAIRMAN. You have heard the motion. I do not want to shut off any argument or discussion, but want merely to tell you that we have not much more time.

Mr. HATCH. What is the difference in effect of the adoption of this motion or that of the original one? The committee does not recommend any amount as compensation for the loss of an eye. It merely presents a method of measuring visual efficiency. I can not see that this last motion is anything other than a restatement of the original motion. I want to be sure I know what we are indorsing.

Mr. WILCOX. I had the thought, Mr. Hatch, that this report is so built up around the idea of 25 per cent for total loss of vision of an eye as to give members the impression we were adopting something they did not want to apply to systems they are now working under. After all, they get those figures from the relating of measurements of visual efficiency, depth of vision, field vision, etc. If we can adopt that part of the report which uses the same relation of those factors and still not bind ourselves to say the loss of an eye means 25 per cent of permanent total disability, I think we will have accomplished a lot. We will at least have that system of determining what is the loss of visual efficiency in the working function of the eye. Then we can take it and apply it to permanent total

disability or apply it to your weeks for loss of eye, or whatever method of compensation rating you use. That will preserve harmony and accomplish something.

Mr. HATCH. I hate to delay this matter, but that is the most dangerous thing you can possibly do. To go back home and take present limits for loss of eye in a certain number of weeks—it is 160 weeks in New York—and apply the Black method of measurement, would very decidedly lower your awards for loss of an eye. That is exactly what would have happened if we had gone on with 160 weeks' limit. You can not very well divorce the method recommended by Doctor Black's committee from the principle which it laid down as the basis for the whole thing: that in trying to measure it you must measure a percentage of permanent total disability. It recommends on that basis and if you have another arbitrary basis, you get a totally different result from Doctor Black's.

Mr. BYNUM. I am not ready to vote upon this matter. I am going to make the motion that Mr. McShane's motion be tabled.

The CHAIRMAN. The motion before the house is the motion suggested by Commissioner Wilcox of Wisconsin. Mr. McShane withdrew his motion and consented to indorse the motion of Commissioner Wilcox. Are you ready to vote?

Mr. WILCOX. May I say one thing? Mr. Hatch thinks my motion is dangerous. I realize perfectly that measuring according to the standard set up by the American Medical Society may mean reduction of the amount of recovery. I am perfectly sure that in a large number of cases that is exactly what will happen. But if it does mean that, it means it because we have been measuring inaccurately. If all usefulness of that eye is gone, then it will be compensated in any of our States according to our present tables; we will not need any method. On the other hand, if it is only partial loss, then we will determine the extent of that partial loss by these factors which the American Medical Society has applied, and then take that relative proportion of the schedule, whatever it may be.

Mr. HATCH. Pardon me for being so insistent, but we had a big fight in the New York Legislature last winter and we had to go into this matter very thoroughly. What was brought out was just this—that if you apply the Black committee method to a fixed limit of weeks, you get a totally different result from what that committee recommends. It recommends that you apply its figures and its method, taking into account central vision, field of vision, binocular vision, on the basis of the percentage of loss of the whole combination of vision the man has in two eyes; namely, a percentage of total vision, not a percentage of a fixed number of weeks for one eye. That is something it left out of consideration. I am very much concerned about it.

If you want to go on record as taking the Black committee report and applying it in a State where you have 150 weeks for the loss of one eye, I am totally opposed to such action, because I think it will result in an injustice. It will result in producing effects that Doctor Black's committee never intended. It is important that you either approve the fundamental principle on which it works or do not. If you take something else, you need to construct your motion very much more carefully and in a different way.

Mr. O'BRIEN. In the fourth paragraph of Doctor Black's report, Section I, beginning at the fourth line, it says:

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.

If that is all we are to debate, I can not see why we are doing all this arguing. If that be true, I can see no objection to Mr. McShane's original motion.

The CHAIRMAN. The motion before the house now is the motion framed by Mr. Wilcox, presented by Mr. McShane. Are you ready to vote?

[Mr. Brown moved an amendment that the association adopt the original report. The motion was seconded by Secretary Stewart, and the question was put to a vote and carried.

Meeting adjourned.]

FRIDAY, SEPTEMBER 17—MORNING SESSION

CHAIRMAN, JOEL BROWN, CHAIRMAN IDAHO INDUSTRIAL ACCIDENT BOARD

The CHAIRMAN. The first paper we are to have this morning is that of "The value of the conference system in the adjustment of compensation," by Mrs. Emma Fall Schofield, of Massachusetts.

THE VALUE OF THE CONFERENCE SYSTEM IN THE ADJUSTMENT OF COMPENSATION DISPUTES

BY EMMA FALL SCHOFIELD, COMMISSIONER MASSACHUSETTS DEPARTMENT OF INDUSTRIAL ACCIDENTS

We have been brought up in the belief, have we not, that the most satisfactory and expeditious manner of settling, or at least clarifying, a disputed matter is to talk face to face and eye to eye with the man or woman who may, through a misunderstanding or only a partial realization of the truth, differ from us to a greater or less degree? An informal getting together, where the parties talk back and forth, asking and answering questions, is more conducive to good feeling and real understanding than a formal hearing where witnesses are sworn, examined, and cross-examined.

So you may feel that in explaining why, and giving arguments for, the adoption or retention of the conference system in relation to compensation disputes, I am trying to demonstrate a proposition that is axiomatic and that time which could be used to better advantage is wasted in presenting arguments in favor of an indisputable, self-evident truth. But although you may all be believers in the conference system, you may be interested to know what our experience in Massachusetts has been and what value we place upon it after having used it over a period of 14 years.

As a definition of the word "conference," Webster gives the following: "The act of consulting together formally; an appointed meeting for discussing some topic of business." Now, if Mr. Webster had only said, "The act of consulting together informally," he would have described more accurately our Massachusetts conference method.

Before enumerating and discussing the various matters in relation to which adjustments have been reached or where the situations have been clarified by means of conferences, it might not be too presumptuous to suggest that this feature of our procedure which we are considering might be adopted with advantage by our law courts.

The statute under which the Massachusetts Industrial Accident Board acts provides that in cases where the insurer and employee are unable to agree either party may ask for a hearing, which hearing shall be held before a member of the board, who shall make such rulings of law and findings of fact as the evidence warrants. This requires a proceeding similar to, although a little less formal than, the ordinary court trial.

It is true that no other proceeding is provided for by the statute, but, entirely apart from the statute, the board has adopted this intermediate step, a conference, which is, as has already been stated, an informal discussion. To the conference the parties are invited and, in company with a member of the board, the questions at issue are brought out and a settlement of the disputed points reached, if possible.

A great many of the disputed cases are disposed of in this manner without a formal hearing being necessary. But in cases where no final disposition is arrived at the conference brings out the points on which the parties do not agree, with the result that when the case goes to a hearing very little time has to be expended on matters of proof outside the real point in dispute. These conferences, being informal discussions of fact and law, do not require the attendance of witnesses. The saving in time, counsel and witness fees to the parties if the case is disposed of is obvious.

In the event that the case goes to a hearing after the conference, there is a similar saving of time, only to a lesser degree, because of the narrowing of the issue brought about by the elimination, as a result of the conference, of the matters upon which it was found that the parties did not really disagree.

As a result of the conference system, the Massachusetts Industrial Accident Board has been able to dispose of an amount of work which would have been utterly impossible if the statutory procedure had been followed in every case. With an original board of five members, now increased to seven, six men and one woman, a stupendous number of cases are disposed of yearly. Hearings of all kinds during the first year of the law (1912) numbered 1,220; during the past year the number, including reviews and conferences, was approximately 6,000 to 6,500.

When it is recalled that the questions which come before the industrial accident board present, within the scope of the compensation law, the same issues which are raised in any other trial, it would seem that the experience of the industrial accident board indicates that a similar method might meet with success if adopted by our law courts.

It is surprising how the real truth of a matter, which many times, unfortunately, can be camouflaged by the formalities of a hearing, is brought out at an informal face to face and eye to eye friendly discussion. And the commissioner, whose duty after all is to see that the workmen's compensation law is properly administered, can be most helpful with suggestions and advice at these informal meetings.

Those of you who have visited the English law courts will remember how the presiding justice leans over the bench and takes part in the trial, and the promptness with which cases are disposed of in England is well known. I remember three cases being finished in one morning's session, during a visit to the English courts, any one of which would have dragged through our common-law courts for a week or more. The American visitor is impressed by the lack of technicality and the comparatively few objections which are made by counsel to the admission of evidence. The chief aim seems to be to get at the truth as quickly as possible.

My enthusiasm for our industrial accident board method of procedure increased tremendously after visiting the English courts and I personally felt that our hearings under the workmen's compensation act were much more like the English court trials than were those in our American common-law courts. The tendency seems to be, in England at any rate, to get away from time-wasting form and to adopt a method of procedure which will get at the truth of the matter as expeditiously as possible.

Some of you may have read an article in a recent issue of the *Saturday Evening Post* by Frederick Orin Bartlett, in which he gives his impressions of American lawyers and American court procedure, after sitting as a jurymen for a number of weeks in one of our Massachusetts counties. Is our law and procedure designed, he asks, to obscure the truth as much as possible from the poor jurymen who is trying to find out what it is all about?

So, perhaps, our informal industrial accident board hearings may be a step in the way of progress and an indication of what our common-law trials may later become. And the conference, a still greater step in advance, may if adopted make less crowded the congested court dockets and give relief to litigants who now loudly complain of the law's delay.

And now for a brief reference to the more obvious matters in relation to which our industrial accident board conferences have been found to be helpful.

First of all, there comes to my mind the employee who refuses to sign compensation agreements in regard to disability compensation or specific compensation, which signing the insurer maintains is a "sine qua non" to the payment of compensation. The chances are that some friend has filled the employee's head with misinformation or else he is afraid that he is signing away his future rights for less than the law allows him. This, then, is a case that should be marked for a conference, so that the commissioner, in an informal way, may explain to the employee simply and clearly his rights under the workmen's compensation act.

And then there is the case where the employee refuses to accept the medical treatment which all the doctors, including the board's impartial examiners, maintain is clearly indicated, and without which the employee faces permanent disability, or possibly death. At the conference which is held in this case the board member, who the employee feels is a disinterested party, tries to present the reasons why medical treatment should be accepted and the results which will follow if it is refused.

Often at a conference an employee who has been out of work for a number of months on account of an accident but who, although practically recovered, hesitates to make the plunge and go back to work again, is given by the commissioner just the encouragement and boost that he needs. And very often at a conference the annoying matter of "average weekly wages" can be straightened out without a hearing being necessary.

Numerous conferences, too, are held on the matter of vocational rehabilitation, the question being what new trade the injured employee can learn in which his disability will not be too great a handi-

cap. At these conferences the supervisor (Mr. Dallas) or assistant supervisor (Miss Lowney) of the vocational rehabilitation division, formerly connected with our department but now a branch of the department of education, is asked to sit in and make suggestions in regard to the trade or trades best suited to the employee's condition and the opportunities offered by the State for the learning of these trades.

Very often, as a result of these conferences and the department's cooperation with the vocational rehabilitation division, an unskilled workman, having received a serious injury in his employment such as the loss of an eye, an arm, or a leg, is able, after having learned a new trade, to earn more money than was being received prior to the accident.

In this connection there comes to my mind the case of a Polish laborer, Michael M., rather above the average in intelligence, who as a result of an accident sustained a double rupture, a fracture of several ribs, and a rather severe injury to the chest. Compensation was paid for a long period of time, the insurer's representatives meanwhile having attempted to get the employee back into industry in view of the fact that their medical evidence indicated that Michael was physically capable of performing certain types of light work. Relations between the employee and the insurer were, however, badly strained and nothing could be accomplished in that direction.

Finally, a conference was assigned in the case on the initiative of the board, the insurer having asked for a hearing, and a definite adjustment was arrived at. The conference was presided over by a member of the board, with the supervisor of vocational rehabilitation present. The employee readily understood that the commissioner and supervisor were his friends and that their advice was disinterested. Michael's doubts as to his future were cleared up. He expressed his willingness to accept light work if it could be furnished but stated that he preferred to take a course in gardening, in which he was interested, under the direction of the vocational rehabilitation division.

The supervisor knew from past experience in placing men with gardening knowledge and experience that remunerative employment was available and a lump-sum adjustment was suggested by the commissioner for the consideration of the parties. It was finally determined, after discussion, that this was a proper solution of the entire difficulty, and the case was settled by the payment of a substantial lump sum. Later developments proved that this settlement was advantageous to the employee, since he obtained and now holds a position as head gardener, with duties mainly supervisory in nature and with a much higher wage than he earned prior to his accident.

Not long ago I was delighted to learn that one of our employees is achieving a marked degree of success in his own battery business, which he was persuaded to learn at a conference in which the supervisor of vocational rehabilitation was present. This young man, a laborer, with only a grammar-school education but with a good deal of native ability, was clearly unable to perform heavy work because of a spinal injury. But as a result of a lump-sum settlement

awarded by the board he was able, after finishing the course offered him by the State, to start a small battery business of his own; and—this is the best part of it—he is happier, he says, than he has ever been before in his life.

It should be understood, of course, that conferences are not arranged primarily for the purpose of bringing about lump-sum adjustments. Their chief purpose, as has already been indicated, is to settle satisfactorily, in accordance with the provisions of the act, disputed cases which otherwise would be assigned for formal hearing. Occasionally, as in the two cases referred to above, lump-sum adjustments are arrived at, but these settlements are merely incidental and recommended by the commissioner when it seems for the best interests of the employee to have his case adjusted in that manner. At a conference, which is so much more intimate than a formal hearing, the commissioner is able to determine whether or not the employee is the type of man or woman who would really benefit by having his or her case adjusted on a lump-sum settlement basis.

Then there are certain types of employees, very often women, to whom a regular hearing, where they are subjected at times to a more or less grueling cross-examination, is a strain almost more than they can bear. To people of this sort a conference is a veritable blessing.

Some months ago a hearing was held before me in the case of Miss X, a nurse, who had been receiving total disability compensation from the insurer because of an injury to the right hand sustained while working as an attendant in a private insane hospital. The insurer contended that the time had arrived when the employee should return to her old work, or that she should take up some other employment.

It was brought out in evidence that while doing night duty Miss X, a young woman of small stature, was left alone in a locked room with an insane patient, a large woman with suicidal tendencies. During the night the patient, while attempting to wrest the nurse's keys away from her, managed to get Miss X's right ring finger in her mouth and chewed it almost to a pulp before finally, after an hour or more, she let it go. Sepsis developed in the hand and at the time of the hearing it was evident that the ring finger itself, or rather what was left of it, had lost all function and that the gripping power of the hand as a whole was greatly weakened; but the condition of the employee's nerves seemed to be the most disturbing factor in the case and whenever the horrible experience was lived over again, Miss X became almost hysterical.

It was very obvious that, because of the neurotic condition alone, this employee was unfit to resume her work as a nurse of insane patients, and it was equally obvious that another hearing, which might have to be held at some time in the future, would be the very worst thing for a woman in her condition. But here again the situation was clarified by the informal conference. It appeared that Miss X had a friend who, having some capital but not sufficient, was anxious to buy out a gift and novelty shop in a very good location and was desirous of having Miss X go into partnership with her. After one of the board's inspectors had investigated the matter and reported that the proposition seemed to be a good one, the commissioner

recommended to the board for its approval the substantial lump-sum settlement which the insurer finally agreed to pay and which the employee was willing to accept. The sequel to the story is that Miss X's health is much improved and that her business is prospering.

I must not omit to mention the conferences which the director of the division of industrial safety of the department of labor and industries (Mr. Meade) is asked to attend. Our industrial accident commission endeavors to cooperate to the fullest extent with the department of labor and industries, and although there is constant communication by the written word between the two departments, there are cases where much can be accomplished by representatives of the two departments sitting down together with the employee present.

Sometimes, when an employee states at a conference that the machine on which he lost four fingers was the same one on which a fellow employee lost two fingers one week previous, the commissioner telephones upstairs and asks the director of the division of industrial safety if he will not come down for a few minutes and listen to the employee's story. Mr. Meade, ever willing and cooperative, always comes.

Many things come out at these informal conferences that do not appear at the hearings. It sometimes develops that children under 14 are working in certain industrial plants; that minors are being employed without certificates; that employees are being allowed to clean machinery while in motion; that safety devices are not being used; that precautions are not being taken to prevent fume, gas, and lead poisoning, or the contraction of anthrax, lung conditions, skin infections, etc. The commissioner immediately conveys this information to the proper authorities so that a thorough investigation of conditions may be made and proper action taken.

Nor must we forget the conferences that are deemed advisable by the single member after receiving the insurer's request for discontinuance of compensation payments. Sometimes it develops that the insurer is so impressed by the employee's sincerity as to his continuing disability, after talking with him and observing him, that he withdraws his request for discontinuance and continues paying compensation. Then again the employee at the conference may be persuaded that it will be for his best interest to make a bona fide attempt to resume employment in spite of some slight residual disability. And what an immense amount of physical and mental vitality the commissioner often consumes in convincing certain types of employees that they will be much better off by the performance of work suited to their condition and that staying at home and thinking about their troubles are the very worst things for them.

Our board records show that in more than 50 per cent of the death cases where liability is admitted but dependency is questioned, the matter is amicably and equitably adjusted at a conference without a hearing being necessary.

There are certain cases, too, where the commissioner feels that he or she will be better able to act upon the employee's or the insurer's request for an impartial examination after a conference. And many times the presence at the conference of our medical adviser, Doctor Donoghue, is found to be most helpful. Then there are the cases where the insurer agrees to pay whatever additional compensation

the commissioner feels is due for certain specific injuries after observing the injured employee at a conference, thus eliminating the necessity of a hearing. Nor must we forget that many disputed medical bills are adjusted at conferences. In fact, there seems to be almost no end to the uses to which conferences can be put.

Perhaps no more significant example of the value of this feature of our procedure could be found than the case of a young Italian, Nicholas A., 18 years of age, a macaroni maker, who sustained a severe crushing of the left arm from the tips of the fingers to the shoulder as a result of having the arm drawn through the rollers of his pressing machine. At the end of two years, in spite of repeated skin grafts, there still remained on the employee's left elbow an open sore a little larger than a 25-cent piece, which would not heal and which increased in size when the employee attempted to use the arm.

It appeared that there was an Italian surgeon in Boston, in whom the employee had great confidence, who guaranteed to give Nicholas an arm as good as new by performing upon him a very unusual operation. This operation consisted in slitting the employee's abdomen and placing his injured arm therein, drawing the flap over the elbow and allowing the abdominal skin to form a new covering over the unhealed portion of the boy's elbow. The charge for the operation was to be \$500. The insurer, however, advised by its doctors, felt no confidence in the success of the operation and refused to furnish the desired treatment. The case was, however, set for a conference, all parties, including the Italian surgeon and two members of the insurer's surgical staff, being present.

The commissioner, impressed by the fact that without an operation there was practically no chance of improvement, but that with an operation the employee had much more than an even chance of recovery, strongly recommended that it be furnished. And what a success it proved to be. To-day Nicholas, with two fine strong arms, is no longer physically incapacitated, and is earning a good living for himself and his mother.

And how proud the Italian surgeon was the day he brought his former patient to the statehouse and had him lift, with the once disabled left arm, a big office chair from the floor to a point above his head.

What pages from the book of life these conferences are, after all, and how all our experiences and everything we have learned works in to help the commissioner in his or her contact with these injured employees. Only the other day, finding difficulty in conversing with a deaf and dumb workman, who could scarcely read and write, I suddenly remembered that as a schoolgirl I had become quite expert in the use of the deaf and dumb alphabet. And how delighted the employee was when he found that I could use and understand his own sign language.

Quiet, encouraging talks with high-strung young girls who feel that they can never return to work in the factory in which they have been injured, the planning of ways and means with the widow who does not know how she is going to bring up her children now that the family income has been reduced by the loss of her husband's salary, helpful advice to the injured employee whose wife claims that his compensation is not spent for the support of the home,

and so on ad infinitum. We can truly say in Massachusetts that the conference system has proved to be not only valuable, but invaluable.

In Gould's case (215 Mass. 480), the supreme court said, "The intent of the legislature must be determined by a critical examination of the words of the statute in the light of its humane purpose and its beneficent aims." And so, with the purpose of compensating the injured employee during his disability and getting him back into industry as soon as possible, the Massachusetts Industrial Accident Board is endeavoring to interpret the act broadly and in a common-sense way. Practical methods have made it possible to administer a most difficult law with efficiency and general satisfaction.

DISCUSSION

The CHAIRMAN. What is the pleasure of the convention concerning this paper? Do you wish to discuss it now? It occurs to me that the paper is of such value that if we should go on with the other papers and not have any discussion that the good things would not be as apt to take lodgment in our minds as they should.

Mr. PARKS. I am a colleague of Mrs. Schofield's, and I want to say how proud I was to listen to the lady with whom I have worked for the past four years in Massachusetts, who has so well covered the ground. Of course, I do not know just what the system is in the other States; our object is simply to show you what we do in Massachusetts. We are here to learn what other States do.

In Massachusetts our principal aim is to rehabilitate injured employees, not to give them money, not to give them lump sums, not to give them a definite stated sum for a certain injury irrespective of disability, which I fear is the mode in most States, but to pay them compensation while they are disabled, and then to try to rehabilitate them so they may get back their earning ability, so that they will no longer need the compensation to which they are entitled.

Mrs. Schofield has well told you of the various cases we take care of. Had I known that she was going to talk about that young Italian boy, I could have brought along a picture of that operation. It was the most marvelous surgical operation I have ever witnessed. If we had given him a lump sum, he would probably have been a cripple for life. The money might have lasted a year or so, but he would have been a cripple for the rest of his life, because he could not have had the operation unless the doctor was assured that he would be paid for it.

With reference to these conferences, I want to make one suggestion, particularly for the benefit of the insurance companies, so that their representatives may take it back to their home offices—that a representative of the insurance company should be present who has power to act, who can say to the members of the board having the conference, "I agree to this," and that statement will be final.

One of our greatest troubles is that the adjuster will come to the office and talk with the board, sometimes spending an hour discussing the case, and then will say, "I will refer it to Hartford," or wherever the home office may be. After a while we hear that the proposition has been turned down by someone sitting in the high

office in Hartford or some other place. That is very annoying. It means that the man who represented the company has not been able to present the matter as it was presented at the conference, and the result is that a great thing is abandoned because the man at the home office did not know just what the situation was, because he was not there to get it.

If the insurance companies would only instruct their various branch offices to send a man to the board conference with power to act, so that if he is convinced we have convinced the company, it would be a great help to us in Massachusetts.

I have already talked to one of the head men of a company here, and he said that it was an excellent thing, and he would try to see that the suggestion was followed up. If all the companies would do that, it would be a great help.

I have been very much gratified to see how the insurance men have attended the meetings here. It is a great thing to get acquainted with these men, to know who they are, to look at them and to talk with them. It has been very beneficial to me and very profitable. I have talked with all these men representing insurance companies, and I have been glad to talk with them. I have obtained a lot of information. I wish they would hover around every convention.

One thing I have learned is that Massachusetts is not paying enough compensation. I would appreciate it if some of the delegates would furnish me with some of their figures to remind me of how much they are paying. I do not think our employees are getting enough.

THE CHAIRMAN. The next paper is "Cooperation of State jurisdictions with the United States Bureau of Labor Statistics in the development of national accident statistics and national safety codes," by L. W. Chaney. This evidently is a paper of great value, because Mr. Chaney gives it.

COOPERATION OF STATE JURISDICTIONS WITH THE UNITED STATES BUREAU OF LABOR STATISTICS IN THE DEVELOPMENT OF NATIONAL ACCIDENT STATISTICS AND NATIONAL SAFETY CODES

BY L. W. CHANEY, OF THE U. S. BUREAU OF LABOR STATISTICS

A year ago at Salt Lake City a paper was presented which endeavored to establish—

1. That national accident statistics in industries not now covered were a necessity in an efficient accident prevention program.

2. That such a system of statistics can be built up only by cooperation between the States and some national organizations.

The present paper records what has been accomplished in the direction of cooperative effort and also attempts to forecast the possibilities of such effort in the future.

At the very outset of the campaign for the enactment of compensation laws the Association for Labor Legislation organized a committee to prepare a form for use in reporting accidents. This form was adopted in a number of States, and when the statistical committee of this association was formed in 1915 the form was used by it as the basis of the blank shown in Bulletin No. 276 of the United

States Bureau of Labor Statistics (page 21), on the standardization of accident statistics.

This bulletin represents a large amount of serious effort on the part of the committee, originally under the chairmanship of E. H. Downey and later under that of Leonard W. Hatch.

This association has repeatedly taken action in the nature of indorsement of the labors of the committee, but the association has no authority and the several jurisdictions have found it difficult to adjust the standard suggestions to their local conditions. As a result the methods of reporting and of handling accident data have become more and more diverse. While these differences are in many cases not great, the difficulties which they introduce in combining the data for national purposes are very serious.

When in 1910 the Bureau of Labor Statistics was called upon to undertake a study of accidents in the iron and steel industry there were few standards by which the study could be guided. It was necessary to develop both a method of securing the data and the technique of handling. For a considerable time this and the labor of applying the methods developed so fully occupied the attention of the section of the bureau staff which could be assigned to this subject that it was impossible to attempt much outside this industry.

Later two small studies were undertaken in the experience of the builders of heavy machinery, such as engines, dynamos, locomotives, and machine tools. As these and the annual review of iron and steel became better known the bureau received urgent requests for information in fields not covered by any Federal agency. In the hope of finding an answer to some of these questions a member of the bureau staff was assigned to a special study of the reports issued by the several State jurisdictions. The nature of the discoveries resulting from this study can be judged by the title of the article which resulted.¹

Later the available data were again assembled in Bulletin No. 339 of the Bureau of Labor Statistics extending the consideration to the year 1921, and a bulletin (No. 425) is now in press bringing the presentation to the year 1924 and in some particulars to 1925.

In the hope of bringing about a more satisfactory condition a conference was called by the Secretary of Labor of representatives of the important industrial States. This assembled in Washington December 3 and 4, 1923.

Twelve States were invited to participate in this conference, eight of which were able to be represented and the others expressed interest and a desire to cooperate.

The conference was nearly unanimous in the view that the propositions of the Department of Labor were reasonable and desirable to carry out. The delegates present agreed to urge their jurisdictions to undertake the compilation of the desired data.

It was agreed that a record of exposure and accidents should be sought through the State organizations for nine industrial groups, as follows:

1. Building erection.
2. Transportation and public utilities.
3. Metal products.

¹ Monthly Labor Review, March, 1921, p. 167: "Inadequacy of industrial accident statistics published in State reports," by Margaret Gadsby.

4. Wood products.
5. Vehicles.
6. Boots and shoes.
7. Textiles.
8. Pulp and paper.
9. Flour.

Each group enumerated above was subdivided into subordinate groups.

The task of coming to a specific agreement with each of the several State jurisdictions was committed to the charge of Mr. Carl Hookstadt, of the Bureau of Labor Statistics staff, and he was engaged upon it at the time of his death. Since no other member of the bureau staff was in a position to take up immediately the work where Mr. Hookstadt's death had left it, there was a considerable interval before it was possible to resume activity.

In this interval, while the project was in a state of suspended animation, a careful study was made of the returns which had come into the bureau from the States. It became evident that a plan which involved the accumulation of data for the departments of the industrial groups stated above and for the causes of accidents would involve so much work as to render it impossible for the States to undertake the effort.

The determination of exposure has constantly been the item which has seemed most difficult to the State organizations. In considering this difficulty it appeared that information regularly coming to the Bureau of Labor Statistics offered a means of closely approximating the exposure. For a number of years information regarding "volume of employment" has been collected by the bureau monthly. This information is in part obtained directly from the concerns and in part from State organizations, which collect for their own purposes. This information is now received from over 10,000 concerns.

From the records of the division of employment a list of establishments was selected, located in 12 States and representing 24 industries. A form letter was sent to each of these concerns asking for a small amount of additional information, from which it would be possible to determine the exposure in terms of man-hours. A return was received from over 80 per cent of those approached. In this way was solved to a reasonable degree the problem which had seemed almost insolvable, namely, that of exposure.

The next problem was to secure from the States the accident records for the firms whose exposure had been determined.

For the year 1924 it was possible to secure this record from only 3 States, namely, Illinois, Minnesota, and Ohio, including 18 industries. In 1925, 11 States contributed information covering 24 industries and 1,272 companies. In the case of the 3 States whose records in 18 industries were available for two years it is possible to make certain interesting comparisons. For example, in frequency of accident 12 industries show declining rates and 6 show increasing rates. It may not be simply a coincidence that in severity rates also 12 industries show declining rates and 6 increasing rates.

Comparison of total rates for States is not of any great significance, since States are not strictly comparable industrial units. However, there is a certain interest in these totals and they are accordingly inserted here.

NUMBER OF INDUSTRIAL ACCIDENTS, AND ACCIDENT FREQUENCY AND SEVERITY RATES, IN SPECIFIED STATES, 1925

State	Number of industries	Number of establishments	Full-year workers	Number of cases				Accident frequency rates (per 1,000,000 hours' exposure)				Accident severity rates (per 1,000 hours' exposure)			
				Death	Perma- nent dis- ability	Tempo- rary dis- ability	Total	Death	Perma- nent dis- ability	Tempo- rary dis- ability	Total	Death	Perma- nent dis- ability	Tempo- rary dis- ability	Total
Illinois.....	13	120	51,330	21	134	1,737	1,892	0.14	0.87	111.28	12.29	0.82	0.69	9.27	1.78
Indiana.....	13	122	20,585	1	51	2,219	2,271	.02	.83	35.98	36.78	.10	.46	.50	1.06
Iowa.....	9	54	11,074	2	40	890	922	.06	1.20	26.40	27.75	.36	1.01	.40	1.77
Maryland.....	12	52	7,199	1	12	478	491	.05	.56	22.13	22.74	.28	.84	.45	1.57
Michigan.....	7	44	165,918	48	580	3,624	4,252	.10	1.17	17.28	8.55	.58	.90	.16	1.64
Minnesota.....	12	60	13,744	14	55	1,141	1,210	.34	1.33	27.67	29.34	2.04	1.46	.49	3.99
New Jersey.....	14	113	46,066	7	223	1,010	1,240	.08	1.03	14.65	5.71	.30	1.57	.21	2.05
New York.....	15	181	70,053	26	511	1,733	2,270	.12	2.43	18.25	10.80	.74	2.79	.37	3.90
Ohio.....	15	161	43,213	13	120	7,043	7,176	.10	.93	54.32	55.35	.60	.93	.56	2.09
Pennsylvania.....	19	342	98,733	26	226	-----	252	.26	2.23	(?)	2.48	1.54	1.66	(?)	3.20
Wisconsin.....	11	73	28,083	12	95	1,631	1,738	.14	1.13	19.36	20.63	.85	.55	.41	1.81
Total.....	-----	1,272	555,998	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

¹ Does not include temporary disabilities terminating in the first week.

² Data for temporary disabilities not available.

Certain deficiencies in the data must be pointed out. Illinois, Michigan, New Jersey, and New York do not include temporary disabilities terminating in the first week. As a result the frequency rates for temporary disabilities are lower than they would be if such disabilities were included. The absence of these cases of short-term disability has some effect upon the severity rates, but it is so much less than the effect upon frequency that for practical purposes it may be disregarded. In view of the greater comparability of the severity rates further comment will be confined to them. It should also be noted that in Pennsylvania no record of temporary disabilities was available. Accordingly, in calculating rates for temporary disability in which Pennsylvania would naturally be included, the Pennsylvania exposure was not used. The Pennsylvania method of filing reported cases is wholly admirable from the standpoint of compensation administration, but makes impossible an assemblage of the facts such as the Bureau of Labor Statistics desires to make. It is hoped that some modification may ultimately be devised which will make it possible to take account of temporary disabilities in Pennsylvania and the other States having similar filing methods.

The concerns covered in 1925 employed workers equivalent to 555,998 full-year workers, ranging from 7,199 in Maryland to 165,918 in Michigan. The high figure for Michigan is due to the enormous development of the automobile industry there and the fact that the records therein are kept in such fashion that it is rather easy to get the facts. Practically all the automobile concerns in Michigan are self-insurers, so there is a separate record of their experience. Minnesota has the highest severity rate (3.99) due to unusual prevalence of fatalities. There follow in order New York (3.90), Pennsylvania (3.20), and New Jersey (2.09). A more detailed statement will be found in Bulletin No. 425, now in press.

The above indicates the present status of the effort to cooperate in the development of national accident statistics. Until the data have been assembled during a longer period the full significance will not begin to be apparent.

Intimately bound up with this matter of producing national accident statistics is that of developing national codes for the safety of the workers. The Bureau of Labor Statistics has been actively concerned in the formulation and distribution of these codes and greatly needs your continued cooperation in order to make them effective.

It is worth while to restate as briefly as possible the facts regarding the national safety codes.

The American Engineering Standards Committee was promoted in the first instance by five engineering societies with the purpose of formulating standards of engineering practice. When, in the progress of the safety movement, it became evident that there was a need for uniform rules and regulations in American industry it was proposed that these codes should be prepared according to the procedure of the standards committee. After two large conferences at the United States Bureau of Standards in Washington it was agreed—

1. That the standards committee should modify its constitution to admit to membership other national organizations interested in its purposes.

2. That a committee should be organized to canvass the situation and recommend such safety codes as the situation seemed to call for. This committee is now known as the safety code correlating committee.

3. That immediately upon the modification of the constitution and report from the correlating committee steps should be taken toward the production of a series of codes.

Under the changed constitution the 5 engineering societies associated with themselves other national organizations, including 6 departments of the United States Government, and others, numbering at the present time 24 organizations or groups of organizations. The representatives of these "member bodies" constitute the "main committee."

The steps in the production of a safety code such as that for abrasive wheels, for which this association is one of the sponsors, are as follows:

1. Certification by an accredited organization or a correlating committee or a conference called for the purpose, that there is a demand for the particular standard.

2. The standards committee invites some national organization, such as the International Association of Industrial Accident Boards and Commissions, to act as "sponsor" for the proposed code.

3. The sponsor organizes a "sectional committee" for the formulation of the standard.

4. The sponsor submits the personnel of the sectional committee to American Engineering Standards Committee.

5. The chairman of American Engineering Standards Committee designates a special committee to determine whether the sectional committee is adequately representative and properly balanced.

6. Special committee reports with or without suggestions.

7. American Engineering Standards Committee approves the sectional committee.

8. Sectional committee organizes and proceeds by subcommittees and meetings to formulate the code.

9. Tentative drafts prepared and widely circulated. Discussion held at safety congresses and elsewhere.

10. Sectional committee reports to sponsor the completion of the code.

11. Sponsor submits code to American Engineering Standards Committee.

12. American Engineering Standards Committee appoints a special committee to consider whether the code has been formulated in accordance with regular procedure.

13. Special committee reports to American Engineering Standards Committee.

14. American Engineering Standards Committee approves the code.

It has seemed desirable to present this matter in this degree of detail in order to emphasize the great pains which are taken to render it certain that in the production of a code every interested party has had opportunity to be heard.

These projects of national accident statistics and national safety codes can not get very far unless the States stand behind them. The Department of Labor has been able to make some very substantial

contributions to the success of the State organizations. The department now indulges the hope that the States will desire to afford something more than indorsement to the projects to which the department has committed itself.

It is now pertinent to suggest again exactly what cooperation is desired:

1. Cooperation in the revision of Bulletin No. 276, Standardization of Industrial Accident Statistics. This bulletin was prepared from the records of the committee on statistics of this association. It is a thorough and painstaking piece of work and deserves to be more closely followed than has been the case.

It is believed that a revision of this bulletin so far as the standards found therein are concerned would adapt it to more general use. The present volume contains a considerable amount of historical and argumentative matter which would be available to those interested in the present publication.

The revision could be devoted strictly to a presentation of statistical standards. It is important that if and when this is done conclusions be reached which can be put in practice by all the States.

It has been suggested that this revision be carried out under the procedure of the American Engineering Standards Committee. It appears to the Bureau of Labor Statistics desirable that this should be done because—

- (a) Experience with this matter has demonstrated that it produces more satisfactory results than can be secured by any other method.

- (b) Such a revision will tend to bring the several States into useful contact with the standardizing program.

If a revision such as suggested should be undertaken it would be entirely natural that this association and its companion, the Association of Government Labor Officials of the United States and Canada, should be made joint sponsors.

2. Early in 1927 information will be sought regarding accident occurrence in 1926. The Bureau of Labor Statistics must look to you not only to help in covering the ground covered for 1925, but to make possible a reasonable expansion. We desire to increase the coverage in the industries included in the 1925 list, and to add some other important industries. It should be possible to secure data to some extent from each State which has a compensation law. Ultimately we would like to include some information from the Canadian Provinces, since their industrial conditions are very similar to our own.

These, then, are the enterprises in which it would seem that close cooperation of the State jurisdictions with the Bureau of Labor Statistics might produce results of real importance.

The CHAIRMAN. There are some books so diluted that we can read them all in one evening and get every idea in them. There are others that it takes weeks to read. Doctor Chaney's paper is like the latter. It is full of thought and will require careful consideration on the part of all in reading it afterwards. We will not take time for discussion now.

The next paper, on the same subject, is by John Roach, Deputy Commissioner of Labor of New Jersey.

STATISTICS AND ACCIDENTS

BY JOHN ROACH, DEPUTY COMMISSIONER NEW JERSEY DEPARTMENT OF LABOR

Ancient history seems to show that statistical information in some understandable form has been used from a primitive period to the present day, although the methods used in collecting this data are shrouded in an impenetrable mist that baffles the vision of those who attempt to pierce the dim past of mankind. We know, however, that when written records began to make their appearance they consisted largely of compilations of practices whose origin and authenticity depended on conjecture, legend, tradition, or myth, which had been handed down orally from father to son and from generation to generation.

At the beginning of early English history the common law of the country consisted of written and unwritten practices that, having received the sanction of antiquity or, as Blackstone observes, existed from a "time whereof the memory of man runneth not to the contrary," were considered valid rules of civil conduct and to-day are foundation stones in the systems of legal procedure that obtain in all English-speaking countries.

Many of the customs and practices involving the transfer of property rights, deeds of conveyance, contracts, and agreements between litigants, verified by oral understandings and supported by the testimony of eye witnesses only, that originated in the fathomless past may excite our curiosity and stimulate our sense of humor in an age when written records of many kinds are kept, but our amusement should be checked when we consider the confusion, doubt, and bitter disagreements that often arise when efforts are made to interpret some of the written laws framed by modern legislators. Undoubtedly the unreliable character of legendary information has made it an active agent in fostering superstition and race, religious, and nationalistic hatreds, while in the hands of intriguing, unworthy people actuated by greed or inspired by personal bias the sinister and provocative part it has played in causing wars between nations strengthens the belief that authentic and clearly stated information on public affairs always will play a prominent part in maintaining world peace.

It is sometimes as difficult to distinguish statistics based on facts from propaganda born of fancy as it is to separate truth from falsehood, for the lines of demarcation are often so faintly drawn that a positive truth emerges from a conscious error, or a wild statement made recklessly without investigation is sometimes true and worthy of taking its proper station in accurate, written records.

During the war much of the propaganda issued, often in the form of statistics, including the enormous strength of the German Army, crop reports, capture of prisoners, casualties, superhuman valor of German soldiers in battle or crediting them with grotesque and diabolical acts of cruelty to prisoners, salvaging dead bodies and converting them into lubricants, were the illegitimate fruits of a propagandist campaign the doubtful value of which has been seriously questioned by sober minds that believe that truth is mighty and will prevail.

On the other hand, our competent military leaders, with a full knowledge of the enemies' combatant powers, were able to estimate the size and strength of an army that could win a decisive victory, and therefore were in a position to assemble the right quantity of food, clothing, arms, ammunition, and shipping space required to place this fighting force in a combatant position on the western front.

As guesswork played no part in these determinations, they were carried out with remarkable vigor, precision, and success. Fancy, based on unusual circumstances, plays such an important part in shaping the birth of ideas that it is important to have records covering a long enough period of time available for inspection before forming a definite opinion.

A writer recently, discussing the source of superstition, declared that he was once riding with a party of friends on a narrow mountain road that had an endless number of sharp curves from whose narrow edges could be seen a yawning valley with a brawling brook hundreds of feet below. On several of the curves cars were met going in the opposite direction, making a dangerous turn for the outside automobile. One of the party petulantly complained that intercepting cars were always met on a curve. The driver of the car, whose exception to this statement caused a count to be taken, proved that in 12 turns of the road only 1 car had been met on a curve, while 6 cars had been met on the straight road. In this case the complaint was undoubtedly made on honest conviction, but the complaining party remembered the passing cars only because they had been met in a dangerous place and had passed unheeded the larger number of cars on the broad, straight road.

We were sitting on the hotel porch this summer enjoying a smoke, while a pleasant, warm rain fell steadily, when one of the party remarked: "This has been the wettest summer in many years." "Yes," acquiesced a fellow guest, whose enjoyment of his vacation had been interrupted by several wet days. "Climatic conditions in this part of the United States are changing and we are having wetter summers and colder winters than when I was a boy." This view was accepted without question by the half dozen guests present, whose comfort and enjoyment had in a measure been adversely affected by inclement weather conditions. I am sure this opinion is incorrect and that Weather Bureau records covering a 25-year period will show fairly average conditions and confirm our faith in comparative weather stability.

The exceptional instance undoubtedly makes a deep impression on our minds, and opinions formed on conclusions drawn from these sources are usually unreliable and faulty. I remember when I was a boy we had two preachers in our town whose wild, unruly boys, because of their pranks and escapades, kept the whole village in a constant uproar. The impression prevailed in that town, despite the decency, steadiness, and docility of the sons of the successors of these clerics, that most, if not all, preachers' sons were wild and unmanageable. Of course that opinion was false but as it was founded on unusual circumstances, repeated several times, it made a deep and lasting impression and formed the basis for a most unjust conclusion.

Great historical wrongs that superficially have been charged to human cruelty, such as witch burnings, pogroms, and nationalistic persecutions that inspired the poet to declare, "Man's inhumanity to man makes countless thousands mourn," might with truth be placed on more substantial ground if attributed to unreliable data clad in the sober robes of historical information.

It has been said tritely that "The proper study of mankind is man." If we paraphrase this, we might say that the proper study of statistics is statistics, or at least the subject matter on which the records have been compiled. If we are looking for weather reports, the Weather Bureau will furnish accurate information, and inquiry as to crop conditions covering a consecutive period of years will be answered by the Department of Agriculture, while authentic, comprehensive, accurate, and extremely valuable records of wage rates, commodity prices, etc., may be obtained from the United States Bureau of Labor Statistics, whose efforts in this direction merit and receive the earnest approbation of students familiar with these subjects.

It is only when we enter the realm of industrial accident statistics that the investigator in a measure is confronted by a conflicting and intangible maze of statistical records that are intended to furnish an index to accident rates among the industrial population of our country. It would be going too far to say that these accident records are worthless, but I am willing to advance the opinion that in a general way they have very little practical value to the industrial engineering student to use in directing his efforts in accident-prevention work. While the work of the pioneers for social legislation that was greatly handicapped by a lack of statistical support has borne good fruit during the past 15 years in cleaner and safer workshops, it is also true that the American people have not yet attempted with characteristic energy and determination to obtain fundamental information regarding the magnitude of the task that would enable them to provide equipment and paraphernalia necessary to a satisfactory solution of the problem.

Opponents of workmen's compensation legislation claimed its passage would increase the number of accidents because men would willfully injure themselves to get compensation, and that it would increase the cost of accidents because injured workmen would mangle and willfully extend the period of compensation liability. Experience has shown that these fears were groundless. Now, we want to know more about the losses that result from accidents, and, if possible, to put our fingers on the individual plant or trade group where, on a basis of exposure, accidents are the most numerous.

Industrial accident statistics that are intended to enlighten the student on the physical attrition that is constantly being suffered by the industrial workers of our country should show the exposure or liability to accident by man-hours as well as the number of man-hours lost as a result of accident during a definitely indicated period of time. The popular and usual method of presenting the total number of accidents suffered in an industry that cause a loss of time, together with a compilation of the losses of various members of the human body, such as fingers, toes, legs, arms, eyes, etc., together with the total number of deaths caused by accident during the year,

while affording some satisfaction to the seeker after truth on the subject, never enables the actively employed worker in accident-prevention circles to determine whether accident frequency rates are increasing or decreasing.

The truth of this assertion has been affirmed so often in meetings of this kind that the matter needs no further consideration, and space would not be given to the statement except that its affirmation and reaffirmation may in time lead to the adoption of an improved system more likely to insure substantial statistical results.

In the absence of a man-hour-exposure system of accident tabulations, some advantage might be gained from a submission of pay-roll exposure. I realize the pay roll is not hurt by an accident in the physical sense and that fluctuating wage payments make it an unreliable instrument with which to measure the problem at hand, but an interesting lesson may be learned from the pay-roll experience of a plant when we realize that accident rates are based on experience and that the increase or decrease in the rate charged to the plant is influenced by the accident frequency that takes place therein.

Many employers seem to think that insurance carriers are benevolent organizations created to carry pay-roll rates without regard to experience, and until they suffer a substantial increase in rate it is sometimes difficult to convince them that safety-first methods are profitable to the plant as well as to the individuals who work therein.

I visited a plant recently where the compensation premium based on normal experience would cost the plant about \$4,000 a year, but which, owing to a succession of accidents covering a period of several years' time, had increased until the premium amounted to \$17,000 a year. A striking lesson can be learned from statistical data of this kind, and I think that the State would be justified in enacting legislation compelling all self-insurers and insurance carriers to furnish the department of labor annually with a statistical statement of each risk covered. This kind of information would assist the department in directing its inspection influence to quarters where it is needed most as indicated by plant experience.

If I were to outline a program for effective accident prevention work I should include the following features:

1. Accident tabulation by the State on a man-hour-exposure plan. A provision requiring every plant to submit a complete and definite financial statement of pay roll, causes, and losses suffered each fiscal year. Careful factory inspection and the enforcement of all code regulations.

2. Close cooperation with the engineering department of all insurance carriers operating within the State.

3. Creation of plant safety organization and the appointment of safety committees. Plant meetings, bulletins, etc., to be posted about plant premises. Encourage all plants to establish a system for training men in safe shop practices.

4. Encourage the formation of safety councils where foremen may receive instruction from competent educators.

I realize that a plan of this kind would mean a radical departure in many ways from established procedure, but in view of the fact that many of our large corporations have adopted it, in whole or in part, in their plants, and that the entire program has been given a

trial piecemeal in many places, I am sure its adoption would not constitute a dangerous experiment in administrative procedure.

That an urgent necessity exists for encouraging every manager to organize safety work in his plant is indicated in the eighth annual report of the Compensation Rating and Inspection Bureau of New Jersey, in an interesting tabulation which indicates that there are approximately 4,000 plants in New Jersey that are subject to a safety credit rating; approximately 2,000 of these plants are too small to warrant the keeping of safety records, but the other 2,000 are reasonably large, and of this number only 184 plants in the entire State are receiving full credit for maintaining safety campaigns.

In addition it is stated that of the 4,000 plants entitled to a credit rating for posting safety bulletins, only 235 plants earn a credit rating for this work. Credit ratings are given for this cooperation to encourage plant managers to participate in a system of safety procedure, based on experience, that has a tendency to lessen accident frequency.

Measured against this are the splendid results being noted in many of our large plants where skilled engineers are employed, a popular type of safety organization that reaches the mass of workmen is functioning, and, in addition, where safety thought, procedure, and practice form an integral part of the administrative policy during the entire year. Truly wonderful no-accident records have been made by many of these plants.

While I know the employers of our State in a splendid spirit of cooperation are spending large sums of money in safeguarding machines and establishing improved sanitary conditions in their plants for the benefit of the workmen, I am also conscious of the fact that only a small percentage of the enormous toll that is taken annually in wasted life and limb can be charged to unguarded plant conditions, and that we will not accomplish the full purpose of the safety movement until employers, convinced of its value, will give proper attention to safety education and plant safety organization work. The "ballyhoo" of the shop safety meeting is valuable, inspiring, and efficient when it is sustained by a regular program and supported by careful inspection and competent safety engineering practices, and is not merely the formal expression of a plant manager who wants to earn a credit rating for its effect on his insurance premium.

The hollow mockery of such procedure, shocking in the face of the deplorable accident toll that results from carelessness and negligence, is a cynical reflection of the social ignorance that still obtains in many high quarters.

A report submitted recently by the United States Steel Corporation, containing a review of 20 years of organized effort to prevent accidents in the plants of the corporation, discloses the fact that 46,000 persons have been saved from death or serious injury and 322,000 others have been saved from less serious accidents, which would, however, have disabled them. These totals were reached by calculating on a percentage basis, taking into consideration the large number of accidents reported annually before the corporation established the accident-prevention movement that has been carried on

so successfully year by year and comparing them with the accidents that have happened each year since.

The value of statistical data is strikingly demonstrated in this report, for contrary to the general impression most of the accidents that occurred were not due to hazards peculiar to the industry or to its machinery, but nearly one-half of the whole number of accidents was due to hand labor where safety devices or appliances could not be provided. For instance, it was shown that hot metal, flue dust, and flame were responsible for less than 5 per cent of the total number of accidents that occurred and that only 4.9 per cent of the accidents were due to machinery causes.

The Steel Corporation has been eminently successful in its accident-prevention campaign covering a period of 20 years because it approached the subject in a scientific and technically correct manner by ascertaining definitely the causes of accidents, installing a man-hour-exposure tabulation system, protecting operating processes that were shown to be dangerous by statistical experience, adopting a system of safety education that included executives, plant managers, and engineers as well as the common workmen, and exacting strict obedience from every employee, independent of rank or position, in the enforcement of the rules governing safety procedure.

We can not shade too heavily on the important part assigned to statistical tabulations in the completion of this magnificent task, the consummation of which has resulted in such a wonderful record of human conservation. It has been said that safety pays in dollars and cents. I think the record of the Steel Corporation, through its statistical tables, shows that it pays a still more substantial dividend through its conservation program in preventing sorrow and tears, grief and misery, that are the inseparable concomitants of tragedies that redden the statistical pages of our States' records.

BUSINESS MEETING

CHAIRMAN, FREDERIC M. WILLIAMS, PRESIDENT I. A. I. A. B. C.

The CHAIRMAN. We will take up the regular order of business.

Mr. STEWART. We have another special committee report yet to hear. The committee on the Wenzel resolution has not yet been heard from.

The CHAIRMAN. Is the Wenzel resolution committee ready to report?

Mr. DUXBURY. Mr. Sinclair, the chairman of this committee, was obliged to leave the meeting and he left it to me to present this report. The report itself is very brief, and it might need some explanation unless you are familiar with the proceedings of the last convention. The resolution, as it is here designated, is the Wenzel resolution, and was introduced by Mr. Wenzel, of North Dakota, at the Salt Lake City convention last year. The resolution was referred to the committee on resolutions of that convention, and it reported that the matter be referred to a special committee, to be appointed by the incoming president, which should report to this convention its conclusions. These conclusions are contained in the report which I am required by the chairman, Mr. Sinclair, to submit in these words:

REPORT OF SPECIAL COMMITTEE ON WENZEL RESOLUTION

Your special committee, to whom was referred the resolution presented to this convention at Salt Lake City in 1925 by Representative R. E. Wenzel, of North Dakota, beg leave to report as follows:

1. Your committee regret the absence of both Representative Wenzel and Mr. George A. Kingston, the chairman of this committee, but beg to advise that they have carefully considered the very able paper submitted at Salt Lake City by Mr. Wenzel in support of his resolution, and also a very comprehensive and interesting summary of cases and a carefully prepared argument of Mr. Kingston presenting his personal views.

2. After full discussion of these papers and careful consideration of the principle enunciated in this resolution, your committee do not consider it advisable to adopt same and therefore recommend that such resolution be not adopted, all of which is respectfully submitted.

V. A. SINCLAIR,
Chairman.
F. A. DUXBURY,
F. W. ARMSTRONG,
F. M. WILCOX,
JAMES J. DONOHUE,
Committee.

[A motion to adopt the report and that it be received and placed on file was made, seconded, and carried.]

The auditing committee reported that it had examined the record of receipts and disbursements and found that they were identically as reported by the secretary-treasurer, and that the net assets of the organization as of the date of audit, August 31, consisted of cash in bank, \$1,517.55; United States Liberty bonds, \$2,200; Canadian bonds, \$500; total, \$4,217.55. The report was adopted.]

The CHAIRMAN. Has the resolutions committee any report to make?

REPORT OF THE COMMITTEE ON RESOLUTIONS

Resolved, That for the many privileges and courtesies extended to and enjoyed by the association and the individual members thereof at this thirteenth annual meeting of the International Association of Industrial Accident Boards and Commissions, held at Hartford, Conn., September 14-17, 1928, we do hereby express our grateful appreciation. [Adopted.]

Resolved, further, That the thanks of this association be extended to His Excellency the Hon. John H. Trumbull, Governor of the State of Connecticut, to the mayor of Hartford, to the Hon. Norman C. Stevens, of the Industrial Commission of Connecticut, 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.]

[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. 237. Atlanta was chosen as the place of the next meeting. Invitations had been received not only from the Governor of Georgia and mayor of Atlanta to hold the next meeting at Atlanta, but also from the Governor of Indiana to hold it in that State.]

The usual honorarium was authorized to be paid to the secretary-treasurer.

Bulletin No. 406 of the United States Bureau of Labor Statistics was adopted as the official report of the proceedings of the twelfth annual meeting of the association.

It was suggested that a mimeographed list of the delegates present at the convention be prepared and sent to those present. Mr. Stewart replied that that would be done during the following week.

It was suggested and directed that the greetings of the association be conveyed to Mrs. Roblin and Mr. Kingston by the returning delegates from their jurisdictions, Mr. Myers and Mr. Fenton, of Oklahoma, and Mr. Sinclair, of Ontario, respectively.

Meeting adjourned.]

APPENDIXES

APPENDIX A.—OFFICERS AND MEMBERS OF COMMITTEES FOR 1926-27

President, H. M. Stanley, chairman Georgia Industrial Commission.
Vice president, Andrew F. McBride, M. D., commissioner New Jersey Department of Labor.
Secretary-treasurer, Ethelbert Stewart, United States Commissioner of Labor Statistics.

EXECUTIVE COMMITTEE

H. M. Stanley, Georgia Industrial Commission.
Andrew F. McBride, M. D., New Jersey Department of Labor.
Ethelbert Stewart, United States Commissioner of Labor Statistics.
Frederic M. Williams, Connecticut Board of Compensation Commissioners.
James A. Hamilton, New York Department of Labor.
W. H. Horner, Pennsylvania Department of Labor and Industry.
John A. McGilvray, California Industrial Accident Commission.
Mrs. F. L. Roblin, Oklahoma Industrial Commission.
V. A. Sinclair, Ontario Workmen's Compensation Board.

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.
Carl C. Beasor, Ohio Department of Industrial Relations.
R. D. Cahn, Illinois Department of Labor.
Charles A. Caine, Utah Industrial Commission.
N. Fletcher, Manitoba Workmen's Compensation Board.
O. A. Fried, Wisconsin Industrial Commission.
C. E. Gleason, Massachusetts Department of Industrial Accidents.
Miss B. C. Joseph, Maryland State Industrial Accident Commission.
George A. Kingston, Ontario Workmen's Compensation Board.
William J. Maguire, Pennsylvania Department of Labor and Industry.
Mrs. F. L. Roblin, Oklahoma Industrial Commission.
R. M. Van Dorn, Washington Department of Labor and Industries.
Charles H. Verrill, United States Employees' Compensation Commission.

MEDICAL COMMITTEE

Chairman, Charles W. Roberts, M. D., associated with the Georgia Industrial Commission.
Vice chairman, Robert P. Bay, M. D., Maryland State Industrial Accident Commission.
Nelson M. Black, M. D., associated with the Wisconsin Industrial Commission.
T. R. Fletcher, M. D., Ohio Department of Industrial Relations.
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 Compensation Board.
F. H. Thompson, M. D., Oregon State Industrial Accident Commission.
Maurice Kahn, M. D., associated with the California Industrial Accident Commission.
Charles J. Rowan, M. D., associated with the Iowa Workmen's Compensation Service.
Ralph T. Richards, M. D., associated with the Utah Industrial Commission.

SAFETY COMMITTEE

Chairman, John Roach, New Jersey Department of Labor.
L. 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.
R. D. Cahn, Illinois Department of Labor.
Miss R. O. Harrison, Maryland State Industrial Accident Commission.
Mrs. Emma Fall Schofield, 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 discussion, but shall have no vote either on resolutions or for the election of officers in the association.

ARTICLE IV.—*Representation*

SECTION 1. Each active member of this association shall have one vote.

SEC. 2. Each active member may send as many delegates to the annual meeting as it may think fit.

SEC. 3. Any person in attendance at conferences of this association shall be entitled to the privileges of the floor, subject to such rules as may be adopted by the association.

ARTICLE V.—*Annual dues*

SECTION 1. Each active member shall pay annual dues of \$50, except the United States Employees' Compensation Commission, the United States Bureau of Labor Statistics, and the Department of Labor of Canada, which shall be exempt from the payment of annual dues: *Provided*, That the executive committee may, in its discretion, reduce the dues for active membership for those

jurisdictions in which no appropriations are made available for such expenditures, making it necessary that the officials administering the law pay the annual dues out of their own pockets for the State.

SEC. 2. Associate members shall pay \$10 per annum.

SEC. 3. Annual dues are payable any time after July 1, which date shall be the beginning of the fiscal year of the association. Dues must be paid before the annual meeting in order to entitle members to representation and the right to vote in the meeting.

ARTICLE VI.—*Meetings of the association*

SECTION 1. An annual meeting shall be held at a time to be designated by the association or by the executive committee. Special meetings may be called by the executive committee. Notices for special meetings must be sent out at least one month in advance of the date of said meetings.

SEC. 2. At all meetings of the association the majority vote cast by the active members present and voting shall govern, except as provided in Article X.

ARTICLE VII.—*Officers*

SECTION 1. Only officials having to do with the administration of a workmen's compensation law or bureau of labor may hold an office in this association, except as hereinafter provided.

SEC. 2. The association shall have a president, vice president, and secretary-treasurer.

SEC. 3. The president, vice president, and secretary-treasurer shall be elected at the annual meeting of the association and shall assume office at the last session of the annual meeting.

SEC. 4. If for any reason an officer of this association shall cease to be connected with any agency entitled to active membership before the expiration of his term, he may continue in office notwithstanding until the next annual meeting; but if for any reason a vacancy occurs in the office of president, the executive committee shall appoint his successor.

ARTICLE VIII.—*Executive committee*

SECTION 1. There shall be an executive committee of the association, which shall consist of the president, vice president, the retiring president, secretary-treasurer, and five other members elected by the association at the annual meeting.

SEC. 2. The duties of the executive committee shall be to formulate programs for all annual and other meetings and to make all needed arrangements for such meetings; to pass upon applications for associate membership; to fill all offices which may become vacant; and in general to conduct the affairs of the association during the intervals between meetings. The executive committee may also reconsider the decision of the last annual conference as to the next place of meeting and may change the place of meeting if it is deemed expedient.

ARTICLE IX.—*Quorum*

SECTION 1. The president or the vice president, the secretary-treasurer or his representative, and one other member of the executive committee shall constitute a quorum of that committee.

ARTICLE X.—*Amendments*

This constitution or any clause thereof may be repealed or amended at any regularly called meeting of the association. Notice of any such changes must be read in open meeting on the first day of the conference, and all changes of which notice shall have thus been given shall be referred to a special committee, which shall report thereon at the last business meeting of the conference. No change in the constitution shall be made except by a two-thirds vote of the members present and voting.

APPENDIX C.—LIST OF PERSONS WHO ATTENDED THE THIRTEENTH ANNUAL MEETING OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS, HELD AT HARTFORD, CONN., SEPTEMBER 14-17, 1926

CANADA

Nova Scotia

F. W. Armstrong, vice chairman Workmen's Compensation Board.

Ontario

R. B. Morley, general manager Industrial Accident Prevention Associations.
V. A. Sinclair, chairman Workmen's Compensation Board.

MEXICO

C. A. Vargas, labor attaché Mexican Embassy, Washington, D. C.

UNITED STATES

Alabama

Walter H. Monroe, workmen's compensation clerk, Workmen's Compensation Division.

California

John A. McGilvray, chairman Industrial Accident Commission.
Charles B. Morris, assistant manager State Compensation Insurance Fund.

Connecticut

George E. Beers, attorney.
Mrs. Marie Besozzi, North American Civic League.
William Brosmith, vice president The Travelers Insurance Co.
E. Sanford Brown, adjuster Hartford Accident & Indemnity Co.
E. T. Buckingham, Compensation Commissioner.
Daniel Campion, attorney Aetna Life Insurance Co.
Leonard J. Collins, attorney Aetna Life Insurance Co.
Charles Deckelman, Travelers Insurance Co.
Wessel Doherty, superintendent Hartford Accident & Indemnity Co.
James J. Donohue, M. D., Compensation Commissioner.
Arthur DuBois, accident clerk American Pin Co., branch Scovill Manufacturing Co.
James C. Graves, jr., M. D., surgical director Travelers Insurance Co.
Samuel C. Harvey, M. D., professor of surgery Yale Medical School.
George Hubbard, accident clerk Scovill Mfg. Co.
Charles Kleiner, Compensation Commissioner.
Miss Mary McCarthy, accident clerk Chase Companies (Inc.).
H. D. Maley, adjuster Hartford Accident & Indemnity Co.
C. B. Morcum, vice president Aetna Life Insurance Co.
F. B. Murrels, The Travelers Insurance Co.
John J. Nagle, chief claims adjuster Travelers Insurance Co.
Leo J. Noonan, Compensation Commissioner.
Howard Peck, adjuster Hartford Accident & Indemnity Co.
Hubert G. Sauer, supervising adjuster Travelers Insurance Co.
George M. Smith, M. D.
Miss Florence A. Soule, Workmen's Compensation Commission.
Walter R. Steiner, M. D.

Norman C. Stevens, Mayor of Hartford.
John H. Trumbull, Governor of Connecticut.
J. F. Visscher, superintendent of Oakville Scovill Mfg. Co.
H. B. Watrous, adjuster Aetna Life Insurance Co.
F. M. Williams, Compensation Commissioner.

Delaware

J. H. Barnholt, E. I. du Pont de Nemours Co.
C. W. Dickey, E. I. du Pont de Nemours Co.

District of Columbia

Charles E. Baldwin, Assistant Commissioner United States Bureau of Labor Statistics.
Lucian W. Chaney, economist United States Bureau of Labor Statistics.
Ethelbert Stewart, United States Commissioner of Labor Statistics.

Georgia

Sharpe Jones, Industrial Commission.
R. C. Norman, Industrial Commission.
H. M. Stanley, chairman Industrial Commission.

Idaho

Joel Brown, chairman Industrial Accident Board.

Illinois

R. D. Cahn, chief Bureau of Industrial Accident and Labor Research,
Department of Labor.
William M. Scanlan, chairman Industrial Commission.

Indiana

Dixson H. Bynum, chairman Industrial Board.

Iowa

Ralph Young, deputy commissioner Workmen's Compensation Service.

Kansas

Frank O'Brien, Public Service Commissioner.
Mrs. Frank O'Brien.

Maryland

Miss Rowena O. Harrison, director of claims Industrial Accident Commission.
Mrs. Rowena H. Harrison.
Miss Bertha C. Joseph, statistician Industrial Accident Commission.

Massachusetts

Joseph A. Parks, Department of Industrial Accidents.
Mrs. Joseph A. Parks.
Mrs. Emma Fall Schofield, Department of Industrial Accidents.

Michigan

M. K. Averill, assistant vice president Dodge Brothers.

Minnesota

F. A. Duxbury, Industrial Commission.
Henry McColl, Industrial Commission.
Ora E. Reeves, claims manager The Mahanna Co.

New Jersey

Andrew F. McBride, M. D., Commissioner of Labor.
John Roach, Deputy Commissioner of Labor.
Charles H. Weeks, Deputy Commissioner of Labor.

New York

John B. Andrews, secretary American Association for Labor Legislation.
T. P. Bradshaw, National Industrial Conference Board.
James A. Hamilton, Industrial Commissioner.
L. W. Hatch, director Bureau of Statistics and Information, Department of Labor.
Loring D. Jones, claim auditor New York State Insurance Fund.
William Leslie, National Council of Compensation Insurance.

North Dakota

S. S. McDonald, Workmen's Compensation Bureau.

Ohio

P. F. Casey, Industrial Commission.
Mrs. P. F. Casey.
Herman R. Witter, director Department of Industrial Relations.

Oklahoma

Edgar Fenton, Industrial Commissioner.
I. K. Huber, chief adjuster Empire Gas & Fuel Co.
R. G. McKinney, tax commissioner.
H. C. Myers, Industrial Commissioner.

Pennsylvania

W. H. Horner, director Bureau of Workmen's Compensation.
R. H. Lansburgh, Secretary of Labor and Industry.
Mrs. R. H. Lansburgh.
T. Henry Walnut, chairman Workmen's Compensation Board.
Mrs. T. Henry Walnut.

Porto Rico

Ramón Montaner, chairman Workmen's Relief Commission.

Utah

O. F. McShane, chairman Industrial Commission.

Vermont

J. S. Buttles, Commissioner of Industries.

Virginia

Parke P. Deans, Industrial Commission.
Mrs. Parke P. Deans.

West Virginia

Lee Ott, State Compensation Commissioner.

Wisconsin

Fred M. Wilcox, chairman Industrial Commission.

LIST OF BULLETINS OF THE BUREAU OF LABOR STATISTICS

The following is a list of all bulletins of the Bureau of Labor Statistics published since July, 1912, except that in the case of bulletins giving the results of routine surveys of the bureau, only the latest bulletin on any one subject is here listed.

A complete list of the reports and bulletins issued prior to July, 1912, as well as the bulletins published since that date, will be furnished on application. Bulletins marked thus () are out of print.*

Wholesale Prices.

- No. 284. Index numbers of wholesale prices in the United States and foreign countries. [1921.]
- No. 415. Wholesale prices, 1890 to 1925.

Retail Prices and Cost of Living.

- *No. 121. Sugar prices, from refiner to consumer. [1913.]
- *No. 130. Wheat and flour prices, from farmer to consumer. [1913.]
- *No. 164. Butter prices, from producer to consumer. [1914.]
- No. 170. Foreign food prices as affected by the war. [1915.]
- No. 357. Cost of living in the United States. [1924.]
- No. 369. The use of cost-of-living figures in wage adjustments. [1925.]
- No. 418. Retail prices, 1890 to 1925.

Wages and Hours of Labor.

- *No. 146. Wages and regularity of employment and standardization of piece rates in the dress and waist industry of New York City. [1914.]
- *No. 147. Wages and regularity of employment in the cloak, suit, and skirt industry. [1914.]
- No. 161. Wages and hours of labor in the clothing and cigar industries, 1911 to 1913.
- No. 163. Wages and hours of labor in the building and repairing of steam railroad cars, 1907 to 1913.
- *No. 190. Wages and hours of labor in the cotton, woolen, and silk industries, 1907 to 1914.
- No. 204. Street railway employment in the United States. [1917.]
- No. 225. Wages and hours of labor in the lumber, millwork, and furniture industries, 1915.
- No. 265. Industrial survey in selected industries in the United States, 1919.
- No. 297. Wages and hours of labor in the petroleum industry, 1920.
- No. 348. Wages and hours of labor in the automobile industry, 1922.
- No. 356. Productivity costs in the common-brick industry. [1924.]
- No. 358. Wages and hours of labor in the automobile-tire industry, 1923.
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