PROCEEDINGS OF THE FOURTEENTH ANNUAL MEETING
OF THE
INTERNATIONAL ASSOCIATION OF INDUSTRIAL
ACCIDENT BOARDS AND COMMISSIONS
HELD AT ATLANTA, GA.
SEPTEMBER 27–29, 1927

FEBRUARY, 1928

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON
1928
### ANNUAL MEETINGS AND OFFICERS OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS

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The fourteenth annual meeting of the International Association of Industrial Accident Boards and Commissions was called to order by its president, H. M. Stanley. After an invocation by Bishop Warren A. Candler, Hon. L. G. Hardman, Governor of Georgia, and Hon. I. N. Ragsdale, mayor of Atlanta, delivered addresses of welcome, to which response was made by Fred M. Wilcox, of the Wisconsin Industrial Commission. The president’s address was then read, as follows:

ADDRESS OF THE PRESIDENT

BY H. M. STANLEY, PRESIDENT I. A. I. A. B. C.

You have already heard the official welcome from the governor of our State and the mayor of the city. In addition it is my great pleasure to extend to you my welcome to this convention. It seems to me that it is particularly appropriate that our convention should meet here this year.

The Southeast has been enjoying a broad expansion within the past few years and there is a constantly increasing change in our industrial structure. To those of you who have made other visits to the South these changes are readily apparent. To those of you who have never before been in this section, I am indeed glad that you are now having an opportunity of seeing it in a state of prosperity and advancement never before attained.

I do not think that anyone will attempt to argue that compensation laws have reached a state of perfection, so to anyone interested in compensation legislation industrial development is of the first magnitude in importance because no type of legislation more closely affects both industry and its employees than does compensation. I apprehend that the South, with its rapidly growing industry, will be confronted with problems that have not hitherto arisen in the compensation field. It therefore behooves us to keep abreast of advancements in order that this most beneficial legislation may adequately serve the purpose for
which it is intended. I have enjoyed and benefited from my attend­ance at previous meetings of this association and I feel sure that all of you members have had the same experience. At these meetings it is possible to get ideas and information on compensation legislation and administration that it would be impossible to get in any other way. The interchange of ideas, coming as they do from all sections of our country and representing all viewpoints, is instructive as nothing else could be. This is the first time that this association has come this far south. The farthest south it has been before, if my memory serves me right, is Baltimore. I feel sure that this meeting will be of particular interest and benefit to the South, in which the States which have not enacted compensation legislation are situated.

While our problems, generally speaking, are the same, each juris­diction, due to local conditions, has its own problems to solve. Usually this solution can be made easier by obtaining the benefit of experience from some other State which has confronted and reached the solution of a question of similar nature. I do not think that there arise a great many compensation problems which are absolutely unique to one particular jurisdiction. I feel that our association comprises the best thought in the country on compensation insurance in so far as it concerns both the theoretical and the practical side of these laws, and in attending these meetings the members get the most complete information from the best possible source in the line of work in which we are engaged.

The past legislative year has been a very active one in the field of workmen’s compensation. Practically every State legislature within the jurisdiction of the members of this association has grappled with bills having for their object some change in the compensation law. Thirty-four of the forty-seven compensation jurisdictions actually changed the law during the legislative year 1927.

In the nature of things it would be impossible in the brief time at my disposal to go into the details of all these amendments. Some of them were merely administrative and more or less inconsequential. For the most part the amendments actually enacted into law were helpful and have either strengthened the acts or cleared away legal difficulties. Unfortunately this can not be said of all States.

In California agricultural labor was included in the act. In Nebraska, where formerly farm labor and domestic servants could be brought under the act by joint election of both parties, an amend­ment makes it possible for them to be brought under the act at the request of the employer alone.

In California the accident-prevention fund is abolished and the balance in the State fund transferred to the general fund. The State compensation insurance fund is authorized to cooperate with the United States in insuring the class of labor coming under the Federal longshoremen’s and harbor workers’ compensation act. In Colorado an attempt has been made to put the State insurance fund on a self-sustaining basis.

The weekly maximum has been increased in many States—Con­necticut, Indiana, Kansas, Michigan, New York, Pennsylvania, Tennessee, and Wisconsin—and also under the Federal employees’ compensation act.
The waiting period is decreased in some States, notably Pennsylvania, where the waiting period has been reduced to seven days. Maine now counts the day of the accident in the waiting period, which shortens the period in that State by one day.

Coverage has been increased in the State of Illinois to take in any employer engaged in the distribution of any commodity employing more than two people.

By the omission of the phrase “who are legally permitted to work under the laws of the State,” Illinois has placed the minor child illegally employed within the definition of employee and when injured 50 per cent in addition to compensation is allowed; while on the other hand Maryland has assessed a double penalty on the minor child illegally employed in that State.

In view of some of the expected discussions at this convention, it is interesting to know that the Illinois Legislature has required that artificial teeth shall be provided to any employee who has lost any of his natural teeth by accident.

There has been a marked tendency to cover State and municipal employees under the compensation laws.

In Kansas there was an entirely new act passed, which, while not containing all of the provisions of the more advanced States, is nevertheless a very marked improvement upon the old law, and Kansas is to be commended for this forward step.

An attempt radically to revise the New York law failed but really resulted in securing some very much to be desired improvements.

As stated in the beginning, this can in no wise be considered a resume of the legislation for the year. I have attempted merely to show tendencies rather than itemized results. It can be said that, taking it all in all, in the 34 jurisdictions that passed amendments to the compensation laws the general tendency was toward improvement.

The Federal longshoremen’s and harbor workers’ compensation act has finally passed, and while it excludes seamen we are nevertheless to be congratulated on the achievement of a very important improvement in our compensation legislation.

I think it is fortunate that this association has as secretary such a man as Ethelbert Stewart. He is at all times ready and willing to be of service. Without such a man the president of this association would be greatly handicapped in his work. I thank him very much for his many courtesies to me during the year. The program committee has prepared a splendid program which I think all of you will enjoy.

I again bid you welcome and trust that your stay in Georgia will be pleasant and profitable.

BUSINESS MEETING

Telegrams were read from several regretting their inability to be present. The following committees were appointed by the president:

Committee on nominations.—F. M. Wilcox, of Wisconsin; L. W. Hatch, of New York; O. F. McShane, of Utah; F. W. Armstrong, of Nova Scotia; A. Calverly, of Wyoming; and W. W. Kennard, of Massachusetts.

Auditing committee.—W. H. Horner, of Pennsylvania; H. J. Haltford, of Ontario; and G. N. Livdahl, of North Dakota.
BUSINESS MEETING

Resolutions committee.—F. A. Duxbury, of Minnesota; J. A. Hamilton, of New York; Miss R. O. Harrison, of Maryland; D. D. Garcelon, of Maine; W. O. Stack, of Delaware; A. S. Phillips, of Missouri; and W. M. Scanlan, of Illinois.

The CHAIRMAN. We will now have the report of the secretary-treasurer.

GENERAL REPORT OF THE SECRETARY-TREASURER

The year has been a rather uneventful one in the life of the International Association of Industrial Accident Boards and Commissions.

Two new active members—the Arizona Industrial Commission and the Delaware Industrial Accident Board—have joined, giving us 36 active members, as follows:

- United States Employees' Compensation Commission.
- Arizona Industrial Commission.
- California Industrial Accident Commission.
- Connecticut Workmen's Compensation Commission.
- Delaware Industrial Accident Board.
- Georgia Industrial Commission.
- 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 State 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 Commission.
- Wisconsin Industrial Commission.
- Wyoming Workmen's Compensation Department.
- Department of Labor of Canada.
- Manitoba Workmen's Compensation Board.
- New Brunswick Workmen's Compensation Board.
- Nova Scotia Workmen's Compensation Board.
- Ontario Workmen's Compensation Board.

The above list includes three organizations—the United States Bureau of Labor Statistics, the United States Employees' Compensation Commission, and the Department of Labor of Canada—which are given full powers of membership by the terms of the constitution itself and are exempt from the payment of dues.

During the year the Republic Iron & Steel Co. rejoined the association as an associate member, and three others—Mr. George E. Beers, E. I. du Pont de Nemours & Co., and Mr. Benjamin W. Kernan—have been added in this class. We now have seven associate members as follows:

- George E. Beers, attorney and counselor at law, New Haven, Conn.
- E. I. du Pont de Nemours & Co., Wilmington, Del.
- Industrial Accident Prevention Associations, Toronto, Ontario.
On January 20, 1927, the secretary, acting for the committee on statistics and compensation insurance cost, addressed a letter to the administrators of the various workmen's compensation laws of the United States and Canada requesting them to cooperate in gathering records from which to compile an American remarriage table. The status of this work will be made a part of the report of the committee on statistics and compensation insurance cost. The replies from 16 States indicate that the information is not available from their records. No replies were received from 19 States, but the matter will be followed up, and it is hoped that during the coming year a reasonably complete representation will have been secured and can be turned over to the committee on statistics and compensation insurance cost for its use in the formulation of an American remarriage table.

On February 28, 1927, the secretary received from Dartmouth College at Hanover, N. H., a request that the association appoint a representative to deliver lectures at that college, presenting the point of view of the association as to the administration and progress of workmen's compensation laws. The letter stated that Mr. E. Robertson Jones was to lecture at the college on "Dangerous tendencies in workmen's compensation laws" and that in connection with their course on modern labor problems it was the desire of the college that the other point of view be presented. At the request of the secretary, Mr. Leonard W. Hatch, of the Department of Labor of New York, represented the association and delivered lectures at Dartmouth College.

Acting for the committee on investigation of results of compensation awards, the secretary sent a letter to all universities and colleges in the United States asking that the secretary be notified of cases where students selected subjects coming within the field of the workmen's compensation laws as theses for doctors' degrees, in order that the association might cooperate with them in their work. Many replies were received, practically all of them stating that they would be glad to secure such cooperation when and if students chose any subject covered by the work of the association. Later the University of Chicago sent a form to be used as an outline of a course of study in that university which was to cover the work of compensation law administration. This form was carefully considered and such recommendations as seemed wise submitted to the university.

As approved by the Hartford convention, the American Engineering Standards Committee has undertaken the work of revising the standardization of methods of recording and compiling accident statistics as previously worked out by the committee on statistics and compensation insurance cost of the association, appointing as joint sponsors for this project the International Association of Industrial Accident Boards and Commissions, the National Council on Compensation Insurance, and the National Safety Council. The sponsors have appointed a sectional committee, which will be submitted for the approval of the American Engineering Standards Committee at its next meeting, when the actual work on the revision will get under way.

On August 2 a copy of the report of the American Bar Association committee on legal aid work, containing a reprint of the first draft of a law designed to facilitate the prompt enforcement of wage claims was sent to the members of the association in the United States and Porto Rico, with the request that they
forward all comments and criticisms to the secretary for consideration in connection with a later draft of the law. The association contributed to the expense involved in this work. The need for better legislation along this line is shown by the article on "Exploitation of labor through the nonpayment of wages," published in the June, 1927, issue of the Monthly Labor Review of the United States Bureau of Labor Statistics.

_The American Engineering Standards Committee._—For a number of years the association has been a member of the safety code correlating committee of the American Engineering Standards Committee. This has to do with the construction of safety codes and is unquestionably a very important work; and the International Association of Industrial Accident Boards and Commissions has been given its full share, to say the least, of the work connected with it. For the last two years the correspondence connected with this phase of the work has constituted a very considerable part of the work of the secretary. It began with the last year of Doctor Meeker's incumbency as secretary and has developed beyond all expectations.

During the year the following principals and alternates have been appointed to represent the association on the safety code correlating committee of the American Engineering Standards Committee:

To serve until December 31, 1928—

**PRINCIPALS**

- Ethelbert Stewart, United States Commissioner of Labor Statistics.
- John Roach, Department of Labor of New Jersey.
- L. W. Hatch, Department of Labor of New York.

**ALTERNATES**

- G. N. Livdahl, Workmen's Compensation Bureau of North Dakota.
- M. H. Christopherson, Department of Labor of New York.

To serve until December 31, 1927—

**PRINCIPALS**

- Sharpe Jones, Industrial Commission of Georgia.
- Charles A. Waters, Secretary of Labor and Industry of Pennsylvania.

**ALTERNATES**

- H. R. Witter, Department of Industrial Relations of Ohio.

During the year representatives were appointed on sectional committees formulating the following safety codes: Colors for gas-mask canisters, effect of annealing on chains, and window washing.

Since the Hartford convention the association has as joint sponsor approved the following safety codes: Mechanical power transmission apparatus (revision); rubber mills and calenders.

On March 19, 1927, the association lost one of its most active representatives on safety code work through the death of Mr. Rowland H. Leveridge, of the Department of Labor of New Jersey. Mr. Leveridge represented the association on the sectional committees for the safety codes on machine tools, mechanical power transmission apparatus, national electrical code (fire), and rubber mills and calenders. Mr. John Roach, of the same department, has been appointed to fill the vacancies made by the death of Mr. Leveridge.

To date the United States Bureau of Labor Statistics has published the following safety codes in the formulation of which the association took part:
**GENERAL REPORT OF SECRETARY-TREASURER**

- 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. 433. Safety codes for the prevention of dust explosions.
- Bulletin No. 436. Safety code for the use, care, and protection of abrasive wheels.
- Bulletin No. 447. Safety code for rubber mills and calenders.

Copies of these codes can be obtained on request from the Bureau of Labor Statistics.

As authorized by the Hartford convention, the constitution of the association has been printed in pamphlet form, and copies are available at the desk.

An index to the proceedings of the Salt Lake City and Hartford conventions has been prepared and is available here for consultation. It has not yet been printed, as it was thought that the association might desire this index printed and bound with the proceedings of the two conventions and distributed to the members as was done with the proceedings of previous meetings. This question is laid before the convention.

The proceedings of the Hartford convention has been published by the United States Bureau of Labor Statistics as its Bulletin No. 432, and copies are available at the headquarters here or will be sent from the bureau upon request.

Respectfully submitted.

ETHELBERT STEWART, Secretary-Treasurer.

**FINANCIAL STATEMENT OF THE SECRETARY-TREASURER, AUGUST 31, 1926, TO SEPTEMBER 15, 1927**

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aug. 31</td>
<td>Balance in bank, $1,512.30; unexpended postage and telegraph fund, $5.25</td>
<td>$1,517.55</td>
</tr>
<tr>
<td>Sept. 1</td>
<td>Oregon Industrial Accident Commission, 1927 dues</td>
<td>50.00</td>
</tr>
<tr>
<td></td>
<td>Porto Rico Workmen's Relief Commission, 1927 dues</td>
<td>10.00</td>
</tr>
<tr>
<td></td>
<td>Washington Department of Labor and Industries, 1927 dues</td>
<td>50.00</td>
</tr>
<tr>
<td></td>
<td>New York Department of Labor</td>
<td>50.00</td>
</tr>
<tr>
<td></td>
<td>California Industrial Accident Commission, 1927 dues</td>
<td>50.00</td>
</tr>
<tr>
<td></td>
<td>George E. Beers (new member), New Haven, Conn., 1927 dues</td>
<td>10.00</td>
</tr>
<tr>
<td></td>
<td>Illinois Industrial Commission, 1927 dues</td>
<td>50.00</td>
</tr>
<tr>
<td>Oct. 11</td>
<td>Manitoba Workmen’s Compensation Board, 1926 and 1927 dues</td>
<td>100.00</td>
</tr>
<tr>
<td></td>
<td>E. I. du Pont de Nemours &amp; Co. (new member), 1927 dues</td>
<td>10.00</td>
</tr>
<tr>
<td>Nov. 1</td>
<td>Minnesota Industrial Commission, 1927 dues</td>
<td>50.00</td>
</tr>
<tr>
<td></td>
<td>Republic Iron &amp; Steel Co., 1927 dues</td>
<td>10.00</td>
</tr>
<tr>
<td></td>
<td>Arizona Industrial Commission (new member), 1927 dues</td>
<td>50.00</td>
</tr>
<tr>
<td></td>
<td>Interest on $1,000 coupon bond</td>
<td>21.25</td>
</tr>
<tr>
<td></td>
<td>Interest on Liberty bonds (two at $500)</td>
<td>21.24</td>
</tr>
<tr>
<td>Dec. 18</td>
<td>Massachusetts Department of Industrial Accidents, 1927 dues</td>
<td>50.00</td>
</tr>
<tr>
<td></td>
<td>Interest on registered Liberty bonds (two at $100 and one at $500)</td>
<td>14.88</td>
</tr>
<tr>
<td>1927</td>
<td>Jan. 1. Interest on bank account</td>
<td>10.72</td>
</tr>
<tr>
<td></td>
<td>Feb. 1. Interest on Canadian bonds</td>
<td>13.75</td>
</tr>
<tr>
<td></td>
<td>Apr. 15. Interest on registered Liberty bonds (two at $100 and one at $500)</td>
<td>14.87</td>
</tr>
</tbody>
</table>
## BUSINESS MEETING

**1927**

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 16</td>
<td>Interest on $1,000 coupon bond</td>
<td>$21.25</td>
</tr>
<tr>
<td></td>
<td>Interest on Liberty bonds (two at $500)</td>
<td>$21.25</td>
</tr>
<tr>
<td>July 1</td>
<td>West Virginia compensation commissioner, 1927 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td></td>
<td>Interest on bank account</td>
<td>$7.13</td>
</tr>
<tr>
<td>12.</td>
<td>E. I. du Pont de Nemours &amp; Co., 1928 dues</td>
<td>$10.00</td>
</tr>
<tr>
<td></td>
<td>Republic Iron &amp; Steel Co., 1925 dues</td>
<td>$10.00</td>
</tr>
<tr>
<td>14.</td>
<td>International Labor Office representative, Mr. Lefur Magnusson, 1928 dues</td>
<td>$10.00</td>
</tr>
<tr>
<td></td>
<td>Ontario Workmen's Compensation Board, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>16.</td>
<td>West Virginia compensation commissioner, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>20.</td>
<td>Ohio Industrial Commission, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>21.</td>
<td>George E. Beers, 1928 dues</td>
<td>$10.00</td>
</tr>
<tr>
<td>22.</td>
<td>Wyoming Workmen's Compensation Department, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>25.</td>
<td>Arizona Industrial Commission, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>27.</td>
<td>Virginia Industrial Commission, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>28.</td>
<td>New Jersey Department of Labor, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>Aug. 3</td>
<td>Illinois Industrial Commission, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>4.</td>
<td>Pennsylvania Department of Labor and Industry, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>6.</td>
<td>Connecticut workmen's compensation commissioner, fourth district (E. T. Buckingham), 1928 dues</td>
<td>$10.00</td>
</tr>
<tr>
<td></td>
<td>Massachusetts Department of Industrial Accidents, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>8.</td>
<td>Connecticut workmen's compensation commissioner, third district (Charles Kleiner), 1928 dues</td>
<td>$10.00</td>
</tr>
<tr>
<td>15.</td>
<td>California Industrial Accident Commission, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>19.</td>
<td>Oklahoma Industrial Commission, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>20.</td>
<td>Idaho Industrial Accident Board, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>22.</td>
<td>Minnesota Industrial Commission, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>23.</td>
<td>Washington Department of Labor and Industry, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>26.</td>
<td>Delaware Industrial Accident Board (new member), 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>27.</td>
<td>Utah Industrial Commission, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td>Sept. 2</td>
<td>Connecticut workmen's compensation commissioner, fifth district (F. M. Williams), 1928 dues</td>
<td>$10.00</td>
</tr>
<tr>
<td>9.</td>
<td>Indiana Industrial Board, 1928 dues</td>
<td>$50.00</td>
</tr>
<tr>
<td></td>
<td>Benjamin W. Kernan, New Orleans, La. (new member), 1928 dues</td>
<td>$10.00</td>
</tr>
<tr>
<td></td>
<td>New York Department of Labor, 1928 dues</td>
<td>$50.00</td>
</tr>
</tbody>
</table>

### DISBURSEMENTS

**1926**

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept. 1</td>
<td>Postage and telegraph</td>
<td>$5.25</td>
</tr>
<tr>
<td>20.</td>
<td>Maryland Casualty Co. (bonding secretary-treasurer for the year ending Oct. 23, 1927)</td>
<td>$12.50</td>
</tr>
<tr>
<td>27.</td>
<td>Ethelbert Stewart, expenses attending thirteenth annual convention, over amount allowed by Bureau of Labor Statistics</td>
<td>$16.70</td>
</tr>
</tbody>
</table>

**Total Disbursements:** $3,767.65
### General Report of Secretary-Treasurer

#### 1926

**Oct. 4.** Eva M. Taylor, partial payment, stenographic and clerical services, 1926-27___________________________ $25.00

**6.** Gibson Bros. (Inc.), printing 500 copies of constitution____ 29.00

**13.** Master Reporting Co., reporting thirteenth annual convention_______________________________________________________ 286.58

Florence A. Soule—

Work at thirteenth annual convention________$25.00

Expenses at thirteenth annual convention________ 29.88

**22.** Postage and telegraph fund___________________________ 5.00

**Nov. 2.** Gibson Bros. (Inc.), printing 2,000 letterheads, $24.50, and 1,000 envelopes, $6.25_____________________________________ 30.75

**17.** National Savings and Trust Co., Liberty bond, coupon No. E-00192340, 4½ per cent, 1927-1942, at $100½

Commission on above__________________________________________________________ 503.28

Interest on above_________________________________________________________ 1.25

**20.** Glenn L. Tibbott, partial payment, stenographic and clerical services, 1926-27___________________________________________ 75.00

Eva M. Taylor, partial payment, stenographic and clerical services, 1926-27__________________________________________ 50.00

**Dec. 14.** Ethelbert Stewart, honorarium, 1926-27_____________________ 300.00

**Jan. 31.** Postage and telegraph fund_____________________________ 5.00

**Feb. 9.** Postage and telegraph fund______________________________ 5.00

**April 9.** British Columbia Workmen's Compensation Board, postage refund on remarriage schedules forwarded for use of I. A. I. A. B. C.__________________________________________ 2.58

**June 6.** Gibson Bros. (Inc.), printing 1,000 letterheads___________ 18.50

**July 1.** Postage and telegraph fund______________________________ 5.00

**9.** Gibson Bros. (Inc.), printing 200 billheads____________________ 5.25

**22.** Glenn L. Tibbott, balance stenographic and clerical service, 1926-27_____________________________________________ 75.00

Eva M. Taylor, balance stenographic and clerical service, 1926-27________,__________________________________________ 75.00

**Sept. 2.** Gibson Bros. (Inc.), printing 1,000 programs____________________ $35.00

**Sept. 15.** Balance: Bank deposits___________________________________ 2,135.74

**1,631.91**

**3,767.65**

It will be noted that the bank book is balanced as of September 14, 1927, and the financial statement is closed as of September 15, but there have been no financial transactions since the balancing of the bank book.

### Summary

**Receipts**

<table>
<thead>
<tr>
<th>Cash in bank</th>
<th>$1,512.30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash in postage</td>
<td>5.25</td>
</tr>
<tr>
<td>Membership dues</td>
<td>2,090.00</td>
</tr>
<tr>
<td>Interest:</td>
<td></td>
</tr>
<tr>
<td>Securities</td>
<td>$142.25</td>
</tr>
<tr>
<td>Bank deposits</td>
<td>17.85</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3,767.65</td>
</tr>
</tbody>
</table>

1. Of this check of $5 for postage and telegraph fund, there is an amount of $3.89 unexpended at this time.
BUSINESS MEETING

DISBURSEMENTS

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Printing</td>
<td>$118.50</td>
</tr>
<tr>
<td>Postage</td>
<td>25.25</td>
</tr>
<tr>
<td>Reporting proceedings, thirteenth annual convention</td>
<td>286.58</td>
</tr>
<tr>
<td>Bonding secretary-treasurer</td>
<td>12.50</td>
</tr>
<tr>
<td>Purchase of Liberty bond</td>
<td>514.92</td>
</tr>
<tr>
<td>Honorarium and clerical service in secretary-treasurer's office</td>
<td>600.00</td>
</tr>
<tr>
<td>Clerical service at thirteenth annual convention</td>
<td>54.88</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>19.28</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,631.91</td>
</tr>
<tr>
<td><strong>Balance: Cash in bank</strong></td>
<td>2,135.74</td>
</tr>
</tbody>
</table>

Total: $3,767.65

ASSETS

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash</td>
<td>$2,135.74</td>
</tr>
<tr>
<td>Bonds:</td>
<td></td>
</tr>
<tr>
<td>United States Liberty bonds</td>
<td>$2,700.00</td>
</tr>
<tr>
<td>Canadian bonds</td>
<td>500.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3,200.00</td>
</tr>
<tr>
<td><strong>Balance: Cash in bank</strong></td>
<td>5,335.74</td>
</tr>
</tbody>
</table>

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 September 15, 1927:

Montana Industrial Accident Board                                                   $50

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

Manitoba Workmen's Compensation Board                                             $50
Industrial Accident Prevention Associations                                       10
Porto Rico Workmen's Relief Commission                                           10

The following check has been received but is in bank for collection and had not been adjusted at the time of making up of statement:

New Brunswick Workmen's Compensation Board                                        $50

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
- No. E-00192340                                                                  500

Dominion of Canada bonds (5) Nos. 1852-6, inclusive, at $100 each                  500

3,200

The association owns two of the second Liberty 4 1/4 per cent converted bonds which have been called for November 15, 1927. They are numbered E-00170425 and E-00192340, each for $500. This amount will have to be reinvested at that time, and Government bonds are drawing such low interest that the question arises as to the matter of policy—whether the amount should be invested in State and municipal bonds at a higher rate but not so easily turned into cash, or whether it should be reinvested in United States bonds at a lower interest rate and possibly having to pay a slight premium for them.

Respectfully submitted.

Ethelbert Stewart, Secretary-Treasurer.

September 15, 1927.
WHAT THE NEW COMMISSIONER FACES AND WHAT HE CAN GET FROM THE I. A. I. A. B. C.

BY CHARLES A. WATERS, SECRETARY OF LABOR AND INDUSTRY OF PENNSYLVANIA

This paper on “What the new commissioner faces and what he can get from the International Association of Industrial Accident Boards and Commissions” is presented to you from the viewpoint of a new head of the Department of Labor and Industry of the Commonwealth of Pennsylvania. It is therefore deemed advisable first briefly to outline to you the powers and duties of that department.

The department of labor and industry was created for the purpose of serving the labor and industrial interests of the Commonwealth and enforcing the laws relating to the safety, health, and well-being of employees in the industries.

The secretary of labor and industry, appointed by the governor with the consent of the senate for a term of four years, is the head of the department. He also serves in the following capacities: Chairman of the State workmen’s insurance board, chairman of the industrial board, ex officio member of the workmen’s compensation board and the State welfare commission, member of the State fair commission and of the Giant Power Survey Board.

The department organization includes: The bureaus of inspection, workmen’s compensation, rehabilitation, employment, industrial relations, industrial standards, statistics, and women and children.

The department is empowered to make studies and investigations of the special problems connected with the labor of women and children; to create the necessary organization, and to appoint an adequate number of inspectors to enforce the laws, rules, and regulations of the department relating to the work of women and children; to make investigations and surveys upon any subjects within the jurisdiction of the department, either upon its own initiative or upon request of the industrial board.

Subject to approval by the industrial board, the department has power to make rules and regulations for carrying into effect the laws regulating the labor of persons within the Commonwealth, and the construction, ventilation, and equipment of the rooms, buildings, or places where such labor is performed, or where public assemblies are held, and to enforce all such rules and regulations.

The department also has imposed upon it the duty of regulating the manufacture, renovation, and sale of bedding and upholstery. In this connection it is required that a statement stamped or printed on a tag be securely attached to all new and secondhand articles of this character; such tags to conform to the department regulations and each tag must have pasted thereon an official adhesive stamp purchased from the department.

The work of the department is carried on by the several bureaus mentioned above.
The bureau of inspection conducts the examination and inspection of every room, building, or place in the Commonwealth where labor is being performed. It also inspects, in order to secure compliance with the fire and panic regulations, all buildings in which public assemblies are held. The bureau also receives and examines plans of all buildings more than two stories high, and all places of assembly outside of cities of the first and second class. It also inspects elevators and issues permits for the erection and repair of elevators. It also inspects boilers; issues licenses, after examination, to motion-picture projectionists and apprentices; and issues orders for removing or safeguarding against hazards that may cause accidents to employees.

The workmen's compensation bureau works in cooperation with the workmen's compensation board in administering and enforcing the laws of the Commonwealth relating to workmen's compensation. It approves or disapproves agreements and receipts in workmen's compensation cases and follows up all cases in which workmen's compensation agreements have been filed and sees that such agreements are fulfilled in accordance with the provisions thereof and the laws of the Commonwealth.

The bureau of rehabilitation renders aid to persons injured in industrial pursuits by procuring artificial limbs and appliances, arranging for training courses in public schools or educational institutions, and providing maintenance for such injured persons during such training.

The bureau of employment endeavors to bring together employers and employees and applicants for employment. Offices are placed throughout the Commonwealth where the services are rendered free of charge to all applying.

The bureau of industrial relations endeavors to iron out differences arising between employer and employees. If an amicable settlement can not be effected, the dispute is submitted for arbitration, the department, in the event of the failure of representatives of employer and employees to name an impartial chairman of the board of arbitration, shall select such chairman to act as such third member.

The bureau of industrial standards conducts investigations and makes surveys of industrial conditions for the purpose of developing and revising rules and regulations for the more complete enforcement of the laws for which the department is responsible. By means of lectures throughout the Commonwealth, circular letters and individual communications, it conducts a campaign of education in the necessity of safe and sanitary working conditions.

The bureau of statistics is empowered to collect, compile, and publish statistics relating to labor and industry and to organization of employees and of employers.

The bureau of women and children investigates special problems connected with the labor of women and children in addition to supervising industrial home work.

In assuming control of such a department the new commissioner, or secretary, as the office is termed in Pennsylvania, faces problems similar in character to those met by any executive at the head of a large organization, be it political or otherwise. The chief difference between problems facing the head of a political organization, such as a department of labor and industry and any other type of organ-
ization, lies in the fact that in a political organization changes in personnel take place at rather frequent intervals, whereas in other types of organizations the basic personnel remains through long periods and basic policies have been established through long experience in conducting the work of the organization.

A realization of this fact, together with the further fact that public positions do not offer as high compensation as corresponding positions in private enterprises, at first appears to threaten the efficiency of such a governmental activity. But in studying the personnel of a governmental department one finds therein men and women of exceptional ability, and although they are underpaid men and women of talent, they appear to find in their public service a satisfaction which private employment can not give. No matter how well a governmental department may be conducted, however, it can not meet the favor of everybody affected by its activities and as a result any change in administration is bound to bring to the new head a number of objections to past policies, charges of inefficiency, objections to conduct of the members of the personnel, and probably very few commendations of personnel or of policy. This does not leave the new commissioner with any sort of toe hold and places him in the position of having to grope around blindly until he is able to sound out the criticisms and suggestions in order to determine for himself which have merit and which have none. A new commissioner can do very little in conducting the work of the department until he has familiarized himself with the duties, powers, and functions of the department and the type of service which it is required by law to render.

After such a study he can then proceed to set up an efficient organization, being careful, however, to avoid as much as possible red tape and the half-baked, unsolicited advice on system which is profusely offered to-day in the name of efficiency. Efficiency is a much abused word in these days. I think that many of us forget in our eagerness to secure it how much of value there is in what I may call the efficiency of simplicity.

Since I assumed control of the Department of Labor and Industry of Pennsylvania I have had suggestions as to efficiency in handling the department made to me in communications that would have done discredit to a 10-year old lad; or submitted to me in other ways in such a crude and garbled fashion that the authors at once proclaimed themselves to be signally lacking in the quality they would impart to others. And bear in mind that this advice came from individuals of supposed standing or from organizations claiming to represent the last word in the teaching of efficiency.

In determining upon the personnel of his organization, the new commissioner should proceed cautiously. Unless he has been connected with the department or with some other branch of the State government which would bring him in contact with the department, he will probably know few if any of the responsible executives of the department, and he is therefore faced with the problem of getting acquainted with the principals in the personnel in order to determine whether or not they can efficiently carry on the work which would be required of them. This is not always easy to do, because frequently in such organizations recommendations which might be made to the commissioner with regard to individuals connected with
the department are not made with the best interest of the work at
heart, but rather for personal reasons.
Changes in personnel should not be made quickly. Hasty action
in this respect may cause the dismissal of a person who would be
exceedingly valuable to the department. As I previously stated, the
new commissioner will receive all kinds of criticisms and recom-
mendations regarding individuals from persons and organizations
with whom these individuals have come in contact in the performance
of their official duties. Many of these criticisms are unjustly made
and arise out of resentment on the part of the complainants because
the department employee was merely carrying out his duties. The
new commissioner, therefore, must thoroughly investigate all recom-
mendations and criticisms, and the past work of all employees, before
he can take any action in connection with the personnel of his
organization.
Another problem which the new commissioner faces is that of
determining whether or not there should be any change in the basic
policy under which the department operates. It is, of course, very
desirable that as little change in policy be made as possible. One
can readily understand the feeling of the industries affected by the
department’s policies when they are required to do certain things in
certain ways for a period of two to four years, and then with a
change of administration they are required to adapt themselves to a
new policy. However, the difficulty which may be encountered in a
change of policy should not deter the new commissioner if after
proper study and full consideration he believes the change necessary
to the proper administration of his department. Too often have
fundamental errors in the administration of public office been allowed
to continue only because of the expense or inconvenience which would
result from a change in such policy. This should not be the con-
trolling element to be considered when a change is contemplated.
Temporary inconvenience or expense should not be considered where
good results of a permanent nature may be obtained in the ad-
ministration of any public office. Hence, if a change in policy will
improve the service which the department can render to the public,
the new commissioner should not hesitate once the wisdom of the
change becomes apparent.
Changes in executives are bound to bring new ideas into the work,
but if the executive has surrounded himself with a loyal and efficient
organization, he is in a better position to give his ideas a trial, as
the experience of the organization will be of great value to him in
determining whether or not his ideas will be of value or would cause
confusion. State administrative departments are becoming more and
more service organizations, and the head of any department is faced
with the one question, “How can I improve the service which this
department should render?” This question can not be answered in
the first six months of a new commissioner’s administration, but
the answer comes as a gradual growth in conducting the work of
the department.
So much for what the new commissioner faces. We now pass to a
consideration of what he can get from the International Association
of Industrial Accident Boards and Commissions.
In this respect I feel that I could better respond to the question
a year from now than at the present time. But even though my
tenure in office has been of short duration, I have already been im-
presed with the great work which the association is doing, and I 
realize the possibilities it presents to the new commissioner. If he 
were to do no more than attend its conventions, thus absorbing once 
a year the papers and discussions presented, he would be greatly 
repaid for the effort expended. If he would go further and enter the 
discussions, indulge in an interchange of ideas with the officials of 
the other States charged with duties similar to his own, he would 
take back with him to his work ideas and suggestions which have 
been tried and tested and therefore helpful to him in the discharge 
of his duties.

We get out of an association such as this just what we put into it 
and nothing more. It is the fundamental principle of democracy 
that we shall help one another—that all citizens shall cooperate in 
the work of government. The particular governmental work in 
which this association is interested is one of the greatest and most 
important of all governmental activities. It concerns the welfare 
and happiness of the worker—the backbone of our great industrial 
structure. Hence, the association is capable of doing a great work, 
and the new commissioner can get from it what the business man can 
get in a limited way from his trade association.

In the International Association of Industrial Accident Boards 
and Commissions the new commissioner finds a real business organi-
ization, a fact-finding body, a director of efficiency, from which he can 
improve the service he is called upon to render by availing himself 
of the information collected by the association along technical lines, 
standardization of procedure, statistics, and other forms of service 
which are helpful to the progress of his department and of benefit 
to the public.

Teamwork all around is the magician's wand that alone can make 
our governmental services what they should be and what they can 
and will be if only that means is applied. In this association with 
its membership made up of State departments and commissions from 
Maine to California, together with Federal representation and mem-
bership from beyond our borders, the new commissioner has the wheel 
horse of the team which he can call upon to do his hardest work in the 
particular field of endeavor which the association covers.

DISCUSSION

The Chairman. The discussion will now be led by Alroy S. 
Phillips, chairman of the Workmen's Compensation Commission of 
Missouri.

Mr. Stewart. Three cheers for Missouri! This is the first ap-
pearance of Missouri in the compensation field.

Mr. Phillips. Missouri has had a rather unique experience in 
getting compensation laws. We have been trying ever since 1910 to 
get a compensation law. We succeeded in getting four laws through 
the legislature; such laws were referred to the people at referendum. 
Our people voted four times on a compensation law; it was beaten 
three times at elections and finally the last one passed.

I notice here the phrase about what the new compensation commis-
sioner faces. He faces a big job. Our law was voted in on the 2d of
last November and our commission was appointed on the 16th of November. Very fortunately the attorney general ruled that the liability did not change until the 9th of January, and that gave us about six or seven weeks to organize. It is a big job to organize a real commission in six or seven weeks, but, I am proud to say, when we started in on the 9th of January we had printed forms for almost every conceivable situation and those forms were in the hands of the people of the State and in our offices.

What we can get from this association, or what we did get from this association, was a great deal of help. I am glad to be able to thank the members of other commissions who helped us. Back there sits Mr. Evans, the actuary of the Ohio commission. The Ohio commission loaned us Mr. Evans and its chief clerk, and they came over and spent a week or 10 days with us and helped us to organize. If it had not been for that, the chances are it would have taken us a great deal longer to organize. I do not know whether or not Mr. Brainfield, of the Massachusetts commission, is here, but he helped us a great deal. Massachusetts sent us its codes. One of the biggest jobs we had was those codes—not the safety codes, but the injury codes and all that sort of thing. We telegraphed to Wisconsin for its code and about two days later we received a copy. Mr. Evans got us a copy of the Ohio codes and also a copy of the Pennsylvania codes. Some years ago I was in New York and had a talk with Mr. Hatch, now a member of the New York commission, and then he sent me a copy of the New York codes and a complete set of the New York forms. I kept them in my office for about a year and when we started in we did not have to write New York for its forms and codes; we had them. We have received suggestions for years from various commissions. I remember that Mr. Pillsbury, of the California commission, gave us an enormous amount of help. That was 10 or 13 years ago. The Washington commission helped us. We visited the Washington commission, and we studied the proceedings of almost every commission in the United States, and everybody has helped us. Missouri has gotten a world of help from this association.

We drove 1,000 miles to come here, because we thought this convention would help us. Incidentally we came at our own expense, because our auditor says we can not travel outside of the State at the State's expense, but we thought enough of this association to do that and we are here to learn and we expect to learn. We are new to all of these problems.

We would like to have some help on the question of partial loss of use. If there is anybody here who can help us on that, we would be glad to have you tell us. We have worked out a new theory, at least the insurance men tell us it is new; they had never heard of it before. We take the view that when the law says that for a whole finger, say, you get 30 weeks and you get 25 weeks for the distal phalange, that the proportion of loss of use is to be worked out in that proportion. The insurance man says that is rather subtle reasoning, but they are paying it right along on that schedule.

We are about to do the same thing on the eye problem. We have read a little bit about symbols and discussion about whether they are fractures or what not, but it is not right, where a law pays 100 weeks for the loss of the sight of an eye, that a man who gets a blemish of
his eye that the doctor grades at 2 per cent should get two weeks' compensation. We have a number of those problems on which we would like help.

On our codes we are trying to keep good statistics, and we probably have the most elaborate set of codes in the United States. I think we have about 1,000 occupations in our occupation code. If anybody can give us help on that we would like to have it.

The CHAIRMAN. We are all delighted to have the gentleman from Missouri here and I am sure that the members will be glad to help him in any way they can, if there is any information he may desire now or at any other time. Is there any other discussion on this question?

Mr. STEWART. A proposition came in which I would like very much to see incorporated into this program. It came in too late to put into the program. Wisconsin has put in the eye schedule. It has not been operating very long and I think, since we are ahead of the schedule, it would be well for us, if Mr. Wilcox is ready and prepared, to have him tell us what they have done in putting the eye schedule which was adopted at the Hartford convention into operation, how far they have got, and just how it is working out.

The CHAIRMAN. We hope that Mr. Wilcox will tell us all about this eye schedule.

Mr. WILCOX. I would be delighted to discuss what we have done, but my forms and material are up in my room and I want just a few minutes to run over it before I undertake to talk on it. I wonder if I can not have some other time during the convention. I think I could do it more intelligibly, save your time and do a better job, if I could have some other moment of this convention.

CHAIRMAN, G. N. LVVDAHL, MEMBER WORKMEN'S COMPENSATION BUREAU OF NORTH DAKOTA

REPORTS OF COMMITTEES

The CHAIRMAN. We will hear from the committee on statistics and compensation insurance costs, by Mr. Hatch, of New York.

REPORT OF THE COMMITTEE ON STATISTICS AND COMPENSATION INSURANCE COSTS

During the past year there has been no meeting of the committee, as no occasion requiring a meeting appeared. Progress was made during the year, however, on two important matters concerning which the committee has previously made report and recommendation to the association. One of these is development of an American table of remarriage experience under compensation laws, and the other is revision of the standard plan for industrial accident statistics.

AMERICAN REMARRIAGE TABLE

In the report of the committee at the Salt Lake City convention two years ago the importance of developing American remarriage statistics was discussed, and some suggestions were made as to what data from the records of compensation cases would be necessary for the compilation of such a table. That
was only a preliminary report, and it was indicated that it was in the plans
of the committee to further develop the subject, and later present a definitive
report. Last year at Hartford it could only be reported that this matter was
still in the hands of the committee, and that final report could not then be
made. At the present time it is possible to report that substantial progress
with this matter was made during the past year. For this, I wish to record,
both the committee and the association are indebted to the efforts of Commissi­
oner Stewart. The contribution of the committee has been only that of some
advice furnished by the chairman to Commissioner Stewart in the develop­
ment of forms along the lines of the committee's suggestions at Salt Lake City.
As you all doubtless know Commissioner Stewart has gone ahead with an
endeavor to collect the necessary data from the several State boards of com­
mis­sions. He has kindly furnished me with the following statement as to
what has been done, which he considers should appropriately be included in
the report of the committee on statistics, and which is as follows:

The secretary of the association has circularized all of the jurisdictions, and
the returns are coming in. About 16 States will not be able to assist owing to
the fact that the information is not available in their records. The work is
proceeding in 14 States and Provinces, and 4,794 forms have already been for­
warded to the secretary.

The Dutch table is based upon only 10,000 cases, and some of those are esti­
mates, and the probabilities are that within a year or so we will have a suffi­
cient volume of material from which to construct a workable table. Unfor­
tunately some of the States do not seem to appreciate the importance of this
work. Other States have so far been unable to apply the necessary clerical
labor to it. A complete record from three or four of the principal States would
give a volume of material far in excess of that upon which the Dutch table
is based. Pennsylvania alone has had over 10,000 cases, and New York proba­
bly an equal number. Pennsylvania is at this time engaged in making a
transcript of its cases, but has not completed the work. Ohio reports that it
has 2,500 present cases, and has records of additional past cases which have
been closed, but that it has not the clerical equipment to furnish a transcript.
It has been suggested that the association authorize the secretary-treasurer to
furnish the necessary clerical help to do this work in Ohio. The committee is
not prepared to make any recommendation upon this subject, but submits it
to the convention or to the incoming executive committee. New York reports
that it has been unable to do the clerical work involved, but if it is able in
the future to do this it will furnish the information desired. Ontario has been
unable to do the clerical work up to this time, but will do so at a later date.
Maine has the information on its records, but is unable to do the work involved.
The United States Employees' Compensation Commission reported likewise, but
the Bureau of Labor Statistics will endeavor to take care of that work.

On behalf of the committee, I wish to urge every possible cooperation of the
various boards and commissions with Commissioner Stewart in his effort to
develop an adequate American table of remarriage experience.

Mr. Hatch. It happens that on the train coming down here I
read a report which refers to the matter of the importance of de­
veloping an American remarriage table under compensation laws,
which is the most striking evidence I have yet seen of the importance
and need of such a table. The document I was reading, by the way,
was prepared by a very eminent man in the insurance field of work­
men's compensation, and it was read before the Canada Association of
Insurance Commissioners. In this report there is a long discus­sion of the question of State funds. I am not going into that, as that
is not why I referred to the matter here, but reference is made to
the experience of the West Virginia State fund which has been under
investigation in West Virginia and about the exact status of which
there is considerable difference of opinion.
The article which I read, which seemed to be a very carefully prepared article, indicated that one of the most important factors in that difference was that one investigation used the Dutch table of remarriage experience, which is commonly in use in this country, and the other investigation used some data which represented West Virginia experience. It made quite a difference apparently.

Mr. Eppler. Mr. Hatch, did that make up the entire difference? I was somewhat interested in West Virginia.

Mr. Hatch. No; I do not say that made up all the difference, but the difference was said to be due to the different methods pursued, and this was cited as one of the principal differences, one of the things that made a very important difference in result. I am not saying a word as to the merits of the West Virginia situation; I know nothing about it; but the truth of the matter is that the soundness of our funds—in many cases it is a question of surplus and reserves—depends a great deal on the factor of remarriage experience which is used in the calculation of present values of future payments in these long-time cases, and those, of course, constitute the reserves.

I just happened to pick that up as I came down on the train and I cite it here to back up Commissioner Stewart's efforts to get a real table. It is getting nearer, within reach, and it certainly ought not to be difficult before long to have a table that will represent more than 10,000 cases, and as Commissioner Stewart says, a few of the leading States' experience combined would give us an American basis for this important factor in that matter of compensation reserves.

Revision of Standard Plan for Industrial Accident Statistics

At the Hartford convention last year the committee recommended to the association that a revision of the plan should be undertaken and that it was desirable, if possible, to arrange to have such a revision made through the agency of the American Engineering Standards Committee and under the procedure employed by that committee for formulation of standard safety codes. The association voted at Hartford in favor of this course and instructed the chairman of the committee on statistics to get in touch with the American Engineering Standards Committee with a view to carrying it out.

In accordance with this action at Hartford in September, I laid the proposal before the secretary of the American Engineering Standards Committee in October. After discussion by correspondence and in conferences, and due consideration, on December 9 the standards committee, following recommendation of its safety codes correlating committee, voted to carry out the proposal of this association. The motion of adoption defined the undertaking to be:

Revision of the classification of industries in the standard plan for accident statistics of the International Association of Industrial Accident Boards and Commissions, definitions of terms, the form of reporting accidents, the computation of accident rates, and the classification of causes of accidents, and also the consideration of possible revision of other features of the plan.

At the same time that the above was adopted, in accordance with its regular procedure in such a matter the standards committee took the first step toward carrying out the project by designating as joint "sponsors" for a "sectional committee" to do the work the three following organizations: International Association of Industrial Accident Boards and Commissions, National Safety Council, and National Council on Compensation Insurance.
Further steps in accordance with the regular rules of the standards committee have been taken since December 9: First, by securing the consent of the above three organizations to act as sponsors; second, by appointment by each sponsor body of a representative on an organization committee of three; and, third, by selection by this organization committee of the membership of the sectional committee.

Mr. Hatch. The sectional committee is the committee that does the work under the plan of the standards committee.

The organization committee will present for approval of the American Engineering Standards Committee at its meeting on October 13 the following to constitute the personnel of the sectional committee:

Mr. Hatch. This is a bit long, but I think it is worth presenting to you. It will give you an idea of how broadly representative is the body which is to undertake this revision, and also I would ask you to note the large representation of this association on that committee through the officers or members.

Chairman, Leonard W. Hatch, New York State Industrial Board.
Secretary, Lucian W. Chaney, United States Bureau of Labor Statistics.
Ethelbert Stewart, United States Department of Labor.
—- —-, United States Employees' Compensation Commission.
M. G. Lloyd, United States Department of Commerce, Bureau of Standards.
—- —-, United States Department of Commerce, Bureau of the Census.
—- —-, United States War Department.
-—- —-, United States Navy Department.
J. H. Hall, Association of Governmental Labor Officials.
John A. McGilvray, California Industrial Accident Commission.
W. J. McGuire, Pennsylvania Department of Labor and Industry.
Herman R. Witter, Ohio Department of Industrial Relations.
W. A. Marshall, Oregon Industrial Accident Commission.
O. P. McShane, Utah Industrial Commission.
T. Norman Dean, Ontario Workmen's Compensation Board.
Leifur Magnusson, International Labor Office.
Lewis De Blois, National Safety Council.
W. Dean Keefer, National Safety Council.
E. T. Blank, National Safety Council, metals section.
J. W. Meyers, National Safety Council, petroleum section.
E. L. Hewitt, National Safety Council, rubber section.
—- —-, National Industrial Conference Board.
—- —-, American Engineering Council.
E. L. Hall, National Council on Workmen's Compensation Insurance.
David Van Schaack, Aetna Life Insurance Co.
Paul Dorweiler, Aetna Life Insurance Co.
David S. Beyer, Liberty Mutual Insurance Co.
H. E. Wiberg, Lumber Mutual Casualty Co.
M. H. Christopherson, New York State Insurance fund.
W. G. Voogt, New York State insurance fund.
Dan Royer, Ocean Accident and Guarantee Corporation.
W. H. Heinrich, Travelers' Insurance Co.
E. W. Kopf, Metropolitan Life Insurance Co.

Mr. Hatch. You will see that in the make-up of this sectional committee, which of course will be broken up into subcommittees to carry on particular lines of the work, an effort has been made, as was explained at Hartford would be done, to get the broadest possible representation of all interests which have any occasion to use or com-

1 Representative not yet designated.
The idea at this time is to get the broadest possible knowledge and information in the revision and also, and a very important thing, to get the largest possible enlistment of interests in the process, so that if possible the standard plan originally set up by this association and to a considerable extent already in use may be extended in use among all those who have any occasion to use such plan.

In addition to the foregoing steps of securing the assistance of the American Engineering Standards Committee for the revision, and the organization of the sectional committee to carry it out, further progress in the matter may also be reported at this time in that Doctor Chaney, of Commissioner Stewart's bureau, who, I am glad to say, is to be secretary of the committee, already has in hand the preparation of suggested revisions, to serve as a basis for discussion, of the present standard plan as it stands in Bulletin No. 276 of the United States Bureau of Labor Statistics, and has already gone over a good deal of the ground. This, the next step in the work, is therefore already well under way. With notation of this, the report on this important matter of the revision of the Standard Plan for Industrial Accident Statistics is brought down to date.

L. W. Hutch, Chairman.

The Chairman. This being a committee report, does the convention want to act on it?

Mr. Stewart. It is perhaps only a progress report. It does not state that anything is finished that the convention would have to accept or indorse. I think no action is necessary on the report.

The Chairman. We will hear from our secretary, Mr. Stewart, on the next report, that from the committee on investigation of results of compensation awards.

REPORT OF THE COMMITTEE ON INVESTIGATION OF RESULTS OF COMPENSATION AWARDS

The committee has little to report.

There has been no meeting during the year and nothing specific has been accomplished, although some educational work has been done.

The secretary of the association forwarded a letter in accordance with the recommendation of the committee in its report to the Hartford convention to the faculties of all universities and colleges in the United States, informing them of the purposes of the association and its readiness to cooperate with such schools in cases where students select subjects coming within the field of workmen's compensation for theses for doctors' degrees. The response to this letter was entirely satisfactory, both in tone and in the percentage of replies.

Request for lectures was received from one university and a study course submitted for criticism and recommendation from another.

Respectfully submitted.

Ethelbert Stewart,
Chairman.

Rowena O. Harrison,
W. H. Horner.

The Chairman. We will hear from Mr. Duxbury the report of the committee on compensation legislation for interstate commerce.

Mr. Duxbury. I am not prepared to submit any report at the present time, and it has occurred to me that it might be advan-
tageous to place it in the session when Mr. Verrill presents his paper on the Federal longshoremen's and harbor workers' compensation act. The report of the committee that I represent will be almost the report of what we expected to promote, which has already been accomplished in the enactment of this longshoremen's act. The other matter we seem to be on this program for is only incidental, and I think that the two had better be brought up together, because the discussion would be related. I would like to have that changed to that time, if there is no objection.

The Chairman. We will grant Mr. Duxbury a chance to make his report following the paper mentioned. We will hear from Mr. Horner the report of the committee on legal aid organizations.

REPORT OF THE JOINT COMMITTEES OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS AND THE NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS, 1927

Your committees were appointed by the respective organizations in 1924, and have now prepared and submitted two reports in which the general theory of the relationship between legal aid work and workmen's compensation work has been thoroughly discussed.

We have reached the conclusion, and our respective organizations have approved that conclusion, that legal aid organizations can and should aid workmen's compensation authorities in carrying on certain types of cases.

The practical problem with which we have been faced is how to bring about this coordination.

Progress to Date

The following table shows the number of cases handled by the various legal aid organizations in the field of workmen's compensation:

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Total: 1,297 2,025
The foregoing figures indicate pretty conclusively that there are contacts between legal aid work and workmen's compensation work. Many injured employees, or their representatives, go to legal aid societies for help. The further question that arises is whether all injured employees and their dependents in fatal cases who need legal aid in connection with their workmen's compensation claims, actually get it. It is obviously very difficult to reach a conclusion on this subject. It seems evident that there are some communities where people who need legal aid in workmen's compensation matters are not receiving it. The responsibility for this lies with both our organizations. We do not know how much we ought to do in this respect. In some States, attorneys and adjusters in the employ of the State compensation authorities furnish legal aid to claimants in controverted cases without charge to the claimants. This policy is followed in the State of Pennsylvania, with good results. Of course, it is impossible for these attorneys and adjusters to render aid in every contested case. Some of the labor organizations have paid attorneys who look after the interests of injured members of their organizations in compensation matters.

If, in addition to the foregoing records kept by legal aid organizations, the workmen's compensation authorities were to keep records of the number of cases in which the applicants needed legal aid, we would then have much better information on the subject and attention could then be more definitely directed toward this class of problems. Your committee, therefore, recommends that for the next year all legal aid organizations and workmen's compensation authorities be requested to keep more accurate record of cases of this kind and to submit the figures to this joint committee for further consideration and discussion.

The ideal condition in the mind of your committee will exist in a given State where the workmen's compensation authorities and legal aid organizations are in such close touch that every case coming to the knowledge of the compensation authorities where legal aid is needed may be called to the attention of the legal aid organizations for such procedure as may be necessary.

Your committee desires to call attention to the plan which is being followed in the State of Massachusetts between the State industrial accident board and the Boston legal aid society which is working out very satisfactorily. There is no reason why the Massachusetts arrangement or some similar plan could not be worked out satisfactorily between other State compensation authorities and the respective legal aid societies.

Your committee therefore recommends that at an early date a joint conference on the subject be arranged between the legal aid organization and the workmen's compensation authorities in the various States, and that the results of these joint conferences be reported for further consideration next year.

If agreeable to the association we would recommend that the committee be continued for further consideration of the problems and in an effort to bring about closer cooperation between the two organizations.

Respectfully submitted.

INTERNATIONAL ASSOCIATION OF INDUSTRIAL
ACCIDENT BOARDS AND COMMISSIONS.

W. H. HORNER, Chairman.

ETHELBERT STEWART.

NATIONAL ASSOCIATION OF LEGAL AID ORGANIZATIONS.

JOHN S. BRADWAY.

[By motion duly seconded and carried, the committee was continued. Meeting adjourned.]
TUESDAY, SEPTEMBER 27—AFTERNOON SESSION

CHAIRMAN, G. N. LIVDAHL, MEMBER WORKMEN’S COMPENSATION BUREAU OF NORTH DAKOTA

The Chairman. Is there any desire to discuss the paper that was read by Mr. Hatch, of New York, the committee report?

Mr. Stewart. It is a progress report.

Mr. Hatch. As Mr. Stewart explained, my report is rather a progress report of the committee, and we shall continue to carry out the instructions of the Hartford convention.

A question that has been asked since I read the report this morning suggests that I say just one word. I was asked what, pending the completion of this revision of the plan, should a State do with its statistical work? The answer is to continue its use, or if you are not using it, begin to use the plan just as far as you can, because the prospect is that the revision will be chiefly a revision in detail within the general framework of that plan. So, if it is to the point, the thing to do is to carry on your statistical work under the present plan, as set forth in Bulletin No. 276, until the revision is complete, and in the revision it will be borne in mind that it should be carried out in such a way that the continuity of figures can be maintained under whatever revision goes through.

Mr. McShane. I know Mr. Hatch has it in mind, but there is one matter I think special attention should be called to and emphasized at this time, and that is that the mass of statistics on industrial injuries that we may gather by class does not amount to anything for our purposes unless we have the man-hour exposure. That is one feature that ought to be taken up in every statistical department and every jurisdiction in the United States and Canada if we are going to use the statistics we are gathering effectively.

The Chairman. The next on the program will be the “Boston plan of legal aid in compensation cases,” by Mr. Samuel B. Horovitz, of Boston, Mass.
BOSTON PLAN OF LEGAL AID IN COMPENSATION CASES

BY SAMUEL B. HOROVITZ, OF THE BOSTON LEGAL AID SOCIETY

In behalf of the National Association of Legal Aid Organizations, and particularly in behalf of our own Boston Legal Aid Society, I take this means of thanking your international association for the opportunity of addressing your body.

For years we have grown up together and yet have known each other only casually. In the United States we have over 70 legal aid societies whose purpose is to render legal aid gratuitously, if necessary, to poor persons, to whom otherwise recourse to our tribunals would be impossible and justice denied. The troubles of our clients are many—there is the wife whose husband fails to support her and the brood of young ones; the tenant whose landlord seeks eviction while the baby lies ill in bed; and the workman who has lost his hand on a dredge and the insurance company refuses to pay workmen’s compensation because, as the employee is told, there is “too much water under the dredge and in the case.”

Our Boston organization is in its twenty-seventh year. Injured employees numbering in the thousands have come to us for aid and assistance. The workman is in most cases a proper client for a legal aid organization. He is a wage earner, generally living from hand to mouth. The injury stops the only source of income. The wife and children must nevertheless subsist; and medical bills are piling up. When the case is disputed or is of such a character that the injured workman needs the assistance of skilled counsel he is in a dilemma. By hypothesis he is in no position to pay a retainer to a private attorney. Most cases, even if won, entitle the workman to weekly payments which hardly enable him to live and give him no surplus from which to pay legal fees. In cold fact the workman can not ordinarily afford to recompense an attorney for the skill, time, and expense that the lawyer must incur and the average attorney can not afford to handle these cases, because if he does a thorough job it is almost certain to result in a loss to himself. There is a major difficulty here that no compensation act has squarely faced. Is it not your experience in other cities, as it is ours in Boston, that many of the best-known firms do not represent injured workmen, do

2 Catherine Hoar (John J. Hoar), Boston Legal Aid Society (BLAS) files, No. 34333. As the husband was obtaining compensation, we obtained part of it for the wife and children. See Massachusetts Industrial Accident Board (now Department of Industrial Accidents), (IAB) files, No. 24350. For similar case see case of Catherine Baylis (John Baylis), BLAS files, No. 32240; IAB files, No. 18335.
3 June Johnstone, BLAS, No. 17847; superior court in equity, Suffolk County, No. 22164, Daniel Toland (John Toland), BLAS, No. 20775; IAB, No. 21565, supreme judicial court, advance sheets, Mar. 3, 1927, at p. 899; 155 N. E. 908.
not take such cases at all? This situation intensifies the difficulty because so many of the best members of the bar handle these cases so rarely that they are totally unfamiliar with the technical, legal, and medical points involved in compensation disputes. The problem confronting the injured workman who needs legal assistance as skillful and resourceful as that which the well-represented insurance company is sure to oppose to the claim is therefore a difficult one.

What is he to do? In Boston he comes to the legal aid society, and we consider that he is entitled to the very best assistance we can give him.

IS THE LEGAL AID NEEDED IN COMPENSATION CASES

Does every injured employee need us? In the great majority of cases, no. The workmen's compensation acts throughout the country intend as far as possible to eliminate the need of the lawyer by having procedure as simple and summary as may be. In Massachusetts there were 162,239\(^5\) reported injuries during the year 1926. Of this number approximately 35,000\(^6\) employees, incapacitated over one week, were protected by compensation policies, and hence compensation was paid by the insurer directly to the employee, with no third party intervention. In over 4,000\(^7\) known cases, however, the insurer denied liability. I say "known" because over 4,000 workers actually applied to the department of industrial accidents for a hearing or conference to ascertain and enforce their rights.

And why have we over 4,000 employees who go to trial on the merits of their cases? Is it because the insurers are dishonest? With rare exceptions, no. It is because some legitimate doubt has been thrown on the merits of the case and the insurer feels justified in litigating the matter.

John Toland\(^8\) is told that as he lost his hand on a dredge in Boston Harbor, his rights are under the admiralty law, so that he can not count on the §16 compensation income nor on medical care. Benjamin Michaelson\(^9\) is told that his lead poisoning comes from his lead pipes at home and not from the fumes of the melting pot in the junk shop. The widow, Angelina Ricci,\(^10\) hears from the lips of the insurance investigator that she and her seven young children are not entitled to dependency compensation, because her husband died from a perforated ulcer; but is not told that he struck his abdomen while falling, with a heavy weight on his shoulder, and the perforation followed immediately. Annie Rispola\(^11\) is told that as she tripped on the sidewalk while distributing samples, it was a street

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\(^5\) July 1, 1925, to June 30, 1926, the fiscal year. From records obtained through Secretary Robert E. Grandfield, Massachusetts Department of Industrial Accidents.

\(^6\) Estimated, exact figure is somewhere between 35,000 and 36,000.

\(^7\) Secretary Grandfield's records show that during the fiscal year 1926, 4,193 hearings were held; in 976 cases there were board reviews (appeals from the decision of the single member); and in addition there were over 4,000 conferences held. As some of the cases required more than one hearing, and as some cases were adjusted by conference only, a safe estimate of employees applying for action on the merits of their cases is over 4,000. See also report of the special commission appointed to investigate the operation of the workmen's compensation act, House No. 999 (Mass., ch. 36 of the Resolves of 1926).

\(^8\) John Toland, BLAS, No. 26775; IAB, No. 21555, supreme judicial court, advance sheets, Mar. 3, 1927, at p. 399; 155 N. E. 603. See also editorial thereon in the Boston Transcript, Mar. 19, 1927.

\(^9\) Benjamin Michaelson, BLAS, No. 28237; IAB, No. 22291.

\(^10\) Angelina Ricci, BLAS, No. 32012; IAB, no report (alleged injury Sept. 17, 1926).

\(^11\) Annie Rispola, BLAS, No. 28935; IAB, No. 23068.
risk and not compensable; but they do not tell her that as the heavy bag of samples was a factor in her fall she can recover.

And there is another group of cases needing legal assistance. Rose Lucey in 1916 has a complete avulsion of the scalp. Based on a low wage of $7.71 received as a 16-year-old summer-time factory worker she obtained only $5.14 weekly compensation. The insurer never mentioned and she never knew of section 51 of the act providing for increases for young and inexperienced employees, which entitled her to a maximum of $4,000 instead of $2,570 for 500 weeks.

Bessie Kelly, young and just fresh from Ireland, falls heavily on the floor and within a few days develops hysterical spells some of which put her in the hospital for two days at a time. Traumatic hysteria, say her doctors; malingerer, says the insurer. Lawrence Farmer loses part of the thumb and index finger and is paid for a time and then given his old job back. Before he can demonstrate his ability really to earn his old wages he is fired for smoking in the toilet during lunch hour and the insurer refuses to pay further compensation. Gligo Tepsich was killed and left small children in Yugoslavia; no one cared to advance the necessary funds and to expend the energy to file and obtain answers to interrogatories to be sent abroad, to establish dependency, as the insurer denied dependency. Daniel Mills had a hernia, and he said it came from heavy work at the hospital where he worked.

In every one of these cases, actually taken at random from over 100 tried or completed before the department of industrial accidents at Boston thus far this year, the employee, widow, or dependent obtained the compensation due. Without counsel how could Toland have established before the supreme judicial court of the Commonwealth that the loss of his right hand on the dredge came within the workmen's compensation act? How could Daniel Mills have been compensated for his hernia without the decision of the supreme judicial court? Or any one of the 200 or more employees be compensated whom we represent before the board annually?

Are our industrial accident commissioners able to handle these cases without our intervention? It is the duty of our commissioner to decide the case according to the evidence. He can not in all fairness be at the same time counsel for the employee and judge in all cases. He can not go out and dig up witnesses to contradict the insurer's witnesses, for in a short time the whole system would fail for lack of faith in the commissioners. He can in fatal cases send out an investigator to see if the widow has a just cause, but he should not summons in witnesses, both lay and medical, to oppose witnesses

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12 Rose Lucey, BLAS, No. 20640; IAB, No. 23831. This severe injury occurred on Sept. 8, 1916, and she received compensation for 10 years directly from the insurer, and when payments ceased came to us for the first time, and finally obtained an additional $800 plus a new wig, and a bookkeeping job at her old employer's.

13 Bessie Kelly, BLAS, No. 29482; IAB, No. 23258.

14 Lawrence Farmer, BLAS, No. 32310; IAB, No. 19804.


16 Daniel Mills, BLAS, No. 29479; IAB, No. 22421. This case was appealed to the supreme judicial court, where we maintained that even though we were unable to point to a specific act bringing on the hernia, it was enough that the work in general was a definite contributing factor. See decision by supreme judicial court, in favor of employee, in Vol. 256 Mass., and in advance sheets, Mar. 1927.
of the insurer, for he naturally would believe his own witnesses and discredit the others. He can write a decision in legal border-line cases awarding the employee compensation for an injury on navigable waters, for a fall on private property, for being hit with an ash tray falling from a window on a public street, or order a private attorney to return to an employee the balance of an excessive charge, but he can not prosecute and enforce his decision on appeal, first to the reviewing board, then to the superior court, and then to the supreme judicial court. He can not in medical cases find that the employee is suffering from benzol poisoning or tuberculosis, industrial in origin, unless physicians so testify before him nor can he nor has he the time to go into the factories and summons fellow-workers and obtain specimens of the materials used. These the legal aid lawyer produces at the hearing.

The Massachusetts commissioner knows he can depend on the legal aid lawyer to have a complete investigation made of the case; that all available witnesses of service to the employee will attend the hearing. He knows that the poor and undeserving cases are weeded out and never reach a hearing, as the legal aid lawyer personally receives no fee from the client but is paid a salary by the legal aid society and has everything to lose and nothing to gain from prosecuting a worthless case. He knows that if the legal aid succeeds in winning the case he (the commissioner) will decide the fee that is to go to the society for its services and that the fee simply helps in the carrying along of the legal aid work for other needy persons.

He knows that the files of each and any case is open to him; that the evidence presented is not purchased for the occasion; that its doctors are representatives of the best hospitals, interested in giving the employee a fair deal and not simply paid to testify; for in most cases the physician's fee is regulated by the commissioner. He knows that the employee is in the hands of a lawyer who knows the compensation law, who can safely advise the client, and who can guard the employee's interests.

And, finally, he knows that by constant contact with employees and insurers the legal aid lawyer detects the weaknesses and strength of the system used by insurers; that dishonest practices, such as getting

17 Ernst W. Swanson, BLAS, No. 32632; IAB, No. 25360; employee, a diver, lost parts of two fingers while laying sewer pipes in Lynn Harbor, from Nahant to the new pumping station.

18 Annie Rimpola, BLAS, No. 23695; IAB, No. 23695.

19 Lloyd McCracken, BLAS, No. 22336; IAB, No. 18394. This case was appealed by insurer to the supreme judicial court (see 251 Mass. 347), where we prevailed, and ultimately at subsequent hearings obtained a total of $3,300 for employee.

20 William Varney, BLAS, No. 19611. An attorney charged a fee of $250 on a $750 case. The department of industrial accidents ordered $175 returned. The attorney refused, and the case was referred by Commissioner Chester E. Gleason to the Boston Legal Aid Society. During proceedings in the superior court, the attorney died, but the society obtained a decree and collected from the estate. (See Superior Court, Suffolk County, No. 164806.)

21 Joseph Bevaird, BLAS, No. 83646; IAB, No. 26290.

22 Spencer Buzzell, BLAS, No. 31880; IAB, No. 24485. See also in Bulletin No. 264 of the United States Bureau of Labor Statistics, p. 189 et seq., "How medical questions are handled under compensation act in Massachusetts" (1918), by William W. Kennard (chairman Massachusetts Industrial Accident Board); and in Bulletin No. 281, Seventh annual meeting of the International Association of Industrial Accident Boards and Commissions (Calif., 1920), p. 276 et seq., see Dr. Francis D. Donovan's (medical adviser Massachusetts Industrial Accident Board) paper on the "System of medical service under the Massachusetts workmen's compensation act."

23 Harry Delton, BLAS, No. 33580; IAB, No. 25906.

ignorant employees to sign discontinuances of compensation under guise of signing simply a "receipt," are nipped in the bud. On the other hand, the legal aid lawyer knows that most insurers have excellent clinics where better care can be taken of the employee than by the irregular practitioners so ably described by Dr. Walter R. Steiner. He establishes cooperation between the insurer's physicians and the employee. He helps in restoring the worker to industry.

And on the question of lump sums, the legal aid lawyer has the advantage over the private attorney. The occasional attorney who tries cases before the board can get no retainer. It is hard for him to get a fee if the employee is simply awarded compensation at $16 or less weekly. He therefore depends on getting a lump-sum settlement, out of which he can get his fee. Lump sums in certain cases have their uses; but in most cases they are dangerous, damaging, and thwart the very purpose of the act, to wit, definite weekly payments for a definite injury. Time and time again an insurer will mark up a case in which compensation is being paid, for the sole purpose or in the hope of obtaining a lump-sum settlement. In every such case the legal aid lawyer opposes lump-sum settlement. He will even prevent a lump-sum settlement desired by an ill-advised client.

Joseph Calabro wanted a lump sum the worse way. The insurer wished to pay some $1,500. But the legal aid lawyer knew that Calabro's right hand was useless for working purposes; that schemers would in a short time get that $1,500 away from him; that he was incapable of handling more than a week's pay at a time; and that if he took his $16 weekly he would ultimately obtain $4,500. He tried to make this clear to Calabro, but $1,500 in one sum seemed like a fortune, and he went to a private attorney, who agreed to take a lump sum; but the legal aid lawyer brought the facts to the commissioner's attention and Calabro is still getting his $16 per week.

So, too, the insurer wanted to give Arthur Brehn a lump sum, but the legal aid lawyer knew Brehn's brain was not equal to the administration of a large fund, and so Brehn is nursing a useless wrist on weekly payments. And Frank S. York is getting weekly payments because he is old, and the weekly payments will continue for five years, definite, certain, and probably to the end of his days (as he may not live the full five years), rather than a lump-sum amount lasting an uncertain time and probably making him a public charge in the next few years of his life.

Is the legal aid needed in compensation cases? Let us see what it has done in that line since July 1, 1912, when the Massachusetts act took effect.

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26 Joseph Calabro, BLAS, No. 33913; IAB, No. 25803.

27 Arthur Brehn, BLAS, No. 81224; IAB, No. 24944.

28 Frank S. York, BLAS, No. 30585; IAB, No. 22400.

WHAT THE BOSTON LEGAL AID SOCIETY CAN DO AND HAS DONE SINCE 1912 IN COMPENSATION CASES

The guiding spirit in compensation work in Boston was Reginald Heber Smith, author of Justice and the Poor, and general counsel of the Boston Legal Aid Society from August, 1914, to December, 1918. With that great foresight which is always his, he saw that legal aid work and industrial accident work were bound to interlock; that a new era of hopefulness for the injured worker had begun; and he began the work of establishing contacts between the legal aid and the industrial accident board. Because of his outstanding ability and personality, the board began to look to the legal aid for assistance. Widows of employees left the statehouse and came with letters (or address simply) to the legal aid. Workers with legs broken hobbled up the stairway. The armless, eyeless, and maimed knocked at the door—and found a willingness and ability to help.

And they continue to come. We have moved nearer the statehouse—within a stone's throw—and the army of the injured is growing. They come from the hospitals by the score; doctors, overseers of the poor, members of the industrial accident board, judges, lawyers, employers, and even insurance companies send them to us.

And one employee tells the other—and so our work and our burden grow. And we want them to grow and we want to continue to help in those cases where counsel is necessary.

Every one of the cases mentioned by name are actual cases taken from recent files and can be found both at the department of industrial accidents and at our office.

Compensation work is but one of our many branches of legal aid work. So far as we can, we try to have each man specialize in one branch of our work. In compensation this has been almost a necessity. The insurers throughout the State have separate departments for compensation, with lawyers doing compensation work solely, with trained medical experts and investigators. But when they go to meet Chester Chabelik (or Chabarek) on the field of battle they find equal forces opposed to them. Young Chester did not know that he was entitled to $500 specific compensation in addition to $16 per week for the loss of use of his right hand, but the legal aid lawyer knew it. He did not know that because two fingers were permanently stiff on the left hand he was entitled to $250 more.

29 William Howard Taft, Chief Justice United States Supreme Court, in the preface to Growth of Legal Aid Work in the United States, says: "A great deal has been done to promote the achieving of justice for the poor and unfortunate in workmen's compensation acts. They have expedited just recoveries and have relieved the burdened courts, enabling them to dispose of other litigation heretofore long delayed." "It was the consciousness of the harshness of the circumstances in shutting poor people out of the opportunity to appeal to courts that induced Arthur Von Briesen, that philanthropic leader of the bar, to organize and set on foot legal aid societies."—Bulletin No. 398 of the United States Bureau of Labor Statistics, by Reginald Heber Smith, of the Boston Bar, and John S. Bradway, of the Philadelphia Bar, Jan., 1926; see p. 32 et seq., "Industrial accident commissions."

30 The report of the Boston Legal Aid Society for 1913-14, p. 25, shows that the contact started cheerfully and at once. The board wrote: "We have advised members of the inspection staff to instruct employees whose cases may be regarded as close and difficult that you are ready to cooperate with them and make said cases ready for formal hearing when insurers decline to make compensation. We appreciate fully the force of your suggestions in this respect and shall be pleased to have your cooperation in the difficult work of administering justice to the parties concerned in the many cases which come before us."

31 Chester Chabarek, BLAS, No. 32871; IAB, No. 26579.
Arthur Beauchamp's back was still bothersome, although X rays did not show it, and there was no reason why the overseers of the poor should stand the burden that his boss's premiums were meant to cover.

Frank Studley simply got a heel nail in his finger, but blood poisoning spread and he lost one finger, then another and another, then his leg, and then tuberculosis set in, and he died; but his next of kin obtained the compensation that was due him during his lifetime.

George A. Dow, an elderly gentleman who had a broken neck which never set quite right, is still getting his $16 weekly, although the insurer forced him to go to the supreme judicial court, through the legal aid help, to get it.

These are but a few of the many cases that could be enumerated. In 1912, when the act took effect, our cases of all kinds numbered 1,041, none listed being compensation cases. In 1920 the total number was 4,646, with compensation cases 148; in 1925, total 7,759, compensation 267; in 1926, total 8,134, compensation 331. Some we can dispose of by advice only, but the great bulk need careful investigation and medical examinations. If a man has no case we tell him so, and that ends the matter, save that if he needs financial help we send him to the overseers of the poor or other social agencies; or if he needs medical aid we establish contact with the proper hospital. The great bulk of the cases, however, need careful examination, and the employee is always given the benefit of the doubt, as he should be given. That the great army of injured employees appreciate our work is attested by the fact that the number of their friends coming for aid continues to increase.

CONTACT FRIENDS

Your former president, Frederick M. Williams, has well said, "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."

We are working along the same lines, and our problems are mutual. We both want to help the injured employees, and we want to do it fairly and equitably. We can not do everything alone. That is why the Massachusetts General Hospital, after treating a patient and doing its duty medically, sends him to us for legal treatment. That is why the Boston City Hospital, the Massachusetts Homeopathic Hospital, and others have their social service departments keep closely in touch with us and cooperate in every way. That is why liberal-minded employers, doctors, the rehabilitation department, and others send injured employees to us. That is why last year the
department of industrial accidents 88 sent 88 87 employees and widows to us, so that we might represent the claimants, if need be, from the hearing before the single member to final decision in the supreme judicial court. That is why the overseers of the poor will send applicants who may be entitled to compensation to see us, for the city or county should not bear the burden which the legislature rightfully put upon industry.

CONTACT SUGGESTIONS

That the various industrial accident boards or commissions should cooperate with the various legal aid organizations is a recognized fact. At the twelfth annual meeting of the International Association of Industrial Accident Boards and Commissions, held at Salt Lake City, August 17 to 20, 1925, the report of the committee on legal aid presented by W. H. Horner, of the Department of Labor and Industry of Pennsylvania, which was after discussion adopted, contained the following resolutions:

1. Resolved, That cooperation in handling workmen's compensation problems is hereby approved by the International Association of Industrial Accident Boards and Commissions and the National Association of Legal Aid Organizations.

2. Resolved, That the member organizations of the International Association of Industrial Accident Boards and Commissions and the National Association of Legal Aid Organizations be requested and encouraged to cooperate with each other in handling workmen's compensation cases.

3. Resolved, That these committees be continued in their respective organizations to supply information as to methods of cooperation, to study the results, and to report from time to time on the progress of the mutual work.

Mr. Horner's report clearly points out the right road to be followed. The first step is to establish direct, personal, man-to-man contact between each industrial accident commission and the appropriate legal aid organization. In most of the larger cities you will find legal aid offices already in existence.

Future progress depends on mutual education and cooperation. It would be excellent if you would send for the attorney in charge of the legal aid office or for any officer or director whom you may know and talk over with him this unique opportunity for constructive service.

It takes time for such contacts to ripen and bear fruit. Close and efficient cooperation is possible to-day in Boston because the plan has been steadily developed during the past twelve years. 88 But the sooner the start is made the sooner will tangible results be accomplished.

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88 The present board consists of the following members: William W. Kennard, chairman; David T. Dickinson, Frank J. Donahue, Chester E. Gleason, Joseph A. Parks, Charles M. Stiller, and Mrs. Emma S. Toussaint.

87 Eighty-eight employees and widows actually came at the suggestion either of a commissioner, the secretary, or a board employee. See annual report of BLAS, 1926. The actual number referred to us is probably in excess of 88; occasionally employees prefer to try their cases pro se, or eventually obtain private counsel, or drop their claims altogether. As the BLAS is a quasi-charitable institution, the board does not hesitate to refer applicants to us; the suspicion which would follow reference to a private attorney automatically disappears (the courts, even to the supreme judicial court, not hesitating to refer applicants to us) ; and the political difficulties of a salaried attorney attached to the board staff is avoided. (See discussion of this phase in Bulletin No. 398, Bureau of Labor Statistics, Ch. IX—Industrial Accident Commissions.)

88 See address by John S. Bradway, secretary National Association of Legal Aid Organizations, at eleventh annual meeting of the I. A. I. A. B. C. (Halifax, N. S., 1924), Bulletin No. 386, p. 114 et seq., and discussion following wherein Joseph A. Parks, commissioner, Massachusetts Department of Industrial Accidents, stated: "I have had a good deal to do with the Legal Aid Society in Massachusetts. It is an excellent organization. We can not do too much to encourage these societies in their work."
I have tried to make this paper practical by talking about actual cases, just such cases as you gentlemen have from time to time in your own jurisdictions. What I have said I feel deeply, and naturally I hope that you may agree with me. In the final analysis you will rely less on what I say and more on what the Massachusetts Department of Industrial Accidents says of our work in behalf of injured workmen.

Our board is represented here to-day by William W. Kennard, chairman of the Massachusetts Department of Industrial Accidents, and I hope he may be willing to speak to you frankly, out of his own experience, about our efforts to furnish injured workmen with legal assistance that is prompt, skilled, efficient, thorough, and at low cost and sometimes at no cost at all.

DISCUSSION

The Chairman. In our State, although it is both young and small industrially and in compensation work, we are very much interested in this subject. The statement that Mr. Horovitz made, that such a large proportion of the lawyers in some of the States do not know anything about the compensation act, I felt was correct, and yet did not dare to bring it out. I have found it to be nearly 100 per cent in our State, and I realize now that there are others with the same experience.

It is apparent to me that a legal aid society and an association of this kind that has workers in the various centers, even in a State like ours where we have no very large cities, would be of vast benefit. It is so difficult to get the evidence before the compensation board, and it is, as complained of by Mr. Horovitz, practically impossible to go out and hunt it up, but that is what we really have to do.

Mr. Stewart. We have Mr. Kennard, of the Massachusetts board, here with us. I dare say Massachusetts has had more actual experience with legal aid organizations than any other State in the Union, and Mr. Kennard can tell us about it from the compensation board point of view. We have heard it from the mutual aid organizations and I think we ought to hear from the compensation commission end of it. I would like to hear from Mr. Kennard.

Mr. Kennard. What I may say must of necessity be thought out as I speak because I was not prepared to say anything at all upon this subject unless some question were asked, so I may be a little desultory in my remarks.

As I did not come in until Mr. Horovitz had gotten through the opening of his speech, I do not know what he said in beginning, but as he went along I had a feeling that unconsciously he might be creating an impression among this audience that some organization like the legal aid society in Boston was necessary in order that claimants might get their rights before our board. That intimation, I think Mr. Horovitz would be the first to deny. You will recall that he said that 88 of the cases which the legal aid society received were sent to it by the commission. I have forgotten how many it had altogether, but I think that 88 was a considerable portion of the cases which it tried before our board. That comes about because such cases are brought to our attention through our original reports,
through the reports of our inspectors of dead cases, because all fatal cases are in the first instance investigated by our officers to find out if there is any possibility of a claim for compensation. If we find or there comes to our attention, through our special force, through a conference with some member of our board, cases in which that situation exists, we find out what the situation is. If we can not adjust the matter equitably and reasonably between the injured employee and the insurance company by that personal intervention and it becomes necessary for the statutory hearing to be held, then we determine whether or not it is a case in which legal counsel is necessary. In a great many of the cases, in fact in a very large proportion, legal counsel is not necessary.

What Mr. Horovitz has said about the lawyers is true. The majority of them who come before our compensation board for the employees, have practically no real knowledge of compensation law, at least in its final aspects. They may have a general observation of it. Many of the cases would be very much better off if they did not have a lawyer, because the lawyer comes up, and, being there, he sees fit to represent the employee and we feel that to some extent that right should be extended to him. However, we do not let the case go by default because the lawyer does not try it correctly—we try it for him. My own business is, in the first instance, whether or not the claimant has counsel to do the questioning, get all the facts, and then I turn to the lawyer and ask him if he has any more questions to ask.

There are, however, cases in which it is necessary to have legal assistance, and as a case is won in its preparation, before it gets into court or before the industrial accident board, that assistance is most necessary in the preparation of the case, in marshaling the evidence, as Mr. Horovitz has suggested, in gathering the witnesses. While we can do something along that line, our hands are of necessity tied. We have our regular day-to-day work and it is impossible for us to get all the witnesses, to go out and do that preliminary work which, as every lawyer knows, is the real substance of the case.

Then we are confronted with this situation. If the claimant has counsel, very well. Many of these people are, of course, not in a position to engage counsel in the usual way, and we then turn to the legal aid society. I do not know that Mr. Horovitz told us to what the existence of that society is due, but it is a voluntary organization so far as I know. It is supported by contributions of citizens of Boston and the immediate vicinity who recognize the need of some people for legal assistance and their inability to pay for it at the usual rates. That is the foundation of the legal aid society, and its work is much more extensive than compensation work, though that perhaps is as important as any. Its fees are very reasonable. It charges fees to a small extent where it is successful; if it is not successful, presumably it does not get any fees.

It does not attempt to take cases where there are lawyers who are interested in the case; it does not compete with the legal profession. Indeed, I imagine that a very considerable proportion of the subscriptions which keep the legal aid society in existence comes from Boston lawyers who are glad to assist in the work.
It has always seemed to me to be a very unwise thing for a member of an industrial accident commission to recommend a lawyer in private practice to any litigant. I do not know that it is necessary to elaborate on the proposition. It seems to me it is self-evident that if an industrial accident board gets an indemnity for the sending of business to any attorney in private practice it has placed itself in a position which does not look exactly right. So we recommend the legal aid society.

It has been a great assistance to us as well as to employees. Mr. Horovitz himself, who represents the legal aid society before our board, has been very zealous in his prosecution of cases and very skillful, because he has had enough work there and has enough natural ability to understand the thought and to present the cases in a way and manner which gives us the employee's side, so that we may determine each case to the best of our judgment with all the facts before us. It has been a very valuable adjunct to our board.

I do not know to what extent in your various jurisdictions you have lawyers come in. I know that that is a question which interests a good many of you. There are cases where lawyers are desirable. I have had cases come before me in which we have found out that the facts of the case are of such a character that they warrant more adequate preparation than could be made by the client, the employee himself, and it was suggested that he get a lawyer. If he says he has no lawyer and does not know where to go, we send him to the legal aid society and give such information as may be necessary to give both the employee and the legal aid society groundwork for the proper preparation of the case.

Of course the industrial accident boards can not create legal aid societies. That should be done by the community in which it is desired that that service shall be rendered, but that they can do much toward propagating an opinion in a community that an organization of that sort would be valuable it seems to me is perfectly apparent. As I say, the work can not be confined to compensation cases, but it can be made very valuable to the community in every line and every branch of the law, though perhaps the need of it in our own particular line is more apparent and greater than it is, for instance, in cases as to whether a man and wife shall live together for a little while longer or shall be divorced or separated, or whether a bill of $25 or $50 should be paid. In short, our branch of the law seems to present a peculiarly fitting place for the functioning of a legal aid society.

As I said, the legal aid society has given great assistance. We feel very glad that we have an organization of that sort to which we can turn in cases requiring a presentation of the case beyond the limits to which we can go. Mr. Horovitz cited several cases to you. They were not perfectly clear instances; if they had been, it would not have been necessary to have a lawyer. The loss of the use of the hand, for instance. I do not recall the case particularly, but it probably was not a case where the hand had been amputated. If it had been, the insurance company would have paid, with no argument about it. It would probably have paid on its own initiative, and if it had not the reports now filed would have indicated that that was the situation, and we would have stood the company up. It was probably a
case that came under that section of the statute where the hand had been rendered incapable of use. There are some fine questions as to whether a hand which is still attached to the arm has been rendered incapable of use. He mentioned the question of disease and that the case was eventually determined to be due to an injury. That was not apparent from the case on its face. I do not know whether that case came from our board or how it came to the legal aid society, but when people go to the legal aid society they go there because some one knows about the legal aid society and recommends it or because some one who has had experience there tells them that it is a good place to go.

Those of you who need legal assistance in the trial of your cases—and I do not see how you can handle them all without legal assistance unless you have a supporting force which can go out and do the work which a lawyer has to do to prepare a case—would find the legal aid societies of great value.

There is laid before me the inspector's report in all of the cases where men are injured under any circumstances which may indicate a possibility of a claim under the compensation law. Cases in which something has been done go along in the usual way, but cases in which nothing has been done are laid before me. I look over those reports, and if there is anything at all about them that would indicate a possibility of a claim under our law, the question comes up, What are we going to do? And when I say inspector's report, I mean the report our inspector makes on every injury that takes place in Massachusetts. He goes out personally; he talks with the witnesses; he talks with the employer; he talks with the doctor and he talks with the family; and then we have a report of that case. A great many of these cases indicate upon their face that there is no possibility of anything being done. When I say all the cases, I mean those in which the injured workers have died, no matter what the original appearance of the case may be. In some of them there may be a possibility. We do not want to stir up false hope in the families of deceased employees. If they come to us in the first instance, we can not tell them definitely what may be the position of the board. If we could we would not have to render a decision, because we would tell the insurance company. We can not tell definitely and we can not very well adjust the case beforehand. We can not arouse false hopes in the minds of the dependents as to the outcome of the case. We simply say there is a chance to do something and they had better get counsel. Our cases are all susceptible of going to the supreme court. When they leave our hands they need counsel argument. They do not go before the courts except on questions of law which may be created by the trial of the cases, when they arise as a result of the decision. So that they have to have a lawyer then or else depend upon the supreme court to know the law without arguing, and while the judges know the law, sometimes they forget and it is better to jog their memory a little by way of argument. So it becomes really essential that the parties should have a lawyer at that time.

I do not know whether I have answered the suggestion that Mr. Stewart made. The legal aid society has been to us a great benefit and to the employee a greater benefit. Then it is a question in your
community of whether there is public spirit along that line intense
enough to raise the necessary funds to support such an organization.
If so, then you have something you will find very useful in your
work. If you have not, I think perhaps you will find it advisable,
if you run across enough of those cases in your practice, to start
something that will create an organization of that sort.

What has been said about fees is particularly applicable. Lawyers
are not in business for their health and there is no reason why they
should be. That is their business, their profession. It is from their
practice that they get their living; in order to get a living they have
to get fees commensurate with the time and effort they put into it.
We have fixed their fees in all the cases that have come before us,
and we have alienated the affections of most of the lawyers around
Boston by the way and the manner in which we have fixed those fees.
Lawyers in Boston, except as a matter of doing something for some
particular member of the community, feel that practice before our
board is so nonremunerative that, as far as possible, they avoid com­
ing before the board. If there are any questions that I can answer,
I will be glad to do so.

Doctor McBride. I would like to know whether or not the lawyers
connected with the legal aid work devote their entire time to the
work.

Mr. Horovitz. I devote practically all my time to compensation
work.

Doctor McBride. I mean any branch of the work engaged in by
the legal aid society—whether or not you, or any other member of
the personnel doing that work, take any outside cases.

Mr. Horovitz. I do not quite get the question.

Doctor McBride. My question was whether the lawyers associated
with the legal aid society devote their entire time to legal-aid work.

Mr. Horovitz. It all depends on the society. In Boston we devote
the time from 9 to 5; if we can work in our own work without inter­
ference, we are allowed to, but it must not interfere with the primary
work.

Doctor McBride. That answers the question. I wanted to know
if you gave your entire time to it.

Mr. Hatch. In these compensation cases is the service to the in­
jured employee gratis so far as the legal aid society is concerned,
or do you charge a fee?

Mr. Horovitz. We operate on this system: We have a retaining
fee which must not exceed $1. The highest fee is $1. In workmen's
compensation we had 331 cases, and $25 retaining fee out of that 331.
If we try the case and lose, all the expenses come from our funds.
The workman pays nothing. If we try the case and win, he gives us
only what they consider a fair fee, and that money goes back to our
funds to help the next man.

Mr. Wilcox. Everyone who has written or spoken at length on the
fundamental object of workmen's compensation tells us that it is
a system of exact, speedy, inexpensive justice. That is one of the
terms they usually use. You and I have come to know that there
is a little volume of cases such as Mr. Horovitz and Mr. Kennard
have mentioned which necessarily can not be handled speedily or inexpensively and without the assistance of the legal aid bodies. It does seem to me that boards will have a cooperating system which will make it possible better to do the thing that we say is the fundamental object of compensation if we can have in our communities a legal aid society functioning as Mr. Horovitz has indicated it is doing in Massachusetts.

We are fortunate in Wisconsin to have a legal aid society in the city of Milwaukee, and we are now encouraging the establishment of one in Madison, and we do just as Mr. Kennard does. We get hold of cases that are troublesome, where we know that the claimant must have the advice of counsel in order to present the case intelligently, and it is always, as you will appreciate, the type of case in which commissioners cannot go out and get the proofs. If it is just a matter of the extent of the disability, I have about as good a chance of working out that part as the legal aid society or any organization will have. If it is a matter of wage, I can get that; I can get it quicker and better than the average attorney, because I am familiar with the rules under which we establish the average annual wage; but when you strike one of those questions as to whether or not the man’s injury actually came from the industry, and that is the issue, I am ill equipped to go out and get the proofs that are necessary to establish this man’s claim, and somebody else must come in then.

I do not look with any disparagement upon the legal profession, because while perhaps 90 per cent of them know little or nothing about workmen’s compensation, as a matter of fact I think that is rather commendatory of the administration systems that we have in our States. The better lawyer tells these claimants that this industrial commission, this industrial accident board, will take care of them—“You go there, and they will see you through.” That is the way it should be, until you come to this type of case where the issue is whether the accident grew out of the industry, and then you have to have help and the industrial accident board can not see you through; then, notwithstanding all the lawyers have told these claimants, somebody else must represent them.

I feel as Mr. Kennard does that it is a mighty delicate proposition when I commence referring clients—men and women who have claims—to this attorney or that attorney. I do know attorneys in the State who are well informed on workmen’s compensation and who know how to present a case just as well as lay people; but I sort of rebel against the idea that I should send this party to that particular lawyer, because perchance the commission may have to decide against that lawyer. If I have sent this party to that attorney and recommended him as knowing how to present the case and he does not win it, I am “in dutch.” I think it is a good deal better plan to be able to say, “Here is an organization that out of its goodness is going to see that you have your case fairly presented—not won, but fairly presented,” and I have a perfect right and I ought to consider it a very great privilege and aid to my department when I can turn the party over to this organization that is so well equipped for handling claims.
The lawyer that I object to is the fellow who tells a widow or an injured man that she or he needs a lawyer and then comes in and pretends to be doing a whole lot when as a matter of fact you wish he had stayed on the outside and let you do it inexpensively. He is in the way instead of being helpful. I had a letter from an attorney up in New Richmond, Wis., the other day who wanted to know whether I did not know that my attitude in telling a widow who lives up there that she probably would not require the assistance of an attorney—probably there was no dispute in that case—was offending the ideas of the legal profession of the State.

Well, I knew I had offended them before and I was not averse to doing it again in a case where I thought I could do just as good a job for the widow as they could. As a matter of fact, that was a case in which the insurance company had already written to us. It had sent us a telegram on the very day this accident occurred and asked for advice as to how and when it should start payments, and then an attorney comes along and tries to make this widow believe that he is serving her and serving her well, when I know better. I know he is in for the fee he is getting.

That is the kind of lawyer I mean. There are lawyers who are very helpful. The most helpful lawyer is the lawyer who tells the claimant, in a case which the industrial accident board or commission can handle and handle intelligently, to let that board take care of him. I have no objection to the lawyer who answers the request of the client to take care of a case that comes from this other class which you and I can not handle.

Mr. Eppler. I feel I have gotten something to-day to carry back to the commission of Maryland. We have in Maryland what is known as the prisoners' aid society that worries us a good bit about prisoners who get hurt on contract work, and we have a family welfare association. Usually this family welfare association is composed of old ladies who have a fondness for our secretary, Mr. Brown; they come to him after the case has been heard and after we have tried to give it our very best judgment, and most of the family welfare association's work is drawing up petitions to reopen cases.

We have no such thing in Maryland as the legal aid society. The board, at the present time, is composed of three attorneys at law. Of course, when a case comes up where a legal question is involved we do our best, but just as Mr. Wilcox and Mr. Kennard from Massachusetts have said, many times we realize that our hands are tied and the claimant is more or less out of it.

I am going to carry back to the Maryland commission the thoughts that have been expressed here this afternoon and I want to talk to the gentleman from Massachusetts who spoke and also to Mr. Kennard. I think the Massachusetts proposition is the one that seems, at least from what I have heard, to be practical. It is really working. I would like to get as much data as I can to carry back to Maryland, because I think that it would be very, very serviceable in carrying on the work there.

Mr. Duxbury. This is beginning to remind me of an old-fashioned Methodist meeting in which each one tells his own experiences. I have been prompted to offer some of our peculiarities in Minnesota, not all of them of course, but so far as this subject is concerned. The
legislature in the State of Minnesota, in its wisdom—I do not know what that means but you know—provided that the department of labor and industries should employ certain persons for the purpose of giving assistance and advice to compensation claimants. Acting under that provision of the law and for the purpose of carrying out what many of you have pointed out, we have six men employed whom we call compensation adjusters. It does not make any difference what you call them. We employ only those who have been admitted to the bar. Once in a while one resigns or dies, but seldom, and if we have to put in a new one we put in some promising young man who has been admitted to the bar.

In every case of dispute with reference to compensation liability, the matter is referred to one of these compensation adjusters, and it is his duty to go out and see the parties. In many instances, of course, these disputes arise because the parties do not understand the law or they are not informed as to the facts. These adjusters are not charged or expected to go out and try to make a case where there is none, but they go out and discover the truth. After discovering the truth, if it is possible to get the parties together, it is done and the case is taken care of, according to the usual method in cases that are not disputed, by agreement or approval of the agreement. But it will happen that they find cases where there is a bona fide dispute of fact, like these cases suggested here—whether or not disability arose out of an accident, whether or not it arose out of their employment, and very many other such questions. Frequently there is a technical question involved. They have the claimant examined by doctors and get the evidence ready, and when the case is set for trial, they try the case before the referee who hears the case in the first instance. They follow the case up to the commissioner. Several instances have gone to the supreme court. The only appeal in our State from the decisions of the commission is the court of last resort, the supreme court.

I have been impressed with the value of that particular service. Of course you can easily see that where you do not have some arrangement of that kind, the legal aid society or some other institution of that kind by which these cases can be taken up and handled is a very useful instrumentality, but our men become experts on the question of compensation insurance and how to try the cases and are of very great assistance in getting cases properly prepared so that the referee can dispose of them.

I am putting this in as a part of our experience, and so far as I am informed that feature of our law is peculiar to it. Of course we all have good laws; ever since I have attended these conventions I have been impressed with the fact that it is inclined to be a sort of mutual admiration society, but with your indulgence I make this suggestion in reference to one law, the Minnesota law.

Mr. Stack. How are these adjusters paid?

Mr. Duxbury. They are paid by the commission out of the appropriation made by the legislature for our expenses, and we start them at $150 a month. Some of them have been there for some time and are now receiving $212.50 a month. We expect finally to get our commission on administration and finance to be liberal enough to permit us to pay a maximum of $225 a month.
Mr. Stack. Are the claimants charged anything?

Mr. Duxbury. The claimants are not charged anything.

Doctor McBride. I am curious to know how you handle the expense of medical attendance at the hearings.

Mr. Duxbury. Some perplexities arise in reference to that sometimes, but we manage to get along pretty well. We have a lot of men in the medical profession who have the spirit that a real doctor ought to have and they will take their chance in making an examination and coming in and testifying and getting beat sometimes, as they should be, of course. The commission and the referee are not influenced by the fact—we hope we are not anyway—that an employee of the commission is presenting the case. We want to be entirely free from that. We try the case on its merits and determine it on its merits, and try not to say, well, these boys are trying these cases (they are not all boys, some of them are past 50 years old) and they ought to be encouraged, and consequently decide the case in their favor. We have instructed them that their efficiency is not determined by the number of cases they win, but that it is determined by the way they prepare the cases and present them. If the case ought to be denied, it is no reflection on them whatever, if the case is presented so that we can get at the merits of it and not in a bungling way, of course. Some lawyers try the question of negligence and every other thing, the number of children and all that kind of thing, that is not material at all, desperation of all kinds; of course we are not bothered with those things.

Mr. Phillips. I want to say amen to everything that the brother from Minnesota has said. The legislature, in its wisdom, said nothing about this subject in Missouri. We just went ahead and did it.

Mr. Duxbury. Good for you!

Mr. Phillips. We have three legal advisers who are in our pay. The State has told these injured men that they no longer need lawyers; they are going to get this compensation without delay, without expense, and it is the duty of the State to furnish whatever legal aid is necessary; they should not have to go to outside sources or charitable organizations or anywhere else for their attorneys. It is a service that should be furnished by the State. It is part of the State’s promise of compensation.

Mr. Duxbury. The attorneys appearing before our referee have that perfect right, of course, but the claimants have the privilege of the service of these compensation adjusters and we have some men in our State in the legal profession who take some interest in compensation cases and try them reasonably well.

Mr. Phillips. I want to explain the Missouri idea. We let the lawyers come in, of course, just like you do, but it seems to me that the spirit of litigation is contrary to the spirit of compensation, and we are trying to do away entirely with the spirit of dispute in compensation cases. In Missouri it is an unpopular thing to contest a case. The insurance adjuster who comes up with a contested case is in bad from the start and we let him know that. I think it is the function of these committees to put a quietus on disputes and litiga-
tions and lawyers and the whole business. We are preaching the doctrine of trusteeship, that the only time the party should come before the commission is when he comes there for advice in the nature of an application by the trustee for directions from the court. The insurance company ought to produce all the witnesses—we make it produce all the witnesses for and against—and it ought to come in the spirit of truth, applying for directions as to what to do. That is what I think is going to make compensation a success, and not all this talk about lawyers and disputes and litigation and law suits and courts and things like that.

The Chairman. We want to compliment Missouri on an attempt at a millenium.

Mr. Kennard. I should like to ask a question. I am going to state first a proposition that seems to be very sound. The gentleman has referred to the trusteeship that we hold, the spirit of the compensation act. I anticipate, and I think it is absolutely true, that any compensation act, like any law which is enforced and administered having in mind but one side of the controversy, will reach its death sooner or later. The injured workman probably represents 2 per cent of the community. Are we trustees for the other 98 per cent? I feel that I am. I feel that when a case comes before me if I do not decide it fairly and squarely as I see it—and I think the gentleman from Missouri feels the same way, though some of the statements indicated a little to the contrary—I have driven a nail in the coffin of the compensation law in my State. With that premise, let me go a little further.

Mr. Phillips. Let me correct you first. By trusteeship, I did not mean the commission; I meant the insurance adjuster.

Mr. Kennard. The gentleman says that the commission appoints lawyers. I do not know whether or not the commissioners expect those men to be impartial, but if they are impartial they start in without the principle necessary that a lawyer should have. He ought to be distinctly and intensely partial if he is going to try that case the way it ought to be tried. Otherwise, he is apt not to present the case to the best interests of his clients.

If they are partial, what is the effect upon the commissioner before whom the man comes whom he has employed and in whom he must have confidence? What must be the impression of the commissioner upon a case which is presented by one of his employees? Is he not bound to feel subconsciously, if not actually, that this must be a good case? Otherwise, his employee, his agent, if you please, would not be there presenting it, and the case starts off unequally. It starts off with a very considerable slant in favor of the employee by reason of the very counsel who presents it.

Then you get back to my original proposition. With those cases being presented by counsel hired by the commission, when you administer the law there is, it seems to me, that tendency to decide cases the wrong way unconsciously or subconsciously, I am sure of that. The proposition has gone so far with us in Massachusetts that at the present time another branch of the legal aid society seems to feel quite wrought up about it because certain cases are decided against them; it says that if they had not been good cases the legal aid society would not have presented them, and being good cases they
ought to be decided favorably, that they are good cases because the legal aid society presents them.

How much does that enter into it in those States where they hire their own counsel? Of course, we take care of the preliminary work, the investigators do that by conferences with the members themselves, because we have personal contact. Some member of our conference has personal contact and we give the preliminary advice; it is only in cases where something more has to be done that we seek the aid of a lawyer. That is one of the thoughts that has entered my mind, the advisability of having counsel connected with our board. On the whole we have been inclined to discard a movement of that sort because of the reasoning along the lines I have somewhat briefly attempted to bring out.

Mr. Duxbury. I am glad that the last speaker made the remarks he did because I have had some of the same instances which he expressed, and it is not humanly possible for one of these compensation adjusters of ours to be absolutely unbiased with reference to the case. If he were, he would be a little more than human, and if he did not have some of the spirit of advocacy, he would not go up and try the case; but they are human, all those fellows, and I think they get the spirit of advocacy a little stronger than they need sometimes. I have not found them in the other attitude of trying to be so judicial and exact about the matter that they do not do justice.

Mr. McShane. I understood you to say that they went out only if there was a possibility of a case; then they filed a claim. It was not when they were dead certain they had a good case before they proceeded. They went out, and where there was a possibility they gave the widow or the injured man an opportunity at a hearing properly to present it.

Mr. Duxbury. They present the case and try it. Of course, in very many cases they are able to say in the beginning whether there is liability or lack of liability, and the thing does not go any further because there are lots of cases, of course, where the man understands his business and would be able to advise very definitely and positively. There are many cases in which the employer or assured can satisfy them that they are liable and very many of them where a valuable part of their service is to get things adjusted without trial, but, as long as human nature exists, there will be disputes about the application of any law, however holy it may be, to the rights of parties, and we will never get to that millenium where there will not be any disputes. I do not want anybody in Minnesota to feel that he has to pay compensation whenever it is demanded or else he is going to get penalties from the commission. I want everyone who honestly believes he is not liable for compensation to resist it because that is the only way you can get justice.

Mr. McShane. I want to make an observation regarding one of the peculiarities of our law, and I want you to understand I am not laboring under any misapprehension about the fact that we have some very rotten provisions in the Utah law, but I am not responsible for them. I am making the most of a bad case.

Regarding the payment for medical testimony in Utah, our law provides that doctors must come before our commission upon sub-
and they are paid the same per diem that a lay witness would be paid; and we pay that out of our appropriation. I know that will not sound very heartening to the doctors, but we have found a splendid spirit of cooperation on the part of our best physicians and surgeons regarding that matter and we are experiencing no difficulty whatever.

I regret that we do not have a legal aid society in our small State, but such is the fact. But we have another thing that has assisted us. We went to the law department of our university and after a conference with the dean had half a dozen of the most promising law students in the senior class each year establish a legal aid society downtown under the supervision and direction of the dean and the associate professors. They assisted in drawing their pleas and we sent many cases to those people, to the benefit of the injured workmen who collect a small wage that is too small to sue for, and to the benefit also of the school and those young fellows, because they are getting a start.

We went further than that this year and presumed upon the good nature of the State bar association. We are sometimes requested by litigants, or one who is pressing a claim before us, to recommend an attorney. We do not feel that it is our province to do so. We ask, will the State bar association kindly name some good fellow in Salt Lake City to whom we can refer these people by giving them a card and say that the State bar association of Utah makes the recommendation, and not the commission?

Mr. Halford. You always have trouble with your lawyers, and you always will have trouble with them as long as there is any dispute. In my opinion there should be no dispute requiring a lawyer in a case, a good case, where compensation is due. I have been interested in compensation for a good many years, and I am glad to know that we have compensation acts all over the country. Some are better than others, but I believe that every State is doing its best to get what it thinks is right for the injured workman. The injured workman is entitled to something, and he ought to get it without the assistance of lawyers. I do not see why lawyers should be necessary at all, and I only wish that all you people over here were in the same happy position as we are to-day in that respect. We have been in existence some 12 years, and we have never had the slightest cause to have a lawyer come near us. They are of no use to us. When a lawyer gets into a case we always find it is a mighty doubtful one. The three commissioners are judge and jury, and if a man has a good claim he gets his money. We have the money, and if he is entitled to it he will get it.

I realize, of course, that you have your different systems in operation here, insurance companies, and, if I were in their position, probably I would think the same as they do; but when the workmen get injured, with us the money does not go to the lawyers, and a great many of the lawyers have gotten to the state where they say to the claimant, “We can not do you any good; go up to the board yourself if you have a good case; then you will get all the money you are entitled to.”

We pay out some pretty big pensions, and I am afraid if you people had to issue pensions around $17,000 to $25,000, as we do,
you would have some lawsuits before you got away with it. But we do not have that kind of trouble at all. I believe Mr. Kennard has hopes it will be that way over here. I would like to see it so.

Now, with us, when there is any possible chance for a dispute we get the parties together and get the facts ourselves. We have about 150 or 160 employees, and we do all the routine work. The three commissioners are supreme and we are free from political interference, and no court in the land can upset our findings or awards.

Mr. McShane. Does your law provide for appeals?

Mr. Halford. No appeals with us. That is what I say. I do not want you to think I am opposed to lawyers in any way; I only say they are not necessary with us. I would like to see all you people in the same position we are in.

The lawyer is concerned about winning his case and getting his fee, and the other fellow has to get his before the lawyer gets it. Sometimes where there is a case in dispute we send a man out to get the evidence, and he makes his report to the board. If we are not satisfied with that, we bring the workman in and the board deals with the question and gets the facts from him. If the employer wants to dispute, why we have him come in also, and we hear his side of the story and we act as the lawyers. When we get through with the case—if of course, you can not satisfy both sides—it is settled, and there is no appeal from our decision, only to the board itself.

Mr. Duxbury. That is why you are right all the time?

Mr. Halford. That is why we are always right. I do not want you to think that when we say this is that or that is this that we are through with the case. We are always willing to reopen any claim—we do not care if it is five years old—and if we find that possibly we have made a mistake and have not given the workman quite enough, we always have the money there to give him more; on the other hand, if we find we have dealt with him a little bit too generously, and we are paying him a pension, why we have no hesitancy in reducing it or taking it away from him.

When our compensation law was being enacted the employers were very fearful as to what was going to happen and they put up a strenuous fight to get the act in accordance with their wishes. We had a very clever man, Chief Justice Meredith, get statistics from all over the world and the best information that he could procure; the results he incorporated in the act, along with what he thought would be best, and that is now in operation in Ontario; and since it has been tested I am glad to say there are very few dissatisfied employers. It does away with all the lawsuits and worry on the part of the employers and there is a more harmonious feeling between the employers and the workmen. We feel—and I do not think there are many of you here who would dispute it—that we have the best compensation act in the world, and there is less trouble in having it administered.

We never put a man off with a couple of hundred weeks. We pay him for his temporary disability as long as it is there, and then we give him a pension if warranted. We do not stop at $5,000 or $6,000. We have issued pensions where the capitalized value is over $25,000, so you can see what the injured workmen get if they are entitled to it. Then when you compare our expenses, the workmen get all the
money that we collect with the exception of about 4 or 5 per cent overhead expenses for the cost of running the institution; so you see the employers are not paying a lot of money to the intermediate fellow.

I was interested in a report I saw a couple of years ago; I think it was in Pennsylvania. I saw they had collected $85,000,000 and the workmen got $85,000,000 out of it. That is awful, you know, to me. If that had been with us the workmen would have got practically all that $85,000,000; they would have got $80,000,000 out of it anyway.

But where there is a dispute I will not say lawyers are unnecessary except under conditions such as we have. If you can get these same conditions, you commissioners who are bothered with all these lawyers will be happy and you will then be able to say you are always right—no appeal to these things. I would like to see all your boards just that way.

Mr. Wilcox. Do you exempt your employers in Ontario from the necessity of insuring in the State fund?

Mr. Halford. They have to come in with us.

Mr. Wilcox. Then in your hearings you never have but one side represented, do you?

Mr. Halford. The employer comes in and tells his story if he wants to.

Mr. Wilcox. If he comes in, there is no financial benefit to him one way or another? He tells his story just the way another witness will tell it?

Mr. Halford. Yes.

Mr. Wilcox. He is not a party to the proceedings?

Mr. Halford. We have the two parties. We listen to both of them.

Mr. Wilcox. So far as litigation is concerned?

Mr. Halford. We have no litigation at all. Absolutely none.

Mr. Hatch. May I ask one question? You just stated in answer to Mr. Wilcox’s question that the employer has no financial interest one way or the other in how you settle a claim. I would like to ask whether you have in your determination of rates for individual employers a system of merit grading or experience grading.

Mr. Halford. I did not say he had no financial interest in it.

Mr. Hatch. I thought that was a mistake.

Mr. Halford. No; I understood Mr. Wilcox meant representation, that they only had one side. Oh, yes, of course, the man that puts up the money has always an interest in the money. We have a system of collecting our money according to the hazard. We have 24 classes and we spread it over them in accordance with the hazard, from 10 cents per $100 of pay roll up, and we assess them. We estimate how much money we want for the year and sometimes we guess pretty close and sometimes we do not, but if we do not get enough money this year we will get it the next, and if we get too much we carry it over. Then we have a system of merit rating which we put into operation every three years, and the man that has a good experience gets a rebate. We return so much money to him. There
is a spread of 55 per cent and the fellow that has a bad experience, of course, has to divvy up a little more.

Mr. Wilcox. Do you ever have a case in which you adjust it on the compromise basis; that is to say, a doubtful case that you pay proportionately?

Mr. Halford. We never have any doubt about it. We always go into the case thoroughly and there is no doubt in our minds about it.

We have another way of penalizing an employer. Of course there are different safety associations and perhaps some good ones over there. It costs about $100,000 a year to carry on their work. The law provides the employers have to have safety devices, and if an employer has more accidents than we think he ought to have we investigate—we have only one investigator and that shows you how much trouble we have—and the employer is ordered to do this or that. If he does not do it, under a clause in our act we have the power to make any kind of an assessment on that employer who will not live up to the law, or we can double the assessment.

Mr. Wilcox. All the safety work you do is done by one employee?

Mr. Halford. The employers have their associations and safety inspectors and they make recommendations to us. They are given that privilege in the act, that they can form associations, find their own money for doing it, which we collect through assessments, and we pay it out to them when they want it. They produce all the money for their safety association. We have nothing to do with it at all except in cases, as I say, where their experience is so bad and they do not apply safety conditions. Then we put what we call section 74 into operation and tax them as we see fit. We do not have to do that very often but we do it occasionally.

For instance, there was an employer who had a sand pit, and instead of bringing that sand pit down in this form [illustrating], straight off, he was ordered by the safety association to make it in terrace formation to prevent sliding. He did not do this and the consequence was that a man was killed. The board made that employer pay, and he thought it was pretty hard and got his lawyer to come up and tell us what we ought to do and all that kind of thing. We simply said, “Well, we understand what we have to do, and we have done it, and he will have to pay and that is all there is to it.” And he did pay.

Mr. Kernan. I appear before you as a sort of personal privilege. I am one of those pestiferous insects talked about by a great many of the others, a lawyer, but I represent the defendant side, the employer’s side. I have the honor to be an associate member of the board and I thought maybe I might give you an experience such as I had in New Orleans. We have industrial accident compensation which is administered by the courts. The injured employee, if he can not make a settlement with his employer, has to appear before the court, and of course the employer may also be represented.

Mr. Horner. Since there seems to be a disposition on the part of this association to cooperate with legal aid organizations throughout the country, I merely want to remind you that in the report of your joint committee, which was submitted two years ago, a list of all the legal aid societies or all the cities having legal aid societies through-
out the country, with their addresses, is given, and that list is published in the proceedings of this association. That may be helpful to you in the event you want to get in touch with legal aid societies in the various jurisdictions.

The Chairman. It strikes me that the association would do well to remember the fact that the American Bar Association has this very question under consideration and I believe the various State bar associations are doing the same thing, and the cooperation between them ought to bring about results. Anything further on this question?

Mr. Williams. Two or three things came up in connection with this most interesting discussion which very seriously interested me. There have been certain results in the Canadian Provinces in regard to important matters of everyday existence which caused me to envy them in their freedom from constitutional restrictions. The recent election in Ontario is one of them. They are not hampered by a written constitution. But those of us who live in the American States still believe that our Constitution is pretty useful to us, and while the Supreme Court has been very careful never to say directly what due process of law is, it has said that among other things it must provide for a notice and hearing before some sort of tribunal, and then a few opportunities to appeal to the various courts of last resort. So we can not utilize in our findings of awards that language which I had not thought of for a good while until I heard my friend from Ontario speak, and it reminded me of the old proclamation, "We, of our grace, certain knowledge, and good pleasure, do hereby ordain." We can not do that. We have to have notice, hearing, and opportunity to appeal to necessary courts.

I think all of us who have had extended experience in the work do not have any great difficulty in defining the law if we can just find out what the facts are, but when you do not know what the facts are it is pretty difficult to make any guess that is reasonably accurate, but if the lawyer will conduct the witnesses any of us can find out what the facts are.

There is one great problem which I find difficult and I bring it out for the purpose of inviting further discussion, because I do not believe there is anything we are likely to have that is more interesting. Take our courts of common-law jurisdiction; some ambitious attorney has a good typewriter and plenty of paper and when he dictates his writ it is just as easy to put on another cipher and make the addendum clause $50,000 as it is to call it $500. But I notice that the courts spend a week in hearing that sort of a case, and when they get through they are not confined to the alternative of rendering a judgment that the defendant recover costs or one that the plaintiff recover the amount of his addendum clause. Now, with most of our work we are up against this very practical proposition. In the average compensation law there is no line of deviation from either finding the issue for the claimant and following out to a logical conclusion what his claims will tally up or denying him compensation.

My personal idea, after a good many years' experience in these cases, is that a lot of things come before us where you can not avoid the belief that denying the claim is probably on the whole going to be
a wrong to the claimant and allowing it and following it out to its mathematical consequences is going to be a gross wrong to the employer or the insurance carrier. I am coming more and more to encourage in certain classes of cases suggestions to the parties that they enter into a stipulation and ask for an award in accordance with the stipulation, and if it is reasonable and it seems to me fair from the whole study of the case, the award follows. I am making this talk hoping to promote further discussion and to gain further information. I would like to hear from any gentleman who has views on that subject, how he feels toward that procedure.

The Chairman. The next on our program is “Problems arising through accidents to employees outside the State in which the employer is located,” by Judge Arthur G. Powell, of Atlanta. I have been informed that Judge Powell is one of the highest authorities of law in this part of the country and that on the subject on which he will address us he is particularly well informed.

PROBLEMS ARISING THROUGH ACCIDENTS TO EMPLOYEES OUTSIDE THE STATE IN WHICH THE EMPLOYER IS LOCATED

BY ARTHUR G. POWELL, MEMBER OF ATLANTA BAR, FORMERLY JUDGE OF THE COURT OF APPEALS OF GEORGIA

Of the problems you ask me to discuss I have selected a few which, though somewhat different, are akin.

1. Within what limits can a State enforce its compensation statute where the contract of employment takes place in that State and the injury occurs in another State?

2. What remedy has the employee in the State where he is injured where the contract of employment is made in another State—

(a) Where both States have compensation statutes.

(b) Where the State of the injury has a compensation statute and the State where the contract was made has not.

(c) Where the State where the contract was made has a compensation statute and the State where the injury occurred has not.

3. Can an action be brought in the courts of a State where neither the injury occurred nor the contract of employment was made?

Certain legal landmarks may be laid down in advance.

There is a difference between a cause of action—or the legal right of one person to have redress against another—and the remedy or legal machinery to enforce that right; though a law creating a new right may so interweave the remedy with the right as to make the remedy a part of the right.

The courts of one State are not bound by any compulsion save only their own sense of duty and a just regard for the object of their creation to enforce any cause of action arising under the laws of another State. The legislature of a State may provide what foreign causes of action its courts may or shall enforce; but article 4, section 2, and the fourteenth amendment of the United States Constitution forbid that any substantial discrimination should be made between resident and nonresident suitors as to the right of access to the courts upon any cause of action of which those courts are given jurisdiction. That is to say, if the resident of the State may sue on a foreign cause of action, the nonresident may also sue with equal right.
If the cause of action arises under the laws of another State and the court undertakes to determine the controversy it must (under United States Constitution, art. 4, sec. 1) give full faith and credit as to all substantive matters to the laws of the State under which the cause of action arose, though as to matters affecting the remedy only it will follow its own laws and rules of practice and procedure.

A court, however, may and usually does refuse to enforce a right arising under the laws of another States or country if it is contrary to the public policy of its own State, or if the right is so conditioned upon a particular mode of redress that the courts of the State in which the suit is brought can not, under its own machinery for enforcing rights, give the relief or judgment sought without a substantial violation of the conditions on which the right of action is given under the laws of the sister State. It is often a nice question as to whether the foreign court can enforce the right without substantive impairment of some procedural condition on which the right is given under the law creating it; but the courts enforce the right if they can do so within practical limits. (Evey v. Mexican Cent. R. Co., 81 Fed. 294; 38 L. R. A. 387; Atchison etc. R. Co. v. Sowers, 213 U. S. 55; 53 L. ed. 695.)

However, neither the full faith and credit clause of the United States Constitution nor any principle of comity or general jurisprudence prevents the courts of a State from taking jurisdiction of a transitory cause of action arising under the laws of another State, where the statute creating the right does not so couple it with a special mode of redress as to make the remedy a substantial part of the right, but attempts to confine jurisdiction of actions brought under the statute to the courts of its own State by an express provision to that effect. (Tennessee Coal & Iron Co. v. George, 233 U. S. 354; 58 L. ed. 997; L. R. A. 1916D, 685; Southern R. Co. v. Dicker, 5 Ga. App. 21, 62 S. E. 678.)

And Mr. Justice Lamar in Tennessee Coal & Iron Co. v. George, supra, says that this is true “whether the statute be treated as prohibiting certain defenses, as removing common-law restrictions, or as imposing upon the master a new and larger liability.”

Certain other general principles may be noted. In our systems of jurisprudence we distinguish between actions ex delicto, or tort actions, and actions ex contractu, or actions based on the breach of a contract. Where a contract is of such a nature that it creates a relationship with corresponding duties, a violation of one or more of these duties, accompanied by injury, may give rise to a cause of action which may at the option of the injured person be treated as ex delicto or ex contractu. For example, you buy a railroad ticket from Atlanta to Washington. This constitutes a contract creating between you and the railroad company the relationship of passenger and carrier, out of which flow certain duties, including the duty of care for your safety on the train. You are negligently injured. You have the option of suing, ex contractu, for a breach of the contract of carriage, or of suing ex delicto for a violation of the duty growing out of the relationship of passenger and carrier. Similarly out of every contract of employment arises a relationship, formerly called master and servant, now frequently called employer and employee, accompanied by duties; and injuries arising from breaches
of these duties may be viewed as being either ex contractu or ex
delicito at the option of the injured person.

Causes of action are determined according to the laws of the State
where they arise. A cause of action ex delicto arises in and is deter-
mined in accordance with the laws of the State where the injury
occurs. A cause of action ex contractu arises in and is determined in
accordance with the laws of the State where the contract is made or
is to be performed.

If a contract is made in one State and is performable in part in that
State and partly in another, the courts of either State may consider
the situs of the contract as being in their own State and in that case
may apply the laws of the State wherein the suit is brought; and will
construe the contract accordingly.

Furthermore, the reciprocal rights and duties arising under a
relationship created by contract are in a measure defined and limited
by the terms of the contract and the legal implications arising there-
from, and the duties for a breach of which a cause of action ex
delicito may arise may be accordingly modified or extended; so that
on the trial of a cause of action ex delicto the right of recovery may
be greatly affected by the terms and implications of the contract.
For example, the contract of carriage between a passenger and the
carrier may contain limitations affecting the liability which will
affect the right to or the amount of a recovery even in an action ex
delicito by the passenger against the carrier; provided, of course, such
terms of the contract are not void as being illegal or contrary to pub-
lic policy.

A court of a State other than that in which the contract is made,
when trying a cause of action growing out of a relationship spring-
ing out of a contract, will give effect to the contract in determining
liabilities ex contractu or ex delicto, except in so far as the terms of
the contract are void or contrary to the public policy of the State
in which the case is tried.

The foregoing propositions are axiomatic. Generally speaking,
all courts recognize them in principle, though it is not rare for the
courts to overlook them in the actual decision of cases.

Let us see if we can apply them to the separate phases of the sub-
ject into which I have proposed to divide it.

If the contract of employment be made in a State and is to be
performed in whole or in part there—if the relationship of master
and servant or employer and employee arises in that State and has a
situs there, there is no legal reason whatever why the courts and
tribunals of that State should not exercise jurisdiction under the
compensation laws of that State, except in so far as its own statutes
limit the jurisdiction; and this is true whether such compensation laws
be voluntary or compulsory, or whether the injury occurs in that
State or in some other State where the servant is on his employer’s
business.

If the compensation laws of the State in question limit their effect,
by express language or by fair construction, to injuries occurring in
the State, these limitations should of course control. This is not to
say that a court is inherently without jurisdiction to redress an
injury which occurred in another State, but which grows out of a
contract and relationship having a situs in its own State, but merely
that there is a class of cases not covered by the compensation laws of that particular State which might have been covered if the legislature had seen fit to cover them. Just as there may be employments not covered by the compensation act, so there may be injuries not within its purview. For redress for such injuries other laws or the common law must be looked to.

Hence, whether the compensation laws of a State extend to injuries occurring in another State is a question to be determined by an inspection of the particular act or by an interpretation of its terms. (This point is fully annotated in L. R. A. 1916A, 443, in connection with the valuable case of Kennerson v. Thames Tow Boat Co., 89 Conn. 367; 94 Atl. 322; L. R. A. 1916A, 496.)

The British compensation act, by its terms, does not apply to extraterritorial injuries except as to workmen in sea service. The English courts, therefore, hold that except as to those engaged in sea service, their act has no application outside the territorial limits of the United Kingdom. (Tomalin v. S. Pearson & Son (1909), 2 K. B. (Eng.) 61; 78 L. J. K. B., N. S., 863; 100 L. T., N. S., 685; 25 Times L. R. 477; 2 B. W. C. C. 1—English contractor not liable for compensation for death of workman engaged in the Island of Malta; Schwartz v. India Rubber, Gutta Percha & Teleg. Works Co. (1912), 2 K. B. (Eng.) 299; (1912) W. N. 98; 28 Times L. R. 331; 81 L. J. K. B., N. C. 780; (1912) W. C. Rep. 190; 106 L. T. N. C. 706; 5 B. W. C. C. 390—no compensation for death of workman lost in the Bay of Biscay while on his way to work in Teneriffe; Hicks v. Maxton (1903 CC), 124 L. T. Jo. (Eng.) 135; 1 B. W. C. C. 160—no compensation for injuries to a charwoman taken from England by a French woman to do work for her in France and injured while in that country.)

Many foreign nations have similar provisions in their compensation acts. (They are cited in a footnote to the case of In re Am. Mutual Liability Ins. Co., 215 Mass. 480; 102 N. E. 693; Ann. Cas. 1914D, 372; N. C. C. A. 60.)

It is likely that these English cases have had some influence with American courts in the construction of their own acts. In the early Massachusetts case of In re Am. Mut. Liability Ins. Co. (often cited as Gould’s case), 215 Mass. 480, 102 N. E. 693, Ann. Cas. 1914D, 372, the court in construing their act as not applying to injuries received in another State, cites a number of the English cases. The court expressly recognized that its legislature could have made the act so extend as to cover such injuries, but held correctly, as I think, that certain language in the act showed an intention to leave such injuries for redress under other laws. The courts of Michigan and Illinois, upon similar reasoning, have limited the purview of their acts.

The acts of most of the States, by express language, bring all injuries, whether received within or without the State, within their purview (for example, Alabama, California, Connecticut, Georgia, Hawaii, Idaho, Indiana, Iowa, Maine, Maryland, Michigan, Missouri, Nevada, North Dakota, Ohio, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and West Virginia).

The acts of a number of other States, though containing no express language to that effect, have been so construed and applied by their
Where the contract of employment is made in one State, but is wholly to be performed in another, so far as services under it are concerned, the same question is involved, "What does the statute mean to say as to this?" Some courts hold that in such cases the act of the State where the contract is made does not apply; others, that it does.

For instance, the North Dakota court, sitting in a jurisdiction where the State bureau carries the compensation insurance, while recognizing that its act could apply, if it were so intended, to a workman who contracted in North Dakota but whose work was wholly to be performed in Washington, holds that the legislature did not intend to subject its insurance funds to any such liability. (Altman v. North Dakota Compensation Bureau, 50 N. D. 215, 195 N. W. 287, and cases therein cited.) The North Dakota act is of the compulsory type, and that fact is referred to, but I can not believe that makes much difference, because it is a familiar rule, applicable to all contracts, that the law is read into the contract as a part of it.

The Connecticut court in the Kennerson case already referred to pertinently asks, "Is it not reasonable to infer that the legislature, having bottomed the right to compensation upon contract, deemed unimportant the place of the injury, since it must be presumed to have known that the contract and not the place of the injury would govern the recovery." The court also says, "A contract for work to be done, or services to be performed or goods to be delivered, in a jurisdiction other than the place of the contract, is as enforceable in the State where the contract was made as it is where it was to be performed."

Furthermore, it seems to me that under a contract of employment the work to be done by the employee is not the only material element in the performance of the contract. The employer's obligation to pay the wages agreed on and his obligation to compensate in case of injury are a part of the contract. Hence the courts and tribunals of the State where the contract is made may look upon it as a contract partly to be performed in that State, and hence fully within the jurisdiction of its laws.

Let us consider now the case where both the State where the contract of employment was made and the State where the injury occurred have compensation statutes, and compensation is sought in the latter State.

Here the contract is made in one State and performed in another. Both States have jurisdiction of the status, the relation existing between the parties. Where both parties have voluntarily come under the laws of the State where the injury occurred there is no legal difficulty or any violation of the principles of comity if the courts of the State where the injury occurs apply its own statute. It is often a nice question of construction as to whether its own statutes do apply.

In a Connecticut case (Banks v. Howlett, 92 Conn. 368; 102 Atl. 822) the employee who was injured in Connecticut was originally employed in New York to work in that State, but subsequently consented to do a job in Connecticut. The court says that this consent
to go to Connecticut and work there made a quasi new contract performable in Connecticut, and hence the injury made a case compensable under the statutes of that State, and the Connecticut act was accordingly applied.

Another phase of the same question is illustrated in a New York case. (Barnhart v. American Concrete Steel Co., 227 N. Y. 531; 125 N. E. 675.) The contract of employment took place in New Jersey, where acceptance of the act is voluntary and contractual. The employee was killed while working in New York, where the statute is mandatory. The employee's administrator sought to bring an action in New York to recover for the homicide, independently of the statute of either State. The court held that the voluntary contract entered into between the decedent and his employer in New Jersey was not contrary to the public policy of the State of New York and was sufficient to bar any action brought at common law for the homicide.

There are cases wherein the courts of the State of the injury have refused to apply the compensation act of another State wherein the contract was made, on the theory of lack of machinery in the local court to give effect to the conditions and limitations of the statute of the other State.

An interesting case is that of Hopkins v. Matchless Metal Polish Co. (99 Conn. 457; 121 Atl. 828), wherein there is an extensive review of the authorities. The court holds that where the contract of employment is made in a State having an applicable compensation act the injured employee must look to that act for his redress and not to the Connecticut act, though under the contract services are to be performed in Connecticut and the injury occurs there; but if the statute of the State where the contract is made does not apply, then the Connecticut act applies unless the parties have rejected its terms. The effect of this decision is merely to construe the Connecticut statute.

The same court in Douthwright v. Champlin (91 Conn. 526; 100 Atl. 97) had said, "If the contract had been made in New Jersey and the parties had accepted its terms, the contract itself would have included the feature of compensation. We would then have enforced the contract unless the special terms of the act made its enforcement in this jurisdiction impracticable, for their act, like ours, is voluntary and contractual, and our declared public policy favors an enactment of this kind."

The collection of authorities in the Hopkins case shows that the rule announced in the Kennerson case and in the Douthwright case have been largely followed by the courts of other States.

If the injury occurs in a State having a compensation law, but the contract of employment was made in a State having no such statute, whether the courts of the former State may enforce their own compensation statute depends entirely upon its terms; that is to say, whether the statute in the State where the injury occurs is broad enough in its terms to include the particular transaction. In the Douthwright case (91 Conn. 526, 528; 100 Atl. 98) the Connecticut court said, "If the contract had been made in South Carolina, where there is no compensation act, and the parties had upon entering upon its performance here accepted our act or failed to indicate a refusal to accept it in the manner called for by the act, it is not
contended that the contract of hiring would not have been enlarged by the addition of our provision of compensation for any injured in the employment."

Unless the compensation law of the State of the injury applies, a common-law action in favor of the injured employee would manifestly lie in that State, unless the law of the State where the contract of employment was made has a compensation statute applicable to injuries received beyond the limits of the State.

If the State where the injury occurs has no compensation statute, but there is in the State where the contract was made such a statute applicable to injuries received beyond its territorial limits, the courts of the State where the injury occurred should refuse to afford redress unless they can do so substantially in accordance with the principles of the statute of the sister State, that statute being an underlying part of the contract of employment out of which the relationship arises. The New York case already referred to (Barnhart v. Am. Concrete Steel Co., 227 N. Y. 531; 125 N. E. 675) is really an application of the underlying principle here involved.

Even though a State has by statute or by judicial precedents outlawed ordinary contracts limiting the right of a servant to recover from his master for negligent injuries, this ought not, I submit, be sufficient to induce a court to hold that a contract made in another State in pursuance of the statutes of that State, whereby the employer and employee agree upon a different basis of compensation for injuries from that allowed by general law, and yet fair and enlightened in its scope, is contrary to the public policy of the State of the injury.

On the other hand the courts of the State of the injury ought not to be quick to shut their doors upon such an injured employee on the theory that they can not redress the injury without violating the contract of employment. They ought to strive to find a way to mold their judgment in such a way as to give effect to the substantial terms of the contract and the foreign law which is a part of it and still give redress for the injury occurring within their own jurisdiction. (See Evey v. N. Y. Cent. R. Co., 81 Fed. 294.)

They ought to consider the contract and law of the other State not as necessarily forbidding an action ex delicto in the State where the injury occurred, but as limiting the recovery.

Let us now consider the rights of the parties in a State which is neither the State where the contract was made nor where the injury occurred. Of course the compensation laws of the State where such a suit was instituted would not apply. Yet there may come cases where from inability to get personal jurisdiction of the parties redress can not be had in the State under whose laws the injury would be primarily redressable.

As we have seen in the preliminary remarks, one State can not prohibit the courts of another State from taking jurisdiction of a cause of action arising under the laws of the former. Yet the courts of the latter State, in attempting to exercise such jurisdiction, must give full effect to the laws of the State where the cause of action arose, and to contracts made thereunder between the parties. And in the class of cases we have been discussing the cause of action may be considered as arising in either the State where the contract was made or where the injury occurred.
If the compensation laws of the State where the injury occurred are such in their scope as to include the transaction and to forbid an action ex delicto, no sister State should allow an action ex delicto to be maintained upon the transaction.

On the other hand, if the injured employee sues, not ex delicto, but upon his rights under the statute of the sister State, and the substantive provisions of the statute of the sister State are not such that the court where the suit is brought can not give redress without violating some one or more of them, the court should not refuse redress. In some cases it might be necessary to sue in equity, rather than at common law.

I do not like to see a court usurp jurisdiction. Nor do I like to see a court shirk jurisdiction where the substantial rights of the parties demand its exercise. Often the courts, in rejecting jurisdiction, remind me of an occurrence in a southwest Georgia prayer meeting that I witnessed when I was a boy. A pious stranger came in and took a front seat. After others had been called on, and the Bible had been read and a song or two had been sung, the brother conducting the service looked over toward the stranger and said, "Brother, won't you lead us in prayer?" The stranger arose, and without letting one jot or tittle of his piety ooze away, replied, "You will have to excuse me, I don't live in this county."

I have not attempted to discuss all the problems falling within the scope of the subject as assigned. They are many and interesting. Nor have I attempted to collect all the cases. I thought you wished a discussion, not a brief.

To sum up: Practically all the problems presented are problems of construction involving the meaning and intent of the particular statutes of the various States. The courts should, and I think in the main do, lean toward giving these various statutes such a construction as will make them work harmoniously together to a common purpose, namely, to allow the injured workman to be compensated for his injury once, and once only, and to make this right to compensation a substitute for the former common-law rights of action given servants against their masters.

There is much need for a standardization of certain statutory clauses. Through the offices of the American Bar Association, uniform laws on various subjects of national interest have been drawn and have been enacted in enough of the States to be of real value toward the end of standardization of legislation. The uniform negotiable instruments law has been adopted in practically all the States. Other uniform laws have had wide enactment.

In workmen's compensation laws uniformity is perhaps not desirable as to many subjects; but as to others it is most desirable. Some influential body—why not this association?—should undertake the labor of causing to be prepared with care certain standard provisions and seek their enactment in the various States.

If a uniform standard provision were enacted in the various States covering the question as to when an employer is liable for injuries received in another State than that where the contract is made and when liable in the State where the injury is received, it would be very desirable and would cut out many perplexing questions.
I am taking the liberty of suggesting that it seems to me that the basic considerations should be these: The statute should be so framed as to impose the liability in the State where the employee is carried on the employer's pay roll. The rates on which the premiums charged by the insurance carriers in a particular State are based are derived by adding up the amounts paid out on account of injured employees under the compensation law of that State and apportioning the aggregate among the various classes of risks; and the particular employer's premium is calculated by applying the rate thus established to his pay roll. The principle is the same whether the insurance is carried with the regular companies, or through mutuals, or by the State or a State bureau.

If a Georgia employer carries on his pay roll in Georgia a workman whom he sends into Alabama, he is paying in Georgia the premium on the insurance against the risk of the workman being injured; and if an injury occurs to the workman, even though it occur in Alabama, it is but fair that the compensation should be awarded in accordance with the Georgia statute upon the provisions of which the premium has been calculated.

On the other hand, if the work being done in Alabama is of such a nature as to bring the workman and his employer under the Alabama statute, and the employer pays the premium for his insurance on his pay roll there, the compensation should be awarded under the statute of that State. The statute should be drawn so as to establish and clarify the correlation between the liability under the act and the insurance on the risk, and therefore between the liability and the place of the pay roll; and should be so drawn that liability under the laws of one State begins where the other ends and vice versa.

Furthermore, it would be easy to draw a statutory provision by which the industrial commission of one State, say of Georgia, could as to an employer residing or having a place of business in this State, investigate a claim and make an award under the statutes of another State, say Alabama, as to an injury occurring in the latter State, and the courts of this State could enforce such an award against the employer or his insurance carrier here. Such a liability should, of course, be charged for rate-making purposes to Alabama and not to Georgia; but the National Council on Workmen's Compensation Insurance which calculates these rates for the various States would have no difficulty in making this allocation. Such a provision would often be of convenience to the parties and in some cases might prevent injustice, as where service of process or notice of claim can not for some reason be made in the State where the liability arises.

I will not elaborate the suggestion further. I think of other matters which should be clarified and made uniform, and so do you, and it is thus that I leave these problems with you.

DISCUSSION

Mr. Stewart. I would like to ask a question. I think the judge answered it, but I am not quite clear. In the first place, with reference to the statement about English and French law, recently, within the last few months, England, France, and Belgium have agreed that
the compensation law of each nation shall be recognized. The subject is up before Italy, but as far as I know it has not been settled yet.

Now, the question that I want to ask the judge is this: The first instance that came to me was that of a contractor from Chicago. He got a job in the District of Columbia, quite an extensive job of excavating. I do not remember all the details. He brought a few people from Illinois, but he hired some men in the District of Columbia. One of those men, a carpenter, got hurt. We have no compensation law in the District of Columbia. This man came to me to learn whether he could get compensation from the Illinois man under the Illinois law. I wrote to the Illinois commission, and I believe he finally did get some sort of a half-way settlement; the fellow got something. But there was no court in the District of Columbia under which the man could bring suit.

The same thing happened in this great boom in Florida. Contractors from New York, Cincinnati, and everywhere went down there. They took some of their own men. They hired men in Florida. The men from Florida who were hurt in Florida while working for a New York or Philadelphia contractor got nothing. I would not say that was true in every case, but scores of cases came to me to know what could be done.

This is the question I would like to ask you: Under the constitutional provision that a State shall give due credence to the acts of other States, why can not a man who is working for an Illinois contractor in Florida bring suit without going to Illinois? Of course, he can not do it in Illinois. He is not a citizen of Illinois, and that is the great trouble. Of course, there is lots of extraterritorial conflict between States having jurisdiction, but the real trouble in the vast majority of cases is where men are hurt who are citizens of States having no compensation law—as Missouri was up to a few months or less than a year ago—but working for men who live in States that have such a law, and the whole issue apparently is on the question of credence.

Judge Powell. As to your man in Washington, since the injury occurred in Washington and not in Ontario where they do not need lawyers, I should say that what he needed most was a lawyer, because I can not conceive of any reason, though he did not make his contract in Illinois and did not have his injury in Illinois, why the law in Illinois would not apply, and I can not see why he could not have the ordinary action of any injured employee.

Mr. McShane. He had his common-law right in the District of Columbia.

Mr. Stewart. That is a delusion and a snare.

Mr. McShane. Why don’t you get a compensation law in the District of Columbia?

Judge Powell. It is possible he needs a witness instead of a lawyer, then.

Mr. Stewart. That doesn’t quite answer the question.

Judge Powell. After all, they are entitled to redress somewhere in all these cases. The doubt under these various statutes ought to be solved by uniform decisions marking where jurisdiction begins in one State and ends in another.
Mr. Scanlan. Since many of the States have extraterritorial features in their acts and most of them have put them in recently, it is an important question. I would like to say just a word about these cases that arise in which extraterritorial features are involved, and the workman, for instance, comes into our jurisdiction and collects compensation, and then somebody tells him he will get more in Wisconsin and he goes up to Wisconsin and files a claim there before its commission, or, for instance, over in Iowa. I think he finds out they do not pay as much. He starts in Iowa and finds they pay more in Illinois and comes over. We follow a rule that where a man first seeks jurisdiction, there he must stay. If he elects or chooses to start in Wisconsin or Illinois, we say he must stay where he started.

I think there was a recent decision in the Texas Court of Civil Appeals in which the man in the case was given a decision in Texas. It seems that in this case there was a contracting firm from Texas that carried compensation insurance with some insurance company in Texas on its employees in Texas. It afterwards got a contract to do some work in Arizona, and sent some men over into Arizona and hired other men, and secured in Arizona from a different insurance company insurance compensation for its men in Arizona. One of the employees, being one of the men who went from Texas to Arizona, was injured and he proceeded to collect from the Arizona company, which gave him compensation. He came back into Texas and filed a claim in Texas, and the insurance company in Texas and the court of civil appeals said it wasn't any business of the insurance company in Texas whether or not he collected from the Arizona company.

As time goes on we will have more and more of those questions, and I think it would be well if we could adopt some such policy as I suggested a minute ago, that if either employer or employee elects a jurisdiction, he stay there and not go into some other State and start there too. I think we have a case pending now where a man got compensation in Illinois and then went over into Wisconsin and filed a claim. There are two questions, whether the Wisconsin commission assumes jurisdiction and makes an award; and, if it does, will it credit the employer with the compensation the man collects in Illinois. It is not determined. It was heard by an arbitrator. I think we ought to have some policy, and that is our policy in Illinois. If the man chooses Illinois or Iowa, there is where he stays, as far as we are concerned.

Mr. Wilcox. In the Wisconsin case, did your commission grant us jurisdiction?

Mr. Scanlan. We did not know a thing about it until the insurance company came in and told us about it. The company compensated that man and the first thing we knew the case was in Wisconsin.

Mr. Wilcox. What would be the final disposition of your commission in the case?

Mr. Scanlan. We are waiting now. We do not know what is going to happen.

Mr. Phillips. Missouri adjoins Illinois, and I do not recall that we have had any disputes on that question at all. We have decided this question this way: We think that there are two causes of action, one by virtue of the contract made in Missouri and under the Missouri
law and the other by virtue of the law of the State where the injury occurred. We think that the employee has the right to elect between those two causes of action. He is entitled to but one recovery. If he elects the Illinois law, he must proceed in Illinois; if he elects the Missouri law, he must proceed in Missouri; and that election is his and not ours. We have nothing to do with it.

If an employee elects to proceed under the Illinois law and takes money for compensation, he is entitled to but one satisfaction and he has gotten it, and we would so advise the commission of Illinois, if he started there and had taken the money under that law; in the same way if he had started in Missouri and had accepted money compensation, we would advise him to continue in Missouri because the courts of other States might hold that by accepting money compensation he had received satisfaction and had really made an election of the two causes of action for one injury.

Mr. Scanlan. Right now I have received a dozen letters from employers in Missouri who carry insurance in Missouri and who have occasion to send employees over to Illinois, and they want to know whether Missouri policies are going to cover the employees in Illinois while working in Illinois.

Judge Powell. That was one of the questions I cut out of my paper to keep it from getting too long. If you go back to the original case in the United States Supreme Court—I think the White case was the name of it—before that body in 1923, I think it was, the court there said what we would do if the law contained any of these unusual provisions, indicating that in the event that a law came up in that situation the court would probably hold it violated due process of law. In case the proposition is so well established, the gentleman from Missouri is correct. A man frequently has an election of causes of action. There may be such a situation under the laws of each State that he can sue in that State for injury for different amounts. Once having chosen and gotten satisfaction on that, he is satisfied on everything on which the cause of action is based. I do know that one or two of the decisions we ran across said this. It may result in double compensation, but that is no business of ours. It is the business of the courts, because there is an elementary rule that on the same cause of action, even if you have dual remedies, you can not receive double remedy. Of course, if he had two insurance policies he could recover on both policies, but workmen's compensation is to the employer insuring the liability which he owes to the workmen and the workmen's right of action is on the liability created by the statute, not on the insurance claims, and some courts have overlooked it.

Mr. Wilcox. There have been two suggestions that I do not think I am quite ready to subscribe to, and one of them is this matter of election by an employee—that in the State in which you have elected your remedy there you shall stay; and the second one is the proposal of the Judge that the State in which the pay roll is turned over by the employer to the insurance company for audit and to have the premiums determined shall be the place of liability, if I understood the Judge correctly.

I am opposed to this matter of election, first, because of the fact that an injured employee does not know where his remedy should be
elected, and I have only to refer to the case Mr. Scanlan has in mind. His insurance company is not concerned at all as to whether or not the State of Wisconsin is going to give credit for the amount of money that has been paid, dollar for dollar. If there is liability under our State, whatever the insurance carrier paid to this widow, that much was paid on account on whatever benefit is finally awarded to her. She never made any election. We call it an election because she took a check from an insurance company, and that is what the insurance company is proposing in this case. Because she took a check from an insurance company where the weekly indemnity was the amount payable under the Illinois law, it undertook to read into the receipt an election on her part of her remedy in the State of Illinois. Now, this widow’s husband’s employer is an Illinois concern, but they are contracting people and travel about all over the United States. They came to Wisconsin to establish a plant for the Seaman Body Works in the city of Milwaukee, and three men were killed because of some condition of gas inside of this tank, or whatever it was they were building. It so happened that one person killed was a resident of the State of Illinois. He was their chief installation man, the company sending him all over the United States to install these plants. They sent him into Wisconsin and under our law this Conveyors Corporation of America is subject to our compensation act. The insurance company was licensed to do business in the State of Wisconsin and was actually insuring this particular concern. Whether the fact that this widow’s husband was a resident of the State of Illinois and that the contract of hire with this company was made in the State of Illinois takes her out of our jurisdiction I am not prepared to answer at this particular time, but she is living in the State of Illinois and she has filed her application in the State of Wisconsin and asked us to determine her case.

I am charged with the responsibility of sitting and determining what the facts in this particular case are. I am not going to have the fact that some insurance company gets her to take a piece of money in the State of Illinois take away jurisdiction from the State of Wisconsin.

Mr. Scanlan. Is it possible under your act that in this present case, in addition to the compensation the insurance company pays this woman or her husband’s employer, the State also pays her?

Mr. Wilcox. The State does pay her.

Mr. Scanlan. When she is a citizen of Illinois?

Mr. Wilcox. In every death claim in the State of Wisconsin where in addition to a widow there are dependent children left, those dependent children have compensation and they get it out of a State fund that is contributed by employers who have accidents, fatal accidents, in which the deceased party did not leave anyone who was totally dependent upon him for support, and the widow in this case will get additional benefit. She gets it out of a State fund.

Mr. Scanlan. She is a resident of Illinois and will get benefits out of the Wisconsin State fund?

Mr. Wilcox. If anybody is subject to the Wisconsin act, we want him to have all of the benefits that the Wisconsin act provides for him, no matter where he lives. That is our position. As long as
benefits under laws vary, as long as coverage is a different thing in one State than it is in another, as long as we have the District of Columbia and five of these southern States without compensation laws, as long as we have States in which we say that the laws are not extraterritorial right in the face of the act or by decision of the courts of that State, we are bound to have these troubles. It has been my privilege to hear three outstanding papers on this question of jurisdiction—the first one by Judge Yaple, the first chairman of the Ohio commission as I recollect, a man whom all the men and women here ought to have been privileged to know; the next by my friend, Duxbury, from Minnesota; and to-day by this Judge—outstanding contributions to this question of extraterritorial jurisdiction, this conflict of jurisdiction.

We are not getting anywhere with this and we have to think for ourselves and make up our minds just where we are heading, what we are going to do. Some committee—and I think Duxbury ought to handle it, he ought to head it—ought to make it its business to decide on a uniform act so far as this question is concerned, and let us have it, and then let us go to our individual legislatures and say, "This is what we want," and be able to guarantee to them that the commissions in the other States are going to try and get those other States to do the same thing.

I hope that out of this discussion to-day something really constructive will come. It would be too bad for Judge Powell to come here, giving the time that he has in the preparation of a paper of that sort, and give it to us, and then we should go away and forget all about the thing—I, fighting with Scanlan as to whether we have jurisdiction in the case, and with Senator Duxbury, and over in Iowa, etc., because we are having those questions right along. We are bound to have them and you have them, and the sooner we get some sort of legislation that will take care of the situation the better off we will be.

Mr. Hatch. I think this very proposal was suggested in the paper and Mr. Wilcox has emphasized it. That is just the kind of thing for this association to be about. I think the Judge in his paper suggested that we appoint an appropriate body to tackle this problem in a practical way. If Mr. Wilcox will put his proposal in the form of a motion, I would like to second it. I have been appointed to take this matter up and make a study for the development of some kind of uniform provisions covering this jurisdiction problem in our compensation law.

Mr. Stewart. The September number of the Journal of the American Bar Association has a paper on this subject that is excellent.

Mr. Williams. I find that my friend Wilcox's mind runs along in the same channels as my own, as I was about to seek the floor for the purpose of making this motion, that the president to be elected at this session be requested to appoint a committee for the purpose of studying this situation, making recommendations so that we can take up this single question and endeavor to get uniformity of law about it. I have always believed that uniform compensation law in the main was most undesirable, but this particular question we should have uniformity about.
It appeals to me with considerable force because two of the medical cases to which the judge referred were decided by the Supreme Court on appeals from my individual decision. In Banks v. Howlett, they sustained me, but practically said later on that that was good law for that case but not for any other. That man made a contract to work in Connecticut. He had no children. He had a sister who was dependent upon him for support but under the New York law she could not participate.

In Hopkins v. Matchless Metal Polish Co., Hopkins lived in Waterbury. A representative from a New Jersey corporation came up there and made him a proposition and he said he would think it over a while. Later he accepted the proposition, but because he was to do some work in a part of New York and a part of Massachusetts, although most of his work was to be done in Connecticut, it was not exclusively a Connecticut contract, and the court said that he should be governed by the laws of New Jersey. Of course, I had no authority to administer them.

Such things are likely to come up, and if Mr. Wilcox wants to vary the form of this motion, I would accept the remedy very cheerfully, but I think that the president who is going to be elected should appoint the members.

Mr. Wilcox. I think that is all right. I do think that Duxbury ought to head that committee when the time comes because he has given so much thought to it.

Mr. Duxbury. I wish I could properly express my appreciation of the confidence which Brother Wilcox has in my ability, but I have had enough to do with this subject, and the question has arisen so many times that I concluded I did not know anything about it. It is a very perplexing subject. I was a little happy at the suggestion made by Mr. Phillips, of Missouri, that the thing was not nearly as hard as I thought it was, but to me it is a very difficult problem and I was much interested in the paper presented this afternoon. I understand the suggestion is that some form of uniform legislation be made in compensation laws relating to this particular thing. If we can get all the different legislators of the United States to see that point and pass such a law it will be a wonderful thing, but that is a job I know I have not the time to undertake. If this committee which is to be appointed will have the wisdom to frame the laws, we could then send the members out to recommend that the laws be passed and that might have some effect, but the trouble with this question is that the basis of jurisdiction varies so much in the different States. In some it depends entirely upon where the contract was made; in some the question of compensation depends upon where the accident happened. You have that variety of situations that is so perplexing that I feel wholly inadequate and unqualified to tackle the problem. I would be very glad to do what I could in stating some of the perplexities if we had some one with wisdom enough to figure it out.

The Chairman. There is a motion before the house. Do I hear a second?

Mr. Hatch. I second the motion. It is essentially the motion I had in mind.
Mr. Stewart. I agree with the motion that it is the most important thing that this association can do at this time. I do not quite agree with Senator Duxbury about the difficulty. In most States it means simply an amendment, two or three words being put in. As I understand it, most of the courts admit that if the law of a State says that its provisions extend wherever a citizen of that State is employed, that the jurisdiction follows; but where there is no specific claim to extraterritoriality in the act itself, then jurisdiction does not so follow. If this be true, an amendment to such State laws as do not now claim it can extend the jurisdiction in every case. It is not difficult to get these amendments inserted in the laws. I do believe that a recommendation from this association as representing the opinion of all of the commissions of all the States will have very great and very rapid effect in procuring such amendments. It does not mean uniform law; in most cases, it means simply two or three words, such an amendment to the law as will cover the objection that the courts have raised.

[The motion was carried. A rising vote of thanks was given Judge Powell for the care and deliberation he put into his paper.]

The Chairman. I will call upon Mr. Bolling H. Handy, chairman of the Industrial Commission of Virginia, at this time. "Compensation for extrahazardous industries which insurance carriers refuse to cover." Mr. Handy has no doubt something very valuable to say on this subject and it may be of interest to quite a number of us.

COMPENSATION FOR EXTRAHAZARDOUS INDUSTRIES WHICH INSURANCE CARRIERS REFUSE TO COVER

BY BOLLING H. HANDY, CHAIRMAN INDUSTRIAL COMMISSION OF VIRGINIA

I assume that the word "extrahazardous" in the subject given me includes not only those industries which by reason of their inherent nature carry so high an accident ratio as to make insurance companies unwilling to cover them, but also that other large class of industries which on account of the smallness of premiums, their inaccessibility, or their failure to meet certain requirements of the insurers are likewise unable to secure insurance.

Thus viewed, it is at once apparent that I have been assigned a subject which is of great importance to those charged with the administration of compensation laws. Indeed, if Virginia's experience may be taken as in any manner typical of conditions prevailing elsewhere, we are discussing the most acute problem now confronting us. I do not think it an exaggeration to say that at least once each week the Virginia commission is appealed to by companies unable to secure insurance. They come to us and say, "What are we to do—the law says we must provide ourselves with insurance—the insurance companies will not give us insurance?"

Now, it is my conception that a commission charged with the administration of a workmen's compensation law has a strong duty to perform toward employees. It must see that the spirit of the law is heeded. This, as we all know, and as the commissions and courts have uniformly held, means a liberal construction and means that in the vast majority of industrial injuries the benefits provided shall be
paid, and that right speedily. It is peculiarly true of compensation
claims that "justice delayed is justice denied," for many times it
happens that the injured employees and their families actually go
hungry if compensation be delayed.

On the other hand, and this, it seems to me, is a point not fre­
quently emphasized, such a commission has an equally plain and
imperative duty toward employers upon the administrative end of
its work. In order to maintain public confidence in the administra­
tion of the workmen's compensation law, the commission must show
that it does not regard itself as the agent or tool of either employer
or employee, but that it is an impartial body, which recognizes its
duty toward employees in the handling of claims and its duty to­
ward employers in rendering them every assistance in solving their
problems. Considerations of vast import to the public and to the
whole social fabric are involved in the handling of the workmen's
compensation laws. No administrative body has a more difficult
and trying task imposed upon it than has the agency charged with
this duty.

Now, one of two courses is open. For want of better terms, I
will call them an active and a passive attitude toward the handling
of claims and the general administrative work devolving upon the
commission.

An active attitude in the handling of claims means that the com­
misson will be unwilling to leave employer and employee entirely
to their own devices in the settlement of claims—that it will not
remain inactive if there is any delay whatever upon the part of
employer or insurer in reporting injuries; that it will require proper
medical reports to be furnished promptly; that it will want to know
why an agreement for the payment of compensation does not follow
in a short time; that if the claim is to be contested, this will be
promptly stated, in order that the employee may be informed and
afforded the opportunity of asking for a hearing; that hearings will
be held with promptness, and decisions speedily rendered. A com­
misson which delays its hearings and does not promptly render its
decisions is failing in its most important duty.

Upon the administrative side of its work an active attitude means
encouraging insurance carriers and employers to deal with confidence
with the commission; to let them understand that there is entire
willingness to cooperate with them in the solution of any problems
which may arise; to hold self-insurers (if self-insurance is allowed
under authorization of the commission) to an extremely high standard
of both financial and moral rating; constantly to lend its efforts toward
educating employers to do safety work and thus to reduce accidents,
and to this end to maintain in some manner direct contact with
employers; to study and to make available to the industries, in a form
which will be intelligible to them and usable by them, statistics as
to their particular industry, as to the number and character of acci­
dents, the causes, the exposure prevailing in that industry, and the
reasons why insurance rates for the industry are what they are.

All this may appear to be a digression from my subject, but I
mention it because it seems to me that a commission with the attitude
outlined will not only be keenly alive to the problems of companies
which can not procure insurance but will also be in a better position
than anyone else to assist in solving them. I can not conceive of a commission which does not enjoy the confidence of the public, including both employers and employees, being of any material value in such a situation. Neither would a commission which took a passive attitude and said to such employers, "It is none of our concern—the law says you must have insurance—it is not our business how you are to procure it," be of any assistance whatever.

I am far from claiming for the commission of which I am a member the possession of all the virtues I have suggested. I do believe, however, that I can truthfully say that it is the aim and purpose of the Virginia commission to follow the attitude I have outlined above. I can also claim, and I believe with equal truthfulness, that as a result of this the administration of the Virginia act has been attended by as little friction and with as general satisfaction as is true of any similar law in existence. I mention this because I do not want you to understand that I am attempting to discuss my subject from a wholly theoretical viewpoint, and because we have many times been approached by companies in Virginia which could not procure insurance, and further because, first, I believe in most cases we were so approached because we have endeavored to evince an active and helpful attitude, and, second, because I hope that our experience may possibly suggest something of help to some other commission.

To begin with, in almost every case the company which can not secure insurance is a small concern. While it is not by any means always true, it often happens that small companies are operated by small men. They do not grasp the vital importance of safety work, and frequently lack the facilities to set up proper organizations. They have a decided tendency to think that their responsibility begins and ends with the procurement of insurance, and utterly fail to grasp the relationship between a favorable accident experience and a continued willingness to supply insurance on the part of the carrier. They will often display irritation and even resentment when the insurer insists upon safety appliances and safety organization, and this is a common cause of cancellation of such risks. When such a company applies to the commission for assistance it is almost always useless to consider the granting of self-insurance. The vast majority of such companies are not financially strong enough to carry their own risks. Even if they were, it would be an extremely hazardous thing for the commission to allow a company which had established such an unfavorable experience as to render insurance carriers unwilling to cover it to become a self-insurer.

We have followed the practice, when a situation of this sort appears, of first requesting a representative of the insurance carrier which formerly carried the risk to meet at our office a representative of the company in question. We encourage a full and free statement on the part of the insurer of its reasons for refusal. Sometimes it develops that the insurer will agree to resume the risk after the employer has been given some frank talk by the commission upon the wisdom of complying with certain requirements of the insurer and has agreed to do so. The commission is in a favorable position, after hearing from both parties, to direct its efforts to the point or points most needed with one or the other.
If, however, this particular insurer is unwilling under any circum­stances to resume the risk, the matter is taken up with others. We have often found that one or more insurers will decline a risk when another will take it, and by persistence we have in several cases succeeded in solving such a problem. So long as the employer company manifests a desire for us to do so, we do not cease our efforts to procure insurance until we have run the gamut of all the companies doing business in our State.

There are, however, insurers who specialize in certain lines of cov­erage, and they, of course, furnish the best possibilities for employers coming within their particular field. It seems to me that concentration of coverage with particular carriers in the industries which are having most trouble with insurance is wise. If one carrier is getting practically all of the business in a particular line, it naturally be­comes more familiar and expert in handling the problems for that line; its spread of coverage enables it to take on risks which under other conditions would be impossible; and more important than either of these, it should be able to decrease materially its overhead charges by concentration of claim adjustment expense, by material savings in medical costs, and by more efficient handling of the business.

Parenthetically it seems to me that it is along this line that the greatest possibility lies for improvement in the present highly unsat­isfactory situation as to workmen’s compensation insurance rates. The carriers all tell us that they are losing money on it, yet the gap between the premiums collected by them and the actual claims paid remains extremely wide. Up to the present time there does not appear to have been any organized effort on their part to co­operate with each other toward reducing this gap. Numbers of companies are in competition with each other for the desirable busi­ness, and cutthroat methods sometimes prevail. Each company maintains its own complete organization, including its office force, its agents, adjusters, attorneys, and physicians. In Virginia we fre­quently see it happen that four or five adjusters and attorneys will travel from Richmond across the State for appearance at the same group of hearings before the commission and each company will have its own medical witnesses, when it may be entirely possible that one adjuster or attorney and one physician could have handled the entire lot. The fees of the various physicians and travel expenses of four hundred or more miles, together with fees for all attorneys, are thus added. It is all very well for the carriers to say that they can not afford to get together and reduce such charges for fear of losing their separate individuality, and of thus being deprived of a selling argument to prospective customers. The public, however, is paying an increasingly tremendous bill in order to maintain this situation, and it seems to me that it would be much wiser from the insurance carriers’ own standpoint for them to forego some of the joys of com­petition which they now enjoy rather than constantly to demand increases in rates and thus maintain an incessant state of war between themselves and the employers who have to buy insurance.

The coal and lumber industries have in our State most generally supplied the companies which carriers are unwilling to cover. All of you know what has taken place in the coal industry. The com-
panies which had been writing this business in Virginia last year stated that they could not continue unless they were allowed a base rate of over $9. They were not allowed this rate, and gave notice of cancellation of all risks. The industrial commission and the commissioner of insurance thereupon endeavored to come to the assistance of the operators. We had conferences with them, in which we did not hesitate to point out that in certain instances they had been gravely at fault in their failure to do safety work and to meet other reasonable requirements. We also told them, however, that in our opinion the rate demanded was unreasonable, and that if we were assured that the conditions we mentioned would be remedied, and that we could rely upon their entire cooperation, we would endeavor to get one insurer to enter the field and take over the entire business, establishing a local office with full authority to act upon all questions, and thus eliminate duplication in office expense, adjustment, and medical costs. We now have this an accomplished fact, one carrier doing all the coal business at a base rate of $5.75, and so far as the industrial commission knows only one risk has been declined by this carrier, and that was because of failure to pay the premium. The operator's association has evinced a keen desire to cooperate and has frequently lent its aid with recalcitrant members. While that company carrying the coal risks has lately given notice of cancellation of all risks, our information is, and we received it I think very reliably, that that is simply a readjustment purpose on the part of the company, that a subsidiary company is immediately going to take it over, and so far as I know the situation will remain as before.

We are endeavoring now to work out our sawmill situation along similar lines. Of course, the many small mills, operating in isolated sections and with small pay rolls and a shifting type of labor, make this situation peculiarly difficult. In a general way, however, the problem should yield to the methods before mentioned. We have two carriers (one has recently come in) that are specializing on sawmill risk, and we have already found that they will take a great many of the small mill risks which the companies doing the general compensation lines are unwilling to take.

One other point which I referred to above should possibly be elaborated. I mentioned as among the things which the commission could do a direct contact in some manner with employers. I believe the most practicable way to establish such a contact is through the establishment of a statistical division under the commission. I mean by this a real statistical department, using the most approved methods and giving to the industries information concerning their particular line which will be of service to them. The smaller companies are reached in this way by an official agency of the State and oftentimes respond as they do not to efforts of the insurance carrier. The larger companies generally are keenly alive to the need of safety work and proper organization, but the smaller ones frequently are not; they do not usually belong to the safety organizations, nor do they come in contact with the results of the study of such questions which is now going on. In Virginia we are in process of working out such a system. Our statistician has spent some considerable time in visiting other States and studying their methods, and in Washington with the bureau over which the secre-
tary of this association so ably presides. Without discrediting what any State is doing along this line, it is only fair to say that we have received more of real value from a study of the methods used and recommended by the Bureau of Labor Statistics than from any other source. I firmly believe that educational methods properly conducted by the agency charged with the administration of the compensation law will go far toward eradicating the problem of the company which can not now obtain insurance coverage.

DISCUSSION

Mr. Stack. Can insurance companies go into the State of Virginia and sell compensation insurance without first getting permission from the commissioner?

Mr. Handy. They have to be licensed by the commissioner of insurance and the policies they write have to be approved by the industrial commission before they can do business there.

Mr. Scanlan. I think you said something about some insurance company canceling minor risks.

Mr. Handy. That was the Associated Companies.

Mr. Stack. Does the commission of Virginia require insurance companies doing business in the State to keep in that State a registered adjuster? In Delaware we have some insurance companies who are not located in the State and we find it a little unsatisfactory to do business with those companies.

Mr. Handy. We do require—it amounts practically to a requirement, the commission is so insistent—that every insurance carrier doing business in the State maintain a local office. Furthermore, we have a practice of requiring every adjuster who is to represent an insurance carrier in the State to be approved by the commission. We have found that quite a wise thing because it enables us to know exactly the men who are going to handle the business of the insurance carriers. We know who they are and we have some opportunity of passing on them before they come in the State to handle compensation work. There has been no objection whatever on the part of the insurance carriers to that latter requirement.

Mr. Kernan. Does the law require insurance?

Mr. Handy. Our law does not. We have no State insurance.

Mr. Kernan. Does it require the employer to take out insurance?

Mr. Handy. Either that or he carries his own risk as self-insured.

Mr. Kernan. It does not enforce any penalty for not taking out insurance?

Mr. Handy. Yes; there is quite a drastic penalty imposed on him if he does not do one of two things: He has either to carry insurance or to come to the commission and get its authorization as a self-insurer.

Mr. Kernan. We have such a provision in our law.

Mr. Kennard. We have a law where they can elect.

Mr. Handy. They can elect but in the absence of an election the penalty is imposed—at least, they are subject to the penalty unless they provide themselves with insurance, in the absence of an election.
Mr. **Kennard**. They can evade those penalties.

Mr. **Handy**. We have never had an employer in Virginia who could get insurance reject the compensation act. Recently our statistician compiled figures on the number of companies which had below the required minimum number of employees who voluntarily came under the act, and I was astounded to see those figures. Out of the total number of employers subject to the act in Virginia, some 6,500, my recollection is that there were close to 1,000 who have voluntarily elected to come under it, although the act did not apply to them on account of the small number of employees.

Mr. **Kennard**. Your law does not apply to a small employer? That would do away with many of our difficulties because it is those small employers who have about three or four men that cause much of the trouble.

Mr. **Handy**. The smaller the industry the more difficult and more acute the situation that I was discussing becomes.

Mr. **Kennard**. I am in a little doubt and confusion as to what the problem in Virginia is. Is it that they will not carry insurance or the insurance carriers will not give them a policy, or is it because the insurance carriers will not give them a policy at the maximum rate which you permit them to charge?

Mr. **Handy**. They can give them a policy only at the fixed rate, but the problem is really somewhat of a combination of those things, if I understand it correctly. It is a combination of the fact that very frequently the risk is so hazardous and the experience has been so unsatisfactory that the insurance carrier is unwilling to carry the risk at the present rate. Probably it would be willing to carry the risk at a very much advanced rate, but even under present rates a great many of these companies say that they simply can not pay the insurance. They are too small. Sometimes it happens that that problem arises from either one of those two things, either the insurance company will refuse to give them insurance or else the employer comes up and says he can not afford to carry insurance, he can not pay for it; the State tells him he has to have it and he does not know what to do about it.

Mr. **Kennard**. Is there no penalty with your compulsory clause?

Mr. **Handy**. There is a penalty on the employer for failure to carry insurance.

Mr. **Kennard**. Can not the employer get insurance if he wants to pay the rate?

Mr. **Handy**. There is no requirement in our law that the insurance carriers must take the risk; nothing of that sort.

Mr. **Stack**. How do you handle those who are unfortunate enough to be refused?

Mr. **Handy**. The main way is the one I mentioned in that paper. We have had some success along those lines. Of course, sometimes it happens that an insurance carrier has refused to carry the risk because the employer has absolutely failed to comply with reasonable requirements. We have had a good many instances in which we get the two together and go over the whole situation, and if we come to
the conclusion that the insurance carrier is correct we do not hesitate
to tell the employer so, that we feel that these people are requiring
reasonable things of him and that he can not get insurance unless he
is willing to do these things. Generally that is efficacious. Coming
from an official State agency it carries more weight with them than
things the insurance carriers say to them. In a good many cases we
have been able to get them to promise to do those things and the
insurance carriers would promise to go back on the risk.

I believe the solution of that problem is largely in the concentration
of coverage. In those unsatisfactory lines, it seems to me that if one
or two or possibly a small number of companies practically get a
monopoly of the business they ought to be able to carry some risks
that a company doing just an ordinary compensation line would be
unwilling to assume.

Mr. Stewart. I would like to break in with something else here.
My secretary calls my attention to the fact that Mr. Phillips, of
Missouri, is on the resolutions committee, whereas Missouri is not a
member of the association. I would like to make a motion that the
State of Missouri and its delegates be entitled to every privilege of
this session of the convention.

[The motion was seconded and carried.]

Mr. Phillips. I would like to say that we assumed we had that
privilege. The question of membership is for our auditor to decide
when we get back.

The Chairman. Mr. Phillips, you are welcome to all the troubles
of the association.

Mr. McShane. It seems to me that the situation that has developed
in Virginia and that has become quite acute is a matter that I have ob­
served in our jurisdiction, and I have heard of similar symptoms in
other jurisdictions. It seems to resolve itself into this one thing,
that insurance companies are making a concerted move to accept
only those risks that will pay them profits and to exclude as much as
possible, when they can get out from under, all risks that are extra-
hazardous and all small risks where pay-roll audits and adjustment
of claims are rather expensive in proportion to the premium.

I feel that there is only one solution to the whole situation, and that
is to amend the acts first so that the law will be compulsory and
compel the employer to carry the compensation rather than to permit
him to elect. The next step is that when an insurance company comes
into a State for the purpose of doing business, make it do business—
simply add a provision to the law, after it authorizes such companies
being licensed by the insurance commissioner or whatever State
agency does license them, that will read something like this: “Every
insurance carrier entering this State shall carry every risk for which
application is made,” and if they will not do it, let them get out.

The Chairman. Of course, I would suggest the only thing to do
is to have an act in every State like that in Ontario and North Da­
kota, and the whole trouble would be obviated.

Mr. Stewart. I would not have invited Mr. Handy to prepare a
paper on this subject if the matter had been confined to Virginia.
Don’t pat yourselves on the back. This thing is already pretty wide-
spread and it is spreading every day. Not only the sawmills of Vir-
Virginia but the sawmills of Georgia and the coal mines of Oklahoma are just as hard hit, and it is becoming a very serious problem.

Now, I am not going to discuss the question of remedies; that is up to you. But I want you to know that from the position I hold as Commissioner of Labor Statistics, as well as secretary of this association, I am in a position to know some of the very bad spots, and this is a thing we have to face and face within the next two or three years or there will be a large percentage of the workmen of this country who are not under compensation at all.

Mr. Stack. I take the position that if we are going to require the employer to protect his employees it is up to the States in which we operate to see that the insurance companies coming into those States sell compensation insurance to the employers when the employers ask for it.

Mr. Kyle. Our secretary has just mentioned the fact that the condition in the coal mines of Oklahoma was similar to that related by the gentleman from Virginia. I just wish to assure you that that is certainly a fact. Since assuming the duties of chairman of the Industrial Commission of Oklahoma in March, that one question has given me more concern than almost any other. I might say that I am a graduate of the coal mines myself. I found that there was one coal company in our State in the month of March that was carrying compensation insurance, the Rock Island Coal Mining Co.; that has since been canceled and I think that at this time there is not a single coal company operating in the State with compensation insurance.

Mr. McShane. What is your rate?

Mr. Kyle. The minimum is $8.

Mr. McShane. Ours is $8.90 and every mine in the State is covered. We are mining the highest coal in the United States.

Mr. Kyle. Of course, the Rock Island Coal Mining Co., being owned and controlled by the Rock Island Railroad, we feel is sufficiently able to carry its own risk. We have allowed it that privilege. There were a number of others we did not think were. That was our problem. When called upon to carry compensation insurance, they invariably replied that they were unable to obtain it and we found that to be true; that is, their claim was that the rates made it prohibitive. I arranged with some of the smaller companies, for want of something better, for an agreement to the effect that they would file with the industrial commission a surety bond in an amount to be fixed by the commission, dependent largely but not entirely upon the number of employees. That was partially, of course, to secure the payment of compensation insurance to injured employees. In addition to that, they entered into an agreement whereby they agreed to pay into a fund, to be styled a compensation insurance fund, a certain percentage of their pay roll until that fund reaches a certain amount, varying from $10,000 to $20,000. They are to report to me as chairman of the commission monthly, or oftener if required, the condition of that fund. After it reaches the amount of $10,000 or $20,000, the sum agreed upon, they are merely to pay such amounts and such percentages of the pay roll into that fund as will maintain it at that figure. That arrangement
and agreement are, of course, only temporary and, as I said, were made for the want of something better.

In the meantime I have, by some insistence and a little suggestion, prevailed upon a number of coal companies who are situated rather closely together, close enough to be convenient, that they put on a safety engineer, his salary to be paid pro rata by the companies employing him or accepting his services. That, of course, is for the purpose of decreasing accidents.

Probably some of you are familiar with the history of our coal industry in Oklahoma. If so, you know that within the past few years we have had some terrible disasters in our coal mines, and that, added to the number of compensable accidents, has caused the insurance companies to make their rates so high as to become almost prohibitive. Now that is the plan.

Mr. McShane. Under the Oklahoma law you do not pay a compensation death claim?

Mr. Kyle. No, sir.

Mr. McShane. That is a very important item in compensation cost. I am going to ask if the policies that are written there carry other liability in addition to compensation which gives rise to this big rate of $8—carry with it liability for extra coverage?

Mr. Kyle. No, sir.

Mr. McShane. It is simply for industrial accidents, excluding death?

Mr. Kyle. Absolutely.

Mr. Scanlan. I would like to ask if any of the companies in Oklahoma writing compensation insurance issue or write excess insurance policies to cover this, you say, $10,000 or $20,000?

Mr. Kyle. Yes.

Mr. Scanlan. An excess policy for amounts above that to protect them?

Mr. Kyle. Yes. I am at a loss as to how we are going to remedy that prevailing condition, and for that reason this discussion has been of peculiar interest to me. We are still confronted with the refusal of the insurance companies to grant policies for employees. I do not know how long we can carry on under the present plan and even that is not general; it is confined to a few of the coal mines. We are decidedly at a loss as to how to overcome that situation.

Mr. Williams. Who has the physical control and custody of this $5,000, $10,000 or $20,000 that you speak of?

Mr. Kyle. The company. That is to be the policy, and it is designated as a compensation fund, aside from their business assets. It is not part of their business at all. It is set aside in a compensation fund. But they furnish me with statements from their bankers showing that the money is deposited to that fund. I suggested that as a temporary solution of a bad situation.

The Chairman. Mr. Halford, of Ontario, is to discuss this subject.

Mr. Halford. I do not know that I can help you very much on this subject. I was very much surprised to know that conditions of
that kind existed. I should think that with no insurance a man does not get compensation. Is that right?

Mr. Handy. Well, of course, he has his right to compensation against his employer if his employer is insured, but if he is not he is just out of luck.

Mr. Halford. Then he does not get any. It is a very serious situation, and I think Mr. McShane here touched the vital spot. There is no hazard too great with us. We simply put a rate on it and adjust it in accordance with the amount of money we have to pay out. Our experience is that the employers are never backward in coming to the front with anything that we suggest. We had nothing on caisson disease in our act until last year. Some deep excavations were being made in the city of Toronto and several of the employees got the caisson disease and it was found that the employees would not work unless they were covered for compensation. That disease was not under our act prior to September, 1926. The employers came to us and requested that we recommend that that disease be included in the act. The legislature always takes suggestions from the board on anything that we feel should come under the act.

The employers even went so far as to want coverage for those men; we did not know exactly what it would cost, but we put up enough to cover it this year and the employers said, "We not only want to pay these men that may be injured in the future, but we want it made retroactive"; they wanted us to cover every case that happened and we did so. Coverage is the smallest thing we have to contend with. There is no hazard too big for us; you see, we are not in it for profit. I can readily understand the insurance companies; as Mr. McShane said, they are in it to get everything out of it where there is profit.

It does appear to me there should be some law to compel these men to take a reasonable profit on these things collectively and not refuse the ones that are more hazardous.

We did not include silicosis in our act until a short time ago. Investigations by the health department of the Ontario Government brought out the fact that there was a great deal of silicosis among the miners. It looked as though some of these miners were going to be soaked for about a half million dollars. They came to us and recommended that we get up a law putting silicosis into the act; they very willingly came across and we adjusted the rates in accordance with what we thought they should be. Up to the present time we have paid out, I think, $200,000 or $300,000 for that particular disease in about a year. We do not know exactly what it will cost, but we made an estimate and after the end of the year we may have to adjust the rates.

It does seem to me that it is a peculiar position to be in. Our rates are not exorbitant, our highest rate being for aviation. It is $10. The employers are satisfied. We have never had an accident in that yet. We carry the insurance on all hazards. Explosives—we thought that that was going to be a terribly hazardous situation, but fortunately we were able to adjust and carry them at a $1 rate instead of $10. Just to give you an illustration, we have what is called the Peterborough Quaker Oats Co. It had never had many accidents and the rates to it were terrible, and so it wanted to carry
its own insurance. It was not allowed to carry its own insurance under Schedule 2 of the act. It had to come to the board and be assessed by the board—always complaining about the rates. Well, the firm had an explosion that put a crimp in it—it amounted to some $120,000—and we have not heard a thing about self-insurance from them since.

Then there was the gas company in the city of Toronto. We used to get a Christmas card from that man regularly—a very decent fellow. He used to send us a letter telling us the big rates he was charged. About two or three years ago the company had a gas explosion and it cost it about $50,000. We do not get any more Christmas cards from him.

And that is the way it goes, taking everything together. The people that come under our act are very well satisfied with it. There are some whom we call self-insurers. They are the big companies, municipalities, railroads, and navigation. Any of those institutions, if it feels like coming under Schedule 1, can do so, but we do not insist on their coming in because those big concerns can never go out of business. Somebody has to carry them on, and the assets are always there for us. But we do give them a chance to come under and we have some hundreds of municipalities which have come under Schedule 1 of the act and they are perfectly satisfied with their rates. The rates are better than they can get any other place. They are perfectly satisfied for us to take the risk, and we do it at a reasonable rate.

The employers are very good, and we have just as big a time with the employers wanting us to pay claims we should not as we have the other way. That is the situation with us. I do not see any way out of it other than to get a law passed exactly the same as we have; and if you can do that, most of your troubles will end.

Mr. Stewart. I would suggest that Mr. Armstrong, who has both coal mines and sawmills, tell us how he handles it.

Mr. Armstrong. Our act in Nova Scotia is similar to the act in Ontario—only they do not have coal mines up in Ontario—and in North Dakota and in Ohio, where they know how to handle the coal mines. Our rates in Nova Scotia are, of course, governed by the experience we have had. After 10 years' experience the rates for coal mines are practically $3. This takes in weekly compensation with a maximum of $12.69, and in cases of death the widow gets $30 a month and the children $7.50 up to a maximum of $60, not governed by the earnings in any case. In that time our experience has been varied. Six months after we started under the act, on January 1, 1917, we had an explosion which cost us $180,000. In six months from that time, in January, 1918, we had another explosion which cost us $420,000.

I think I am safe in saying that the average rate for the 10 years, the average cost rate, has been about $3. In that time we have laid aside a reserve, specially collected from the coal mines, of somewhere about $450,000. That is the situation there as far as the coal mines are concerned. The amount of annual premium from these coal mines has averaged somewhere between $450,000 and $500,000 a year.

As to the lumber industry, we started out with a very low rate in lumbering, a $1.80 rate, and in 10 years' experience the rate has
gradually worked up to $4. Of course, the average rate charged would not be near that amount, but we are finding now that we are just about square, or perhaps a little behind, with our lumbering rate at $4.

Mr. Duxbury. During the course of the discussion, it appears that in those jurisdictions where they have a State fund similar to that which has been under discussion, rates for these coal miners are somewhere in the neighborhood of $3. They are covering them and carrying them right along, while in these States where the rate of insurance is somewhere in the neighborhood of $8, as in Virginia and Oklahoma, the insurance companies are declining to take the risk. I am wondering whether those insurance carriers do not know enough to know how to make money or whether the other fellows have not got their rates right. It looks to me, if the other fellows have got their rates right, the insurance carriers ought to be falling over themselves to get that insurance which they are now canceling. There is something wrong somewhere.

Mr. Armstrong. Ask what Ohio is; they mine a lot of coal in Ohio. What is your rate?

Mr. Duxbury. Of course, it makes no difference whether the insurance is carried by a private company or a State fund. The risk is practically the same and, if these State funds are collecting what they ought to on that particular line and are getting from $3 to $4 and the insurance companies are declining risks of $8, there must be something wrong with those companies.

Mr. Stewart. As a matter of fact, Ohio, for instance, keeps her industry separate. She knows exactly what the coal-mining accidents cost her. I do not know whether the insurance companies do or do not, but Ohio does and she has a $4 rate. I do not know about the other States, but I do know that Ohio assesses the rates on the question of the amount of money that the industry costs.

Mr. McShane. Our $3.90 coal-mine rate in Utah has been in existence for four years, and I want it understood that this rate is not a State-fund rate. Our rate is 80 per cent of that, and a lot of that business is being carried by independent carriers. If you will go into your coal mines, you will find the reason why there is a variation in the rates. When we had our disaster at Castlegate, March 8, 1924, and 173 lives were snuffed out, the first thing I did was to lay our entire mining experience before the National Council on Compensation Insurance, and Mr. Leslie, whom many of you know, wrote me and told me, as chairman of the commission, that even that catastrophe did not indicate an advance in coal-mine rates in Utah.

Mr. Halford. Our rate over all during the life of our compensation board has been about $1.11. That includes all our industries. We haven't any coal mining. We have a great deal of other mining, however, over there, but nevertheless we carry all our insurance on an average rate of $1.11 and have during the past 12 years. If we can carry it, it does appear to me that the insurance companies must be making a lot of money or else they are wasting it in different things, as the brother pointed out here, in excessive work. These things are worth going into. I should like to help you if I could, but I must confess that I have not studied your situation enough to
know very much about it. I do know this: I know from our own experience that we are not stingy in anything, and our overhead expenses, covering everything, amount to just $1.11.

It does seem to me that the employers of this country ought to help the boards to get a law that will keep the expenses down in proportion to what is being paid out. You see, we have a very liberal allowance for our men and the cost of compensation, of course, is very small in comparison with that.

I might mention another little thing. Up until a year or so ago, when a man was injured and had a hand taken off or an eye lost the employers were just a little bit loath to take that man back again for fear that he might become a total disability case if he had another accident. Heretofore, in cases of that kind, we taxed the employer with that amount of money; that is, we took it out of the rate for that particular group or class. A year ago we decided to make it easier for the employer; we decided that we would take anything of that kind out of the disaster fund. We have $150,000 in the disaster fund that we have done nothing with for a year or two, and the interest on that amount of money pays practically what we have to pay for those additional injuries that a man gets, such as getting the other eye out or other hand off. We find that the employer is quite willing to take the man back under those conditions.

Mr. McSHANE. I want to add to my statement. I made it so short I did not get everything in that is material, but there is not a classification provided by the national council that I can not give the loss cost of over a 10-year period in five minutes at my desk. I want to say that, notwithstanding two coal-mine disasters in Utah, loss ratio for that industry has been less than 57 cents on each 100 cents collected. We started out with a $7.80 rate, not having any experience. We have gradually reduced that until it is $3.90, and we feel that we are about on even keel now in that industry. I want to make that clear, that we are doing things according to Hoyle.

Judge Powell. I think I can tell you something about rate making in workmen's compensation insurance. I happen to know Mr. Leslie and Mr. Hobbs, the representative of the insurance commissioners of this country, who sits there with him and presides over that national council. Here is the reason that rates vary: Every one of these compensation rates in the manual sent out by the national council is calculated. They take the aggregate loss of your State at your own experience; they take those losses and that much money must be raised, plus the expenses that go into it. They do not take the experience of your own State for the purpose of classification among industries. They take the experience of the United States, not merely the experience that has been had in those industries during the time that your workman's compensation has been in effect, but go back as long a period as insurance companies have been writing casualty statistics anywhere for the purpose of classification, and they figure out how much money they will have to raise to keep that thing going according to experience for a long number of years.

For instance, barber shops in this State have a rate. There has never been a barber-shop injury in this State. The theory is all right, yes, but unless you have raised money enough out of the barber shops in the beginning to pay that sum, you haven't that rate.
DISCUSSION

You take these States where the basis is solely their own experience. If they have not had a catastrophe, as they did in Utah, their rate would be very low but subject at any moment to be jumped up.

That is the difference between the two methods of calculation. One is calculation by long experience of years. Not only that—this fact I happen to know because of litigation—but the insurance companies refused to add any profit to their compensation rates. They said it was uniform throughout America where the insurance carriers derive it simply on the national council rate without profit, and I happen to know the result in the State of Georgia has been that the insurance company has lost something like $100,000 a year, for the reason that Georgia happened to have a progressively unfavorable experience.

Mr. Hatch. This matter of the differences in rates in different States is a very complex thing. What has just been said is true in the long run, and yet the national council, when it sets rates for an individual State, applies the State differential. The rate fixed by the national council for a given State is not a national rate based on national experience. It is a rate readjusted.

Judge Powell. I said for the purpose of calculating the amounts to be raised they took the Statens own experience; for the purpose of distributing it among the various classes, they took the national experience.

Mr. Hatch. That may be correct but the council can not ignore the State experience any more than it can ignore differences between State laws.

Judge Powell. The Georgia law gives $100 compensation for injury; the Tennessee law gives $75; the Georgia rate must be one and one-third times as great as the Tennessee rate. You have to take that factor into consideration, it is the law of your State; but I supposed it was understood that your rate would vary according to benefit given. When you say that a coal mine carries $4, it does not mean anything unless you know how much benefit there is under the law.

Mr. Hatch. When you get to arguing about the differences in rates in different States you are getting into a very complex thing. You can not explain it by any simple formula. There are a good many things involved. Mr. McShane did not tell you quite all his story. When the matter of this $8 and $9 rate was up, we were talking between ourselves here and Mr. McShane was quoting his rate. He has just told you they started with a $7 rate and now they are down to $3.90. What he did not say was this: In Utah, he thinks, they have the finest coal-mine safety organization in the world. Now in just that fact lies a large part of the reason for the Utah rate as compared with your Virginia rate, and your other State rates that are so much higher. Do not let anybody fool himself on that.

Mr. Handy. Possibly I ought to give a little explanation in view of some of the statements made. I had no idea and no intention of criticizing the insurance carriers in any adverse way in what I said in my paper. The point that Mr. McShane made, however, was
just the point I was trying to make in my paper. He tells me that they have a system in Utah whereby they have available statistics, but the loss ratio that he spoke of as being put on his desk at regular intervals is not the loss ratio that is furnished by the insurance carriers. It is the loss ratio that his own statistical department of Utah furnishes him. That is what I had in mind in talking about the establishment of a statistical department. I do not blame the insurance carriers in all respects for the present rate situation. During the past two years, although our commission does not make the rates in Virginia, I devoted a great deal of time to this question of compensation rates. It is a complicated matter. It is a scientific and a technical matter. I have not been able to take the statements that are furnished by the insurance carriers and satisfy my own mind as far as Virginia is concerned as to the cost on this compensation insurance. I am not talking about the losses they pay; the big gap comes in between the losses and the rate they have charged, that 40 per cent that most of them have in there.

Now I feel that the regulatory authorities or the legislatures of our States have been partly to blame for this situation, if not as much as the insurance carriers. Take the item of medical costs, for instance. I have had insurance companies come to me and say, "There are certain doctors we feel are increasing estimates of disability here at the expense of claimants." We have not very many of them, but I have had more than one insurance carrier mention an individual doctor to me and say that. I say that the regulatory body, the rate-making body, of our States ought to have absolutely full and complete figures before it, through a proper statistical department, of compensation costs. We ought not to be satisfied simply to say that here is a statement of the insurance carrier of its overhead cost of compensation. We ought to know what those costs are; they ought to be analyzed in a way that they certainly are not analyzed in our State, and as far as I know in most of the States.

The question of the overhead cost in that thing is a big item and I believe it is in that particular that possibility rests. I imagine that is exactly where the favorable rate exists in Utah. It comes back to the same thing when you take up the question of the safety organization there. They have that safety organization in Utah, I imagine, because they have made this study of industrial statistics and their coal-mine statistics are available and given to the industry of their State in a form that is practical and usable. The result has been that those two things, the increase in safety methods together with the fact that the commission of that State is making its own study of compensation costs and is prepared to check costs of the insurance carriers at any time, have counted for a favorable coal rate.

So far as national rates are concerned, here is what happened in Virginia within a period of two months' time as to coal. The companies that had been doing that business said, as I said in my paper, that they could not carry those risks for less than $9.20—I think that was the rate they asked for. We got to work and the first proposition we took up was one very large insurance carrier. We went into the situation. We had a meeting of operators, together with representatives, one a vice president, of that company. They
said, “If you will give us a certain premium income on this, we will write this for a rate of $7 and something.” The commission of insurance was right there, with a lot of time to work it out. The operators were not able at that time to guarantee them the minimum premium return that they asked and so that company did not take it. We turned around and went to work and another company took our coal at $5.75, and that is the base rate in Virginia to-day. In two months’ time there were three companies, one of which said it had to have $7.20; another $7 and something; and another took it at $5.75.

The whole situation gets back to this question of the rate-making authorities of our States groping in the dark to a great extent on this question of compensation rates, and it is no criticism, as I see it, of the insurance carriers to say that rates ought not be made by information furnished entirely by the insurance carriers. I do not regard it as a criticism of them at all to say that. As I see the situation, the States themselves, all of us, are as much to blame as the insurance carriers for the situation along that line. I have meant to be perfectly frank in my statements but I did not want to appear to be simply making blanket accusations against the insurance carriers. I did not have that attitude because I do not think I have that idea.

[Meeting adjourned.]
[A telegram from Mrs. Roblin, of Oklahoma, extending her best wishes for the success of the meeting, was read.]

The President. I presume that every commission finds that a large majority of the cases it has to handle depend entirely upon medical reports. Of course, when a man is killed, you have only to find if the accident arose out of his employment and if he has some beneficiary. Likewise, if a man suffers a dismemberment or loses an eye those claims are easy, but the great majority of your claims depend entirely upon medical reports, and sometimes, if you have the same experience that we have, you have a case in which one doctor says there is nothing in the world the matter with the claimant and another doctor says he has a 100 per cent disability, and of course you have to guess a lot.

When the Georgia commission began to function, we went out to get the best surgeon we could find, and we believe that we succeeded. We believe that the medical director of the Georgia commission ranks with the best anywhere. Doctor Roberts, our medical director, will have charge of the program this morning, and I think he has arranged a very fine program. He got the best medical talent he could find and put them on this program. I take pleasure in introducing to you Dr. Charles W. Roberts, of the Georgia Industrial Commission, who will now preside.

The Chairman. When I began to give thought to the matter of getting up this program, I began to revolve in my own mind the problems which had arisen in the Industrial Commission of the State of Georgia and the program which you see before you is the result. Strange to say, when I availed myself of the opportunity of getting from the distinguished secretary of this association, Mr. Stewart, such information as I might have obtained at the outset, I find that the very problems which we have placed on the program for discussion to-day seem to have been the problems which have been discussed over and over again in this association. I have no apology to make for that particular situation, because it would appear that the problems we have met in Atlanta are the problems which are being met all over the country with respect to the medical phase of the administration of the compensation act.

It occurs to me that while what we doctors may give you to-day may sound very close to the same information which you have received before, the very fact that this thing is being repeated over and over again may indicate that we are somewhere close to the truth, and if we can keep on preaching this same doctrine over and over again until we have accepted that which is truth in it, we will have accomplished something.
I found no trouble in calling to my aid representative medical men to appear on this program. We have a great teaching center here. Our men have had an opportunity by virtue of that particular fact to become at least ordinarily proficient in medical work. The men who will appear on the program are selected men, not simply men taken at random, but men chosen because of their special fitness, as we believe, to serve you in this particular instance.

We will have plenty of time for discussion of these problems and the men who are appearing on the program have been advised that you are going to ask them questions. I sincerely hope that you will enter as freely into the discussion of these medical problems as you entered yesterday into the discussion of matters that I knew very little about, all of great interest however.

Dr. Lawson Thornton, an upstanding man in orthopedic surgery, will first address you on “A consideration of injuries to bone and joint tissues, with suggestions for minimizing the industrial handicap.”

A CONSIDERATION OF INJURIES TO BONE AND JOINT TISSUES, WITH SUGGESTIONS FOR MINIMIZING THE INDUSTRIAL HANDICAP

BY LAWSON THORNTON, M. D., ATLANTA, GA.

The time to begin minimizing the handicap of industrial injuries is immediately after the accident occurs, and it should not be discontinued until the optimum result has been obtained.

An accurate conception of the cell life of the injured tissues would enable one to visualize just what is taking place as healing goes on from day to day. The process of repair follows certain definite natural laws, and unless there are outside interferences or mechanical impossibilities one may know what to expect with some degree of accuracy. Bone tissues heal with the greatest ease, while, on the other hand, joint tissues repair very poorly.

When a bone is broken blood flows from the opened medulla out through the rent in the periosteum, and is extravasated into the intracellular spaces of the fascia and muscles, and there is usually a lake of blood around and between the fractured ends of the bone. This intracellular infiltration of blood produces an intracellular and extracellular coagulation which becomes evident by loss of elasticity of the soft tissues about six hours after the time of injury. Fractures are more easily reduced before this chemical change takes place. Reuniting of the fracture begins at once by clotting of the lake of blood around the fragment ends. Without delay this clot is invaded by rapidly budding blood capillaries accompanied by bone cells and fibrous tissue cells. The blood clot serves its purpose as a medium into which these cells and vessels grow, and is later absorbed. The blood capillaries are soon to be displaced by bone cells and fibrous tissue cells which they have supported and nourished. It remains to be seen whether the bone cells or the fibrous tissue cells will take possession of the field, and the deciding factors are motion or fixation. Motion will permit the fibrous tissue cells to win, while immobilization will allow lime salts to be deposited in the young bone cells and the completion of the callus bridge between the frag-
ments. While the callus is still quite young it is somewhat pliable and may safely be molded to change the alignment of the bone. There comes a time when the callus has acquired enough strength to permit careful resumption of function or weight bearing, which will hasten its maturity and calcification. Application of heat and gentle massage will also be of value at this time.

There are many criteria in determining the methods of choice in treating fractures. As a general rule it would seem that the surgeon should employ the plan with which he is most familiar, and which has given him the most accurate reductions with the greatest ease, and will require the shortest time of immobilization after reduction. The available facilities influence one in the selection of the method of procedure. Open reduction might be definitely indicated, but would not be carried out unless a perfect operating room technique could be depended on. Often it is necessary to conserve adjacent joints and tendons from the damage that might be done them by prolonged immobilization. As an example, the knee tolerates fixation very poorly, and in treating fractures of the femur this joint deserves much consideration. Open reduction with accurate fixation of the fragments by one of the methods of bone grafting greatly shortens the time of necessary immobilization, and makes it possible to liberate the knee before any damage has been done. Early motion of the knee may be obtained by applying a well-fitting brace at a time when the callus is still in need of external support.

Another method of treating the fractured femur which will prevent immobilization of the knee is by means of traction applied directly to the lower fragment of bone by calipers or penetrating metal pins. By the use of this skeletal traction apparatus the knee is left free to be moved as desired.

Fractured bones of the hand and fingers and the elbow can not be immobilized more than a very short time without danger of limitation of range of motion. Early motion here is necessary, even at the risk of loss of anatomical position.

One of the greatest sources of danger of doing temporary or permanent harm in the treatment of fractures is from too tightly applied splints, bandages, or casts. Especially is this true of the upper extremity. All grades of impairment may occur, from ischaemic paralysis, with its dreadful contractures, to a milder form of nutritional disturbance, which may only prolong the convalescence. No extremity should be tightly bound. Even when not applied too snugly, swelling will almost always make the splint or cast too tight. Every fractured extremity should be kept under observation during the time when swelling is likely to occur, and the dressings loosened whenever necessary. Fingers and hand should never be permitted to remain swollen or discolored without loosening the cast or splints. Ischemic paralysis, however, has often occurred where no splints or bandages were applied, probably the direct result of blood-vessel injury.

Fractured bones which have been accurately reduced may lose their alignment or even their apposition from various avoidable and unavoidable causes. As an example, the muscles of the thigh might atrophy within the plaster cast and permit sagging and loss of alignment of the shaft of the fractured femur. Such happenings
might go unrecognized until firm bony union had occurred with fixed deformity. Accurately taken X-ray pictures at frequent intervals of time would prevent such a misfortune. X-ray facilities should always be available, and so arranged that the cost of repeated check-up pictures should not have to be considered. Many deformities are permitted to go unrecognized for the sake of X-ray economy.

Joints are the most complicated structures of the animal mechanism of locomotion, and some of the tissues of which they are composed heal very poorly following injury. If there should exist in conjunction with the joint injury an abnormal irritating chemical or bacteria within the blood stream, the problem would become even more difficult on account of additional insult to a defenseless tissue. So important is the question of toxemia or bacteriuria, that its consideration is paramount in joint injuries. Foci of infection are, of course, sought and eradicated. While chemistry and bacteriology have not proven the belief that the intestinal tract is the source of the offending toxic substance, which is brought to the joint by the blood stream, it has not been disproved. It is especially in those patients beyond the age of 30 years that toxic traumatic arthritis is encountered, and it is about this time of life that we suppose some intestinal change may take place. Possibly, for some unexplained reason, there may be an increased fermentation or putrefaction of the intestinal contents. The cells of the intestinal mucosa may become more permeable to chemicals contained in the digestive tract; or even it may be supposed that there may be an impairment of the excretory function of these cells, thus allowing accumulation of some end products of metabolism in the blood stream. Regardless of the exact nature of the condition which exists, most gratifying results are often obtained by a somewhat empirical regimen, briefly outlined as follows: A diet of digestible quantity and low in carbohydrates and proteids to limit fermentation and putrefaction; saline laxative of sodium sulphate, and colon lavage are given daily. Turkish baths are taken to increase the excretory function of the sweat glands.

Partially torn ligaments may heal readily without any future trouble; more severely injured ligaments may cause serious joint impairment. Such ligaments as the crucial and lateral ligaments of the knee, acromioclavicular and sternoclavicular ligaments, the ulno-radial ligaments, and others of importance may be so torn or stretched that the joints traversed by them may be subluxated and deranged. By means of fascia grafts these ligaments may be very satisfactorily reconstructed and the stability of the joint restored.

Fractured cartilage heals very poorly. Cartilage covering a bone surface heals across a fractured crevice, leaving a scar tissue ridge and an imperfect joint surface. Semilunar cartilages of the knee probably never heal when completely fractured, and when the ligaments which hold them in place become torn or stretched they may be permanently loose. Very little, if any, impairment of function follows excision of the semilunar cartilages.

Low back pains having their origin in the lumbar-sacral and sacroiliac joints are causes of much disability. The patient is first entitled to a thorough conservative plan of treatment, which would consist of low back brace or sacroiliac belt, postural training, plus the regimen suggested above for toxic traumatic arthritis. These
joints may be made to fuse by operation and entirely eliminate the pain and disability.

Painful backs following fractures of vertebrae may be entirely relieved of pain and disability by spine fusion operation. In cases of injuries of the heel the fracture may extend into the subastragaloid joint and cause a permanently painful joint, with lameness. Loss of motion in this joint would be an almost negligible loss in function of the extremity, and pain would be eliminated. It would seem, therefore, that a fusion operation would be indicated for relief of pain in the articulations whose loss of motion would not cause much, if any, loss of function.

One could not too forcefully emphasize the importance of physiotherapy, intelligently and skillfully applied, during the convalescence from bone and joint injuries. As soon as the injured extremity becomes accessible by removing splints or cast, the work of the physiotherapist should begin. This treatment consists of heat applied in any of the many convenient ways, massage, and physical training. Each day the patient is made to do a bit more, and each step of progress in function is done correctly. If it be a lower extremity he is taught to use his muscles in such a way that he does not develop a limp. Atrophied muscles are brought back to normal size and strength. The patient is not allowed to do too much nor permitted to do too little. Each day he is made to progress. He is made to be patient while the natural process of repair clears up the damage.

In conclusion, I would say that bone and joint problems require more time and more patience than do other traumatic conditions; more patience on the part of the patient and the industrial agencies which supply the funds, and last but not least on the part of the surgeon. Cooperation by all parties concerned is necessary, and a clear-cut understanding between them all would make less worry for the employer, more efficiency for the surgeon, and less handicap for the patient.

DISCUSSION

Mr. Halford. We handle all the medical business at our end of the game. The doctors do the work for us and we pay them. We have all these problems to deal with that have been suggested in this paper.

One very big feature and one of the most important things that we have to deal with is an ununited fracture, Doctor. The delayed union causes, of course, a great deal longer disability than if there be union by first intention. Some of the physicians say that steps should be taken to make an effort to have the bone united, either by grafting or bone plating, in three months from the date of the accident if there is no union. Others say let it alone for a longer period, perhaps four or five months. We have these cases coming to us and they take a long time. What I wanted to ask you, Doctor, was this: In your opinion, should plating ever be done? And then again, is it the proper procedure to do it, and under what circumstances? And, is bone plating as good as grafting and under what conditions should the bone plating be done?

We have some eminent men in our city, Professors Starr and Galley and Shuttleworth, and other very eminent men, who do a great
deal of work for us. We, of course, understand the reluctance of the medical man in the outlying districts, where he is more of a physician than a surgeon, to undertake these responsible, big problems. I would like to get your opinion, Doctor, on those two or three questions, because I think it would be of interest to us.

Doctor Thornton. In the paper a few minutes ago I said that I thought that the surgeon should use the plan which he has found from his experience gives him the best result and is easiest for him to do. Now, I would not say that bone plating should not be done. I can only speak for myself and say that I do not do bone plating because I get better results by other means. If internal fixation is done, we use bone instead of metal, osteogenous bone graft from the same patient rather than metal. Excellent results are obtained by certain men by the use of bone plates. I think it is a general principle, used all over the country, everywhere, that bone plates probably should not be used, because they become foreign bodies, and if an infection occurs you have a foreign body there that acts as a splinter and causes suppuration to continue.

Mr. Wilcox. You said bone plates should not be used; you meant metal plates?

Doctor Thornton. Yes. However, that is just my own opinion, and I say again that a man should use the thing that gives him the best result and with the least damage.

Mr. Williams. Have you ever found any trouble from giving thyroid extracts where fractures are ununited?

Doctor Thornton. I have never given any drugs or biological products to promote bone growth. I have not done that, sir.

The Chairman. It has been my experience in medical meetings generally that very often much more is obtained from the discussion than from the papers. At least, the discussion always elaborates or clarifies the papers presented. In view of the fact that Doctor Gravlee is not present, I think it would be well to extend the scope of Doctor Thornton's paper to include any questions which you might want to ask bearing upon the second problem, namely, "An assessment of the value of radiant energy in the treatment of traumatic conditions," because it is in injuries of bone and joint structure that we have the use of some of the appliances that have come on the market under the head of "Physiotherapy"—lights of one kind or another. I was very anxious that we have this particular subject discussed at this meeting; so if you will be good enough to ask Doctor Thornton any questions along that line or raise those questions for discussion, it might be gone into. I see Doctor McBride here. I would like to have him discuss this problem.

Doctor McBride. Of course, we employ physiotherapy very extensively in our work in New Jersey. We have six rehabilitation clinics there and we run them very ethically. We do not take any case in our clinic unless it is referred by some medical man who feels that he himself or the institution he represents can not give the treatment and he sends the case to one of our clinics. We probably have the finest rehabilitation clinic in the world in our Jersey City clinic building. Doctor Albee, the orthopedic surgeon, is a man of great

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*A copy of this paper was not supplied to the Bureau of Labor Statistics and is therefore not included in these proceedings.—Editor.
renown as head of the rehabilitation commission of New Jersey, and he has made that statement. He has been all over the world and he says that without question we have the finest rehabilitation clinic to be found anywhere. We have all sorts of apparatus. We have the various types of light; we have both hand and machine-driven apparatus of all types.

I believe strongly in physiotherapy following trauma of all kinds. I do not think that admits of any contradiction. I think the results have been splendid. I do believe with most of the men who do industrial surgery that great care should be taken that the parts, the injured parts, are not allowed to remain inactive too long. I believe that we ought to begin just as early as possible the function of that part. I think that every encouragement ought to be given. I do not think any fracture ought to be left without follow-up X ray. As the doctor said, many things may occur and the man who allows a fracture to remain without the aid that X ray can afford is doing wrong. I think that all surgeons appreciate that more and more all the time. Where fractures were allowed to remain for weeks without disturbing them, trusting to luck as well as nature to effect the proper repair, it often resulted in disappointment. To go on that way is not allowed now in this enlightened period of that important work.

I believe that the establishment of compensation acts in the States of the United States and in the Provinces of Canada has done much for better surgery. That does not admit of contradiction, because if a man is checked up now he cannot afford to do bad work. If he does, it is going to be made very uncomfortable for him, because his patient will find out he has not done the proper thing. That has all been brought about by compensation work.

Our clinics in New Jersey are open to any doctor in good standing. He can bring his patient there and put the treatment of that patient under the direction of our medical director. I am strongly in favor of physiotherapy and mechanotherapy in all cases of trauma. I believe it shortens the period of disability without question, and that probably there is a great deal better functional result than if it were not resorted to. Heat, massage, manipulation, functional reeducation by gymnastics, and all that, are all certainly a great aid in the restoration of the damaged parts.

Mr. Hatch. Doctor McBride, is your commission clinic supported entirely by the State? Just how is it financed?

Doctor McBride. It is mainly supported by the State. We have our rehabilitation law. We are allowed the fees that may be collected in our clinic up to $20,000 a year, to be applied to our rehabilitation work. We charge wherever the person is able to pay for it. That, we believe, is only fair to the medical profession. If we treated them gratuitously when they could pay, it would not be fair to the State or the profession. We have some few cases referred to us by carriers, a very few. Most of them do their own work and we do not solicit it because we felt that sometimes they expected things that we did not believe were fair. For example, they would expect a report and they were entitled to a report if the patient was treated at our clinic. Being a doctor, I discouraged it and said that no one could receive a report about the disability of an injured person excepting the referee or deputy commissioner of compensation, the only ones entitled to it. There are two sides to the question. We do not
want to be a party to the side which might make it appear that we were favoring the person who sends us work. The average person does not pay. The average person is not able to pay, but wherever people are able to pay we charge a nominal fee, never more than $2 and sometimes 50 cents or whatever they can pay, but if they can not pay we do not think of making any charge at all.

Dr. Earl D. McBride. I practice orthopedic surgery and was very much interested in the first paper that was read. I want to discuss this a little because I am called on occasionally to answer questions by the State industrial board of Oklahoma, and, as was mentioned in the essayist's paper, we do have some rather paradoxical situations.

The law in Oklahoma provides, I believe, that medical attention shall be given to an injured workman at the expense of the employer and does not qualify that by saying what medical attention or how long. I sometimes think that by the time the industrial commissioner is through with his term he ought to be given an M. D. and allowed to practice, because I believe he ought to know at least as much about fractures and some of those things as some of us doctors. He gets at least a varied opinion on the proposition.

The difficulty, it seems to me, in handling bone and joint injuries and nerve injuries, and I believe most of these industrial injuries come under that class, is that we are not given sufficient time to obtain results. Pressure is brought to bear on physicians over the State, by traveling representatives of insurance companies insisting that the patient be discharged from the hospital as soon as possible and that the man be dismissed from treatment as soon as possible, and as a result a number of men will be influenced by that, because they want to please the company and to please the claim agent, who are looking at the thing entirely from the dollars and cents point of view, and, by the way, from the narrower point of view.

I attended the American orthopedic convention in Los Angeles in June and the examining doctor for a company seemed to take the broader point of view. He congratulated the orthopedic surgeons in that they secured the best results in the shortest period of time if everything was taken into consideration. When I say orthopedic surgeons, I include all general surgeons who are taking care of fractures in this class of injuries, because even though a man may practice general surgery, of course he is obligated to pay special attention to orthopedic principles if he handles that kind of cases. In other words, it seems that in California they are recognizing that thorough treatment of a fracture, no matter if it takes a little longer, not only will give the man who is injured a better result, a more useful limb throughout the rest of his life, but it will in the end save the company who has to pay for the permanent injury considerable money.

Unfortunately, I do not feel that that obtains in the State of Oklahoma. If we keep a fractured femur over eight or nine weeks, immediately some representative comes by, if it happens to be an insured case, and begins to look with mild suspicion upon us and all but accuses us of extortion of extra money for that particular case. It makes it rather difficult for the surgeon as well as for the injured workman under those conditions.
All of those things happen as a rule before the case comes to the industrial commission. Then when it comes to the industrial commission, if the case has happened in some small town, such as we have in Oklahoma—these small oil towns where every Tom, Dick, and Harry that has an M. D. goes in to make quick money—and the man has severe deformity of his femur or a stiff knee or a drop foot or some other condition of that kind, he is jerked up and switched into the industrial board as quickly as possible. In many instances an attempt is made to settle with him. If we men who are specializing go before the board and make statements concerning possible cure of that man by operation, there is always considerable controversy, and sometimes, outside of the commission room, considerable embarrassment occurs because of remarks that are made.

I say these things because I believe they are practical things that we want to talk about at this meeting. In fact, that is why I came. I wanted to hear the practical side of this thing from the experience of men in various parts of the country. I do not know what the solution is, whether it means that the State eventually will have to pay for treatment in order for the men to obtain sufficient treatment and treatment over the proper period of time, but I do believe that this is the proper attitude to take toward industrial cases; namely, that efficient treatment is the cheapest in the long run and gives the injured employee the benefit of the best medical skill.

Mr. McShane. I was interested in the statement you made regarding fixation of injured spines. I know that doctors do not agree; there seems to be two schools of thought in our State and I believe that I have discovered the same in other States. What process would you recommend, the Albee or the Gibbs? If I might make one observation with reference to Doctor McBride, of Oklahoma, I would say that when an insurance claim agent or any other third party comes around interfering in a medical problem, he should be told that this is a medical problem and it is none of his affair; "We will treat this man as he should be treated, we will not release him until he should be released, and after he is released you will get our report and then you may handle the case any way you see fit."

Doctor Thornton. Regarding the spinous operation, as to whether the Albee spine-fusion operation or the Gibbs operation should be used, I will say that we employ both procedures and we decide which one we will use, depending upon the individual cases. They are both good procedures, and as experience has shown everywhere, if properly carried out, just as the originators of the plans have devised and designed, both procedures will give the same results. That has been our experience. They probably all graft more in the lumbar spine where we have the long spinous processes which diffuse. However, the Gibbs spine fusing will give equally good results. If a surgeon can do an Albee graft better than he can do the Gibbs graft, he should use the Albee graft and vice versa. I like them both.

Mr. Kernan. I notice you refer to paralysis following some injury. I would like to be informed just exactly what kind of paralysis that is.
Doctor Thornton. Ischaemic paralysis. Often following fractures, especially of the upper extremity, especially of the elbow, tight bandages will cut off, it is supposed—no one knows exactly—the return venous blood, causing starvation of blood for the forearm, and the muscles are constricted; the result of this starvation is fatty degeneration of the muscle, the fat being subsequently replaced by scar tissue and fat. The final condition is a dreadful deformity with contracture of the hand, a perfectly useless hand in this position [illustrating a sort of claw position].

As I said a few minutes ago in the paper, a number of cases have been authentically reported where no apparatus or fixation has been applied, only a sling, so it is possible that it does occur—I do not believe always, but sometimes—as a result of injury to the blood supply of the arm by the accident and not by the bandage, but tight bandages, we believe, will cause an ischemic paralysis.

Mr. Kernan. The other question I desire to ask is about the result as to impairment of the function of the joint where the cartilage has been excised. I have been told that it leaves the knee in a position likely to give way when any unexpected force or any weight is put upon it. Is that your experience?

Doctor Thornton. I would not like to answer that in a positive way, but it has been our experience that the people who have had cartilage removed have satisfactory function of their knees, and it is very rare, if ever, that we have one complain or tell us that there has been any impairment of function. I suspect that there is an impairment of function, but these people are so happy to be relieved of their pains and troubles, for which they were operated on, that they won't complain. I suspect there is some disability and impairment, because anything that is done surgically to any joint, of course, leaves the joint not in as good shape as before operation. I suspect there is a certain percentage of disability after removing the cartilage.

Mr. Williams. Do you find that very many cases that were formerly diagnosed as sacroiliac are in reality lumbar-sacral? What has been your experience?

Doctor Thornton. You certainly have asked me a hard one this time. I will answer it this way: I went to a little orthopedic club to which I happen to belong—Robert Jones Orthopedic Club in New York—last year or the year before last. At a New York orthopedic hospital, Doctor Gibbs's place, they had done a number of lumbar-sacral fusions—that is, a fusion of the spine to the sacrum—and all of their cases were comfortable and fine. There was a bunch there from Boston who believed in the sacroiliac fusion; most all of their cases were comfortable and fine. However, that is not a good answer. I think that both of these joints become injured and it is up to us to find out where the trouble is. It is not always possible to know, even to work out, whether it is a lumbar-sacral or a sacroiliac joint. I think after we have done the best we can to locate it, we should fuse the one we think it is and if we do not get away with it we have to do the other one. I have had to do that.

The Chairman. A statement was made on this floor yesterday by one of the commissioners, I believe from Utah, that impressed me very much indeed—that the consummation to be sought by industrial
accident boards was actually to prevent injury. That is the primary thing to be done. When an injury occurs, the next best thing is to rehabilitate that injury if possible.

The thought that was in the back of my head when this title was suggested by Doctor Thornton was that when an injury has been received it does not work out by any rule of thumb; that is to say, that if we have 10 men with broken femurs, those 10 men are not going to consume the same amount of time in getting well; that there are many factors which enter into the end result. I know that you have found that to be true. Here comes a patient who has had a fractured femur, or a fracture of the wrist, or some bruise or bump or strain of the back or what not, and he is a cripple over a period of months, and of course we have a controversy as to what is the matter with that fellow, whether he is a fake or whether he is not. Here is another man who receives the same type of injury who is back on the job within a short period of time. Now what makes the difference? Is there a real reason why there should be a difference; and if so, what is that reason? Those are the problems that we meant to introduce, and if you have questions along that line that can be answered by anybody present, we should be glad to have those questions asked, because it is an interchange of ideas for the purpose of finding the truth that this association is seeking, as I understand it.

Mr. Phillips. I should like to know why it is that when two men of the same age have similar fractures one will lose the strength of his hand and the other will not.

The Chairman. I see Doctor Hames, who is a prominent local surgeon. I would be glad to have him enter into the discussion.

Doctor Hames. I was very much interested in what Doctor Thornton and the other gentleman said, especially with reference to injuries of the os calcis and spine, and what the chairman just said with reference to back injuries or so-called back injuries, as to what they are where we have no definite bone injury and still at the same time a prolonged disability, in which we can find nothing whatsoever wrong with the body otherwise, no foci of infection, nothing except that the man has a prolonged disability and a great many times something apparently trivial. Just what those things are I do not know. I have wondered and wondered and studied and thought, and I do not know.

With reference to this os calcis, I think that what the doctor says with reference to fusion of the subastragaloid joint is right. In the majority of those patients they can be made comfortable where there is a fusion of this joint, and it causes practically no functional disability.

The fractured spines, of course, something must be done for. They must be fixed in some way if they have a marked deformity. In my work I cover the whole field because I get the compensation accidents from the mines—lacerations, and on up to the major fractures and head injuries. It has been our rule to call in and use men more experienced, men with more knowledge, than we have, because we can not follow the whole work and do it thoroughly. We know that there are men who know more of certain subjects than we can possibly know, and we never hesitate to call those men in, and it has been my pleasure a great many times to call Doctor
Thornton and have the benefit of his opinion and assistance in handling these cases.

Certainly there is a great problem in a great many of the cases. Fortunately, the majority of the cases under compensation occur as minor injuries and not as major injuries. If they were all major injuries we would be in an awful predicament.

I wish that our State might have a board of rehabilitation for these injured people, and that there might be some means of educating those who are in the rural smaller communities with reference to the mechanics of fractures, so that they will not cause disabilities by the putting up of the fracture; in other words, in preventing a foot drop in fractures of the leg or femur, or preventing an ischaemic paralysis, of which the Doctor spoke, by applying a cast too tight or not noticing that cast for several days. Unfortunately, we have had any number of those cases referred to us—ischaemic cases, most of them hopeless, and cases of foot drop from lack of notice of the position of the foot during confinement, which could have been corrected if the attending physician had noticed that the foot was dropping and simply tied it up in some way.

As to ischaemic paralysis, I do not know. I have seen cases occur, as Doctor Thornton said, with nothing but a sling applied. Whether that is a disturbance of the return flow of the blood, I do not know. It is certainly a great question. The whole compensation work is a medical question; it is something that has eventually to be worked out medically, and we can not do it except with the cooperation of the employers or the insurance carriers, and with the sympathy and cooperation of the members of the compensation board.

Mr. Eppler. Have you found a real test for what we might term the sacroiliac failure?

Mr. Hatch. As to these back injuries where the medical profession report they are unable to find any pathological condition or any injury, the doctor who just spoke said he does not know what they are. Unfortunately, that leaves the compensation commissions pretty badly up in the air, because we have those cases. It occurs to me to ask this question: If the medical profession does not know what they are, can the medical profession say to-day what the possibilities are; that is, can you eliminate everything but certain possibilities? Can you draw a circle and say it is some of these things? That might help. Evidently it is a very obscure field, but I am wondering whether it is possible to say that the possibilities are limited to certain things. That would be a great help to the commissions sometimes.

Doctor Thornton. You refer to low back pains?

Mr. Hatch. These back injuries where all we get is a report of the pain and disability but the doctor can find nothing objective.

Doctor Thornton. First, as to whether it is the sacroiliac or the sacral-lumbar joint, that is a hard problem. The two joints have practically the same motion. I think that it is a medical problem as to which of the two it is, and one we have to work out with our observation and experience. But that was not your question. You did not care to know which it was?

Mr. Hatch. What is the trouble when you do not know? What I mean, Doctor, is this: What can it possibly be? It may be several
things, perhaps, or is it totally obscure, and you can not even name the possibility?

Doctor Thornton. I can not answer your question, but I can tell you something. You can not see everything; your X-ray picture is nothing but a shadow, and there can be much in the spine that does not show in an X-ray picture. Another thing you have, the muscle spasm, and another thing, the symptoms which a man tells you about. We know that you can have an injury to the joint without showing anything by any means of examination. You also know that you can have an injury to a joint that does not show anything, and have, on top of that, in plain, ordinary language, rheumatism, arthritis, something in the blood stream that adds a poison to that. We have it ourselves—people above the age of 30. You have to keep always in mind that you can have a traumatic toxic arthritis. We see it every day in people who are not injured and have no reason for telling us about it other than their pain. We have in orthopedic work in the hospital half a dozen to eight people all the time with just such pains and minor injuries, with pain in the lower spine, and the only thing we have to show for it is an occasional spur on the spine that you know about. You almost always have to give your man credit for being truthful about it, I am sure, and work to cure his disease and trouble.

I have not had much experience with industrial work, have not gone up against the problems which you ask about, except in consultation occasionally, and I can not answer your questions as well as Doctor McBride and Doctor Hames and Doctor Roberts can. I wish I could.

We do go after the treatment of arthritis very strenuously and thoroughly by elimination, seeing that the intestinal tract is well cleared from any foci of infection as much as we can, and treat the patient as if he had arthritis, and then after we have done all we can, we go after the more radical method of treatment.

Why two injuries just alike will turn out differently is partly answered in the same way. Of course, they would be treated differently. One may have had a different case. One may have been mobilized longer than the other. One patient may have been older than the other, with less healing power, and one of them may have been rheumatic and the other one may not have been. Injuries are never the same. One may have had considerable torn ligaments in addition to his torn bone and the X-ray picture does not show the torn ligament. One may have had more injury to the joint than the other.

The Chairman. Now with respect to the next problem to be presented to you in this particular territory, we are accustomed to using the opinions of the next essayist as a sort of court of last resort. I am presenting Dr. Charles E. Dowman as another picked man. I commend him to you. What he is going to tell you he believes is the truth. Now, doctors do not always agree and are not infallible, but he deserves your attention, and I believe you will be benefited by the discussion of his particular question, namely, "Brain, spinal-cord, and nerve injuries, with special reference to their industrial aspects." I am glad to present Doctor Dowman.
The nervous system is composed of the so-called central nervous system (brain and spinal cord) and the peripheral nervous system (nerves). In discussing injuries to these structures as related to industrial problems, both the immediate and late effects have to be considered.

Up to a few years ago the medical profession viewed all injuries to the cranium and its contents (brain) in terms of "fractures of the skull," and most of the modern textbooks continue to approach the subject from this angle. This is a great mistake, for the reason that the question of the greatest importance is whether or not the brain incased within the skull has been injured. It is possible for an individual to sustain a fracture of the skull without the brain or its membranes being injured, whereas it is also possible for the brain to be extensively injured without the incasing skull being broken. The determining factors are (1) the type of blow received on the head and (2) the degree of the normal elasticity of the skull. For example, a blow of great force but of small impact, such as may be produced by a small hammer, may cause a simple or compound depressed fracture of the skull, with or without an accompanying contusion of that portion of the brain lying directly under the area fractured. Widespread and remote contusions and lacerations of the brain seldom result from an injury of this nature. A blow of less force but of larger impact such as the head striking the pavement, on the other hand, may cause very little damage at the point of impact, yet extensive remote contusions and lacerations of the brain may result. Under such circumstances the presence or absence of a fracture will depend largely on the second factor, namely, the degree of the normal elasticity of the skull.

One should keep in mind the fact that the skull is an irregular sphere forming a solid incasement for the brain and its membraneous coverings. Just as a football changes its shape momentarily when kicked, so the skull as the result of some sudden forceful impact will change its shape momentarily. During this momentary change in shape the elasticity of the skull may be carried beyond the normal limits with the result that linear fractures of more or less extent may result. Under such circumstances the X-ray examination will usually reveal the presence of the fracture. As to whether or not the brain becomes damaged depends entirely upon the degree of "squeezing" to which it was subjected at the time the shape of the skull was temporarily altered. Experience has taught us, as already mentioned, that it is quite possible for the brain to have been damaged little or not at all even when extensive fractures are found on X-ray study, whereas extensive brain damage may have taken place without the skull having been broken.

It is therefore necessary to consider injuries of the head according to the degree of brain damage and not in terms of "fracture of the skull." With this in mind one can readily see that, from the standpoint of compensation, it is a mistake to base the degree of disability upon the X-ray findings alone.
The immediate effects of injuries to the cranium and its contents depend, therefore, upon the degree of brain damage and not upon the presence or absence of fracture. The mortality of head injuries has materially lessened since the study and treatment of such patients has been based on the type and degree of damage to the brain. Before instituting any particular treatment it is absolutely essential to classify the individual case in its proper group, as the type of treatment indicated depends entirely upon the type of injury sustained. Experience has taught us that practically all cases of head injury can be classified as follows:

A. Massive brain injury, with evidence of rapid exhaustion of the medullary centers and death within one to several hours.

B. Definite evidence of middle meningeal hemorrhage.

C. Simple or compound depressed fracture, with localized brain contusions, with or without indriven bone fragments.

D. Classic manifestations of rapidly increasing intracranial pressure which are well within the period of medullary compensation.

E. Definite evidence of brain injury exhibiting no classic findings of acutely increasing intracranial pressure, yet of the type that experience has shown is liable to develop gradually increased intracranial pressure due to subdural fluid accumulation.

F. So-called “concussions” with no evidence of gross brain damage.

G. Depressed fracture of a mild degree, giving rise to no symptoms whatsoever.

H. Linear fractures with no evidence of brain injury.

I. Scalp lacerations, without damage to the underlying structures.

Those cases falling in class A invariably die regardless of the type of treatment employed. The brain in this particular group of cases has been so extensively injured as to render a continuation of life impossible. The percentage of deaths in any particular series of cases depends upon how many of the patients sustain this type of injury, as those cases belonging to the other groups practically always recover, provided the proper type of treatment has been used. The treatment, as already mentioned, varies according to the individual case. In some an immediate operation is indicated, whereas in others (class E) operation is contraindicated, the treatment to be employed consisting of the administration of those drugs which clinical and experimental experience has taught will prevent the occurrence of increased intracranial pressure due to subdural fluid accumulation. Those present who may be interested in the details of the type of treatment indicated in each group of cases according to the above classification are referred to the medical literature of the past few years, as a discussion of such technical matters is out of place in this particular gathering. It may be of interest, however, to mention that in the past four years 465 cases of serious brain injuries have been treated by my associates (Dr. J. C. Weaver and Dr. Hugh Cochran) and myself according to the above classification, with a mortality of 20 per cent. This mortality when compared to that of previous years, when a mortality of 50 or 60 per cent was to be expected, justifies our contention that all cases of brain injury should be carefully studied and properly classified and then the treatment indicated for the particular case instituted.
The question of more vital importance to those interested in in-
dustrial problems is the degree of partial or permanent disability in
those individuals who escape death after having sustained a serious
brain injury.

Unfortunately such disability can not always be accurately deter-
mined. Of one thing I am thoroughly convinced, and that is that
the degree of permanent disability depends in many cases upon the
type of treatment employed at the time of the accident. To illus-
strate, a patient who has a depressed fracture with localized brain
contusion should be operated upon immediately. The operation of
choice consists of the removal of the depressed bone fragments and
a careful removal of all contused and devitalized brain. The bone
defect should then be obliterated with selected bone fragments (pro-
vided they are not infected). Unless the contusion involves very im-
portant cortical centers (motor cortex, areas for the memory of
things seen and heard, etc.) the patient should make an uninter-
rupted recovery with no permanent disability whatsoever. If, on the
other hand, the depressed fragments are simply elevated and the con-
tused brain is not removed, the patient may eventually develop a
traumatic cyst of the brain which may cause more or less permanent
disability even though the cyst be eventually recognized and oper-
ated upon.

To illustrate further, any patient who is allowed to lie for days or
weeks with an increased intracranial pressure, when such a condition
can be either prevented with proper medication or relieved with a
well-devised decompression operation, is liable to be more or less
permanently disabled on account of the damage which a long stand-
ing increase of intracranial pressure may produce on various centers
and association nerve fibers, etc.

Furthermore, it is a great mistake to permit patients who have sus-
tained an injury to the brain to return to their work too soon. A
three weeks’ rest in bed followed by about three months of thorough
relaxation and freedom from domestic and occupational cares will
often prevent the occurrence of many distressing post-traumatic
symptoms which might otherwise develop and hinder a return
of good health.

Where there has been actual destruction of important centers there
naturally will result a certain amount of permanent disability, de-
pending not only upon the particular function lost but also upon
the type of occupation of the individual injured. For example, half
vision in each eye as the result of destruction of the optic tracts in
one occipital lobe of the brain may not necessarily disable a common
laborer, whereas such a disability would materially incapacitate a
locomotive engineer.

The great majority of patients who have sustained a definite injury
to the brain complain of more or less headache and dizziness. It
has been our experience that these distressing symptoms were less
pronounced when the patient had avoided occupational cares for
three to six months after the injury was received. Why these sym-
ptoms occur has never been satisfactorily explained.

There are several very distressing conditions which may result
from extensive brain injury and which may render the patients more
or less permanently disabled. Even in cases where there have been no
so-called localizing neurological findings there may occur at the time of the accident innumerable small but widespread areas of contusion scattered throughout the brain mass. These areas of contusion eventually undergo scar tissue formation (gliosis) and there often develops a definite interruption of the association pathways in the brain. As the result of such lesions there may occur a marked change in personality. A self-respecting methodical individual may become a slovenly, irresponsible member of society. The memory may be so altered as to render clerical and allied work out of the question.

Furthermore, every case of serious brain injury is a potential epileptic. The epileptic attacks are probably the result of the scattered areas of scar tissue throughout the brain mass. Such attacks do not necessarily follow brain injury, yet are not infrequently observed in such cases. It is on account of this well-recognized tendency that juries often award large verdicts in case of damage suit. Such seizures are usually generalized in character, where the brain injury has been of a general nature. When there has occurred localized damage to those areas where motion is represented, the attacks are more liable to be of a localized (jacksonian) type. In the latter case an operation may be indicated in the hope that some localized lesion such as a cyst or brain scar may be found and removed. There is no indication for operation, however, in those cases where the seizures are generalized in nature.

There is a theory that brain tumors may be caused by head trauma. It is quite true that in practically all cases of brain tumor one is able to obtain a history of a blow on the head at some time during the patient’s life. Usually, however, such injuries have been of a very trivial character. One may venture the opinion that there is not sufficient evidence to warrant the claim that injury to the brain is a direct cause of brain tumor. Many brain tumors are of slow development and may exist for a long time before causing any symptoms. Under such circumstances a blow on the head may cause a more rapid growth of an already existing neoplasm. The development of symptoms under such circumstances may give the impression that the injury actually caused the tumor.

The same may be true of other more or less dormant diseases of the brain. An individual may have a syphilitic infection of the brain, for example, and to the casual observer may appear perfectly normal. A brain injury under such circumstances may cause the preexisting syphilitic infection to light up, as it were, with the result that marked symptoms may not appear until after the trauma. A question of great difficulty to compensation boards under such circumstances is to decide the true merits of such a case. One might argue that the syphilitic symptoms would not have developed had the patient not been injured. On the other hand, it might be as forcibly argued that the injury, which may have been rather trivial in nature, would not have caused the disability in a perfectly normal individual.

Perhaps the most difficult cases to deal with are the so-called traumatic neuroses. The injury in such cases may have been almost insignificant in severity, yet many most distressing neurotic symptoms may occur. Such cases must be differentiated from those cases where the brain has been actually damaged on the one hand and from individuals who are malingering on the other hand. A well-trained neu-
rologist can usually detect the malingeringer. When such an individual is discovered he should receive no consideration whatsoever other than to be exposed in his efforts to receive unwarranted compensation. The individual who has a true traumatic neurosis is in reality a sick man or woman. If it were possible to give the proper treatment, such functionally ill individuals could usually be cured. Unfortunately the subconscious realization that one may receive compensation as long as disabled militates against a cure being effected. Practically all patients of this type have fundamentally a psychopathic tendency, since otherwise a functional neurosis could hardly develop. However, a consideration of this phase of the subject is hardly within the scope of this paper. The essayist to follow will discuss conditions of this type.

The spinal cord lies within the spinal canal and extends from the base of the skull to the level of the first lumbar vertebra. Below the first lumbar vertebra the anterior and posterior nerve roots of the lumbar and sacral segments of the cord extend downward, this portion of the spinal canal contents being called the cauda equina (horse's tail). A severe injury of the cervical and thoracic and upper lumbar vertebrae may be accompanied by an injury to the spinal cord proper, whereas an injury below the first lumbar vertebra may result in an injury to the cauda equina.

It is of paramount importance to determine immediately whether or not the spinal cord or cauda equina has been damaged when an individual has sustained an injury to the back. X-ray examination of the spine should reveal the presence or absence of a fracture or a fracture-dislocation of the vertebral column, whereas a systematic neurological examination should tell whether or not the contents (spinal cord and cauda equina) of the spinal canal have been injured. When the cord has been injured there results a paralysis of more or less extent below the level of the lesion, depending upon whether the spinal-cord injury has been complete or partial.

If the spinal cord has escaped injury, the treatment usually consists of absolute rest and support of the back for a sufficient time (circa three months) to permit the healing of torn ligaments and fractured bones. Undue manipulation should be avoided on account of the danger of injuring the spinal cord. Should the dislocation be so marked as to call for an effort at reduction, this should be done only when the spinal cord has been exposed at operation, so that it can be properly protected when the dislocation is being reduced. Unless this practice is rigidly adhered to there is a grave danger of producing a paralysis which otherwise would not take place.

When the neurological examination indicates that the spinal cord or cauda equina has been injured, the type of treatment indicated depends upon whether or not these structures are being pressed upon. The only object of operation is to relieve pressure on the cord. There is a very simple test devised by Queckenstedt which will give the desired information. If this test gives evidence of spinal-cord

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1 This test consists of a lumbar puncture performed below the level of the lesion and the measurement of the spinal fluid pressure. Both internal jugular veins are then compressed. This will cause a venous congestion of the brain with the displacement downward of cerebrospinal fluid. If the spinal cord is not pressed upon there will occur an immediate rise of the spinal fluid pressure. If, on the other hand, the spinal cord is completely pressed upon there will occur no rise in spinal fluid pressure. In case the pressure on the cord is slight a slow, step-like rise in the spinal fluid pressure will occur, and a slow, step-like fall as soon as the jugular compression is released.
compression an immediate operation should be done. If no com­pression is demonstrated, operation is contraindicated.

The eventual disability in spinal-cord injuries depends in the first place on whether or not the spinal cord is actually crushed, and in the second place on whether or not an early operation is done if the paralysis is caused simply by pressure on the cord. Where a complete lesion of the cord has occurred the paralysis below the lesion will be complete and permanent. Where the lesion is partial a paralysis of certain muscles only will remain. Many such partial paralyses can be benefited by well-selected orthopedic operations. For example, a paralytic foot drop can be so greatly improved by a foot stabilization operation as materially to diminish the degree of disability. Where the spinal cord has been affected by pressure only, an immediate spinal decompression operation will usually result in complete recovery with no disability whatsoever. As a general rule injuries of the cauda equina have a better prognosis than those involving the spinal cord proper.

Practically all spinal-cord injuries produce a paralysis of the bladder, either permanent or temporary according to the extent of the lesion. Therefore, the care of the bladder constitutes a very important phase of the treatment of such cases. Repeated catheterization results eventually in an infection of the bladder and the kidneys. Such infections may eventually cause the death of the patient. By placing a tube directly into the bladder through a low abdominal incision, the necessity of catheterization is done away with and the possibility of infection is minimized. The lives of those who remain permanently paralyzed can be thus preserved; also a permanent disability on account of infected kidneys in those whose paralysis is only temporary can be avoided. Should the bladder paralysis disappear the tube can be removed and the bladder function thereby restored to normal.

Taken as a whole, spinal-cord injuries constitute very grave problems in industrial accidents. As a general rule such individuals become more or less permanently disabled. A small percentage of such cases, however, can be saved from permanent disability provided they receive the proper type of examination and treatment.

Every patient giving evidence of a motor or sensory paralysis following some injury of the extremities should be suspected as having sustained an injury to one or more nerves. The particular nerve or nerves injured can be easily recognized by determining the individual muscles paralyzed and the area in which sensation is lost. If the paralysis is complete and comes on at the time of the injury, a nerve division is to be suspected. If, on the other hand, the paralysis is partial and comes on gradually a pressure lesion is the most likely. Such pressure may be caused by the callus following a fracture or by constricting scar tissues.

As soon as it appears definite that a nerve has been severed an operation is indicated. The object of the operation is the approxima­tion of the ends of the divided nerves by means of suitable sutures. As a general rule, the sooner this is done the better will be the result. Unlike the nerve fibers in the central nervous system, those in the peripheral nerves regenerate provided a suitable anastomosis has been accomplished. When there has been considerable destruction
to a nerve it may not be possible to bring the ends of the injured nerve together. Under such circumstances nerve transplants have to be resorted to. The results after such a procedure are not so good as is the case when the ends of the nerves can be sutured together.

In case there is some doubt that a nerve has been divided it is fairly safe to wait as long as three months before operating. A wait longer than three months is hardly justifiable unless there is evidence of return of function. Should it be decided to postpone operation for a few weeks or months it is absolutely essential that the paralyzed muscles be massaged daily, as otherwise they may undergo a fibrous change which will materially interfere with their proper function even though the nerve fibers regenerate. In addition to daily massage of the muscles, the various joints should be so splinted as to prevent the functioning muscles from pulling the extremity into a deformed position. Such treatment should also be given after operation and kept up until regeneration of the injured nerves has taken place.

The length of time necessary for an injured nerve to regenerate depends largely upon the distance from the point of injury to the muscles innervated. It has been estimated that nerves regenerate approximately 1 millimeter per day. As it takes 25 millimeters to make an inch, a nerve will regenerate something like 1 inch per month. If, therefore, there is a distance of 6 inches between the point of nerve injury and the paralyzed muscles, one could hardly expect return of function under six months after the nerve has been sutured. In estimating the time of disability the above facts may have some value.

It is a well-known fact that the return of function is better in some nerves than in others. For example, when the musculospiral nerve has been sutured the result is almost invariably good; whereas it is very difficult to obtain good results following injury to the ulnar nerve. The reason of this is readily understood when one keeps in mind the fact that the more highly mixed (motor and sensory bundles) a nerve is, the less the chances of good results; whereas in an almost purely motor or a purely sensory nerve the chances of a satisfactory result are excellent. In effecting an anastomosis it is desirable to have the motor bundles fit motor bundles and sensory bundles fit sensory bundles. This is largely guesswork, as it is impossible to tell the motor bundles from the sensory bundles when looking at the divided ends of a nerve. Should, therefore, in a highly mixed nerve it so happen that the motor bundles are approximated to the sensory bundles the result will be bad. The reverse situation is likewise true.

Where the function of nerves is interfered with by callus or scar tissue it is necessary to free the compressed nerve before return of function will take place. Should such a compressed nerve be allowed to remain so for a long period of time the nerve fibers will actually degenerate and return of function will not take place until regeneration has occurred. An early operation, on the other hand, is usually followed by return of function within a few days, as the function of the nerve fibers is simply disturbed by the pressure and not by actual degeneration. As soon, therefore, as the pressure is removed it is possible for the nerve impulses to travel down the nerve fibers.

There is a type of injury which may give rise to the late development of nerve paralysis. I refer to the late development of ulnar
paralysis following fracture of the elbow. Such a paralysis may occur many years after the injury. It is due to pressure upon the nerve by callus. The operation of nerve transposition will usually cure this condition.

There is a very distressing injury of the nerves which results in a permanent loss of function of the affected extremity. In this particular injury the nerve roots are actually pulled away from the spinal cord. It is usually the brachial plexus which is affected in this manner. The avulsion is caused by the head being forced away from the shoulder beyond the normal limit of stretching which the plexus can stand. Such a stretching of the plexus either tears one or more cords of the plexus itself or actually pulls the nerve roots from the spinal cord. When the plexus per se is injured an operation is indicated. When an avulsion has occurred there is no treatment whatsoever which will be productive of good results. The paralyzed arm is flail-like and in the patient's way; an amputation, therefore, is justifiable under the circumstances. In adjusting compensation in an injury of this type it should be kept in mind that the patient is permanently disabled as far as the affected extremity is concerned.

In discussing injuries to the brain, spinal cord, and nerves and the relationship of these injuries to industrial problems an attempt has been made to bring out some of the fundamental principles underlying injuries of this nature. It is felt that a thorough understanding of such principles by compensation boards would aid them in adjusting compensation on a fair and equitable basis to all concerned.

The Chairman. Due to the allied nature of the subject which is to follow, I am going to ask you to withhold any questions you might want to ask until after the presentation of the next paper. You will observe that Doctor Dowman has been dealing with cases where the physician qualified for the proper studying of injuries of the brain and spinal cord and nerves can lay his hand upon the actual cause of the trouble presented by the paper. In compensation work, unfortunately, we have a large class of people who present nerve affections where it is difficult for the honest physician making a complete study to put his hand upon the thing which is causing the trouble. In looking about locally for a man to discuss this problem with us this morning, it was not difficult for me to choose Dr. Lewis M. Gaines, who, while specializing in diseases of the nervous system, is yet a physician, a physician broad enough to see all phases which enter into the compensation problems of a patient of this type. I am glad to present to you Dr. Lewis M. Gaines, who will discuss this title, “The psychic factor in industrial practice: An attempt to clarify the question of disability resulting from functional neuroses.”

Doctor Gaines. I appreciate very much this invitation to present this phase of the subject. I wish to say that I have not had any particularly large experience in dealing with the industrial phase of this subject, so that if what I have to say does not apply as thoroughly to the requirements that you feel should be brought out, I will attempt to answer any questions that I can at the close of the discussion.
THE PSYCHIC FACTOR IN INDUSTRIAL PRACTICE: AN ATTEMPT TO CLARIFY THE QUESTION OF DISABILITY RESULTING FROM FUNCTIONAL NEUROSES

BY LEWIS M. GAINES, M. D., ATLANTA, GA.

It is safe to say that there is a psychic factor to be reckoned with in every industrial-accident case, irrespective of its severity. Whether the psychic factor assume the dominant rôle depends upon a number of factors to be considered presently and not upon the severity of the injury.

In this inquiry we are concerned with the group of cases which have been variously called "functional neuroses," "traumatic neuroses," "traumatic hysteria," "expectation neuroses," "litigation neuroses," and other names.

A man at work on a scaffold slips and falls 20 feet, striking his shoulder and head, suffering severe bruises and a laceration of the scalp. He is dazed and incoherent for some hours after his removal to the hospital, but the next day appears much better. The X ray shows no evidence of fracture of any bone. Careful physical examination fails to disclose any severe injury. Can one predict that by the time the bruises and lacerations have healed this man will be ready and eager for return to work? One can not. By the time the tissues have healed a veritable host of symptoms have made their appearance. Our hero, who incidentally is not a malingerer, begins to complain of pain in the head and neck and extending down the arm. The pain is dull and boring in character and aggravated by any effort either he or the examiner makes to move the affected part. In addition there is severe dizziness, especially when he attempts to walk, so that he has to be supported in a journey from the bed to a chair near by. He also notices, irrespective of dizziness, a sense of pressure in the top of his head as of a weight and accompanied by a burning sensation. At times there is a feeling of a tight band around the head. He states that his sleep is fitful and broken by unpleasant dreams and that after a restless night he has no feeling of refreshment. He is depressed and irritable, feels no interest in anything, and is easily moved to tears. Four months pass. Surely the rest, the financial help he has been securing during his disability, and the solicitous care of family and friends, to say nothing of various medicines prescribed by his physician and certain adjustments to his cervical spine surreptitiously achieved—surely, I say, he must by this time be far on the road to recovery. Exactly the reverse. He not only maintains most of his first symptoms but many new ones have appeared. His locomotion is now impaired, so that walking is a slow and laborious effort. His sense of smell and taste is impaired to such a degree that food is no longer enjoyed. He is frequently nauseated and occasionally vomits a meal as soon as it is eaten. As a result of these digestive disturbances he has lost about 10 pounds in weight. Altogether this man is a picture of complete misery and wretchedness, and in his own opinion and that of his family a permanent and total invalid.

At this point a careful and painstaking examination reveals no evidence whatever of organic disease. The man is the victim of a traumatic neurosis. He does not imagine his symptoms, as some of
his friends assert, nor is he assuming them, as others suspect. He is the victim of suggestion, which has found favorable soil on which to flourish.

The picture which I have given in very sketchy form is not overdrawn, and the name of the man is legion. He is found many times over in every sizable industrial community and he constitutes a very real and very knotty problem.

What is the mechanism of this disability, as exemplified by the foregoing illustration, and in a larger way by the general symptomatology of the neuroses?

Purves-Stewart has defined a neurosis as "a molecular abnormality of the nervous system characterized clinically by abnormal reactions to ordinary stimuli. These stimuli may be physical or emotional; they may arise outside or from within the patient's body. The abnormality of reaction may consist in excessive response, in diminished or absent response, or in some unusual or strange response."

Purves-Stewart reminds us further that the processes of the ordinary thought and behavior of all of us are guided in two entirely different ways: By logical thought and reason, on the one hand, and the directing force of subconscious "complexes" on the other hand. By the term "complex" is meant, as he remarks, a repressed, persistent system of ideas strongly influenced by an emotional feeling tone. An emotional tone, such as hate or disappointment, tinges all the mental processes of the individual, so that he regards everything not in the cold, clear light of logic but through glasses colored by his emotion. So we say a lover sees the world through rose-colored glasses. It is also true that the actions and behavior of mankind are controlled and directed far more frequently by emotional than by logical processes, and the oft-quoted saying that man is a creature of the emotions is a statement of fact.

Now the most potent of all the emotions is fear, and it is to the rôle played by fear that I would call particular attention in connection with the question of the psychic factor in industrial practice.

Cannon has very conclusively shown by experimental evidence that demonstrable bodily changes occur as a result of emotion, particularly in fear. It is also evident that certain characteristic symptoms ensue from fear, such as staring eyes, dilated pupils, dry mouth (inhibitory effect on salivary glands), rapid and often irregular heart action, pallor, sweating, tremor, cold extremities, feeling of extreme weakness (exhaustion of adrenalin in the blood with low blood pressure), and often involuntary urination and defecation. It must be remembered that all of these symptoms normally resulting from fear are duplicated in the neuroses.

Bearing these in mind—the leading rôle played by emotional tone as a guide to thought and conduct, the potency of fear as a major emotion and the bodily changes capable of being wrought by it—we are in better position to understand the mechanism of these cases of traumatic neuroses.

In connection with these fundamental considerations, I would direct attention to certain cooperative factors, namely, the part played by heredity, suggestion, emotional shock, exhaustion, and toxemia.

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Whether heredity determines a definite structure pattern in the nervous system which conditions the responses of the individual, or whether, as the behaviorists would have us believe, it is a matter of reflexes conditioned purely by early environment is a disputed point. The fact remains that a large number of individuals are potential neurotics and slated for a neurosis, provided the right combination of strain is encountered.

Suggestion has been defined as a device whereby a communicated proposition is accepted without criticism in the absence of logically adequate grounds for such acceptance. Individuals vary enormously in their susceptibility to suggestion. Persons of the neurotic type are particularly suggestible, and it is in that variety of neurosis called hysteria that suggestion plays a predominant rôle. Suggestion intelligently and skillfully used is a powerful therapeutic weapon to effect cure. Undirected, suggestion becomes a noxious agent. Such unfavorable suggestions may arise from within (autosuggestion) or they may come from without. Consider the case of the man who fell from the scaffold. At first there was pain, abnormal sensation, disability, exhaustion. Meantime, the patient's suggestibility is temporarily exaggerated by the violent emotion of fear. The distress of his predicament, the apprehension of permanent disability and loss of earning power, and the expectation of compensation dependent on a continuance of the disability all serve to act as autosuggestions intensifying and stereotyping symptoms which would otherwise have quickly disappeared. This so-called "compensation neurosis" is purely a type of hysteria induced by suggestion, likely to persist as long as there is prospect of future compensation and, as Purves-Stewart remarks, "Such prospect, by suggesting to the patient his incapacity for work, is an active hindrance to complete recovery and favors the development of fresh hysterical phenomena." "A pensioned hysteric is a social parasite."

Suggestions from without are difficult to escape. Well-meaning but injudicious and sympathetic friends and relatives may produce or aggravate hysterical symptoms. The indiscreet leading questions of medical examiners are particularly prone to initiate harmful and powerful effects through suggestion.

Emotional shock is of particular importance on account of the fear it engenders. We have already seen that fear plays the double rôle of superinducing bodily changes and of rendering the patient more suggestible.

Exhausted states prior to an accident, whether bodily as from fatigue or loss of sleep or mental as from previous grief or anxiety, play a contributing part in a certain number of the cases. Various toxic states in which the patient may exist previous to injury may also play their part. Such toxines may be from focal infections in the apices of teeth or from tonsils or from recent disease, with its weakening effect, or from drugs such as alcohol and opium or from excessive use of tobacco.

I have so far attempted to indicate—very briefly—the more important factors concerned in the production of traumatic neuroses together with the mechanism of such production. At this point it might be appropriate to refer to the variety of symptoms which these cases
present, and to the general methods in use to distinguish between true organic injuries and traumatic neuroses.

In the first place it must be remembered that the symptoms of a neurosis are able to simulate any symptom due to an organic lesion. It is convenient for purposes of description to make two groupings of symptoms, subjective and objective.

I. SUBJECTIVE SYMPTOMS

(a) Pain.—Pain is the earliest and most frequent complaint, and is usually referred to the injured part, or rather to the part that had been injured but which now gives objective evidence of having recovered. The pain varies greatly in character and severity. In some cases it is a more or less constant dull ache, in others sharp and shooting, in still others burning or boring. It is usually aggravated by active or passive movement of the affected part; hence there is a tendency for such part to become fixed in position.

(b) Headache, while a variety of pain, may be considered separately as it is of such frequent occurrence, particularly if the injury has been in the head area.

These headaches may be dull and nagging or they may be severe and blinding in character and often accompanied by vertigo and tinnitus. They may be constant or intermittent, and may interfere with sleep. They are usually made worse by exertion or emotion. They frequently occur in the top of the head or are described by the patients as a feeling of constriction, as though an iron band were placed around the head and tightened.

(c) Paresthesias, or abnormal sensations such as numbness, tingling, burning, or crawling feelings, are quite common. They are referred to the injured part or to the extremities. Sometimes they have a distribution suggestive of hemiplegia type of impairment. More frequently they do not conform to the anatomical distribution of the spinal segments or the course of peripheral nerves, but assume a patchy form. Related to these paresthesias are similar areas of anesthesia or hyperesthesia.

(d) Disturbances of special senses.—Quite common are loss or perversion of taste and smell. Sometimes blindness, partial or even complete, is encountered. I have seen blindness in one eye only. Deafness may similarly occur. Occasionally there is aphonia.

(e) Miscellaneous.—Such a group includes palpitation of the heart, excessive sweating, anorexia, vomiting, with or without nausea, difficulty in breathing, difficulty in urination, impairment or loss of sexual desire and vigor, feelings of general weakness and exhaustion. Under this group may also be placed the mental changes so often complained of by the patients. They are often irritable and morose, depressed and hopeless over their plight, and complain that they have lost all interest in life, that they are unable to concentrate their minds, and that their memory has failed.

II. OBJECTIVE SYMPTOMS

Objective symptoms are those which are evident to the examiner and are mainly motor in character. They include hyperkinetic phe-
nomena, such as various types of tremors, tics, spasms, or even convulsions. Other motor phenomena are of the paralytic type. There may be simply a paresis or weakness, or there may be complete paralysis closely simulating organic forms, such as monoplegias, hemiplegias, or paraplegias. Contractures may occur in the spastic types, or the paralysis may be of the flaccid form. Disturbances of gait are very common and may suggest that seen in organic disease.

The symptoms here described do not exhaust the possibilities, but are the more common ones encountered in dealing with the group of patients under consideration. How, then, is it possible to differentiate between disability due to organic injury and that the result of a neurosis, since they may resemble each other so closely?

Time forbids more than a bare reference to this very important question of diagnosis. Suffice it to say that injury to nerve tissue in definite locations (such as spinal cord or brain) gives rise to certain characteristic signs, discoverable on adequate examination. Thus, a destructive lesion of the pyramidal tract is followed by a unilateral exaggeration of the reflexes, by a Babinski phenomenon readily elicited on the affected side, or by a true ankle-clonus. If a sensory tract is affected, the resulting disturbance has a characteristic distribution on examination. Increase of intracranial pressure from hemorrhage following head injury will give rise to a rather definite history, to slowing of the pulse, falling blood pressure, perhaps to changes in the eye grounds on ophthalmoscopic examination, or to blood in the spinal fluid. If blindness is the complaint and examination reveals a normal eye ground with normal pupillary reflexes, the only possible explanation is a neurosis (malingers excepted).

In a word, then, the correspondence or noncorrespondence of symptoms and physical signs is a most valuable criterion. The examiner also takes into account the mental state of the patient, the variety of the symptoms complained of, the very multiplicity of which is often suggestive of neurosis; the history of the case both before and after injury, and the response to suggestions made to the patient by the examining physician.

It is necessary to remember that a neurosis may coexist with organic injury, and it then becomes a nice question to decide to what extent each plays its part in the disability.

Finally, there are cases in which previously existing diseased states are brought to the fore by trauma. This is particularly exemplified in syphilis. The spirochete of this disease may lie dormant in the body and particularly in the nerve tissues for many years, and suddenly become active from undue physical or mental strain. Thus, the characteristic symptoms of tabes, of paresis, or of other types of neurosyphilis may follow injury.

The title of this paper indicates that an effort would be made to clarify the question of disability in these cases of functional neurosis. What is the question or rather what are the questions in need of clarification?

From my own study of this subject, I should say there are four outstanding questions: 1. The question of diagnosis. 2. The question of prognosis. 3. The question of treatment. 4. The question of the best method of granting compensation both economically and for the therapeutic effect on the patient’s neurosis, bearing in mind the rela-
tion already shown between the maintenance of symptoms and the expectation of compensation.

An attempt has already been made in this paper to deal with the question of diagnosis. By keeping in mind the symptomatology of the traumatic neuroses, their mechanism of production, the methods of differentiating them from organic cases, the possibility of their coexistence with organic injury, and their relation to preexistent disease the careful medical examiner should make few mistakes.

In regard to prognosis and treatment, which may be considered together, it may be definitely stated that the relief and cure of these cases may be accomplished in the large majority, provided their environment can be sufficiently controlled and their compensation expectations adjusted. Reference has been made in this paper to the rôle played by suggestion in the production of the neuroses. It may also be again stated that the proper use of suggestion is the most important aid we possess in successful treatment. But to apply suggestion with the best prospect of success demands a favorable environment. Isolation in a hospital, free from association with similar cases, free from the noxious suggestions of family and friends and often of unskilful physicians, and exposed to a carefully planned system of favorable suggestion wherein there are many devices, will usually result in rapid amelioration of symptoms. Many valuable lessons were learned during the World War as to how to deal with this very type of case. For example, soldiers who had been totally blind for many weeks when sent to isolation hospitals and treated by suggestion would sometimes recover their vision in a few days. Predictions of exact duration of disabilities are risky so that only the general conservative statement can be made that under the most favorable surroundings the duration of disability can be greatly shortened.

The remaining question of method of compensation is not difficult to answer from a medical standpoint. Shaller studied 50 cases of traumatic neurosis with a view to determining the outcome after settlement. Among other conditions influencing recoverability he finds early lump-sum settlement. Pollock quotes German statistics as showing that in spite of progressively improving medical and surgical methods the duration of incapacity in accidents is greater than it was in preinsurance days. Before the Netherlands adopted accident insurance the German workman took much longer to recover than one injured in the same way in the Netherlands. In Denmark it is customary to pay insured workingmen a lump-sum settlement at a very early stage of their incapacity and 93.6 per cent recover from what is known as traumatic neurasthenia, which is, of course, traumatic neurosis. From studies such as these and from the opinion of all contemporary neurologists with which I am familiar there seems no doubt that the early elimination of compensation expectation has a most favorable effect, and that this is best brought about by lump-sum settlement. It is my opinion that a physician with a thorough understanding of this whole problem should carefully explain to each individual case something of the nature of his disability, of

the probability of early recovery, of the experience of the medical world as to his ultimate restoration, of the proposed financial awards to be made in one sum, and the reasons therefor as I have attempted to indicate them.

DISCUSSION

The Chairman. All right, gentlemen; we will be glad to have you enter into this discussion. Are there any questions?

Mr. McShane. I would like to ask Doctor Dowman one question in order to get his reply into the record. I would like to ask you, Doctor, assuming that a man who has been suffering with a benign form of dementia praecox receives a very severe head injury and is treated for a period of time, in your experience as a medical man would you say that that benign form might change to the malignant form by reason of the injury?

Doctor Dowman. That is rather a tough question to ask a man who deals entirely with organic nerve problems. I think that I would be correct, however, in stating in the first place that a true dementia praecox is not caused by brain injury. I would like Doctor Gaines to elaborate on that and see whether my impression of that is correct. I do believe, however, that any brain injury, whether trivial or grave, is liable to make any preexisting condition worse, and it is quite possible for an individual who is suffering from a mild form of dementia praecox to be made worse by a brain injury. That is my impression. I do not say that that is an authoritative statement, because I am not a psychiatrist.

I think the same thing is true of any preexisting organic disease, as has been brought out by myself and also by Doctor Gaines in regard to dormant syphilis of the nervous system. An individual may have a dormant syphilitic infection without any particular symptoms, probably existing without the knowledge of the patient. If this patient receives a brain injury, it is quite possible for marked symptoms of syphilis of the nervous system to come to the fore, as it were, as the result of the injury. The same, as already mentioned in my paper, may be true of a preexisting, slowly growing, non-symptom-producing neoplasm of the brain. Take the question of glioma of the brain, which is the most common tumor of the brain—a slowly growing, infiltrating tumor of the brain. Such tumors go on sometimes for many years without producing any marked symptoms, and if that individual sustain a serious head injury there may be a hemorrhage within the preexisting tumor of the brain and the local resistance of the brain to the invasion of the growth may be broken down, as it were, and allow this preexisting neoplasm to make great headway and to bring on very rapidly developing symptoms.

Mr. McShane. I wonder if Doctor Gaines would elaborate on that?

The Chairman. I should like to introduce a question before Doctor Gaines speaks. It is my impression dealing with the local industrial commission, that the commissioners have no difficulty in believing that a man who presents himself before them with an organic lesion of the nervous system—for instance, a man who has received an injury to the side of the neck that has pulled the nerves away from...
the spinal column, and he gets paralysis of the left arm—is disabled because of injury. However, when a man presents the chain of symptoms that have been so excellently presented to us by Doctor Gaines and is dubbed a traumatic neurotic individual, it is a little difficult for our commission to understand that he is a disabled man. In other words, I am raising the question, Is a man suffering with the chain of symptoms that Doctor Gaines presented this morning disabled or is he not disabled?

Doctor Gaines. In regard to the further elaboration of the original question proposed, I wish to say that I do not profess to be a psychiatrist but rather a neurologist. However, I have had occasion to deal with dementia praecox to a limited degree. In the first place, we do not know what causes dementia praecox; whether it is due to one or to another factor is a matter of dispute. There are many theories but no proven facts as far as I am aware. However, we can say this, that the dementia praecox patient possesses a substandard brain, and I think it is probable that he possesses a very suggestible nervous system. In other words, he falls in the group of cases which are distinctly open to suggestion, and any strain such as an injury encountered by such an individual would undoubtedly be capable of making him worse. Does that answer you?

Mr. McShane. Yes.

Doctor Gaines. In regard to Doctor Roberts's question, I am convinced that probably most laymen, and certainly many physicians, have very little patience with neurotics. Consciously or subconsciously, they regard them as nuisances and chronic complainers, whose special prerogative it seems to be to make themselves obnoxious to everybody around them—it is characteristic of these cases that they go around and tell everybody how badly they feel. They can not help it. Their sufferings are real. Now, I am not speaking of those who assume symptoms, because they do not fall in this group, but the sufferings of these victims of neuroses are very real indeed. In fact, I am satisfied that they suffer more than many cases with organic injury suffer. For that reason they are really disabled; they are not assuming that they can not work, but they are really disabled. They should be treated as sick people. Furthermore, they can be, in the vast majority of cases, improved and cured, provided they can get the proper treatment. But, as I have attempted to indicate in the paper, the great difficulty is in giving them the proper treatment and I am satisfied it can not be given them at home except in exceptional cases.

Only last night a case of this type sent word to me over the telephone that he was in a dreadful condition, suffering intense agony. I had examined him a short time before and found no organic basis. I am not sure that he heard this conversation over the telephone, but I am satisfied from the way it was delivered that the man himself was thoroughly persuaded by everybody in the house that he was at the point of death. With such surroundings how can you expect a man of this sort to get better?

The practical difficulties of putting a patient in a hospital and isolating him and exposing him to the proper procedures are very great. During the World War it was possible to do that. There was no escape from doing it. The result was remarkable cures in the
majority of these cases. So if we can accomplish that we will have very much less disability.

Mr. Williams. Do you consider it important that you try to satisfy yourself whether the neurosis so far shades into a psychosis as to make the man incapable of true effort, of exerting his will power?

Doctor Gaines. The line of demarcation between mental health and mental disease is not a sharp line. There exists between the mental health on one side and mental disease on the other a border line, quite a border line. So that if one approaches closer and closer to the point of a true psychosis, one begins to observe more and more symptoms of true mental disturbance, and, of course, when one has finally crossed into the true psychotic area, then I believe that the suggestion that you indicated in your question becomes true, that he is not responsible.

These neuroses that I have been speaking about occupy this border line and they may easily cross over it and cease to be neuroses and become true psychoses. We are accustomed to speaking of these cases as psychoneuroses, indicating the close approach to a true psychosis, but they may just as well, if they are close to the mental health side, be called simple neuroses. As they approach the psychotic limit they may be called psychoneuroses. There is no sharp line.

Mr. Eppler. You spoke about your patient. What was the result? Did you remove him from the home?

Mr. Gaines. No, I did not. I did not see him last night, but that is a case that I somewhat surreptitiously referred to Doctor Roberts, I think only yesterday. That man never appeared before the board, and the board had no knowledge of him until I told him to go to the board, and I am awaiting Doctor Roberts's suggestions about him. The man ought to be in the hospital. He is unable financially to go to a hospital, having no resources except those which we may be at liberty to use.

Judge Land. Are the patients that you have described totally disabled to work as laborers? Are they physically unable by reason of the mental condition?

Doctor Gaines. Well, of course, we have all grades of disability, I should say, in this group of cases. We are considering them as a whole. Take the example of the man whose hypothetical case I proposed. I should say a man of that type, which is a very common type, is totally disabled. There are other cases that have only remnants of disability. I should say a case of that sort is not totally disabled.

Judge Land. Would you put the physical disability, your percentage rate, according to the amount of mental handicap?

Doctor Gaines. I should say in general terms that that would be correct, just as they do in the Burns Bureau reports, so much percentage rating of disability.

Judge Land. Permit me to ask you another question. What percentage of that trouble would you say was entirely mental and what percentage of it physical?
Doctor Gaines. I think it is all physical. It is all physical in the sense that it is the result of definite factors. We do not always, I think, have a clear idea of what we mean by mental and what we mean by physical. If you mean by mental that the man imagines these things then I say none of it is mental, because it is produced by definite mechanism. We might say that I am proposing a mechanistic theory for the production of all these disturbances, and that I am not conceding that any of it is due to what is often termed the imagination of the patient at all.

Mr. McShane. Isn't that what Stewart says in his definition, "definite molecular changes," and that is pathology, but we have not the same means at our command to demonstrate it physically?

Doctor Gaines. That is the way I look at it.

[A vote of thanks was given Doctor Dowman and Doctor Gaines for their presence and splendid papers. Mr. George S. Harris, Mr. P. E. Glenn, and Mr. J. P. McGrath, representative manufacturers of Atlanta, were introduced, and Mr. Harris spoke in part as follows:]

Mr. Harris. From what I have seen of your program and the little I heard of the discussion, I think you are doing a very constructive work. As manufacturers and as employers of labor, we are keenly interested in what you are doing.

We believe that we have a long ways to go. Speaking for the employers, there are two features in the picture that I think we have neglected. First, I think that the employers have neglected to see the enormous costs that we are now paying in distributing the loss to the injured man over the plant and over the industry. We believe that we are paying to-day enormous costs for the administration of that distribution, and that there is great room for improvement.

The other feature I have in mind, speaking for employers, is that I think we have sadly neglected our part in accident prevention. I have special reference to the southern mills, where we have not the laws that they have in some other sections of the country requiring mechanical devices. Our experience, however, has been that mechanical devices, safety devices, are a small part of it. It is the human element and that comes through education. From my own experience I have seen amazing results from very slight effort on the part of the management in developing a thought consciousness on the part of the employee, making him responsible for these accidents.

In my own plant to-day we consider carelessness equally as important as inefficiency. We are just as apt to discharge a man after he has been injured and is back on the job if we develop that it was carelessness on his part as we are if he has been inefficient in his work. That is just a thought that I am passing out as a viewpoint for the work we are doing.

[Meeting adjourned.]
WEDNESDAY, SEPTEMBER 28—AFTERNOON SESSION

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

MEDICAL SESSION

The President. The afternoon session will be presided over by Doctor McBride, of New Jersey, who is the vice president of this association. I take great pleasure in introducing Doctor McBride.

The Chairman. We had a very instructive session this morning. In fact, all of our sessions have been very instructive, but as a doctor I can deeply appreciate, and I am sure you men who are engaged in settling compensation disputes can appreciate, the high excellence of the papers delivered this morning and the splendid discussion that followed those papers. I am sure we are going to be amply repaid likewise by the papers to be presented this afternoon. The gentlemen who are to present the papers are men of great ability in their respective communities, and they are going to give us the benefit of their advanced experience.

I understand that Doctor Dorr is not here this afternoon and if there is no objection I will ask Mr. Casey, of Ohio, to present the paper of Doctor Dorr.

WHAT COMPENSATION COMMISSIONS WANT OF THE PHYSICIANS

BY H. H. DORR, M. D., CHIEF MEDICAL EXAMINER DIVISION OF WORKMEN'S COMPENSATION, DEPARTMENT OF INDUSTRIAL RELATIONS OF OHIO

[Read by P. P. Casey, chairman Ohio Industrial Commission]

As the title indicates, this is not a scientific treatise in any sense of the term, but only a practical discussion of some of the problems with which every compensation board has to contend. I have tried to make it practical and general in application, but, naturally, it is based on conditions which arise in the administration of the Ohio compensation law.

While compensation laws differ considerably, I am inclined to the belief that compensation boards throughout the country are very much alike. It has been my privilege to be in close contact with all the Ohio commissioners since 1914, and they have been without exception earnest seekers after truth. It is often difficult, if not impossible, to obtain the true facts in a given case. This may be due to many causes, a few of which may be mentioned:

(1) Exaggeration on the part of the claimant, which may be intentional or unintentional; (2) an error in diagnosis; (3) the effect of an injury or a preexisting disease or defect; (4) whether or not an injury was actually sustained; and (5) whether or not an intercurrent malady has been directly or indirectly due to the injury claimed.

As every person knows, there are numberless points or situations which may arise in the history of a claim which will tax the inge-
nuity of a commissioner to solve. It is his duty to see that justice is meted out both to the claimant and to the employer. Naturally in all contested claims the testimony will differ. There will be proof both for and against the claimant's allegations of injury. There will be proof to show that his disability is due to that injury. Against this there will be evidence to show that his disability, if any, is due entirely to disease or to some natural cause or that it actually antedated the injury.

In death claims all sorts of proof of dependency will be forthcoming. It is not at all unusual to find more than one wife claiming dependency on the same husband. In one case a workman had married in Alabama, left his wife to find work in Cleveland, married again without the formality of divorce, and after a time left for St. Louis. When he finally sustained a fatal injury in Toledo we had applications for compensation not only from the Alabama and Ohio wives, but also from a woman in St. Louis, who said she was his "Missouri wife."

Workmen's compensation in this country is still in its infancy; nevertheless, it is surprising to note the changes that have taken place in the administration of such laws in the past few years. I know that in Ohio the commissioners used to devote valuable time to the consideration of claims which to-day would never reach them. When only a few claims were being filed each would receive individual attention from the commission. But as the number increased by leaps and bounds, new positions had to be created, the incumbents to act as assistants to the commission—employees trained to pick out the essential matter and prepare it for the commission's action.

The volume of work in Ohio is so great at this time that it is physically impossible for any board of three men to give individual attention to all claims. They must accept the word of some one on questions of fact. Although our legal friends may question this statement, I am sure that all the doctors will agree with me that the medical aspect of a claim is the most important one and that all compensation boards require and must have dependable medical proof.

What do compensation commissions want of the physicians? They want what they have always wanted and always will want—honest cooperation from the physicians. That statement, in my opinion, covers the field. It may be divided and subdivided into headings and subheadings, but cooperation is what is wanted. Do they get it? Usually they do—quite often they do not. Many doctors, especially those located in small towns, hesitate to tell all they know about a claim. They have learned by bitter experience that it does not pay to talk too much. They must depend for their living on the good will of their neighbors. News travels rapidly in a small community and every claimant usually has a host of friends who will stand by him. We can not always depend on getting absolutely disinterested reports under such conditions. There is nothing new about this statement, of course. Every board has the same situation with which to contend. We can not expect everything from the physician, but we can and do expect the truth as he sees it.

This difficulty of obtaining frank expressions of opinion as to the extent of disability is one that will always be with us. A re-
luctance is often shown in saying just when the injured workman is able to resume work. We understand, of course, the physician's principal reason for this. He does not like to incur the ill will of a claimant, which sometimes happens if he insists on a return to work contrary to the claimant's view in the matter. We often receive requests from the physician asking that a special examiner settle the question. This we are glad to arrange, because if we expect to receive cooperation from the physician we must in turn cooperate with him.

I am charitable enough to believe that most of the erroneous reports we receive are due to carelessness and lack of business method, rather than to an actual intent to deceive or mislead the commission. But occasionally we encounter what has all the earmarks of collusion between claimant and physician. Ohio, in common with other States, has her share of ambulance-chasing doctors, but they are comparatively few, and, being known, their activities are hampered to a certain extent. Quite often these men have considerable ability, and if their energies were rightly directed they could be of great help to the commission.

Workmen's compensation has been the means of creating a new specialty—that of "industrial surgeon." Although at first some of the more conservative members of the profession were inclined to treat it with contempt, the specialty has even at this early date made a definite niche for itself. There is no question about the unlimited field which awaits energetic and capable physicians in this branch of medical service.

It has been our experience that the average general practitioner keeps rather incomplete records. He has never acquired the habit of keeping case histories and he resents any suggestions along that line. On the other hand, specialists in every line usually have complete records. This applies particularly to oculists and the like. Their reports are often of immense value to the commission. Formerly boards pursued the short-sighted policy of trying to save money by paying an inadequate fee for information along medical lines, but they soon found that it was cheaper in the long run to get their information from a competent and reliable source and pay a fair fee for it.

A physician's knowledge, skill, and judgment, expensively and slowly acquired, are his sole stock in trade. It is unreasonable and unjust to expect him to render expert opinions in matters involving hundreds or even thousands of dollars for a mere pittance. Expert and specialized knowledge along any line is at a premium at the present time. Witness the expert consulting engineer, the corporation lawyer, and the trained executive. While it is true that compensation boards are now paying fair fees to private physicians, it is a lamentable fact that they are still paying wholly inadequate salaries to those in their employ for services which are just as expert, just as specialized, and just as valuable as those rendered by physicians in private practice. I suppose in the course of time this condition will also be remedied.

Formerly the Ohio commission's blanks for the use of the doctors were rather lengthy and complicated affairs. Many physicians complained about the detailed clerical work required of them. As ex-
experience was gained it was found advisable to make changes from time to time so that now we feel that we have a system that is simple and easily handled, but which if followed will give the information necessary in all except the more complicated claims which require special medical or other investigation.

Where a medical fee only is paid and there is a disability of seven days or less, it is necessary to file only one form. This is a combination form bearing the claimant's application, the necessary data and the employer's certification on one side and the medical report and fee bill on the other. This one sheet of paper, when properly filled out, constitutes a complete claim. No other blank or action of any kind on the part of the claimant or physician is necessary. We call these "medical only" claims because they are for the payment of medical fees alone. They are given a separate series of numbers and bear the prefix "M" to distinguish them. The regular compensation application is printed on paper of a different color, and the first sheet filed contains the claimant's application, the employer's certification and a preliminary short statement from the doctor, with an estimate of the period of disability. If the claim appears to be a legitimate one, compensation is started immediately, and at the first hearing a supplemental report blank is sent to the claimant to be filed by his doctor a short time before the expiration of the period for which compensation has been allowed, and of which date he has been informed. Each supplemental report blank carries this date so that the doctor has this information before him when filling out the blank, which is short and gives the doctor considerable latitude in describing conditions in his own way. For the use of oculists we have what we call a "special eye" blank, which is different from the form used by our special eye examiners in reporting on permanent disability claims. A multiplicity of blanks is a nuisance, and it has always been the policy of the commission to keep the system as simple and uninvolved as possible.

The question of hospital care is one that I am sure gives every compensation board more or less trouble, and is one which is very difficult to handle. The attending physician should know better than anyone else when the necessity for hospital care has ended. It is not proper, in my opinion, for a claimant to be kept in a hospital when he is not confined to bed, unless it is necessary for the administration of treatment which cannot be given elsewhere. For instance, there is no apparent excuse for keeping a clean finger amputation case in a hospital for 2 weeks, or a simple Colle's fracture case for 50 days. I have actual knowledge of such occurrences. In one instance a doctor testified at an oral hearing that he always kept "State" cases in the hospital longer than he did private cases. He probably had reasons for this which were satisfactory to himself, but the propriety of such a course is open to discussion.

The great majority of doctors in Ohio cooperate well in regard to hospital care, but there are some who seem to think that a claimant needs hospital attention until he is perfectly well. All the commission asks and expects is honest cooperation. It is perfectly willing and anxious to pay fees for necessary hospital service, but objects to the hospitals being used as boarding houses.
The same situation obtains with respect to special nursing service. In Ohio, fees are paid for special nursing, provided the attending physician certifies to the need, and orders the services. Fees are paid not only for services of registered nurses, but for practical nursing service as well, where the need is clearly shown and the person who renders the service is competent. We have little difficulty in handling this part of our work, because we have always received excellent cooperation from the physicians. It seems to be a fact that a physician is much more apt to order hospital attention when it is not necessary than he is to order special nursing services under similar conditions.

The whole thing resolves itself into a question of judgment. It is not practicable to make a rule to fit all cases. It is physically impossible for any board to maintain a staff of workers large enough to keep in close touch with all cases. It follows that much dependence must be placed in the integrity of the attending physicians, and I am glad to testify that this confidence has been justified in the great majority of the cases in our State. When compensation was a new thing there was more or less unpleasantness existing between the commission and the doctors. All was not so harmonious as it should have been. It is difficult to say which was most at fault, the commission or the physicians. Probably both were culpable to a certain extent, but it is believed that most of the trouble was due to misunderstandings and the difficulties which inevitably arise when any innovation is instituted. As soon as the doctors realized that the commission was not trying to "work" them and was willing to pay fair fees, they found it possible to meet the commission on common ground and do their part in bringing about a successful administration of the workmen's compensation act.

Since most boards are composed of laymen, it seems not unreasonable to ask that physicians couch their reports in terms which are readily understandable. Sometimes, of course, this is difficult, but the physicians who make a practice of following this course need not fear any loss of prestige by it as far as the commissioners are concerned.

Since so much dependence is placed on the accuracy of medical reports, care should be taken that these reports really are accurate and that the estimated period of disability is a safe one. That is, the period of disability should be an underestimate rather than an overestimate. Such expressions as "indefinite," "don't know," "can't tell" must be as unsatisfactory to the physician who writes them as they are to the commission. If the physician who is treating the injury, and supposedly familiar with it, is unable or unwilling to venture an opinion, what must be the position of the commission who has not even seen the claimant? Reports should be clear, concise, complete, and legible. Typewritten reports are preferred.

It is desirable that the physician should take a personal interest in every claim that comes to him. He is not only the claimant's advocate, but in a certain way he is the commission's representative also. It is the commission's duty to see that the claimant receives the compensation to which he is entitled by law, but no more than that. The commission depends upon the physician to keep it informed as to
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the progress made, the treatment administered, the complications which may arise and the period of disability due to the injury. He should not consider the State insurance fund as some vast till, the raiding of which is a public service. He should realize that this fund is one created by premiums paid by employers for the maintenance and treatment of their workmen who have sustained injuries in the course of and arising out of their employment; that it is not to be disbursed for disability due to any other cause than injury and certain specified occupational diseases; and that it is to his interest as well as to the commission's to deal promptly and effectively with cases of malingering and exaggeration.

As I stated in the beginning, this may all be summed up as active and honest cooperation, the practice of which on the part of the physicians is "a consummation devoutly to be wished."

The Chairman. The next gentleman on the program is one whom you already know. We have had every evidence of his splendid ability in presiding at our session this morning. The paper Doctor Roberts is going to deliver this afternoon is an excellent one. There are some very valuable suggestions to be presented for your consideration and solution.

FACTORS INFLUENCING THE DISABILITY PERIOD FOLLOWING INDUSTRIAL INJURIES

BY C. W. ROBERTS, M. D., MEDICAL DIRECTOR INDUSTRIAL COMMISSION OF GEORGIA

The science of traumatic surgery has developed a literature reflecting the crystalized opinion of experts practicing in this field which offers in terms of common experience answers to many questions which would otherwise disturb the adjudicating agency set up by compensation laws. Thus we have come to know what symptoms are logically expected to follow a given type of injury and what period of time may ordinarily be required to permit of maximum improvement or complete return to a normal state of working efficiency in the uncomplicated case. One must remember, however, that authors writing on problems of industrial medicine, in common with those engaged in the elucidation of other branches of medical science, deal at length with the more palpable questions lending themselves to ready solution in terms of more or less accurate conclusions, but show a paucity of usable information bearing upon another group of questions which repeatedly arise to perplex those charged with the meting out of justice to injured workmen.

I have chosen to deal briefly with one of these disturbing queries, because my experience in the capacity of medical adviser has brought me so often to the consideration of cases running counter to the accepted average disability period considered compatible with the injury under investigation. Indeed, it would appear that the common experience of compensation boards and physicians working in industry is replete with cases of extended disability growing out of trivial accidents and following a course in severity altogether contrary to that which ordinarily would be expected.

No new definition of accident or injury is offered. Simply would I raise the question of aggravation by injury of a preexisting abnormal state and seek to understand its lethal influence when so
aggravated. The considerations following are based upon the acceptance of the principle of responsibility for aggravation of pre-existing disease caused by injury. Without attempting to speak in favor of a broader interpretation of such a controversial point in the administration of compensation laws, I feel impelled to say that my sense of justice, as well as a fair understanding of the modus operandi of trauma as a potent force in the activation of latent disease, leads me to declare in favor of considering extended periods of disability growing out of such activation as an undeniable and, so far as the injured is concerned, unavoidable part of the time required for maximum improvement or recovery from such injury. Indeed, I have the impression, so far as my personal knowledge goes and in so far as the limited literature bearing on this point has been consulted, that the overwhelming weight of opinion approves favorably the application of this principle. Such a viewpoint accepted, I am prepared to say that an experience extending over more than six years as chief medical examiner for the Industrial Commission of Georgia, during which time some 1,500 cases have been studied and reported, has taught me that about 33½ per cent of the workmen in this territory (when minor injuries such as affect principally the fingers are excluded) suffer aggravation of latent disease in some form and that the period of disability is in the same ratio affected. This astounding statement will naturally require some support since its establishment will tend to explain why the period of disability and its increased medical costs seem perhaps at variance with those in other sections of the country as well as to furnish an explanation of the mounting cost of compensation in the temporary and permanent partial groups.

The percentage of latent disease in any general group of our native white population, taken in New York, for example, does not vary appreciably from a similar group taken in Georgia or in California; but the negro laborers of the South and other groups composed of the ignorant foreign born do present a much higher percentage of physical defects. It is the colored laborer of the South and the group sometimes spoken of as "poor white trash" that run our general average upward. For instance, syphilis had been found to affect about one-third of the colored patients admitted to the Grady Hospital of Atlanta without regard to the condition for which they were admitted. That is to say, on routine examination syphilis is found as a complication of one-third of admittances. Heart disease, blood vessel disorders, lung affections, various focal infections principally in the throat and the intestinal tract, and disorders of the nervous system falling under the head of lowered nerve stability, make up the roster of common findings in both races. Nor would I have you understand that the appearance of latent disease is confined to patients admitted to the charity hospital of Atlanta. The experience of medical men in office and private hospital practice reveals the same high ratio excepting only the question of syphilis. Examiners in our public schools, county health officers, industrial physicians connected with big corporations, health-extension bureaus, medical departments of life insurance companies—all tell the same story.
Of special interest, perhaps, is the data concerning defects which caused rejection for military service among young men from 21 to 31 years of age during the World War. These men, be it remembered, were supposed to represent the "flower" of our country and surely were freer from physical defects than any other age group that might have been examined. Notwithstanding their preferential status, out of 467,694 rejections the following percentages and causes appear:

<table>
<thead>
<tr>
<th>Condition</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bone and joint diseases</td>
<td>12</td>
</tr>
<tr>
<td>Eye affections</td>
<td>10</td>
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<tr>
<td>Heart and blood vessel disease</td>
<td>13</td>
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<tr>
<td>Mental disturbances</td>
<td>5</td>
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<tr>
<td>Lung conditions</td>
<td>10</td>
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<tr>
<td>Genito-urinary disease</td>
<td>3</td>
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<tr>
<td>Flat foot</td>
<td>3</td>
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<tr>
<td>Hernia</td>
<td>6</td>
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<tr>
<td>Nerve disorders</td>
<td>5</td>
</tr>
<tr>
<td>Carious teeth</td>
<td>3</td>
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</tbody>
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These young men were drawn from the Nation as a whole and give a graphic picture of submerged disease in a choice group of our population. Think of 12 out of 100 men with bone and joint disease, of 13 per 100 with heart disease, 10 out of 100 with lung affections, 6 with hernia, 3 with carious teeth and so on. Let it be borne in mind that all these diseases were producing no symptoms such as would interfere with ordinary efficiency.

Now, multiply these averages manyfold when older groups are considered, and the fact becomes inescapable that one injured man out of three hurt is potentially subjected to an extended period of disability on account of aggravation of his latent disease. This conclusion becomes more impressive following the examination of a group of 100 records taken at random from my files, which show the following points. Seventy-eight of the one hundred showed positive evidence of latent disease distributed as follows: Neurosis, 13; focal toxemia, 41; heart and blood vessel disease, 6; faulty muscle tone, 3; hernia, 2; venereal, 3; and other (rarer) disorders, 10.

What shall be the attitude of administering commissions on this question so frequently projecting itself into adjudicating councils? Shall we lose sight of the spirit and purpose of compensation laws? Are they in fact designed to transfer the economic loss suffered by workmen from unavoidable indisposition resulting from accident to its rightful place along with the wear and tear of machinery and other production costs? If so, and granting that the conscientious physician seeking to aid his employer in reaching an equitable decision as between disability from injury on the one hand and disability from disease on the other hand finds himself face to face with unfixed precedents or baffled by a lack of exact knowledge that would fix accurately a demarcation between these closely drawn lines of a disturbing dilemma, shall we here part from the principle so well established of giving the benefit of the doubt to the workingman for whose interest compensation legislation was conceived? It seems only logical to me that here we should apply the dictates of common sense—a practical art used by common consent in many spheres of human relations, where as yet only the leadings of an altruistic conscience can be depended upon for guidance. Medical dogmatism
will not suffice. To say that the exact influence of injury on dormant disease is not known does not discredit the science of medicine, which has established its right to popular acclaim by so many contributions to the progress and efficiency of the world's work. Let it suffice rather to repeat that countless examples of activated quiescent diseased processes are known to those whose experience qualifies them to express a worth-while opinion on the question.

Neither are we justified in attempting to shift the burden of relief from this major factor influencing disability periods to the shoulders of the workingman. His status in life including the level of health is not his own design. If ignorance of the laws of hygiene have contributed to it, the Government must accept its rightful blame. If inheritance renders him less unfit than his neighbor to stand the stress and strain of unfortuitous circumstances, a sense of charity dictates that we pity rather than censure. If environment has warped his moral nature so that the will to carry on as long as there is physical endurance within the limits of safe self-preservation is lost, a carping attitude of unsympathetic understanding will not furnish the vision which sees under the handicap and beholds the chilling atmosphere in which his moral nature has been nurtured. It must therefore be obvious that until the cherished day comes when men shall be free from the crippling influences of insidious disease, the liability of inherited perils, and the damning handicaps of a low moral make-up, we shall have to accept these attributes in no mean proportion among those making up the so-called working class and continue to witness their unsavory influence over the course common to the experience of normal individuals following injury.

The right of every man to work must continue to be recognized. Examination before employment for the purpose of finding remediable defects is a commendable venture of industry provided the necessary interest is furnished looking to constructive relief. If for the purpose of separating the fit from the unfit—a compensation law which functions so as further to harass by refusal of employment an already heavily burdened class of society would deserve and, I doubt not, receive the hearty condemnation of all those who have correctly interpreted the spirit and purpose of such legislation. The burdens of the weak must continue to be borne by the strong and the employers of labor must not be encouraged to discriminate against a social class whose activities have been limited by influences beyond their control.

The principle of acceptance of the workman as he stands when employed will probably prevail. Excepting only instances of fraud and willful malingering and cases presenting wide variations from the average, an injury which sets up, activates, brings to the attention of the workman the latent disease, or otherwise changes a man earning his livelihood in spite of potential disease to one who falters by the way and lies temporarily the victim of a slight injury, should be given the same consideration as though disability resulted from injuries in the more palpable class. Indeed, here the administrators of compensation laws might recognize their opportunity and, by diligence in their demands for careful measures of rehabilitating, return to industry a class which, contrary to the group the personnel
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of which is composed of more sturdy members, may be even benefited by the misfortunes of accident. Certainly no rule of thumb will ever be suited to the equitable adjudication of cases falling into the class whose extended disability has resulted from the aggravation of preexisting disease. Here, the settlement of each case on its own merits, after diligent search for the truth by a commission which chooses the difficult problems of its work as a challenge of efficiency and after due consideration of the findings and conclusions issuing from an adequate examination by a competent medical adviser, will continue to be the plan of choice, and awards should be meted out which will be fair and acceptable to all parties at interest.

Turning now to a more specific consideration of factors influencing the disability period, and for the sake of brevity passing over such well-known examples as latent syphilis, arrested tuberculosis, compensated heart, potential hernia, focal infection, submerged disorders of the nervous system, the changes in muscle and ligamentous tissue incident to rheumatic states, and disturbances in soft tissues dependent upon altered blood-vessel caliber commonly called arteriosclerosis—a group that has had much consideration in your sessions as revealed by their reported proceedings—I would call your attention to a few other factors which appear to me to be of equal importance and responsible perhaps in the sum total of their added disability extension for even a greater share of the economic loss thus occasioned. Let me add, before passing, my personal testimony to that of others in support of assigning to the common examples of latent disease above mentioned a major rôle in extending, when aggravated, the average period for recovery considered normal to given types of injuries and record my complete acquiescence in the soundness of the practice of compensating within reasonable limits for lost time dependent upon such activation of these common maladies. Employers and their agents, while according a modicum of thought to this important phase of their rehabilitation work, too frequently apply the treatment suited to the uncomplicated case and show a tendency to limit their reconstructive efforts to such measures alone. When response is slow the discordant element is either not diligently sought after or if known not aggressively attacked by suitable forms of treatment. I would urgently direct attention to needed reform in the handling of the group so influenced by activated disease. To treat the injury alone will not suffice. This added responsibility should be accepted by employers and measures for their relief instituted.

This leads me to my first additional factor, which concerns the selection of a physician suited to industrial practice. The disability period will depend largely upon his skill, his familiarity with the details of management and with industrial accidents, as well as his ability to lead the injured to assert returning powers and to lend full cooperation in reconstructive efforts. Probably of greater importance still is his ability to impress his patients with the sincerity of his interest in their welfare to the end that the beneficent healing and restoratory influence of the “will to do” may be marshaled in their behalf. The best physician for industrial practice is not necessarily the most intellectual or the most highly trained, technically speaking, but rather the man of good training who lends an unaffected interest
to his work, who speaks a language common to the injured workman under his care, and whose devotion to his patient’s every interest is such as to lead those mercenarily inclined back to their place in useful endeavor. The employment of the matter-of-fact doctor may suffice in the care of gross fractures, lacerations, and the like, but for the group whose injuries are complicated by diseased processes long resident in the workman, more than cold professional essentials are needed if the doctor’s lack of aptitude is not to result in the awakening of an antagonistic attitude on the part of the patient. An injured workman inclined to convert his accidental loss of time into a monetary asset furnishes a delicate problem for solution. It is the physician’s opportunity, by tactful management and if need be by many concessions not ordinarily incumbent on him in private practice, to break down this barrier to speedy recovery. The following quotation from a recent editorial in a current medical journal gets to the crux of the question I am undertaking to emphasize:

The true physician is a gregarious person who loves his fellow man and understands personality. Such understanding can come only with a type of intellect that sees beyond the test tube and the specimen into the spirit of the living organism. By the choice of his avocation, the physician may do much to cultivate himself in those fields that are likely to provide him with a humanistic point of view.

I know no harder task than to remove fixed prejudices once they have become established.

The second factor concerns the question of permitting injured workmen to remain idle longer than is absolutely necessary for safe healing of wounds. The lay-off enforced by accident should not be appropriated as a vacation period. The injured should be kept busy trying to get well rather than lending himself to the enjoyment of ill health. I know of no better massage for stiff joints than the exercise which follows selected work suitable to the case in hand. Contrarywise, no more fertile soil for the development of imaginary complaints and exaggerated disabilities can be found than is presented in the workman suddenly thrown into extended idleness by injury. The mind is left to brood over his misfortune, augmented too often by actual want of the necessities of life incident upon reduced weekly income. The situation is intensified in many cases by the apprehension that fair and full recompense for the injury will be denied. Left to his own devices a defensive complex is set up which seeks to convince all parties at interest that the disability is greater than he is credited with suffering. Such abnormal reasoning imposes a heavy burden upon the physician who is trying to get his patient back to work. Surely, here the idle mind is the devil’s workshop. To obviate these harmful influences close supervision is needed from the outset of injury, and special facilities suited to the reconstruction of the partially disabled workmen are highly advisable.

Again and again we have seen a convalescing patient with a 50 per cent earning capacity kept in complete idleness for lack of a suitable temporary job. Forward-looking industrial plants “find a job” for their injured as soon as they are permitted to return for any duty. Such cooperation should be encouraged by the commission insisting upon the injured man’s return to work at the earliest moment compatible with good results. When, however, a tolerant spirit is lack-
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... as appears to be manifested so often by employers in the demand that a full day's work at the regular job be the criterion for return to work, compensation boards have no alternative than to keep such patients idle—a poor reconstructive program in which the vicious circle thus established too often converts a temporary partial disability into one of permanent nature. I know of no more malignant factor in prolonging disability periods and thus unnecessarily piling up compensation costs than is found in this neglected field. I know of no better treatment for residual disabilities after gross healing of visible wounds and fractures has occurred than that associated with work exercise. Nature soon compensates for sore muscles and for minor limitations of motion. She even offers acceptable substitutes for lost members, and soon brings into play latent forces which, with the lapse of time and the soothing effect of a weekly pay envelope, speedily converts a partial cripple into an industrial asset.

The limits of time preclude a consideration of such factors as low morale, the neuroses, etc. Before concluding, however, I have been requested to raise for discussion the following questions:

1. To what extent is loss of teeth a permanent partial loss of bodily function, and how shall they be compensated for? (Suggested by Mr. McShane of the Utah Industrial Commission.)

2. What should be the general practice of the commission as to the extent to which it goes in requiring employers to remove teeth and tonsils, where following some sprain it is found that focal infection exists from teeth or tonsils? An employer often attempts to bring out that a sprain would be of only minor importance and short duration were it not for focal infection from claimant's teeth or tonsils, for which infection he is not responsible, and he also tries to raise the defense that recurring pain following strain is not due to strain but due entirely to focal infection. Is the commission justified in requiring the teeth and tonsils to be removed at the expense of the employer, and should this be the general practice? (Suggested by Mrs. Roblin, of the Oklahoma Industrial Commission.)

3. The relation of sprains to osteoarthritis, especially where the disease was apparently unknown to injured employee prior to accident. (This suggestion also from Oklahoma.)

I conclude with the following summary:

1. Preexisting abnormal states influence the type and period of disability in more than one out of three workmen.

2. The practice of considering disease activated by injury as a part of the results from injury appears to me to be sound provided each case is settled upon its own merits.

3. Workmen should be employed without prejudice, and their handicaps, precipitated by industrial accidents, passed on to society as a part of the production costs.

4. Disability periods may be shortened by employment of physicians and adjusters who are skilled in the handling of industrial problems and whose vision is broad enough to recognize the preferred attention required by the group of injured workmen falling in the unusual class.

5. The unnecessary idle period should be eliminated by early return to selected work after injury.
The Chairman. Some very important questions have been raised for discussion and the Chair will now, if that is your will, have you discuss this important paper with particular reference to the questions raised by Mr. McShane, of Utah, and by Mrs. Roblin, of Oklahoma, and by some other person from Oklahoma, or any other question that may occur to you or any other thought that you may have to offer concerning the contents of this paper.

Mr. Williams. Doctor Roberts, have you ever seen anybody answering the description of a perfectly normal man who did not have something the matter with him before he was hurt; and if so, to what extent?

Mr. Eppler. We have some cases where the doctors say, "Well, the man is not fully recovered. He can do light work." Then we go to the employer and say, "Here is a man who can do light work." The answer is, "Well, all we have is heavy work." It is a foundry, perhaps, a mill of some kind. That is a question that we are up against every week almost—light work.

Mr. Duxbury. All of that is not in Maryland; we have some of it in other places.

Mr. Eppler. But I am particularly interested in Maryland. I would like to have the doctor's viewpoint about the situation.

The Chairman. I would like to ask Doctor Roberts one specific question, if he cares to go into it in detail to that extent. We occasionally examine people and are asked to judge the percentage of disability, often are asked to express an opinion about a back or a knee, in regard to the actual percentage of loss. Given a man with what we term osteoarthritis of the spine, in which that spine has become considerably stiffened and is involved in disease, plus the accident, to the extent that the man is unable to work perhaps for an indefinite period of time in the future, I would like to know about what percentage of disability he would rate that individual—I mean the man who has not had a very definite injury but the disease has been aggravated by the injury. Also with respect to osteoarthritis of the knee in which the man has had an injury which has set up certain stiffness, does he estimate the percentage of disability in respect to the amount of movement that the man has, or does he take into consideration the total loss of use of the leg in respect to the man's occupation, and would he give permanent total loss of use of the leg where the greatest amount of disability, we will say, was due to the disease and not to the accident?

If there are no further questions, Doctor Roberts will kindly answer the questions that have been raised.

Doctor Roberts. Mr. Williams, I believe, asked me if there were any perfect men. Back in my medical-school days the professor of the branch dealing with mental conditions made a statement which has stayed with me ever since, namely, that we are all crazy—just simply a matter of degree. I think that answers Mr. Williams's question.

Mr. Duxbury. There was one perfect man but they crucified Him, you remember.
Doctor Roberts. The only perfect one was crucified. Since that time it has been a question of degree. However, for purposes of compensation practice, I think we do have two separate and distinct classes of individuals. At least, I see two classes. The great majority of people who come in to me for examinations belong in the class that are willing to be sick. I have undertaken to say in my paper that I do not charge that up to the individual. I do not believe it is design and I do not believe that the great majority of these people will to be simply nuisances. They are that because they can not help it, for which they are not responsible. However, the majority fall in that class.

But a goodly percentage, a fair percentage, are fair. They come in and say, "I had nothing the matter with me before this thing happened and nothing the matter with me now except this simple—whatever they are complaining of—and I do not desire to make any trouble about it; just want what is due me. That is all." In other words, it is very easy for the examining physician.

I think that is the experience of all those who study these cases. It is easy for us to see the dividing line between the man who is presenting his best to you, who is the man who approximates the normal, and the man who is presenting his worst to you, who goes in the other direction.

The light-work problem: Here we base the opinion rendered to the industrial commission not upon an effort to tell in detail what a man can do and what he can not do. When we say that a man is capable of doing light work we mean simply this: That if the man's employer is willing to do his part by the man, take him on again and give him employment with an understanding that he is not to be held to an 8-hour hard day's work, but is to be permitted to sit down and rest if he becomes tired, or, if the errand which he wants to send him on is considered by the workingman more than he is able to bear, he will listen to the workingman—that is, a spirit of cooperation between the employer upon the one hand and the individual upon the other—that man is ready to go back to light work.

I think it would be very difficult if we should start a precedent, or undertake to establish one, that would mean that the examining physician should say in detail in each case, when he says the man is able to do light work, that it should be one definite particular thing or a group of things; and so, so far as we are concerned, when we say that a man is ready for light work, we mean by that that we think it is to the interests of the injured man to be required to go back in the industry, provided his employer is willing to meet him half way and to permit him to do those things which he is able to do.

Doctor McBride raises the question of what percentage of disability a man has who has osteoarthritis of his knee or his back that has been brought to his attention by injury. I like to think of it in this way. I do not wish to impose any personal views on this gathering, but when a man has certain convictions it is at least fair to express them. I believe this is the truth with respect to this question of submerged disease, and I think it works out in this audience. I believe that here this afternoon we have that high proportion of men and women who are expressing what to-day appears to be good health and yet are carrying about certain physical disabilities which
have not yet come to the consciousness of the individual. A latent
disease of which one is not conscious is playing no part in the life of
the individual. It is very easy, however, for this thing which is sub­
merged to be aroused, and the thing which arouses it may be a very
simple thing. For instance, an individual living in the southern
part of the State, in that section which at one time was a malarial
section, and who under the environment of that section had no evi­
dence of malaria, goes to North Georgia, an entirely different section
of our State, in the mountains where the altitude is different and the
air is different and the water is different and the other surroundings
are different, and wakes up about 7 to 10 days after he gets there on
his vacation with an attack of malarial fever. It is a very simple
thing to be transported by train 250 or 275 or 300 miles and to wake
up with malaria; the change from one altitude to another, the change
in environment, awakens a slumbering condition in the individual.

Just as simple things wake up dormant disease, and I have no
patience with the idea that a man attempting to lift a 200-pound
barrel of apples, for instance, can not arouse a back condition, an
osteoarthritis, and come into a definite disability. It is not difficult
for me to see it. I do not see how it should be difficult for any un­
biased mind to grasp, not only the possibility, but the probability, of
arousing such a condition.

When such a condition is aroused—getting now to the point of
trying to answer Doctor McBride’s question—whenever one of these
sleeping conditions, which before the accident has been submerged,
the patient having no consciousness of it, is provoked into temporary
or permanent activity by this slight injury, the length of time that
that individual is disabled is dependent upon the type of treatment
which he receives, and he is the individual, if his condition is neg­
lected or is thought to be trivial, or if someone tries to impress upon
him that it is trivial, who will have a long period of disability.

However, usually if such a patient is properly handled, necessary
fixation apparatus used on his back, the proper amount of rest in
bed, and such amount of cleaning up and cleaning out, if you please,
whether that be teeth or tonsils or bad intestinal tracts or what not,
as is proper, he soon returns, not to a state of health, any more
than he was in a state of health before, but back into the condi­
tion in which he was before he had the injury; that is to say, he
again becomes the same individual he was before. He is not a cured
person any more than he was before but he has gotten to tolerate
his condition. That is what we call adjustment to surroundings.
So that the period required to bring the individual up to a time
when he is willing to tolerate the condition which he has and is
willing to go back in the industry determines the amount of dis­
ability which that individual will have.

You can readily see that an osteoarthritis in the back may become
a permanent partial disability and in the great majority of cases, it
seems to me, there is no reason why it should be longer than a period
of, say, 6 months, 3 months, or 12 months, provided the potentialities
of the serious nature of this condition are recognized and it is handled
as a really serious problem.

These remarks are with respect to osteoarthritis of the back and
knee and to other dormant states of health, as I see it, including this
much-discussed question of the so-called traumatic neuroses, in which I am convinced that Doctor Gaines this morning presented what to me at least appears to be the truth and the whole truth of the matter before us.

I think it would be unwise to undertake to go into the question of how we arrive at percentages. I undertook to emphasize over and over again in this paper that each case as I see it must be settled upon its individual merits, and I think it would be most unfortunate if there should be written into the literature of industrial surgery any kind of a scheme whereby a physician might by any rule of thumb calculate for an industrial commission what would represent the amount of disability in any given case.

Mr. Huber. Is there such a thing as light work? To me all work is hard. If you are honest you will agree with me.

Doctor McBride comes to me and reports that a man is ready for light work. That gives us more trouble than anything else. I have one doctor who asks, "Couldn't you give that man change of work and he will get along all right?" The idea is this: A good workman hates to have the stigma on him that he is being given light work, because to him all work is hard. You doctors should change your reports, and say "a change of work." Do not say "light work." There is no such a thing as light work. All work is hard to me. A change of work and, if possible, the same rate will bring our men into such a shape that we can put them back at the same work in the course of time. If you say, "We will give this man light work," his coworkers will pick at him and say, "Oh, you have an easy snap." That term "light work" has given us more trouble than anything else that you doctors put onto us. So I ask you doctors—that is all I want to ask—discard those two words "light work"; say "change of work."

Mr. Kernan. There was one thing that suggested itself to me while listening to the discussion and that is this: Suppose a man injures his thigh, breaks his leg. The condition that results is that his leg is useless to him. He can by amputation get an artificial limb and go back to work, but if the doctor does not think it ought to be amputated because it is not suppurating or sore, there is no immediate danger of death from leaving the limb on, and for that reason he is incapable of work. If he goes to work, he finds difficulty in discharging it. How should that man be compensated? Should he be compensated as for a loss of leg, or for a permanent total disability because he is totally incapacitated as long as he carries that useless leg around with him?

The Chairman. Are there any other questions? Doctor Roberts, do you want to answer?

Doctor Roberts. I can answer that question in terms of the way we handle it in Georgia. We do not approve, or recommend to the commission the approval, of amputating any member so long as that member is of any use to the injured man. What I mean is this, even if we consider that as a competitive laborer a man has lost the use of his right arm, say for instance if he has an ununited fracture in the middle of the humerus and the thing is wobbly and he can not use it and perfect his labor, we do not approve of amputation in order to get
rid of the dangling member. We simply recommend that he be compensated by the commission as having lost the use of an arm.

The difference between permitting amputation and letting the injured man keep it is simply this: So often those members become useful members after we doctors pass judgment on them. After the claimant has been compensated for the loss of his member, that arm is yet to him a useful member. Take an ununited fracture of the femur. By stabilizing the leg by putting on external fixation braces, etc., the individual is able to get around. In that case we would compensate for the loss of the leg, and that would be the end of the compensation unless there was further reduction of the man's earning power by virtue of infection or some other lethal influence passing into the individual as a result of the carriage of the leg. Naturally, if this individual had a malignant tumor or something that endangered his life we would recommend amputation, but never amputation simply for an ununited fracture. If it could not be made to unite, we would compensate for the loss of the leg, and then unless there was harm or influence upon the general health of the individual by virtue of the carriage of that limb, that would be the end of compensation; that is, from the medical viewpoint. Does that answer the question?

Mr. Kernan. An ununited fracture had been splinted by fixation methods—I believe screws had been put into the bone—and the bone would not unite and the leg was perfectly useless to the man. He was incapable of performing his duties and it was a total loss to him. The doctor said he would never get over it. What I wanted to know was whether that would be permanent total disability or would it be just the loss of the leg? The two compensations are different.

Doctor Roberts. The loss of the leg.

The Chairman. This brings us to the question that was raised by Mr. McShane and by Mrs. Roblin, of Oklahoma, and the third question raised likewise by Oklahoma. "To what extent is loss of teeth a permanent partial loss of bodily function and how shall they be compensated for?"

Mr. McShane. I did not want to consume any time on that.

Mr. Stewart. Illinois has just passed a law covering the question of teeth.

Mr. McShane. I did not understand that the Illinois law got at my question. We compensate for the loss of teeth in this way, that we take care of the period of temporary total disability and furnish plates, but is there a specific loss of bodily function there? Many of us have a very crude contraption called the "schedule," in which we attempt to compensate a man for loss of bodily function or the partial loss of a member. To my mind the loss of teeth, the means of mastication, has a very serious effect on that man's future health, and I am wondering if that question has been answered properly by some State. Ours has not answered it.

Mr. Duxbury. It seems to me the remedy for that is to extend the schedule to include the teeth as a member. There isn't any specific compensation in most of the compensation laws, so far as I am advised, in the specific schedule for the loss of teeth. If there is not,
there is no way to compensate for it except as it might enter into the loss of wages, which it does not often do. Of course, there are lots of results of injuries that are not compensated for in the ordinary sense of the word “compensation.” They never get paid for that injury; in other words, after having had an injury which results in temporary disability, for which they are compensated, they are not as good as new and never will be again, but they are not compensated for the deficiency resulting from that except as they were paid compensation for the purpose of rehabilitating them, of just establishing them in an earning and self-sustaining state, not as good as they were before but rehabilitated, which to my mind is the chief function of the compensation law all the way along. It is a rehabilitation law, not a compensation law. It does not compensate. You try to rehabilitate, that is all you try to do.

Mr. Halford. We compensate for the disability and then, after the teeth are out, for whatever teeth are out we give them $25 apiece, but we do not do any dental work at all. If there is anything over and above the $25 needed for dental work, we do not do any of that, but if a man gets 8 or 10 teeth knocked out, which sometimes happens, we give him $25 a tooth. We have a rehabilitation fund to the extent of $100,000 a year that we can use, and we started using that and are getting some very good results from it.

The Chairman. I am not convinced that Ontario has reached the millenium, in that $25 for the loss of a tooth is not what it should be. We allow four weeks for each tooth. The next paper on the program is by Doctor Gehrmann. Doctor Gehrmann is the medical director of one of the large industrial establishments of this country, a young man of unusual ability, and I am sure that he has an essay that will be worth listening to.

PROBLEMS OF THE PHYSICIAN FOR THE SELF-INSURER

BY G. H. GEHRMANN, M. D., MEDICAL DIRECTOR E. I. DU PONT DE NEMOURS & CO.

The problems of the industrial physician are to my mind basically the same, whether he is employed by the self-insurer or by the insured. They are in either case founded on three principles, and these in the order of their importance are prevention, cure, and rehabilitation.

Prevention of accidents and occupational disease, along with measures to maintain and improve general health, represent the first and most important problem and at the same time the most difficult one. Prevention is to industrial medicine what diagnosis is to internal medicine. It represents the possibility and opportunity to study and evolve methods and create regulations, both of which make it an interesting and scientific work, which should result in an enormous benefit to employee and employer. I hardly believe it necessary for me to point out the benefits of prevention, especially to you of this organization who see so many thousands of accident cases coming before you each year. You can readily agree with me that it would have been far better had preventive measures been so applied that these men could have reaped the benefits of their application rather than pay the penalty inflicted by their omission. Of course,
I do not mean to imply that these cases can all be eliminated by even the most careful preventive measures. My industrial experience in the past 12 years has rather led me to believe that, in some instances, the harder you strive to keep some employees out of trouble the more certain they are to get into it, and it would seem that they apparently derive great satisfaction in breaking all rules and regulations. Then, again, there are accidents which are truly accidents and entirely unavoidable, even though an analysis might indicate that if so and so were so, then it would never have been thus.

The problem is, How is this prevention best to be carried out? And my answer to this question is: By the joint efforts of the medical and safety departments, with the cooperation and help of every individual of the organization. It is not my purpose, neither am I qualified, to deal in this paper with the problems of the safety department. It is, however, my purpose to convey to you the medical preventive methods which are followed by the Du Pont Co. in an earnest and sincere desire to overcome accidents, illness, and permanent disabilities and at the same time maintain and improve the health of its employees with the resulting increased efficiency.

The first step toward the solution of this problem is made at the time of employment. Each applicant is sent to the medical department before he is allowed to go to work. Here he is given a careful and thorough physical examination in order that he may be properly classified and a determination made as to whether the man and the work will properly fit together. In other words, we try not to send a boy to do a man’s work, nor to send a moron to fill the position that requires intelligence; neither should the man with 50 per cent of physical impairment be expected to do the work that demands 90 per cent physical ability. Our object is to select and place the men in such positions that their physical conditions and the working requirements will be approximately proportionate. By following this method our rejections are reduced to a minimum and outside of old age, infectious conditions, and cases where the physical condition is such that the man is unfit for any kind of work, we are able to place the majority of those examined. Of course we have, especially in the chemical industry, operations that should be carried on only by men in the best of health, and in these operations we feel that for the safety and best interests of all concerned no exceptions should be made.

I recall that several years ago large industries were making physical examinations with the sole purpose of protecting themselves, but I feel certain that this procedure is rapidly being supplanted by the newer and better one of proper classification. There has been the development of some human consideration, and we realize that even though a man shows physical impairments which may be considered as dangerous under improper working conditions, yet he must work to support himself and family, and undoubtedly he is far safer working for the industry that fits him to his work than he is in the one that places him irrespective of either work or physical condition.

During the course of the examination we often detect minor physical defects which should be corrected, and these are always called to the attention of the applicant, with the hope that he will give them
the proper attention. He is referred to his family physician, and often by future examinations we find that the conditions have been remedied; of course, others have failed to follow our advice. In many instances our own medical department corrects some minor conditions.

We find that the majority of our men pay no attention to their teeth, and to overcome this serious and important condition we have established in some of our larger plants a dental service in charge of a full-time dentist. This service includes all forms of prophylaxis, repair, extractions, and even plate work. The work is done on company time and a nominal charge is made for the work. The service is open to all pay-roll men who have had six months' service, and it has accomplished splendid results toward improving general health among our employees. Also, the employees are well pleased with the work and few of them fail to take advantage of it.

So much for the employment examination; but to stop here would be of small gain. There must be repeated periodic examinations, the frequency depending on the kind of work that each man is doing and the health hazards existing. To regulate this, we divide our work into several different classes, each class requiring examination at periods varying from once a week to once a year. With the appearance of any symptom or symptoms that indicate that a man's work is detrimental to his health, he is immediately transferred to some other department, and whether he is returned to his former work or not (after all effects of exposure have passed off) depends upon the results of our investigation of the case.

We occasionally find men who show a hypersusceptibility to some of the chemicals we manufacture. When we find a man who has been working under our normal working conditions, and has been following all the rules that govern the operation, showing symptoms of illness attributable to his work, and his fellow workmen showing no ill effects, and when all possibilities of accidental exposure have been eliminated, that man is probably hypersusceptible and should not be allowed to continue in the operation. Then again, if we find a similar condition in several men of the same operation, the symptoms appearing about the same time, we usually find that the source of the trouble is in the operation and the best way to relieve the situation is to go into the factory and carefully study the conditions existing before trying to solve the problem.

It must be remembered that many of our chemical operations have to be controlled by regulations that must be worked out by experience, inasmuch as industrial preventive medicine has not yet progressed to the point where ready reference can always be made in literature to the experience and advice of those who have been through similar experiences, especially when the conditions are entirely new and represent pioneer work in the field.

Let me tell you of one of our problems that had to be solved a few months ago. One of our plants had recently started to use an entirely new material in one of its products. This material was a fine powder, highly explosive, very light and dusty in character, and soon proved to be very irritating to the mucous membranes and skin, producing conjunctivitis, ulcers of the nose and throat, and a persistent dermatitis. The operation was carried on by girls. We very soon
realized that there would have to be devised improved methods that would eliminate the health hazards, or it would be necessary to discontinue the new operation. After a careful study of the situation we decided that a ventilating system of special design, with a hood over the workbench, would no doubt improve conditions. Our engineering department set to work designing and installing the system, and while this work was in progress the operation was restored to its original basis in order to prevent further risk to our employees.

A careful search of the medical and chemical literature gave us no help, because no one had used the product; therefore our regulations for safe handling had to be formulated without the help of past experience.

With the completion of the special ventilating system we felt that more rigid sanitary measures than used previously must be put into force. We formulated these sanitary regulations and then proceeded to enforce them.

It is comparatively easy to formulate regulations, but not always so easy to enforce them, and the desired results depend on rigid observance of every detail. We find that the best way to get rules functioning and their importance realized and understood properly is for our medical department to get into the operation and stay there long enough to explain to and convince our employees of their necessity and value. Once this has been properly carried out the rules will usually be followed diligently and conscientiously.

Accordingly, my associate, Doctor Lawler, spent his entire time in the operation for several weeks, explaining the importance of following our rules and teaching the employees how to protect themselves. He encountered considerable trouble in the beginning, due to false impressions and prejudices formed during the previous use of the material. At first every manner of ailment was again attributed to the use of the new powder. This was overcome by giving each one a careful examination and then telling her just exactly what was the trouble and explaining the difference between her condition and that caused by the powder. Gradually the prejudice and fear were overcome and the work settled down to regular production, with no evidence of dermatitis or mucous membrane irritations referable to the material being used. This work has been going on now for several months without a semblance of the former trouble. A hazardous occupation has been eliminated, our employees are no longer in danger of occupational illness, and our compensation cases in this department eliminated.

So much for prevention, by which we maintain better health, increase efficiency, and do everything within our power to eliminate the necessity of placing our employees on the compensation pay roll. The initial cost is great in many instances, but the results more than warrant the expense.

The second problem is the cure of those cases which by reason of accident have to be placed in the compensation class. It is our feeling that when an employee is sick or injured as a result of employment, it is our duty to get him back to good health by the best treatment obtainable, regardless of the expense, time, or trouble necessary to obtain that result.
Every possible effort must be made to prevent or overcome permanent disability. The handling of our clear-cut cases according to the compensation laws is comparatively easy, but we often encounter a case that is not a clear-cut one, the etiology being obscured by several factors. For example, we recently had a case involving unusual visual impairment.

The case occurred in a man working in an operation where the handling of wood alcohol was necessary. This man twice a day drew 10 gallons of wood alcohol into two 5-gallon cans and immediately emptied them into an autoclave, which was closed and sealed at once. From this point on the operation was entirely closed. His total daily exposure would not exceed 30 minutes and would be very slight. The building is well ventilated, and the operation has been going on for years without ever having had any similar conditions.

However, this man's vision became slowly impaired. As soon as we became aware of his trouble he was removed from the operation because we felt that every possible precaution should be taken to hasten and facilitate his cure. After a few days it was apparent that the man's vision was growing worse. We immediately sent him to Philadelphia and placed him under one of the most eminent eye specialists of that city.

A careful study of the case, in conjunction with several eye specialists and with the aid of an internist and pathologist, revealed three possible causes of this man's condition: First, the wood alcohol; second, excessive use of tobacco; third, focal infection. Each examiner expressed himself by saying the man's vision might have been caused by his occupational exposure to wood alcohol, but each was uncertain as to the exact etiology. Under treatment he improved and is still improving, but will have some permanent disability. We feel certain in our own minds that this man's condition was not brought about by his work. This feeling is based on our years of experience in which we have had no trouble that in any way simulated this case. However, this case has been classified as compensable because there is an element of doubt as expressed by highly reputable men; therefore we will give the man the benefit of the doubt. The case will be referred to the State compensation commission to decide the amount of permanent disability, and we have the highest respect for its judgment.

We make it a rule to treat our own cases of accidents and occupational diseases, especially the latter, because we feel that our past experience in handling these cases has made us familiar with the specialized treatments required in each condition, and in many instances the regular practitioner has had no experience along these lines and consequently is not in a position to obtain the most desirable results. For this reason it is particularly important to keep an accurate check on each man employed in a hazardous occupation, this check to be made daily, and if he fails to report for duty, then the reason for his absence must be investigated at once by the medical department. In this way we sometimes prevent our employees from receiving improper treatment. Let me illustrate this point. Several months ago one of our men working in lead failed to report on a Monday morning. One of our plant physicians went to the man's home and there learned that he had been sent to the hospital. The
doctor immediately went there and found the case diagnosed as appendicitis and the man scheduled for an appendectomy. The man was suffering with lead colic and not appendicitis.

Thus you can see the importance of following our own occupational conditions, in order to give our employees the advantage of the experience which is so often lacking outside of industrial practice.

The rehabilitation of our employees with permanent disabilities presents many difficulties and calls for careful study and reclassification of physical ability, in order to fit the man to his work and to develop him along lines that he can with proper training follow to the best advantage.

We make every possible effort to provide these employees with work that they can perform satisfactorily and at the same time feel that they are really useful. The cooperation of this group is usually good, although occasionally we have cases which are almost unmanageable, because they feel that not only are we compelled to pay for their disabilities but also must furnish them with work as long as they live.

In conclusion, I will say that I am not taking the stand of being either for or against self-insurance. It would seem to me that from the industrial physician’s standpoint it should make no difference what the insurance conditions are. The success of his work depends on and is measured by his ability to formulate and enforce regulations and methods that will advance the principles upon which the work is founded—prevention, cure, and rehabilitation.

DISCUSSION

Mr. Stack. The gentleman from Oklahoma said a while ago that all kinds of work were hard. I think it would be quite interesting to the men here if Doctor Gehrmann would explain to us the various methods the Du Pont Co. has of classifying its employees. Doctor, I mean those four classes, A, B, C, and D. You are familiar probably, Doctor McBride, with those classifications.

Doctor Gehrmann. When we examine our men for employment, they are classified into four groups, A, B, C, and D. A class A man is a man in whom we find no physical impairment. He is fit for any kind of duty at any time and anywhere in our plants. A class B man has minor physical conditions which can be overcome by proper treatment, and he also is fit for duty in any part of our plants. A class C man is fit for special duty only, and he is sent into the plant with the understanding that he is to perform special duties and under no circumstances is he to be transferred from that position to another without first consulting the medical department. A class D man is a man who is fit for work of the very, very lightest nature, and he is sent in with the understanding that he also will not be transferred from the work in which he starts without first consulting with the medical department to determine whether or not it would be safe from his standpoint and from our standpoint to do other types of work.

Mr. Stack. In what class are you placing your hernia cases?

Doctor Gehrmann. Our hernia cases would be placed in class C.
The CHAIRMAN. Are there any other questions anyone wants to ask Doctor Gehrmann?

Mr. Kernan. I would like to ask this question: Suppose the gentleman he referred to that had an impairment of his eye lost the sight of that eye, what would be the method of procedure? Would he continue his work or would he be discharged as being a menace or danger to the industry and to his fellow workmen?

Doctor Gehrmann. The trouble was in both of his eyes. However, it would make no difference. In all of our cases of permanent disability, regardless of the degree, we always find some work for them.

The CHAIRMAN. The next paper on the program is one by Doctor Abercrombie, the State commissioner of health, of Atlanta. I take great pleasure in introducing Doctor Abercrombie at this time.

INDUSTRY AND PUBLIC HEALTH

BY T. F. ABERCROMBIE, M. D., STATE COMMISSIONER OF HEALTH, ATLANTA, GA.

In recent years the question of the health of the industrial employee has assumed great significance in the field of curative and preventive medicine. Health is a great industrial asset. A large number of concerns are spending enormous sums of money to keep their workers physically fit. They find that it pays from an economic standpoint.

One concern employing 4,500 employees found, before instituting medical service, that they were losing from cost of illness due to sickness $67,500; cost of absence from sickness, $150,000; production loss from sickness on the job, $50,000; loss to workers in wages, $162,000; loss through reduced earning capacity, $40,000; medical expense to workers, $45,000; public expense and charitable relief, $56,000; total, $570,500.

The justification for industrial medicine lies not only in the reduction of absences from sickness, but also in the prolongation of lives of usefulness of the older and more experienced employees. We have no statistics on this subject, and it will be a long time before the ultimate effect can be appraised.

Our present knowledge indicates that while the average length of life has been increased as a whole, that of the industrial population has shown no relative increase. Hackett in his Health Maintenance in Industry says that the blacksmith dies at the age of 55, and the machinist at 44 years of age, 11 years earlier. The average span of human life of all classes is 58 years.

If medical service can prolong the life and usefulness of the skilled machinist even for a few years, the benefit will be substantial. This could be accomplished by a thorough physical examination of the applicant and a check-up or reexamination once a year of each individual. In this way minor ailments that would affect the earning capacity of the individual will be caught and remedied, and prevent a loss to the individual as well as to the industry which he is serving.

The physical examination will reveal, in one instance, bad teeth; in another, defective vision; another, a quiescent case of tuberculosis; another, an old case of venereal disease; another, some slight heart affection. Many of these are not advanced to the stage that would
cause a rejection, but if taken in hand and handled properly the individual will be kept on his feet, and his earning capacity will not be seriously impaired.

Industrial accidents cause probably about 25 per cent of the disabilities, and when studied closely and thoroughly in many instances will be found to have a direct relationship to some physical impairment such as ill health, fatigue, or worry. An employee worried, in ill health, or fatigued may be compared to a machine operating when not in good working condition. Any one of a number of things, accidents among them, is liable to happen in consequence. And accidents cost money. Statistics further show that the average industrial worker is absent from duty six to nine days each year due to insignificant ailments. In the case of salaried workers this loss falls wholly on the industries; while in the case of hourly paid workers the loss is divided—the worker losing the wages, the concern the output.

Where absenteeism lasts so long as to require workers being replaced, the loss to the industries increases heavily. Estimates vary as to the cost of hiring an employee, but besides the first cost wastes of one kind and another are involved. Often the worker is no better in health than the one replaced. The accident hazard is increased, output lessened, and defective work increased. Here is another economic reason why big business is interested in health.

Two new industries opened in Georgia for business within the last few weeks are giving their employees thorough physical examinations. One is the Johnson & Johnson Manufacturing Co. at Gainesville. It is providing, besides the physical examination, thoroughly sanitary and up-to-date equipped houses for its employees to live in. The Pullman Co. is the other one. It is just opening shops in Atlanta, and is to be commended for the medical service it is providing for its employees. Many of the older concerns are providing medical service of various degrees.

The medical examination, in addition to catching the major defects which mean a direct loss to the industry or concern, will also catch submerged or minor defects that will mean the prevention of a breakdown at some future date.

As to results accomplished from the direct application of health work to industries, the Metropolitan Life Insurance Co.'s figures are probably more accurate than any others we have. Its statement for the year ending December 31, 1926, shows that lives saved among industrial policyholders from 1911 to 1925 in excess of general mortality improvement numbered 240,000; lives saved among policyholders in 1926, as compared to the death rate in 1911, numbered 63,330. In other words, by the application of protective health measures to industrial workers it paid 63,330 fewer death claims. This means that not only fewer death claims were paid, but it also means happiness and well-being for thousands of families.

There is one other phase of industrial health that should be mentioned and stressed considerably more than is being done at present. That is, in studying the figures of absenteeism it is found that influenza, grippe, and colds head the list. Nonindustrial accidents come next. Just a word about influenza. Those of us who have made a study of the spread of this group of diseases—influenza, grippe,
and colds—know that they are spread by contact; that is, from the sick person to the well person. It will be necessary for us to educate the industrial worker that whenever he has a cold of any kind he must protect his neighbor worker from the secretions of his nose, mouth, and throat. If we can do this, we will save the industrial world thousands of dollars and the workers untold suffering and loss of earnings.

In conclusion, I think it can be safely said that big industries recognize the economic value of health and health work to the industrial employee. Physical examinations should be made on entrance to any industry. These should be followed by a yearly check-up to catch minor ailments that might show up.

Special study should be given to the nonindustrial accidents which happen from overwork and fatigue during working hours.

Also, the matter of the spread of colds and grippe should be given more careful consideration.

DISCUSSION

[Hon. Clifford Walker, former Governor of Georgia, and R. C. Norman, former member of the Georgia Industrial Commission, here addressed the meeting.]

The Chairman. We left for further discussion the question of eye disability. I think it was taken up yesterday afternoon. If we have time I think it might be well to continue that question. If you care to now, the Chair will have the points raised or if you do not want to solve the points involved by the questions of Mr. McShane and Mrs. Roblin, we will dispense with that and go into a general discussion of the papers that have been presented or any other matters that you want to take up.

Mr. McShane. I think it would be an opportune time to hear from Mr. Wilcox on what they are doing out in Wisconsin on the schedule that we adopted at Hartford last year. I think he is prepared now.

The Chairman. If there is no objection we will hear now from Mr. Wilcox of their experiences in Wisconsin.

Mr. Wilcox. The administration of workmen's compensation is a tremendous and overwhelming task, and when you stop to think that to a comparatively few men and women, with practically no appeal, there is committed the determination of the rights and liabilities of the manufacturers and insurers on the one hand and of the employees on the other, throughout the entire United States, you will know that it is a serious business. We have had exemplified in these last few minutes that there are others outside of our group that recognize it is a serious business. When an ex-governor gets out of a sick bed to come here and commend a group for coming together as we have, you can know that he thinks likewise.

And that is one reason for my being ready at this time to say just a word with respect to this adoption of a system of rating eye disabilities. My chief reason is because I have faith in the doctors who were appointed by the American Medical Association to make a study of this subject and who have told us in various ways that the plans that we are using in all of our States are little else than a mess. That
makes me dissatisfied with myself and with my administration in my State and that is the reason why I am willing to take time to get away from it, whatever time it takes.

Simplicity is urged upon us with respect to these laws, but we are thinking, when we talk of simplicity of acts and of plans of administration, primarily of the interests of the employee and the employer. Simplicity is not for you and me. Ours is a job, and we should give all the time that is necessary to it. If it takes something other than the most simple type of plan, then we have to give ourselves to it.

The American Medical Association has called attention to the fact that we are not, as I said a moment ago, administering the rating of eye disabilities in a manner that is at all creditable. I am not an oculist and I am not able to discuss this with anything like the technical ability with which it ought to be presented to you. If you must understand all the things that are back in the heads of the American Medical Association in this eye section, in the development of their plan, I can not help you. I do not know any more about that subject than I do of many of the subjects that these doctors have talked of to us to-day. But I call doctors before me to help me, and if I have faith in them then I am going to take their word for it. I judge them and make up my mind as to whether they are right or whether they are wrong, and if I can picture the right then that is where I want to go. I do exactly the same thing with regard to these men who have provided a scheme for the rating of eye disabilities.

Primarily, it is simple. It is simple from the standpoint, I think, of administration; simple from the standpoint of you and me. The technical end of the thing the doctor has to solve. Doctor Black tells me, and all of the oculists that I have consulted tell me, that after all, given the rules, given the plan, with ordinary directions, the eye specialists will understand the technique of it, and, given the blanks, they will report to us in a fashion to make it possible for us to apply the measurements in our several jurisdictions.

Now, we rate eye disabilities, and I suppose you get reports from doctors just as we do, and they tell you that a man's vision rates 20/200, say. Well, when they use the number "20," they probably mean distance vision, they do not mean near vision at all, because in the ordinary formulas for rating near vision 14 inches is used, the rating being expressed in the terms, 14/14, 14/21, 14/28, and so on. These men who have studied this thing say that near vision, if you take it on the average, is the more important of the two functions. This thing is borne in upon me, and it will be borne in upon any man who has to wear a bifocal lens in order to see near and to see distant. If you wear that type of glass you will find out when you come to shave that you can not get your head high enough to see out of the lower part of your glasses or get up close enough to the mirror. So these things are borne in on us that it is not alone distance vision that ought to be given consideration but near vision as well, and as a matter of fact near vision is the more important of the two so far as dealing with the work is concerned, dealing with the usefulness of an eye. So this committee that has studied this thing and finally procured the adoption of its plan by the American
Medical Association and which we have adopted as our plan, has said
that both near vision and distance vision should be measured in each
of the injured man's eyes.

And then when we rate visual efficiency we should not disregard
the uninjured eye. You have to have the uninjured eye in the pic­
ture the same as you have the injured eye and they must both be
measured. You give the uninjured eye a factor of three, the injured
eye a factor of one, and out of the result of that, by dividing by four,
you get the actual visual efficiency, and from it the loss of visual
efficiency of the two eyes. The committee does not allow us to stop
there. It says that then you must find out the field of vision and it
gives you a chart by which that is determinable, and it is our plan
in Wisconsin to have on the report that the doctor is to submit to us
a chart upon which to plat the action of this eye. The committee has
adopted rules by which you determine the result.

Likewise with the question of diplopia, the committee has another
chart, by which with your eye fixed at a certain point it can be seen
whether there is double vision here, and there, and there, in 20 dif­
ferent points of view. Those are all tests that are familiar to the
specialists on eyes. Then out of the combination of those three
factors is determined this man's loss of vision because of the accident
in question.

It is difficult for me to outline this plan since I do not have the
theory underlying this thing and I do not understand it well enough
to be trying to explain it, but I am simply saying to you that we are
endeavoring as best we know how to make our law and our rules for
measuring of eye disabilities fit in with this scheme that the
American Medical Association has laid down for us. The rules have
not been formally adopted in Wisconsin. We had to have an amend­
ment to our law and we thought that the legislature was going to
give its approval some time about the middle of July but that failed
and it went over into August. It was not until along toward the
end of August that we were able to have a meeting. Then we called
a meeting of all the eye specialists in the State and the insurance
men, employers generally, and employer associations. We had a day
session in Milwaukee where the rules and regulations were discussed
at length and readjustments made in the light of the legislation that
fitted the scheme into our law and our law into the scheme, and we
are now ready for its final adoption.

If I could have gotten our mimeographing department working
before I came, I would have had copies distributed to each of the
members here, but you know that at the last minute you have a
thousand things to do and you can not always do all you wish to
do. The result was that I had to come unprepared to furnish you
with copies of the rules as we are adopting them. But I will prom­
ise the association this: Within a few weeks we will have our rules
adopted, with our charts, in the form of a report that is to be sub­
mitted to the doctors to give us the estimates of disability. We will
have this ready for distribution, and then I will see that each of you
have a copy of what we have done. It may be helpful to you. I
hope it will be, and if anything you have done you think may be
helpful to us, I would like to know about it. I would like to know
what you do anyway, have a clear explanation of what you are doing, so that we can apply it if it is practical under our law.

Mr. Duxbury. I would like to ask, Mr. Wilcox, what was the specific change which was necessary in your law in order to make this plan available so that it could be used?

Mr. Wilcox. Wisconsin has, as you know, rather a different type of rating of permanent disabilities than that which is applied in other States. We set up a major injury schedule for age 30, and at age 30 for permanent total disability we pay a thousand weeks; that is nearly 20 years. We pay a certain percentage of permanent total disability for all major injuries, loss of arm, leg, foot, eye, ear, or whatever it may be.

Mr. Duxbury. That is practically the schedule for permanent disabilities adopted by this association at St. Paul.

Mr. Wilcox. As far as percentages are concerned, it is the same thing. The only thing Wisconsin did was to include—I think the committee on statistics urged an age factor, didn’t it, Mr. Hatch?

Mr. Hatch. Yes.

Mr. Wilcox. We undertook to apply an age factor and that runs up to age 70. Let me give you an illustration. For the loss of an arm at the shoulder or a leg at the hip, at age 30, compensation is paid, in addition to healing, for a period of 1,000 weeks on the basis of a 50 per cent impairment. Our maximum average annual earnings in Wisconsin are $1,500, so that translated it means $9.75 a week, after the healing period, for a period of 1,000 weeks for the loss of a leg at the hip or an arm at the shoulder. For other disabilities the percentage will be less.

For age 70 the man who loses his arm at the shoulder or his leg at the hip will be compensated on the basis of 85 per cent of his weekly compensation for permanent total disability, but compensated for only 280 weeks, just a little over five years. In other words, the man who has reached the age of 70 years or is older than 70 is treated as being almost totally disabled by the loss of an arm or a leg.

That factor runs all through. It is a gradation from 30 years on up to 70 years and over. For the loss of vision of an eye, at age 30, the percentage is 20. The American Medical Association said that for the loss of the vision of an eye the percentage should be 25. That set us back right away; we could not get away to their plan without having our law fixed over, and so this session of the legislature has said that for the loss of the vision of the eye at age 30 a man shall be treated as if he had suffered 25 per cent of permanent total disability.

The Chairman. This is a mighty important and intricate question, the consideration of eye disability. I think you all appreciate that something radical should take place, and if we can get some proper solution of it whereby an extra adjustment may be made that will fit all these States and the Provinces we shall have done a great work. I am very grateful to Mr. Wilcox and I am sure you all are, and I hope just as soon as his law is fixed and the materials available that he will remember his promise and mail us Wisconsin’s experience, just what it does.

Is there any other discussion or any other questions to be raised or any matters to be taken up at this session?
Mr. Wilcox. I can not help but recall the paper of Doctor Gaines this morning. The problem of the neurotic case is after all how to handle it inside the commission. I remember explaining at the Chicago convention, rather illly perhaps, what we are undertaking to do on this type of cases in Wisconsin. We have followed that up since that time and it is very helpful to us in the disposition of neurotic cases.

When we find we have a case of neurosis attributable to accident, we try to fix in our minds the degree of the neurotic tendency—is it serious or is it less serious—and when we have worked that out to our satisfaction, we try to figure out the probable period of disability that this man would sustain if treated by the most advanced methods known to men who handle that type of case. And when we have our minds fixed on that, we call before us the employer or the insurer or both. We do not call in the injured man; we do not call in his doctor nor his lawyer nor his wife nor the brothers-in-law and the sisters-in-law nor anybody else who has given him a lot of advice as to how seriously he is injured.

We then work out with this employer or insurer the proposition that this commission is going to enter an award, on its face final in every respect, for its psychic effect upon this injured man and his lawyer and his doctors and all the rest of them. We figure the indemnity over that period of time and it must be a sum sufficient to clean up the current debts. That is first.

Now do not let us get our minds off the subject matter. This fellow's mind has to be set at rest. You have to get him straightened out and you have to figure his compensation for a certain number of months in advance and it must not end in the middle of the winter when there is no job for him. It must tide him over until his opportunity for getting work is back and he can get out in the sun and get limbered up. Then we say to this employer or insurer, we will enter this award, final in all respects so far as it shows on its face, provided he will agree with the commission, in writing, either by letter or by dictating it into our records, that if the amount of compensation that he pays in a lump sum to this injured man shall not be sufficient in our future experience to have compensated him for all of the disability that results, then, as between him and us and the injured man and everyone, it shall be understood that this case is open and we may call it up again and do essential justice.

Mr. Eppler. Suppose the injured man is not satisfied? Suppose his lawyer is not satisfied or his doctor?

Mr. Wilcox. He has a right to appeal to the courts.

Mr. Eppler. Will you give him a hearing before your commission?

Mr. Wilcox. We have had our hearing already with him and we have taken his testimony and the testimony of his doctors and witnesses. We know what his condition is. We are satisfied that he is suffering from neurosis, and that treatment in this fashion will cure him and that he will come back at the expiration of that time, return to health, and be able to work. His hearing is over. He will have the right to appeal, but he will not appeal. He will take his money in a lump. We have never had one of them appeal yet. They take their money in a lump and go their way. In all our experience
since that Chicago convention we have never had occasion to reopen a single case. The amount of money we awarded, and we do not award many months in advance, was sufficient to restore the men and they came back long before the time. Sometimes a man was paid more money than would compensate for the actual disability he suffered, but after all it was money well spent.

Mr. Stack. Why do you not call the injured man in?

Mr. Wilcox. If you call him in and tell him you are going to keep the award open, in case it does not work out all right, he will never go to work. He is a sick man, everybody tells him so, and he will not go back to work. I have lawyers who think that that is not ethical and doctors who question it and all that sort of thing, but I am just as concerned with ethics as they are and just as concerned with the final recovery of this man as they are, and I think that as long as I preserve in our records that information so that my successors and everyone can look and read and know, I protect him.

Mr. Stack. Have you had many appeals taken?

Mr. Wilcox. Never, from an award of that sort.

The Chairman. I have one question. Have you any idea at this time about how many cases you have settled on that basis?

Mr. Wilcox. I can not answer you, Dr. McBride, but we have that same grist of cases that you have. Our experience is not unlike yours here in Georgia, or yours in New Jersey. We are dealing everywhere with this type of case.

Mr. Suppiger. May I ask you how you keep that information from getting to the injured man. Your records are more or less public. You have clerks; you have three men or commissioners; you have secretaries on your board. How do you keep the information from getting out of your records?

Mr. Wilcox. In the first place, the man's mind is immediately disabused of the fact that there is anything else. He gets an award in final form which tells him that he gets $300, $400, or whatever the amount was, and that that fully compensates him up to a certain period, and we write into the award that the commission believes that before the expiration of that time this man is to be restored to full health. Everything in the paper that he gets is calculated to make him believe that this is the fact and that has proven to be the fact, and he does not ask to get back into the records.

Finally, we do not let him have the record. We do not let him have access to it. We do not let his lawyer get it either. I will say this, Mr. Suppiger, it is usually taken in shorthand and written into our records just like testimony, by stipulation of the attorney for the employer or the insurer as the case may be.

Mr. Stack. Do you in those cases use the physician or rate your conclusion on the testimony?

Mr. Wilcox. Well, when you have a case of neurosis, you usually have pretty much of an agreement between doctors. Doctors are not very much in disagreement on a case of that sort. If they are in radical disagreement, then under our law we have authority to have the man sent out for another examination and we do that.

Mr. Duxbury. If you have the evidence.
**The Chairman.** I infer from what you say that you are rather generous in the settlement of those cases.

**Mr. Wilcox.** I confess that we are generous in our settlement. When you are niggardly with your settlement you are apt to undo the very thing you are trying to do.

**Mr. Klaw.** I should like to ask a question. Do you follow up those cases to see whether or not they have worked out, or do you go on the assumption that the fact that the man does not come back squealing proves that it has worked out properly?

**Mr. Wilcox.** We investigate every single one. We have a follow-up in our records. This case is not closed. As in all States, when cases are finally closed, it is an end result and the case is filed away with closed cases. This case is not. It is an open case as far as we are concerned, and we put a follow-up card along with his docket card so that on a certain date that case is re-referred to whomsoever handled it, or to me or some member of the commission, so that we may again check up on that case, and we go into it thoroughly to find out what he is doing, how he has gotten along, etc.

**Mr. Klaw.** You have disposed of probably half a dozen cases for the Du Pont Co. along those lines and I might state that they have worked out very satisfactorily, especially so far as we are concerned, because we know that if the case had not been settled in that fashion it would probably have dragged on and on and we would have been paying more and more money.

**Mr. Wilcox.** You must be very discreet in your check-up of your case, when you come to check it up again, not to arouse the man’s suspicions that there is something hanging back. We usually get in before the expiration of time for which he has been compensated. Another thing we try to do is to make certain that the man gets decent treatment; that somebody is around to give him the kind of work he is suited for, and to get him back on the job.

**Mr. Stack.** Do you say to that indigent employee, when the payment is handed to him, “Your case is closed”?

**Mr. Wilcox.** We enter an award in all those cases. It is not a settlement between the insurance carrier on the one hand and the man on the other. We issue a formal award, which is provided for under our law, in which we recite all of the facts. I will admit to you that we use language in that award which is calculated the best we know how to make this fellow understand that his case is that kind of a case. The benefits are final. At first we used an expression in our award which meant to everybody around the department that it was not final. We use this expression, “upon the evidence,” just like a court would, “the commission makes the following findings of facts,” and then we say that “we conclude that this man should be awarded so and so much.” In this type of a case we say “upon the evidence and the representation of the parties” — that clause, “and the representation of the parties,” is the suggestive phrase.

You can go along with that kind of a thing about so long; and then, when you are dealing with one of these lawyers who has been in on the insurance side of the case, when he reads that, he knows that language means something; when you are dealing with that kind of a man you get the record in shorthand, and you do not
write it; we get it for our own records in writing, and we do not put it in the award.

We never yet have had an employer or insurance company refuse to agree to it, and come right along and do whatever we said. We often have to go back to the employer and say that he must see to it that this man gets a job. He has to help on it. "You help, or else the end result may not be as you want it, and you will have to dig up some more money"—and that has a salutary effect upon the employer.

Mr. DUXBURY. I have another question. Do you regard that agreement which you make them sign or stipulate in your record as absolutely essential to the right of the commission to reopen the case if the developments prove conclusively that it should be?

Mr. WILCOX. Our law, like most laws I assume, has this provision, that whenever the commission has entered its findings and conclusions, if any party is dissatisfied with them he may within 30 days, as it is in our State, appeal to the circuit court, or ask the circuit court for a review of our findings.

Now you can understand that if you are to carry out this plan, and disabuse this man's mind of the fact that he has still more coming; if you are going to write an award which on its face is final in form, then you are gambling on the other side coming through in case this thing does not work out right and saying, "Well, you entered a final award in this case and we are all done."

Mr. DUXBURY. Under our statute I think we would have an absolute right under the provision of our statute to make an award and reopen the case in any case, no matter how much finality there may be.

Mr. WILCOX. In Wisconsin we do not have that. Our awards may be final, and if they are final awards then you must appeal within 30 days.

Mr. STACK. Your law then, I take it, does not say the award is subject to review? Your law does not compel your commission to write into its award, "This award is subject to review by either party interested"?

Mr. WILCOX. It would if you want to have reservations in your award. If you want to have the right to review at any time in the future, you have to put it into your award, of course.

Mr. STACK. Quoting the section under which the award can be refused. We frequently do that in Delaware.

Mr. WILCOX. Of course, the minute you write in "opportunity for review or reconsideration"—it may be essential in many cases, but with a neurotic you just nullify everything you are trying to do.

Mr. DUXBURY. My thought was that under our statute I do not think we would need that agreement; we would have that right anyway and we could reopen.

Mr. WILCOX. That is probably unfortunate because his lawyer will know the same thing and there will always be wrangling to reopen it.

Mr. DUXBURY. That might be true, but in the event that we did not guess right and his disability persisted and he did not get well under
this treatment we were giving him—it did not effect his recovery—it seems to me we would have a right to reopen.

Mr. McShane. I want to say that in Utah we attempt to handle our neurotics pretty much on the same plan as Wisconsin and we are getting by with it. We sometimes feel that we are on thin ice and that we may go through but we have not done so yet.

With regard to Senator Duxbury's proposition, that under their statute they have a right to open up a case, I take it that most of our compensation acts have a continuing jurisdiction clause. When once the jurisdiction of the commission has been invoked and some formal action has been requested by the parties in interest, then we in Utah have continuing jurisdiction, and I think from reading other acts that it is pretty much the same in all other States. But even in the case of a neurotic, when you are going to enter an award, you must do it on some basis. Under our clause in the Utah act (I refer to my own State because I am familiar with it), if we find or conclude after our findings that the man is disabled to the extent of 25 per cent, and we make an award for 25 per cent disability to bodily function, not provided for in the special schedule, that will give the amount of the award. There is in every award the 20-day notice, that the man must ask for a rehearing within that time if he is dissatisfied. If he does not do it and we award upon that basis, then, unless he comes in at a later date and shows that his disability is greater than the 25 per cent, he can not get it. I believe the same is true under the Minnesota act.

Mr. Duxbury. No.

Mr. McShane. Then if you pay for a condition and that condition does not change, how do you get further jurisdiction if the man does not exercise his right? He has a duty to perform as well as the commission, and that duty is to comply with the statute and appeal within the statutory period, and if he does not do that and the condition does not change, how are you going to get away?

Mr. Duxbury. The condition does not change? If the condition does not change there would be no basis for vacating the award.

Mr. McShane. But if you base it on a definite amount of 25 per cent disability and pay for that?

Mr. Duxbury. If we have a temporary disability, which this is under our statute, if it appears to the commission that the amount of the award was inadequate according to the facts of disability as they developed and exist, that we have made a mistake in our adjudication of the amount of disability, we have a right to vacate that award and make a new award and there is no limitation upon the time. We may vacate the award of our own motion and there is no limitation upon the time in which we may do it. The question has arisen once or twice as to whether or not the statute of limitations applies to that right to have that award vacated, but it is not in the statute expressly and I do not think any limitation exists. Of course, delay of a long period of time might justify the commission in its decision in denying the application to vacate the award, but our power is there.

Mr. McColl. I think there is one matter that Senator Duxbury has forgotten to mention. Possibly I am in error. He will know. The
only appeal from our commission is to the Supreme Court of the State of Minnesota. There is no intervening court. If my memory is correct, unless an award has been reduced to judgment or a writ issued by the supreme court, either one of those two things, then we could not reopen the case, could we?

Mr. Duxbury. No; that is true, I think, in the one and not in the other. Under the wording of the statute, if the award has been reduced to judgment—that is, certified copies of the findings of the award procured and by motion the judge orders a judgment in the district court where the execution enforces the award—that seems, under the terms of the law, to end our right to vacate the award. My position is not exactly like theirs in Ontario, but I am right until someone says I am not. I have held that our power to vacate that award is suspended while the case is pending in the supreme court, but after it has been remanded to the commission our jurisdiction covers it just the same as before. I do not think that is conclusive and final during the period the case is pending in the supreme court, but if it is remanded to the commission, we have jurisdiction just the same as in any other case.

Mr. Hatch. I might say that we have in New York the same situation that Mr. Duxbury says they have in Minnesota. The commission has practically continuing jurisdiction to correct any errors or to consider any changed conditions. However, in New York, we have the custom of calling a case closed at a certain stage; that is, when apparently we have arrived at what the disability is, that it is determinable and ascertainable and we have properly ascertained it; but it is traditional with us that actually a case is never closed.

I am impressed with the fact that because of the difference in background in Wisconsin as to the finality of closing awards from what exists in New York and in Minnesota there is an essentially different situation as to the adoption of the method to which Mr. Wilcox refers, because in New York everybody knows a case is never closed if evidence of error or change in condition can be produced. If we make an award for a lump sum on the basis of a certain number of weeks up to a certain date, it is always possible for the party to come in and claim the disability is still there and that it is still going on; that it has gone on beyond that date and therefore all that the claimant is entitled to under the award has not been granted, an error has been made, and the award must be reopened. We have two or three cases before us now; in one which happens to be my particular charge I am going to try out, the best we can with the New York general situation in the background, just what you are doing in Wisconsin; namely, to impress the claimant with the idea that this is final so far as compensation possibilities are concerned, and that it is now up to her to find employment and get herself back on the job and do her bit. I can see that we are in a weak situation as compared to Wisconsin, where the understanding is that when you say it is final it is final, except as you have a secret reservation, practically by private understanding with the employer and carrier.

Mr. McShane. As I understood you, and as I understood Senator Duxbury, you are going on paying on a basis of some weeks, you say, to a certain time. Mr. Wilcox is paying in a lump sum. I
can not conceive of a situation that is not paradoxical when attempting to pay 500 weeks in advance on account of temporary total disability. We are talking about fixed conditions. First we must find the man's condition as fixed, find a permanent partial loss of bodily function and pay for it, and then if we can make him believe that that is the end of it he does not come back.

Mr. Hatch. The answer to that is this: That if you rate these cases as permanent partial disability, then we would do in New York what you refer to. As a matter of fact they are partial disabilities but “permanent” is the sticking point. The very theory under which they operate in Wisconsin is that it is not permanent. If you give these men the right psychological treatment, they are going to recover. Strictly, you can not call these cases permanent.

Mr. Duxbury. In our State too.

Mr. Hatch. In a sense, we are doing in New York and Minnesota a more accurate thing than they are doing in Wisconsin. In Wisconsin they are not doing it that way, but if we could always say, well, this is a schedule award on a permanent disability schedule, then we could give the impression of finality more easily.

Mr. McShane. Isn’t that the only way to approach a neurotic case?

Mr. Hatch. You can approach a neurotic case by saying, “You have had all of the compensation awarded to which you are entitled. We believe that in the commission. We have gone over your case. We believe that your difficulty is that you are mistaken about your understanding of your own condition.” Of course, it is a process of getting them into such a state of mind that they will believe they can work. But I want to say that I admire the situation that exists in Wisconsin in its effectiveness for the handling of these cases.

Mr. Duxbury. I do not want to be understood as criticizing it. I think it is absolutely necessary, but I thought that under our statute—and I thought possibly his was the same—it was not necessary. Of course, the element of lump sum there has a very salutary influence to make the man think that that is all he has coming. In lots of these cases that are not technical neurotics there is an element of what I would call, for want of a better term and I wish the medical profession would approve it, “compensationitis.” There is a little of that in a good many cases. If you do something to cure that compensationitis, that is the object you are after. That is one of the great elements, as I understand from these doctors’ technical papers, in it. If you can cure that one element, such persons will probably get well, and by giving them a lump sum or an understanding that that is the end of it, you have gotten that element out of the picture and improved the possible chances of recovery. Compensationitis is sometimes a real thing, a real malady, and sometimes not as real, but it is there all the same.

The Chairman. Mr. Wilcox, there is one point not quite clear in my mind. Cases of the class you refer to you say are not closed. The petitioner does not know that, but the insurer or the carrier knows they are not closed. When do you close those cases? When do you formally close them?
Mr. Wilcox. Well, you have paid him compensation that covers disability over a certain period of time. You go back and check up to see whether or not he has had compensation enough to take care of all disability he suffered. If the man is back at work on the job, earning his regular wage, you will be able to satisfy yourself pretty easily whether you have done the right thing. If you have not, of course you have to keep the case open, but you will know by the expiration of four or five or six months whether you have accomplished your purpose.

The Chairman. Did you have any fixed period of time?

Mr. Wilcox. No, it is just a matter of check-up; you award varying sums because you have varying degrees of neurosis; some will get well in three months and some it will take six months, and some you have to add a month or two longer to carry them through until the next spring. It is a problem that you just have to reckon with.

Mr. Horner. I should like to ask Mr. Wilcox whether the Wisconsin law allows the commission to direct lump-sum payment in any type of cases.

Mr. Wilcox. Any type at any time and without any effect whatsoever upon the question of whether a case can be opened up. Some States I know have the provision that if money is paid in a lump then the employee forever waives any right to have further compensation. That is not so under our law.

Mr. Stack. Are not your records open to the public at all times?

Mr. Wilcox. Yes. They are open to any man who has a right to see them. We do not allow everybody to come in there and mull them over.

Mr. Stack. But any employee can come to your office and go over the records.

Mr. Wilcox. You are thinking that this injured employee has his mind riveted on the fact that there is something uncanny in our records that he has to see. That is never the case. In the first place, this fellow is a sick man, weak and exhausted, and he hasn’t a concern for anybody in the world. He is just done; that is all, and when he gets his money in a lump he forgets about this hearing shortly afterwards. He never digs around in our records.

Mr. McShane. You never had one come back to look for it?

Mr. Wilcox. Never had one come back.

Mr. Hatch. I would like to ask one question. Suppose an attorney representing a claimant in such a case comes in and wants to see the record. Do you deny him access? You trust that he wants to see what has happened.

Mr. Wilcox. I do not let him see a letter that I have asked the employer to write to me agreeing that if this man does not get well within the period of time we have estimated the case may be reopened. After I make that agreement with that employer, I would not let him see that particular letter. I am perfectly frank about it. You may call it whatever you please, but I am working to get this man well. The letter is there if this man’s disability is more serious than what we estimated it would be, and we will make use of the letter when the time comes, but up to that point I do not think it is any
of his business, and the less he knows about it the better everyone is off. Usually our practice is to have the employer or the insurer dictate that to our own stenographer, our own reporters when we go about taking hearings, and they just read that right into our records, dictate it.

Mr. Eppler. That is not in a public file?

Mr. Wilcox. We never transfer it unless there is an appeal and this lawyer will have some trouble reading those shorthand notes.

Mr. Eppler. He could get them, couldn't he?

Mr. Wilcox. They are on file in our office and he would not inquire into them anyway. We are worrying now about something that is not there.

Mr. Eppler. I understand.

The Chairman. If you had a designing and dishonest attorney on the other side, he might worry.

Mr. Hatch. I want to say just one word more. That is that we do not let these cases in New York dangle on indefinitely. When we are faced with a case of this kind in New York, what we attempt to find out by the very best possible medical assistance we can get is whether the case is one of traumatic neurosis and whether an honest attempt to work would cure the difficulty. When we get a case where the consensus of medical opinion is to that effect or the weight of opinion is to that effect, we frequently award up to the best determinable point as the point where this claimant has no further excuse for not working. We award to that point and close the case. That is the practical method of trying to produce the same effect that you do in Wisconsin. We announce that that is all the compensation they are entitled to under the law and according to the medical evidence and the case is closed. Now, the difference in Wisconsin is that they have a secret arrangement with the employer and carrier. We are like Minnesota; we do not have to have any such arrangement. If later on we discover there has been some error in this case or the man's case is different from what we estimated, and sufficient proof comes in to establish this fact, we can automatically reopen and readjust, but otherwise it is closed, and we do get the psychological effect that it throws the party back on his own resources and that is what we are trying to do.

We are getting very conservative in New York about lump sums. No doubt Mr. Stewart will be glad to hear that. We are getting very conservative about that. Everybody is that has had any experience with it, I dare say.

Usually, however, these cases are handled and we make the award up to a predetermined date if possible. Sometimes we simply affirm an award a referee made to a date a way back. We decide that there is no evidence at all that this claimant, if he had tried to go to work and to help himself, would have had any further disability. I admit that is difficult and you run the risk of making mistakes, but we also have a way open to correct mistakes. We usually make the award for temporary total disability, or temporary partial in some cases, up to whatever date we decide is the fair date for the termination of the actual disability condition.
Mr. Wilcox. It seems to me, Mr. Hatch, that you lose a lot in a neurotic case when you pay compensation in weekly installments. I think you have done exactly the wrong thing. That is my impression. It would be unfortunate if we stand up so straight on this idea that we should never grant lump sums that we deny them in the neurotic case, because I think we have gone a long way toward the end results when we give him a lump sum.

Mr. Williams. I do not care to go into the details of our statute particularly, but there is this phrase in it, that an award may be reopened upon application, if it is shown that changed conditions exist. Our supreme court held last year that the denial of a motion to reopen was purely a discretionary matter in which an appeal did not lie. We do not have to make these bargains that Mr. Wilcox speaks of, although I would very quickly if we had to, because that is the only way to cure it. I remember one case. A fellow had an injury. I think originally he intended to draw compensation as long as he could. He was a good deal like Doctor Jekyll and could take that medicine for a while and change back when he wanted to, but I had a little idea that he had become Mr. Hyde permanently. He couldn’t find the missing ingredient. I had some doubt as to whether his will power was exactly under his control. In order to give him time to recuperate, I got his schedule for 24 hours. He slept, ate like a hog—ate more than a hog would—and would be 15 minutes walking from here over to that window. We made an award that he could have $100 and that would be all he could have, and he wanted to get those things out of his mind before he spent that $100. Some of his neighbors thought it was pretty cruel but they told him, and inside of a month he was at work.

Mr. Livdahl. The method in Wisconsin is, of course, the very best thing. It is the application of the theory that what a man doesn’t know doesn’t make his head ache, and we have to make use of that. The reason why Mr. Wilcox has to consult the carrier or the employer is, of course, obvious, but we are up against this proposition, that the disability we pay for must be designated either as temporary disability or as permanent disability, and we certainly can not pay for the temporary disability until that temporary period has passed. If it is permanent, then we have, of course, admitted that there is something that will last for the rest of the person’s life, and that is the very thing we are trying to cure. If it is not permanent we must not pay for it as being permanent. But we certainly would like to do what they do in Wisconsin if we could possibly do it.

Mr. Scanlan. I would like to ask Mr. Wilcox a question. Your plan in Wisconsin is based on the theory that there is no such thing as a permanent case of traumatic neurosis; in other words, it is curable at all times?

Mr. Wilcox. Every State has to apply its administration according to the character of injury. We do not do what I say we do in every case where there is a neurotic element. In some cases we know that the man’s injury was of a trivial nature so far as physical damage to the body structures are concerned, and that it could not be anything else but a neurotic situation developed out of little less than nothing, and in that kind of a case you can be pretty sure they
are going to get well anyway, so we often close those cases right out. You just estimate the disability and pay the compensation to them and the thing is over. But in the other case, for instance, the man who has suffered a severe concussion or fracture of the skull that the doctor mentioned this morning, you don’t know whether he is going to get over those headaches. You don’t know if he is going to get over the dizziness; it may be permanent, or it may be temporary. You take a chance on it being nothing but temporary, that the neurosis is the responsible cause for it; you take your chance on that and estimate disability and pay it in a lump and then await developments.

Mr. Scanlan. We have instances in traumatic neuroses that they themselves thought it was permanent.

Mr. Wilcox. We have had men that have never recovered.

Mr. Kyle. This discussion has been of peculiar interest to me for I came here hoping that this subject would be discussed, and that I might learn something that would help me solve a perplexing problem, that of awarding compensation for a neurotic case. When Mr. Wilcox began his remarks, I thought probably I was going to get some light, probably obtain some suggestions that would be of relief to me from his remarks. I soon saw that, comparing the laws of Oklahoma with those of Wisconsin, I was in the same predicament or rather position as the gentleman from Minnesota and the gentleman from New York. I might say that Oklahoma copied its workmen’s compensation law almost entirely from that of New York. So we are in the same position relative to the making of an award that would in any way tend to close a neurosis case. We have continuing jurisdiction in all cases. We have discretionary power to award lump-sum payments as a matter of course when the disability has been determined. However, as the gentlemen over here suggested, the disability is either permanent or it is temporary. Being temporary, so far as the commission in Oklahoma is concerned, it would be undeterminable. Therefore, an award would not be made on that basis. Neither can I find nor see where under our law we can estimate a percentage of a permanent disability. So I am still in the dark. I might say that I would certainly agree with one of the doctors, Doctor Gaines I believe it was, in the statement he made in his paper to-day, that this is a very knotty question. It certainly has its knots.

The Chairman. I understand it was not Mr. Wilcox’s idea that there was any permanent disability in any case that they settle in this manner. It was simply to get rid of a very troublesome condition satisfactorily. I do not see how you can estimate the average traumatic neurosis in any other way. Those cases are very questionable. They are the cases that we doctors think are malingerers, if you will. We have grave suspicions but we are oftentimes unable to prove that our suspicions are correct, nor are we willing to subscribe to the findings of other medical men. So I do not think that you can go far astray in your jurisdiction. I think you can settle the cases under your law on the same basis that they do, because you are simply making an award that you feel will cover the actual conditions, and if it does not cover them, you have the right to reopen under an agreement of that kind, as I see it.
Mr. Kyle. We have this condition to contend with: The claimant is represented by a lawyer, or, as I believe someone stated yesterday, an attorney at law. I do not care to discuss this lump sum—I believe it was suggested that we do not talk about it—but I just want to refer to it to the extent of saying that in Oklahoma our commission is, or rather I am, thoroughly, almost completely, satiated with this lump-sum proposition. We have as I said attorneys at law, representing the various claimants, who come in and not only give evidence of a crass ignorance of the real principle of the workmen's compensation law but give further evidence of their interest in the case by immediately filing an application for a lump-sum settlement. It is getting to be quite a problem with us. Ninety per cent of the applications for lump-sum settlement that we have come from men representing claims, and, by the way, I have even had them file applications to our commission for lump-sum settlements on a temporary total disability. They go to that extent. But getting back to the subject, in the case I have in mind the claimant is represented by one of these attorneys at law whose chief interest is a lump-sum settlement and a fee, of course, and I doubt very seriously whether any reasonable award might be made, as suggested by Mr. Wilcox, that we could get by with because of the greed and interest of the attorney in the case. He would question our right to make any award that did not conform to his views of the case.

[Meeting adjourned.]
THURSDAY, SEPTEMBER 29—MORNING SESSION

CHAIRMAN WALTER O. STACK, PRESIDENT DELAWARE INDUSTRIAL ACCIDENT BOARD

The Chairman. Since our last convention, there has been passed by the Federal Congress an act extending to longshoremen and harbor workers remedial legislation that was long denied them. Mr. Charles H. Verrill, commissioner of the United States Employees' Compensation Commission, the agency as I understand it by which the law is being administered, will now tell us how the law is working.

FEDERAL LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT

BY CHARLES H. VERRILL, COMMISSIONER UNITED STATES EMPLOYEES' COMPENSATION COMMISSION

INTEREST OF STATE COMPENSATION BOARDS IN COMPENSATION FOR MARITIME INJURIES

The members of the International Association of Industrial Accident Boards and Commissions have necessarily been concerned with injuries occurring within their States which could not be given the protection of the State compensation laws, and the association in its annual meetings has repeatedly discussed the possible means of extending the protection of compensation laws to such employees subject to admiralty and maritime jurisdiction. Most of the members of the International Association have been familiar with the attempts of Congress in the act of October 6, 1917, and again in that of June 10, 1922, to hand over to the States jurisdiction as to the compensation of harbor workers, attempts which were ineffective because the exclusive power to act in matters of admiralty and maritime jurisdiction had been reserved to the Federal Government by article 3 of the Federal Constitution. It is therefore peculiarly fitting that the longshoremen's and harbor workers' compensation law, enacted March 4, 1927 and in effect July 1, 1927, should be given a place upon the program of the international association at this time.

ATTEMPTS OF CONGRESS TO PLACE MARITIME EMPLOYMENTS UNDER STATE COMPENSATION LAWS

It is desirable to discuss briefly the attempts of Congress to legislate in regard to this matter and the decisions of the Supreme Court of the United States in regard to those attempts. First, it is necessary to explain the nature of the employments which come under admiralty and maritime jurisdiction. Maritime employment has been defined:

Whatever is done to operate a ship, to aid her physically in the performance of her mission, viz, to take freight or passengers, to carry freight or passengers, to unload freight or passengers, and to preserve her while so doing, is a maritime service. (Robinson v. "The C. Vanderbilt" (1898), 86 Fed. 756.)
The employments indicated by this definition may be divided into two general classes, the one including the master and members of the crew of a vessel, and the other those workers upon vessels usually resident at fixed points and in no wise engaged in the actual process of navigation. Specifically, this class includes among others longshoremen, repair men, carpenters, riggers, calkers, painters, and similar occupations, employed in or about whatever is done to aid a ship physically in the performance of her mission; that is, loading, unloading, supplying, equipping, maintaining, outfitting, or repairing of a ship.

Admiralty jurisdiction was originally limited to tidal waters, but in the United States it is now applicable to all navigable waters whether tidal or not, as well as to the lakes on which navigation takes place, a specific enactment of 1845 extending its application to the Great Lakes. The Federal Constitution provides in article 3 that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction. No statutory definition has established the limits of such jurisdiction.

The work of longshoremen, ship repair men, and many harbor workers is at times on the dock or elsewhere on the shore and at other times on vessels in navigable waters. Thus, men in these employments have found themselves during their work on vessels, the most hazardous part of their work, without the protection of compensation benefits in case of accident. Because of the special hazard of the work on vessels, Congress endeavored to furnish a remedy by the act of October 6, 1917. This act undertook to save to suitors not only the common-law remedy, where the common law is competent to give it, but also to secure for claimants for compensation for injuries their rights and remedies under the workmen's compensation law of any State. The United States Supreme Court held that this law was invalid in that it endeavored to confer upon the States power to enact legislation upon a subject over which, under Federal Constitution, they had no control. The court said:

The definite object of the grant was to commit direct control to the Federal Government to relieve maritime commerce from unnecessary burdens and disadvantages incident to discordant legislation; and to establish, so far as practicable, harmonious and uniform rules applicable throughout every part of the Union.

The subject was intrusted to it to be dealt with according to its discretion—not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the States to do so as they might desire, is false reasoning. Moreover, such an authorization would inevitably destroy the harmony and uniformity which the Constitution not only contemplated but actually established—it would defeat the very purpose of the grant. (Knickerbocker Ice Co. v. Stewart (1920), 253 U. S. 149, 40 Sup. Ct. 438.)

The amendment of June 10, 1922, undertook to distinguish between the master and members of the crew of a vessel and those other employees, in such occupations as longshoremen and harbor workers, not engaged in the actual operation of ships, and authorized the application of State compensation laws to the latter class when injured in maritime employment. The Supreme Court held this amendment also invalid and that “the exception of master and crew is wholly insufficient to meet the objections to such amendments heretofore often pointed out.” The varying provisions of the State
compensation laws were again referred to as disturbing the uniformity contemplated in the Federal Constitution. The court pointed out the power of Congress to act, saying:

Without doubt Congress has power to alter, amend, or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employers' liability law or general provisions for compensating injured employees; but it may not be delegated to the several States. (Washington v. Dawson & Co. (1924), 264 U. S. 219, 44 Sup. Ct. 302.)

After these two attempts of Congress to legislate, with the resulting decisions of the Supreme Court of the United States, it became apparent that only a Federal compensation law could furnish the remedies desired by persons in maritime employments. Congress, therefore, after numerous hearings, in which all classes of interested persons were heard, enacted the longshoremen's and harbor workers' compensation act of March 4, 1927.

EXCLUSION OF SEAMEN FROM THE ACT

This act, as its name implies, does not include persons engaged in the operation of vessels; that is, the master and members of the crew. During the legislative consideration of the subject, the House Committee on the Judiciary recommended the inclusion of seamen as well as longshoremen and harbor workers. The International Seamen's Union of America, however, was firmly opposed to being brought under the provisions of a compensation law as recommended by the House committee. As a result of this opposition, the master and members of the crew are specifically excluded from the coverage of the act.

Seamen under maritime law have certain long established rights which they value highly. While the House Committee on the Judiciary proposed that all these rights should be preserved to seamen and that compensation benefits for injuries should be granted in addition, the seamen demanded that they also be given the right of election whether to accept compensation or to bring suit for damages after an award had been made under the compensation law. The approach of the end of the legislative session of Congress made action upon the bill urgent. The provisions with regard to seamen were therefore eliminated and the bill enacted with such exclusion.

COVERAGE OF THE ACT

The provisions of the longshoremen's act may be briefly outlined:

In geographical scope, it covers the United States, including the Territories of Hawaii and Alaska. The possessions, Porto Rico, the Philippines, and the Canal Zone are not mentioned and are therefore not included. The employments covered, defined affirmatively are: "An employer any of whose employees are employed in maritime employment in whole or in part upon the navigable waters of the United States, including any dry dock." Compensation is also payable if recovery for the disability or death through workmen's compensation proceedings may not be validly provided by
State law, a provision of the law which apparently sets down only the obvious, but which is not free from ambiguity.

Defined negatively, the act excludes: (1) The master or member of a crew of any vessel; (2) Any person engaged by the master to load or unload or repair any small vessel under 18 tons net; (3) any officer or employee of the United States or any agency thereof or of any State or foreign Government or of any political subdivision thereof.

The liability of an employer under the act is exclusive and in place of all other liability, except that if he fails to secure payment of compensation the injured employee may bring suit for damages, in which event the employer may not plead the usual common-law defenses of contributory negligence, assumption of risk, and negligence of a fellow servant. Insurance under the law is compulsory, either in an authorized insurance company or by the authorization to become a self-insurer under conditions which are prescribed by the commission administering the act.

**ADMINISTRATION OF THE ACT**

The administrative direction and supervision of the act is in the Employees' Compensation Commission at Washington, the commission which for more than 10 years has been administering the compensation law applicable to employees of the Federal Government. I may mention, however, that under the employees' compensation act for employees of the Government the commission pays the compensation directly. Under the longshoremen's act compensation is paid, as under any State act, by the insurance carrier or a self-insurer.

The immediate local administration of the act is by deputy commissioners having jurisdiction in districts established by the commission. The deputy commissioners conduct the administration within the district, receiving reports, giving information and assistance to employers, insurance carriers, and employees, making inquiries and investigations, holding informal conferences, adjusting differences between the interested parties, and, if necessary, holding formal hearings and making awards or rejecting claims and determining all questions in respect to claims. The only appeal provided for in the law is to a Federal court if the decision of the deputy commissioner is not in accordance with the law. The commission is assigned the duty of establishing compensation districts, appointing the deputy commissioners and other employees under civil service laws, establishing forms and procedure, making rules and regulations, authorizing insurance companies to write compensation insurance, which authorization may be suspended or revoked for good cause after hearing, authorizing employers to become self-insurers under conditions which it prescribes, making studies and investigations as to safety and causes of injury, and making recommendations to Congress and to employers and insurance carriers as to the best means of preventing injuries, supervising vocational rehabilitation and advising and directing the deputy commissioners upon questions of a general nature, such as are necessarily applicable throughout the several districts.
The compensation provisions and many of the administrative provisions of the act have been taken with little or no change from the New York State compensation law. One important difference from the New York law is that in this act the term "injury" includes not only accidental injuries but also "such occupational disease or infection as arises naturally out of such employment." Occupational disease is not otherwise defined. Awards on account of occupational disease thus are dependent on a showing of a causal relationship between the disease and the employment. The law gives no list of diseases to be classed as occupational.

The basis of compensation payments is two-thirds of the average weekly wages payable after a waiting period of seven days, this waiting period being compensated for if the disability exceeds 49 days. The maximum weekly benefit is $25 and the minimum $8 or full actual wages if less than the minimum. The employer must furnish such medical, surgical, or other attendance or treatment or apparatus as the nature of the injury may require without limit as to time or amount. The total compensation payable for any injury or death may not exceed $7,500. This is probably the most important difference from the New York compensation act, which places no limit of amount upon the compensation payable in case of death or of permanent total disability. Compensation as defined in the act includes the funeral benefits but not the expenses of medical treatment. Funeral benefits, but not medical payments, are, therefore, included within the $7,500 limit.

Total disability is compensable during the period of disability. Temporary partial disabilities are compensable on the basis of two-thirds of the loss of earning capacity. Permanent partial disabilities are compensable according to a specific schedule which is the same as that of the New York State compensation act, which ranges from 15 weeks' compensation for the loss of the fourth finger to 312 weeks for the loss of an arm. If temporary total disability and permanent partial disability result from the same injury, payment in excess of the benefits for the permanent disability may be paid if the healing period is longer than a fixed period specified in the law. An award for permanent partial disability is payable in case of the employee's death from other causes to the widow or dependent widower or surviving children under 18 years of age.

VOCATIONAL REHABILITATION

Vocational rehabilitation is provided for by a maintenance allowance of not to exceed $10 a week payable out of a special fund created for this purpose. From the same fund, payments are made to any employee sustaining an injury which of itself would only cause permanent partial disability but which because of a previous disability does in fact cause permanent total disability. The employer or insurance carrier in such case is liable for compensation only for the disability caused by the second injury, the additional award caused by the permanent total disability being paid out of the special fund.
The law provides for death benefits of 35 per cent of average weekly earnings to the widow, with an additional 10 per cent for each child under 18 years of age. Upon remarriage, the widow receives two years’ benefit. In case of the death or remarriage of the widow or if there is no widow, 15 per cent is payable to each child under 18. The law also provides for compensation at 15 per cent each to dependent grandchildren, brothers, and sisters under 18 years of age and 25 per cent each to parents and grandparents, provided the full awards to widow and children permit such allowances. The total amount of death benefits payable in any case can not exceed two-thirds of the weekly wages nor can the total benefits exceed $7,500. Average weekly wages in computing death benefits are considered to have been not more than $37.50 nor less than $12, but the total weekly compensation can not exceed the weekly wages. An allowance not exceeding $200 is made for reasonable funeral expenses.

PROCEDURE

Notice in writing of injury or death must be given to the deputy commissioner and the employer within 30 days. Failure to give such notice, however, does not bar a claim if excused for reasonable cause by the deputy commissioner. Compensation is payable by the employer and the insurance carrier without an award unless the liability is controverted. The first payment is due on the 14th day after the employer has knowledge of the injury or death and semi-monthly thereafter. Penalties are provided for failure to pay compensation when due. Claim for compensation may be filed with the deputy commissioner at any time after the first seven days of disability or after death, and such claim must be filed within one year. The deputy commissioner must notify interested parties that a claim has been filed within 10 days, and 10 days are then given within which to request a hearing if desired. The deputy commissioner makes an award or rejects the claim within 20 days after a hearing or within 20 days after notice of claim if no hearing is requested. The order of the deputy commissioner becomes effective upon filing, and final within 30 days unless appeal is taken to the Federal court on the ground that it was not in accordance with the law.

The maintenance allowance for vocational rehabilitation and the payments on account of second injuries are paid from a fund made up of payments by the employer of $1,000 on account of deaths from injury of employees leaving no dependents.

PREVENTION OF INJURIES

Special provision is made in the act for the study and investigation by the commission of safety provisions and the causes of injuries, and the commission is required to make recommendations to employers and insurance carriers as to the best means of preventing injuries. In this accident-prevention work the commission is required to cooperate with existing Federal and State agencies.
For the purposes of administration, as required by the law, the commission has established 14 administrative districts, and in each district an office in the port which was considered by the commission most important for administrative purposes. The cities in which the district offices are located are: Boston, Mass.; New York City; Philadelphia, Pa.; Baltimore, Md.; Norfolk, Va.; Savannah, Ga.; New Orleans, La.; Galveston, Tex.; Cleveland, Ohio; Chicago, Ill.; Louisville, Ky.; St. Louis, Mo.; San Francisco, Calif.; Seattle, Wash. The complete description of the limits of the various districts has already been published and distributed and is too long for repetition in this place.

INSURANCE

Under its duty to authorize insurance companies to write insurance covering the liability of employers under this act, authorization has been given to 65 stock and 27 mutual companies and certificates of compliance have been issued to over 5,000 employers to whom these companies have issued insurance policies containing the required provisions. Authorization to 211 employers has been issued by the commission to pay compensation directly as self-insurers. These authorizations have been issued after the applicants had submitted proof of financial ability to pay such compensation and had deposited either an approved indemnity bond issued by an approved surety company or approved securities to secure the payment of compensation.

Because handicapped by lack of time and funds, it was not possible for the commission to make adequate investigation of the insurance companies applying for authorization or for the employers desiring to be approved as self-insurers. The commission, however, has taken into consideration the action of State authorities having supervision over such insurance. The entire subject of insurance will receive careful study, and the policy of the commission as the result will be modified if found necessary or in fairness to the insurance carriers to safeguard adequately the payment of compensation.

In acting upon the applications of self-insurers the commission was especially handicapped by lack of time to make investigations and by the lack of adequate data to guide it. It is possible that some of the applicants approved as self-insurers will later be found of doubtful fitness because of the nature of their work and the small scope of their operations. The rules which the commission established for self-insurers, which were uniformly applied to all applicants, required an initial deposit by the employer of an approved indemnity bond equal to not less than 25 per cent of the employer's pay roll for the preceding 12 months or approved securities equal to not less than 15 per cent of the pay roll for the preceding 12 months. No such initial deposit of indemnity bond could be less than $25,000, and no such initial deposit of approved securities could be less than $15,000 par value. The maximum initial deposit required, except in special cases, was $100,000 for an indemnity bond or $50,000 in approved securities. The rules of the commission provided that an additional deposit might be required if the accident experience of the self-insurer indicated that in the opinion of the commission it was necessary. The rules with regard to self-insurers further provided for
periodical statements of assets and liabilities, as well as sworn periodical statements of the injury experience and compensation payments.

**NUMBER OF EMPLOYEES COVERED BY THE ACT**

The number of employees in employments covered by the act has been estimated as upward of 300,000. The actual number is not as yet known and can be known only after a period of considerable experience. Maritime employment within the meaning of the act cannot be accurately defined. Many employers have as yet no knowledge of the act, and many others have only the vaguest idea of its application to them. After the law had been in effect more than two months, one large company was found whose officers were entirely ignorant of the existence of the law, although it was found that the company had had not less than 50 accidents to which the law was clearly applicable. The company promptly complied with the requirements of the law.

Even later, a great railroad company, expressing doubt as to the application of the law to any of its operations, made application to become a self-insurer. Every day inquiries are received from employers as to the application of the law to certain described work which is clearly under the act. Many of these inquiries disclose the assumption that because the greater part of employer's work is under the State compensation law, the small part which is on a vessel can not be within the intent of the law. It is probable that many of these employers knowing that casual employments are so often excluded from the State compensation laws have assumed that such employments must also be omitted from the coverage of the longshoremen's act. The law, as a matter of fact, makes no exclusion because of the casual or brief character of any employment.

The question of jurisdiction as to the employments covered by the act is one which must remain somewhat in doubt until clarified by the Supreme Court. The decisions of that court, made at a time when there was no law providing compensation for longshoremen and harbor workers, have left in the minds of many, including some of the State courts, confusion as to the possible application of State workmen's compensation laws, and consequently as to the limits of the application of the present act.

As questions of construction have been raised by employers and insurance carriers under the law, opinions have been issued by the commission for the guidance of the deputy commissioners which indicate the views of the commission as to the proper legal construction of the act. In three cases employees on certain vessels have been held to be members of the crew and thus excluded from the coverage of the act. These were employees on fishing boats engaged in fishing (opinion No. 6); crews of dredges and barges engaged in sand and gravel dredging, and employees operating stationary engines upon floats alongside of sand and gravel docks for the purpose of placing or taking out the sand and gravel barges in connection with unloading operations (opinion No. 9); employees engaged by steamship companies on Lake Michigan to serve as deck hands in loading and unloading at each port of call, paid by the hour when doing such work but receiving subsistence in return for incidental duties in the operation of the boat (opinion No. 13).
In seven cases employees in certain work were held not in maritime employment. These were employees constructing or assembling rafts (opinion No. 4); employees engaged in construction of a vessel in a dry dock or marine railway (opinion No. 7); employees on floating rafts and pile drivers (opinion No. 3); employees working on floating equipment and engaged in the construction, demolition, or repair of bridges over navigable waters (opinion No. 10); employees working on the breaking up of a vessel for junk (opinion No. 15); employees of business concerns on board a vessel for the purpose of performing duties personal to the master or crew or to the passengers, such as the delivery of packages for the personal use of the master or crew or of flowers or messages for passengers (opinion No. 8); and employees of organizations going on board vessels to solicit members of the crew to join a welfare plan, to put and take off books in a library, or as delegates of an association to talk with members of the crew (opinion No. 14.)

In seven cases certain work or operations were held to be covered by the act. In one case, a marine railway was held to be a dry dock within the meaning of the act (opinion No. 1); and a staging upon which work was done upon the outside of a vessel on a marine railway was held to be under the act as a part of a dry dock (opinion No. 2). Laborers not members of the crew of sand and gravel barges, who assist in unloading, were held to be in maritime employment (opinion No. 9). Employees of business concerns on board a vessel for the purpose of delivering supplies or seeking orders (opinion No. 8), fleet engineers, port captains, and office employees of steamship companies on board a ship for conference with ship's officers or for inspection (opinion No. 12) were held to be in maritime employment. Employees in maritime employment on a vessel were held to be covered by the act when leaving the vessel until free from the gang plank (opinion No. 5). The exclusion from the act of "any person engaged by the master to load or unload or repair any small vessel under eighteen tons net" was held to be limited in its scope to employees directly engaged by the master (opinion No. 11).

Further opinions are being issued by the commission as questions of a general character present themselves. Such opinions are being distributed to insurance carriers, to State boards and commissions, and to others to whom they may be useful.

The policy of the commission in the administration of the act is to make its application as simple and informal as possible, believing that such a method is in the interest of all and will result in a large saving of time and expense to the interested parties. Where a settlement satisfactory to the interested parties and in accordance with the law can be secured by informal conference or by personal explanation or personal investigation, it is the purpose of the commission to avoid formal bearings. Such hearings, of course, must be held when any party at interest demands it or when in the opinion of the deputy commissioner a satisfactory decision can not be reached without.

Most of the persons to whom this new Federal law applies are also at times during their work under a State compensation law. Whether some employments are maritime in character will be a matter of
doubt. Employers in doubtful cases will naturally desire to have claimants paid under the law of lower benefits, which in most cases is the State act. Employees, on the other hand, will just as naturally wish to be compensated under the law with the more liberal benefits. This will naturally lead to difficulties on questions of jurisdiction. Thus far, the commission has had the heartiest cooperation at all times from employers, insurance carriers, and employees. The commission realizes fully the need under existing conditions of the fullest measure of cooperation with the State compensation boards and commissions in order that jurisdiction may be exercised so far as possible according to the intent of the law, and that all unnecessary misunderstandings and litigation may be avoided. The commission has already had in matters that have come up gratifying evidence of the disposition of the State boards and commissions to work in most cordial cooperation, and the hope is expressed that the work may continue to be carried on on both sides in this spirit.

It is especially important, therefore, that the commission work in full cooperation and understanding with the State boards and commissions, and the commission because of this solicits your interest and your cooperation whenever any case comes to you that apparently is under the act or is a doubtful case.

DISCUSSION

Mr. Stewart. I would like to ask Mr. Verrill one question on what seems to me to be a new policy entirely, though I may be wrong about that. I understood you to say that where the worker's total wage was less than the minimum stated in the law, he got as compensation his total wages.

Mr. Verrill. That is the policy under the Federal compensation act. I believe it is under the New York act.

Mr. Stewart. It struck me as raising the question that was raised here last night about compensation, rather putting a premium on the fellow not going back to work.

Mr. Verrill. It arises under every act. Of course it becomes more acute the higher the minimum is. It is somewhat important under this act because of the special irregularity of the employment. Longshoremen rarely work six days a week, and in many cases you will find that they do not average more than four days a week. There are cases where I have taken the average earnings of such classes of longshoremen and they are less than the minimum specified.

Mr. Williams. What do you figure as their wages if they are working an hour for one employer and another hour for another one? Do you take what they get?

Mr. Verrill. That raises a question that I omitted from the discussion. I shall answer it by reading what I have prepared, which I think will adequately answer that question and Mr. Stewart's question, perhaps.

The nature of the employment of longshoremen renders it peculiarly difficult to secure any adequate data with regard to their annual earnings. Most of such employees have no regular jobs but are hired each day—sometimes twice a day for the particular job of
The result is that in most of the eastern ports no employer is in position to prove the annual earnings of longshoremen. The individual longshoreman is also, as a rule, incapable of proving annual earnings. The practice has developed, therefore, in the interest of both employer and employee of securing an agreement between the longshoremen's union and the employers and insurance carriers with regard to the acceptance of a figure to represent the average weekly earnings of longshoremen for the purpose of compensation payments. Such an agreement has been in force in the city of New York for some time. Representatives of the labor organization and of employers have said that there has been no record of any individual longshoreman or of any individual employer attempting to reject the agreed-upon rate. Since the coming into effect of the longshoremen's and harbor workers' compensation act, new agreements have been made for a number of the important Atlantic ports. The parties to these agreements fully understand that the individual can not be legally held to such an agreement should he elect to reject it when a claim arises. However, the labor organization supports these agreements strongly, feeling that such agreements are definitely in the interest of the higher-paid men, as well as to the interest of those of a low rate of earnings. You will see that the labor organization accepts the principle which is embodied in the union scale of wages, that there must be an equalization in order to promote the interests of all.

Up to the present time agreements have been reported to the commission as follows:

<table>
<thead>
<tr>
<th>Port</th>
<th>Average weekly wage</th>
<th>Compensation per week</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portland, Me., and Boston, Mass.</td>
<td>$27.00</td>
<td>$15.00</td>
</tr>
<tr>
<td>Port of New York</td>
<td>$30.00</td>
<td>$20.00</td>
</tr>
<tr>
<td>Baltimore</td>
<td>$30.00</td>
<td>$20.00</td>
</tr>
<tr>
<td>Norfolk, covering Hampton Roads district</td>
<td>$24.00</td>
<td>$16.00</td>
</tr>
<tr>
<td>Savannah and Brunswick, Ga.</td>
<td>$13.50</td>
<td>$9.00</td>
</tr>
<tr>
<td>Headers</td>
<td>$12.00</td>
<td>$8.00</td>
</tr>
<tr>
<td>Gangsmen or deck hands</td>
<td>$15.75</td>
<td>$10.50</td>
</tr>
<tr>
<td>New Orleans</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In two of the cities on the Pacific coast the employment of longshoremen is much more regular than in the East, and exceptionally complete records of the earnings of a large number of men over a long period are available. Because of these records, the making of agreements as in the East has not become the practice.

Mr. Kennard. Our State court has recently rendered a decision awarding compensation in a case which is a border-line case under the State law. The intimation, I think, in its decision is that it might well have been under a Federal law, but that it was near enough to the jurisdiction of the State for us to assume it, and so the supreme court upheld the act on our part. You say that the Federal act is exclusive. Is it intended and is it the legal effect of the Federal act to remove the jurisdiction of the State court from such a case as I have indicated?

Mr. Verrill. A commission, I think, can not undertake to speak for the Supreme Court of the United States, and it seems to me
rather obvious that your question can not be answered until the Supreme Court speaks. One of those opinions that I referred to touches a question which will go to court, I feel confident. In Norfolk, Va., a company engaged in the repair of a ship on a marine railway had a staging from which the workmen were engaged at work on the outside of that ship. The staging fell and some 16 workmen were injured. The company contends that that comes under the State compensation act. It is the belief of the commission that it belongs under the Federal act, as that opinion I referred to indicates. It probably will go to the courts. There has been a rehearing already in which the party controverting the case, I may say, describes this marine railway as a drydock marine railway.

Mr. Kennard. That leads to my next question, which is this: The claim under your Federal act, I presume, must of necessity be made within some definite length of time. If a man seeks a remedy under the State compensation act and it is determined that he has no remedy under the State compensation act, is the delay involved in those proceedings going to injure him or prevent him from recovering under the Federal act?

Mr. Verrill. I would say not.

Mr. Stewart. Does that answer for an injury where you have power to set aside the 30 days? The one-year report of death is fixed, is it not?

Mr. Verrill. The commission has generally advised, when that question has been raised, that the safe procedure is to report the case to both jurisdictions, and that, I believe, was what was done in this Virginia case that I spoke of, in order that there may be no doubt about it. So far as the commission would have any discretion in the matter, I think it would be inclined to say that a claim could still be made.

Mr. Kennard. I would like to ask whether he can file under both laws and have your commission entertain the claim while the State claim is resting dormant and still outstanding.

Mr. Verrill. I should say undoubtedly that is possible.

Mr. Kennard. I have been asked this question, the answer to which I think is fairly obvious. Employers have asked if they are obliged to carry compensation under both laws. I presume the answer is practically obvious.

Mr. Verrill. The policy of insurance which insurance companies have issued has been a standard policy that has been used heretofore under State laws with an indorsement extending the insurance to the Federal act, so that new policies have not been issued.

Mr. Kennard. I am glad you answered that way, because that is the way I answered it. I thought some arrangement could be made with the insurance companies under both acts.

Mr. Verrill. The commission dictated the form of indorsement that should be used, as it had the right to do, and the insurance companies were quite willing to accept it.

Mr. Kennard. Do you think if our State commission under a mistaken apprehension of the law had awarded compensation under our law, that the claimant would then be permitted to seek the Federal
commission and get compensation under that law on the ground that our decree was void and of no effect so far as our jurisdiction was concerned? That question was raised with reference to compensation in two different States at the same time.

Mr. Verrill. It would be my impression that that could be adjusted without difficulty. The commission might possibly say that payment under that award represented an advance payment of compensation, and the law specifically provides that any such payment can be taken into consideration when there is an award.

Mr. Kennard. Does it sum up into this: That the suggestion we should make or the advice that we should give to one whose right is perhaps a little hazy is to file under both acts and then to proceed under the one from which, on the face of it, he is going to get the greater benefits, until he has determined that he is or is not.

Mr. Verrill. I say that protects the interest of the claimant to the greatest extent.

Mr. Kennard. And without damage.

Mr. Verrill. Our commission is not disposed to be contentious in any of these matters and not disposed to invoke penalties where the parties are acting in good faith and within their best knowledge.

Mr. Kennard. I appreciate the frame of mind and the policy of the commission, but my question, of course, had in mind more particularly the legal effect of the act in limiting what would seem to be the humane policy of the commission.

Mr. Verrill. I am answering from that point of view so far as it is possible for me to do so.

Mr. Kennard. Thank you very much.

Mr. Duxbury. Mr. Verrill, did I understand from your statement in the paper that the limitation of $7,500 would include funeral expenses and medical costs?

Mr. Verrill. Funeral expenses, but not medical costs. The law contains a specific definition of the word “compensation” to include funeral expenses.

Mr. Scanlan. Has the commission adopted the set of rules as printed?

Mr. Verrill. No; no complete set of rules as yet.

Mr. Wilcox. I wonder if I understood, in the reading of those agreed wages for different parts and different types of work, that wages were being fixed at less than full-time earning power.

Mr. Verrill. My reference to the union rate of wages indicates the principle on which the longshoremen’s organization has proceeded. It is willing to agree upon what is a fair average of the weekly earnings. The higher-paid men are willing to have this done for the benefit of the lower paid.

Mr. Wilcox. You had some down as low, as I recollect, as $15 per week.

Mr. Verrill. Some lower than that.

Mr. Wilcox. Does that mean that you are fixing the earning ability at less than full-time employment? Does that mean two or three days a week?
Mr. Verrill. It is less than full-time employment because there is practically no such thing as full-time employment for the longshoremen. That is true of nearly all the ports. There are exceptional groups of which it is not true, but rarely do you find longshoremen who can get six days' work a week.

Mr. Wilcox. Then in permanent disabilities, two men with equal earning power—I mean so far as capacity is concerned—would be compensated differently for permanent impairment, one of them on half of the basis of another for example.

Mr. Verrill. How would that happen?

Mr. Stewart. You mean at different ports?

Mr. Wilcox. Not necessarily, but in different types of employment; each of them, so far as day value or hour value of service is concerned, is paid substantially alike, the reason for the $13 or $14 or $15 wage being that employment in that particular employment is not afforded for more than two or three days a week.

Mr. Verrill. That is correct. That is extreme, two or three days. It would be higher than that, but these agreements are made because both parties agree that it is utterly impossible to prove annual earnings; they get together and agree that that is a fair figure as representing average weekly earnings, and the figures which have been agreed upon—averages—in some cases, I think it has been proven, are really in excess of the actual average and do give some of the men probably higher earnings than they ever realize.

Mr. Wilcox. The thing I am thinking of is that in most of the State acts we establish wages on a full-time basis, 300 days, 50 weeks, or something of that sort, regardless of the fact that that particular industry may not afford employment throughout that period of time, but the man's opportunity to earn is taken away from him just the same.

Mr. Verrill. How can one say there is an opportunity to earn if no one ever has earned the figure that you speak of as the opportunity?

Mr. Wilcox. Many industries in the States can not be conducted in the winter months, for example, or in the summer months. In that particular employment there is no opportunity to work the full year; but this man is a workingman and he has to earn a living, and so when there is no work in that employment he works in some other, so that in establishing disability indemnity we put it on what his loss is in any employment that he may engage in.

Mr. Verrill. You understand that under the agreements the individual is quite at liberty, if he chooses and can do so, to come in and show that his actual earnings were higher than his agreed-upon rate.

Mr. Wilcox. Does the rule for the establishment of the wage under the Federal act, under this longshoremen's act, make it possible for him, even though that particular industry does not afford full-time employment, to establish the wage at say 300 times his average daily earning ability?

Mr. Verrill. If he can come in and show such earning capacity, of course that must be considered.
Mr. Stewart. You referred to the arrangement between the union and the insurance companies on the scale for various ports. I may be wrong but my impression is that some time ago the union in New Orleans, for instance, was totally smashed by a strike. I am wondering whether the union has the right to come in and fix the compensation basis for a port like New Orleans—apparently they fix it at $15—when it has no interest in that port, if I am right in my recollection that there is practically no union in New Orleans.

Mr. Verrill. My recollection is that it was reported to us that the representative of the union was a party to the agreement in question.

Mr. Stewart. The union in New Orleans?

Mr. Verrill. Yes; that is my recollection.

Mr. Stewart. I wonder how large the union membership is.

Mr. Verrill. The international organization has been following these agreements, and I think it will indicate a protest if it does not think them reasonable.

Mr. Stewart. At one time the union was very strong there. My impression is that it is now practically nil.

Mr. Wood. I was a little bit astonished when I saw the award handed down for the longshoremen of New Orleans, at the rate of $10.50. My reason for that is this: Previous to the enactment of the Federal act, the employers were paying as high as $20 in many instances and on an average of $12, where they were compensated at all and nearly all the shipping masters were compensating their employees. The question of basing the earning capacity of the man at about $63 a month does not harmonize with the contentions made when the men asked for more money. We see it in the paper, and we hear it from the press, and from the public, and I get it myself direct from the employee interests, that this is the highest paid nonskilled labor in the world, that the men are earning anywhere from $8 to $14 a day, double time for night work and Sundays and holidays, etc.; that is what the employers tell the public when these men ask for five cents an hour increase. But when they come up to get compensation under this act, the employers say, “You are earning $14 a week.” Those conditions I have never been able to harmonize.

As far as the longshoremen’s union in New Orleans is concerned, it is practically defunct. Its contracts were abrogated a long time ago. Its men went out on strikes periodically for about six years, against the advice of others, until they lost their prestige. Only last week they tried to reorganize and got into internal strife and were striking again among themselves.

Regardless of the award, whether it is right or whether the contention that the man makes only $65 when he is asking for more money, or $165 or $200 or $300, as the employers claim, that is purely immaterial after all. The earning capacity of the man can be established in court; he can still go into court and establish his case to collect. I do not understand how that award is going to be binding at all. Certainly the longshoremen of New Orleans are earning more than $65 a month. If they are not, well somebody is lying or the figures are.
Mr. Verrill. The gentleman is mistaken in referring to an award. I have said nothing about an award at New Orleans, or, so far as these rates are concerned, at any other port. They are agreements which are made by the parties interested, and we have been informed that such agreements have been made. When a claim or a case comes before a deputy commissioner, if the two parties are agreed as to what the earnings were, and he has no reason to believe that the agreed-upon rate unfairly represents things, he naturally accepts that as the basis of settlement. The commission is not a party to any of these agreements.

Mr. Wood. Do you think that (to be personal and no discourtesy meant) Mr. Harrison, who is president of the longshoremen’s union, which has absolutely no contract, can speak for every longshoreman in the city? He can not bind any longshoreman. These agreements can not.

Mr. Verrill. But I have explained that these agreements can not bind any individual. Any individual is at liberty to come in and allege earnings and to establish such evidence as he can as to what his earnings are, and the deputy commissioner must give consideration to the evidence and make investigation to ascertain what the facts probably are.

Mr. Scanlan. In other words, it is just a minimum.

Mr. Verrill. No, the parties agree that this shall be, but the individual may jump the agreement if he chooses to, or if his facts will allow.

Mr. Scanlan. He may prove that his wages are in excess.

Mr. McShane. It seems to me that Mr. Verrill has explained that situation very satisfactorily. What the situation is, the people, either authorized or unauthorized, make a tentative stipulation, in the absence of evidence on a formal hearing, that this shall be the wage. When the man comes in for a formal hearing he has the privilege of presenting his evidence to show that his wage is in excess of this tentative stipulation, and he is not bound by it. Mr. Verrill never said that he was bound by it and of course the burden is on him to show that his wage is in excess of that. If he can do it, he is going to take advantage of that and do it. My experience with workmen is that they are not very much fooled on matters of that kind.

Mr. Duxbury. I think it might be added that the insurance carrier, if he knew this individual was not earning that average wage, could also show what the average rate was.

Mr. Verrill. But in some instances of which I have knowledge he has not done so.

Mr. Duxbury. They do not ordinarily do it?

Mr. Verrill. I have known cases where the employer was able to prove a lower wage for the individual but adhered to the agreed-upon rate.

Mr. Duxbury. I presume that insurance carriers use that agreement as the basis of their pay-roll audit, do they not?

Mr. Verrill. I do not know.

Mr. Eppler. I just want absolutely to prove what Mr. McShane has said. In Baltimore we have had the same difficulty, of course.
In 1920 we were up against this proposition. There was no way to get at the average weekly wage, so we tried to get all the parties in interest together and at that time it was decided that an average weekly wage of $21 would be a fair proposition. Then we amended the law and increased the compensation from 50 per cent to 66\%\textsuperscript{2}\%; our maximums were all increased and the minimum was increased, and other changes were made to try to bring the law a little more up to date to fit the circumstances. Then we all got together again and arranged to raise this class of workers from $21 to $27. It is just arbitrary. The commission says that the average weekly wage is $27, and in the seven years that I have been on the commission, and I have attended most of the hearings, although the injured man has the right to come in, I have never seen an injured employee able to come in and give us facts and figures which brought his weekly wage above the $27, and our law says the average weekly wage is based on full time.

That is the principle of it. It is a practical proposition; we have to get at the average weekly wage some way. If the man can come in and show $40, he has that privilege. We put it at $27 because that is our maximum under the Maryland statute; $18 is the maximum compensation, so $27 would be the maximum wage. That is the situation with us. It is an arbitrary matter and it has worked out with us; we have never had any discussion.

Mr. Duxbury. I would like to ask Mr. Verrill a question. I have a report to make which I had deferred until this time, and he might answer this so as to throw some light upon the question. It appears that masters and members of the crew are absolutely excluded from this act. They are not covered by this act at all. Do you know what was the practical, legislative reason which caused them to be excluded from the act?

Mr. Verrill. The demand of the International Seamen’s Union that they be not included. The position of the seamen’s union was that if the seamen were included in the bill they could and would defeat the bill. It was true; they could and would have defeated the bill. The last stand was in the Committee on Rules of the House, and the Committee on Rules was satisfied, upon their statement, that the bill could not pass if the seamen were kept in, and the seamen were therefore excluded.

Mr. Duxbury. And they preferred to keep the remedies which they had, which I understand were the benefits of the Federal employer’s liability act?

Mr. Verrill. The benefits to which I referred were old established rights—maintenance and cure for accident or sickness, and wages to the end of the voyage of the ship, even though the seamen might have to be landed and put in a hospital long before the end of that voyage.

Mr. Duxbury. But in addition to that, in a claim for injury their remedy for the injury is under the Federal employer’s liability act?

Mr. Verrill. Yes.

Mr. Halford. In the case of a body of men that have no employer, how do you arrange for that?
Mr. Verrill. There are some such cases on the Great Lakes, and the question is now before the commission. I think an opinion will come out that those men are all employees and that the boat is the direct employer.

Mr. Halford. I was interested in that to this extent: We take the organization to which they belong. They agree to that and they pay the assessment to us from the organization; that is, we take the principal of the organization and in that way get the base for allowing compensation.

Mr. Verrill. I know that the practice is not uniform. We have heard of some of those groups that assume the insurance and some that do not.

The Chairman. Are we through with the paper before the house, gentlemen?

Mr. Duxbury. I would like to be permitted to present the report of the committee on compensation legislation for interstate commerce employees, which was on the afternoon program of the first day, but on my request, was deferred until we heard Mr. Verrill's paper. That report will be very brief.

The Chairman. If there is no objection, Senator Duxbury's report will now be received.

REPORT OF COMMITTEE ON COMPENSATION LEGISLATION FOR INTERSTATE COMMERCE EMPLOYEES

This report will be in the nature of a few statements to you and will not occupy very much of your time because the question which I put to Mr. Verrill and his answer are practically the substance of what our report will be.

This committee, of which I have the honor of being chairman, associated with Mr. Wilcox, of Wisconsin, Mr. McShane, of Utah, Mr. Archer, of New York, and Mr. Bynum, of Indiana, was appointed as the result of a discussion which arose with reference to the situation of the laws relating to injuries to employees engaged in interstate commerce. The motion that a committee be appointed on that subject was made at the Salt Lake City convention. At the last meeting of this convention at Hartford, we submitted a rather formal report which, if you are interested in it, you will find on page 39 of the report of the Hartford convention proceedings, after which a discussion followed, occupying the next 10 pages, I think, of that report. We had in that debate Doctor Andrews of the American Association for Labor Legislation, who had been very actively interested in the subject matter, and much of what might be of interest in relation to this whole subject you will find in that report of the discussion.

It developed that while that committee was trying to do what little it might do to further the object for which it seemed to be appointed, at the last Congress preceding, a bill had been introduced at the beginning of the December session which practically covered all interstate commerce employees, including those engaged in maritime employment which probably are engaged in interstate commerce. It soon developed that those two subjects could not be handled together, because men engaged in interstate commerce on railways and their organizations were very definitely opposed to any legislation of that character, and it became expedient to divide the matter into two separate bills, one to take care of those engaged in interstate commerce by railways and the bill which finally passed and which was the subject of Mr. Verrill's paper.
That had rather a checkered career in the first session of the Congress. The bill passed the House in the form practically of the law that was finally established, as I understand it, and passed the Senate with some radical modifications, but in the closing days of the second session of the Congress the Senate passed the House measure, which resulted in this bill which we have heard and listened to this morning.

The question which I put to Mr. Verrill with reference to the practical reason why masters and members of the crew are excluded from this present law, and the answer which he gives, indicate exactly the situation with reference to compensation legislation for employees engaged in interstate commerce on railroads. They do not want it, and until they can be convinced that a system of compensation law will be better for their interests than their present remedies, it seems to be hopeless to pass any legislation on that subject. The practical reason why members and masters of the crew are excluded in this maritime compensation law was that they have a lot of benefits, which Mr. Verrill recited to you, that belong to them as such, and also, in case of injury, they have the right to the benefits of the Federal employer's liability act, which applies to injuries in railroad activities, and they and their unions and advisers regard them as more desirable than compensation laws.

The question of whether they are right or wrong in that conclusion is too big a question to undertake to discuss at the present time. My own conclusion is that they are wrong, but I find a lot of people with whom I do not agree that I can not change, and that seems to be pretty near the situation with reference to these fellows at the present time. Under those circumstances, it seems to me that this committee of this association, of which I have the honor of being chairman, should be at this time discharged, and I move that the committee be discharged.

DISCUSSION

[Mr. Williams objected to the motion. The motion was seconded by Mr. Stewart.]

Mr. Williams. During the time that I had the honor of being president of this organization, I thought that this particular question was of more practical importance and affected the very living of more people than any other matter which had been brought before us or was likely to be brought before us. I do not know how many railroad employees might be affected. I think it would be safe to say that at least 10 of them to every longshoreman, possibly more. I have not the text of the Federal employer's liability law before me, but as I recall it, it applies to common carriers by railroad engaged in interstate commerce. Our supreme court has held that the express company whose men are on trains was not a common carrier by railroad.

Mr. Eppler. Pullman?

Mr. Williams. Yes, the same thing. Now here we have this situation and it seems to me that Mr. Verrill's very frank and intelligent explanation of why that law is as it is not only does not close the door of hope for the people in whom I feel interested but affords a very definite suggestion of how they can be helped. I am well aware that members of the conductors and firemen's union and of the trainmen's union, when they sustain injuries, ordinarily sustain them
under such circumstances that they can get under the Federal em-
ployer's liability act and get some aid, but the freight handler and
the trackman, as a rule, are without any remedy at all. The New
York Winfield case definitely fixed the fact that anybody who was
working around the track, repairing the right of way or maintaining
it, could not get any assistance under the State compensation law.
The two Winfield cases and the Southern Pacific case came up at the
same term of the Supreme Court, but I thought the opinion of the
New York Court of Appeals was far more logical and convincing
than what was said at Washington.
What Mr. Verrill told me this morning convinces me that it is
perfectly feasible and practical to draw up a general Federal law
that will cover the case of trackmen and freight handlers. We are
all aware of the fact that the employer's liability act, which was one
established by the employers' liability cases, can and is administered
by State tribunals. We are somewhat familiar, most of us, with
the fact that the Volstead act can be and is administered in State
courts, and there is nothing that will prevent a statute being passed
that will refer to employees of railroads engaged in interstate com-
merce and except from the operation of the act the trainmen, the
engineers, the conductors, and the brakemen. If they do not want
to come in, let them stay out, but the freight handlers and the track
repair men have no organization. There is nothing in the world that
I regret more than to see a man with a railroad suit come into my
office. He knows that his neighbor who got hurt working in a
factory is getting $18 a week and unlimited medical, surgical, and
hospital care, and I have not the time and possibly he has not the
capacity to take a three or four year law course to explain why he
can not get anything.
This matter is of tremendous importance to a lot of people who do
not know how to take care of themselves, and instead of discharging
this committee from further duties I think if the whole organization
would resolve itself into a committee of the whole to get just such
an act passed, uniform in its application but enforceable by State
officials, it would produce great relief to a class of mighty worthy
and deserving people.

Mr. Duxbury. I think probably that my motion was a little bit too
drastic, and since the last speaker has elucidated the matter and has
shown his comprehension of it, I think that motion ought to be modi-
fied to read that the present committee be discharged and that a new
committee be appointed, with Mr. Williams of Connecticut as
chairman.

[Seconded by Mr. Scanlan.]
Mr. Stewart. Maintenance-of-way employees on railroads are
well organized. If the trainmen as a whole have any objection to
coming under compensation, there is no coaxing to be done. I
do not believe it is the function of this organization to coax the
engineers and firemen or the seamen to come under compensation.
We are up against several propositions. A number of unions
whose members are already under compensation are insisting that
they are going to get out. If the association wants to appoint a com-
mittee to draft a bill, that is one thing, although we have stayed clear
of that subject during our entire history. Not only have we not put
in any bills, but we have not indorsed any special bills. This committee was appointed and organized on the theory that the railroad men were changing their minds. Now, it is very evident that the railroad men are not changing their minds, and it seems to me that it is perhaps better from all points of view that the association drop the question.

Mr. Wood. I have to differ with the brother here as to the trackmen and the freight handlers not being unionized or organized. They are members of the American Federation of Labor and are represented by their general head just like the transportation head. How strong they are I do not know, but I can say just a little about the brotherhood, because I am a member. They are opposed to workmen’s compensation because they have something 50 times better. That is all. And they do not see any use giving up $150 for 50 cents. Nearly every one of them is compensated when he is injured, if the accident is caused by the company. Of course, the man gets nothing when it is his own fault, unless he can collect by law. But the majority of these cases, 95 per cent, are attributable to the carelessness of the company. The man himself draws full pay. He gets not only his time but his hospital fee and his care. Why should they accept 50 or 60 or 65 per cent, with a maximum of $25, when then can draw $300 for a month’s pay. That is the whole thing in a nutshell. That is the reason they are against it.

I was at the convention held at Cleveland recently, and workmen’s compensation was brought up and went down in defeat as it has the last 25 years. I am not opposed to compensation, as far as I am concerned, for the transportation brother, but the rank and file are, and every time you propose such a law you are going to have opposition. That is the condition that you are confronted with at this time.

Mr. Scanlan. I agree with Mr. Williams, of Connecticut. I think Congress ought to pass a bill giving the State boards the right to compensate these men engaged in interstate commerce who are working on railroads. For instance, the Supreme Court of Illinois held recently that they were trying to find out what the man was doing at the particular time he was injured. They found it easier to solve the question by saying that if there was any interstate transportation it was an interstate commerce case and we had no jurisdiction. Take the ordinary trackman and section man. What remedy has he? He has no remedy. The State commissions ought to be given the power to assume jurisdiction and to fix the compensation for the common workers on railroads like freight handlers and trackmen.

Mr. Wood. I took no issue with that when I spoke of the organization. I think that one of the strongest fights you had in this country was brought about by the trackmen’s association. It may be true, and doubtless is, that there are a great many on the track who are not members of the organization, and it is true as in other organizations that it is his prerogative to join or not to join. He can join even if he is a Mexican, but if he does not want to join, that is his own fault. That is a condition. We have no objection to it personally. I believe in workmen’s compensation but the opposition we have from the transportation brotherhood is due to the fact that they have something so much better.
We have a law in our State, I presume the same as in yours, that certain classes of railroad employees, come under the act but this is what we have found. One case was interstate and another one was intrastate although they were parallel—very similar. I remember we had the case of a man working on a bridge in the State of Louisiana who sued the L. & N. Railroad, and the supreme court held he was an intrastate worker because that work was exclusively in the State of Louisiana.

Mr. Scanlan. If it is practical and feasible for Congress to undertake to legislate on maritime jurisdiction and to include under the act the employees it did include and to exclude masters and seamen, it is equally feasible and practical for Congress to exclude from an interstate commerce act the trainmen, engineers, and brakemen and take in the ordinary trackmen. That is feasible, isn't it?

Mr. Stewart. I rise for information as to whether or not this convention has power to follow its program. Apparently we get off onto anything. The usual limitation of one speech on one subject is five minutes but that has been thrown to the winds. Length of papers and length of discussions, and confining yourselves to the question, have been entirely forgotten. Now it is proposed to jam this thing through to-day, which means that one of the principal questions which was to be discussed at this convention is not going to be reached at all.

The Chairman. Before the question is put, the Chair is going to ask Senator Duxbury again to state his motion so that we will all understand what we are voting on.

Mr. Duxbury. I attempted to withdraw the first motion but that could not be done without the consent of the second.

Mr. Stewart. I do not consent.

Mr. Duxbury. Then, of course, I shall have to ask that the first motion be put, that this committee be discharged.

Mr. Suppiger. I would like to offer an amendment in the language that Senator Duxbury used in his substitute motion. Will you state it, please?

Mr. Duxbury. That was to the effect that this present committee be discharged and that the incoming president be authorized and directed to appoint a new committee of five, with Mr. Williams, of Connecticut, as chairman.

Mr. Hatch. Would it not be well, in order that we may know exactly what we are committing ourselves to, in view particularly of what Commissioner Stewart has said, to define in the motion what that committee is to undertake to do.

Mr. Duxbury. That would be well.

The Chairman. That is why the Chair asked Senator Duxbury again to state his motion.

Mr. Duxbury. In the original appointment there was nothing definite. We were left to the entire field—the committee on compensation legislation for employees of interstate commerce—but I think that it would be well to define the functions of this new committee a little more definitely than ours were defined.

Mr. Kennard. Is there any motion before the house?
DISCUSSION

The Chairman. I am not familiar with parliamentary law but my impression is that the amendment could be debated.

[The amendment was seconded.]

Mr. Kennard. This is the third day we have been in session here. We have been confronted with many problems where people need assistance and want assistance, and it seems to me that instead of this convention appointing a committee at this time to attempt to foist compensation on a class of the population which indicates no desire for it, which does not want it, and apparently is not in any frame of mind to cooperate in receiving it, we had far better lend our energies to those things concerning which we can do some constructive work. This association meets each year. When the time comes that the class being talked about now begins to show a little interest in us—and if it is for their good time will show it to them—then it will be time enough to get aboard and help them out, but if we attempt to foist this upon them without the recipients caring anything about it, we are undertaking a job which would consume time and energy that had much better be put in another direction. I hope the original motion will prevail.

Mr. Livdahl. I want to speak on the motion. I believe it is entirely out of place for us to assume a position of this kind toward the population of the United States. We might just as well seek to dictate to the soviet at Moscow, Russia, as to attempt to do anything of this kind. There is a large organization in this country, of which John B. Andrews, of New York, is secretary, which is looking after this very kind of legislation, and if the individuals here are interested they certainly can get behind anything or go against anything that is being fostered by that association. I think the motion is entirely unnecessary and out of place and I shall vote against it.

The Chairman. As the Chair understands it, the amendment is that the committee appointed at Salt Lake City, of which Senator Duxbury is chairman, appointed for the purpose of giving certain classes of marine workers and certain classes of interstate employees—

Mr. Duxbury. That is near enough.

The Chairman. Be discharged and that a new committee be appointed with Mr. Williams, of Connecticut, as chairman.

Mr. Stewart. I insist that that motion is two motions and that it be divided. Now, the first motion was to discharge the committee. It has been amended that the new president appoint a committee of which Mr. Williams, of Connecticut, shall be chairman. We can not vote on both of those motions at once.

Mr. Duxbury. I understood that that amendment was that a new committee be appointed and that Mr. Williams, of Connecticut, be the chairman. That is the amendment. We ought to vote on that amendment.

Mr. Wilcox. I rise to a point of information. Isn't it possible for the executive committee, if Doctor Andrews or any organization thinks that this association can be helpful to them, to nominate a committee? Is it possible for the executive committee to nominate a committee to take such action as may seem fit?
Mr. Stewart. Yes.

Mr. Duxbury. Without any express authorization of this session!

Mr. Stewart. Yes.

Mr. Duxbury. That ought to be considered on this amendment, then.

[The question was put to a vote and lost.]

Mr. Lydvahl. I understand the situation is this, that Senator Duxbury withdrew his original motion and made a new one and still the new one included the old, but now he has changed it to make it only the amendment and that is what we are voting on, which is that a committee be appointed headed by Mr. Williams. Am I right?

The Chairman. That is the way the Chair understands it.

Mr. Stewart. The question is on the original motion.

Mr. Duxbury. I did not understand I was amending my own motion. I thought someone else did that. All I did was state what the nature of the amendment was. I did not make the amendment to my own motion, and now that the amendment has been voted on, it seems to me the original motion is before the house to discharge the committee.

The Chairman. The original motion, as the Chair understands it, was that the committee of which Mr. Duxbury is chairman be discharged. Is that right, Senator?

Mr. Duxbury. Yes.

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

Mr. Stewart. I move that the question at issue be referred to the incoming executive committee to act on at any time and in any way when it can be of service during the coming year.

[The motion was seconded and carried.]

The Chairman. Are you ready for the next paper? Mrs. Roblin, of Oklahoma, is not present and so the Chair is going to ask Mr. Kyle, of Oklahoma, to read her paper.

WHAT PORTION OF COMMISSION’S TIME SHOULD BE GIVEN TO UNCONTESTED CASES?

By Mrs. F. L. Roblin, Member Industrial Commission of Oklahoma

[Read by L. B. Kyle, of Oklahoma]

What portion of the commission’s time should be given to uncontested cases is a question which has received comparatively slight attention thus far in the work of most industrial commissions or accident boards. From replies to inquiries sent out by our esteemed friend and most efficient secretary, Mr. Stewart, to whom I am deeply indebted for the statistics quoted, it appears there is considerable variation in the manner in which these cases are handled and the time devoted to them by the different accident boards and commissions. In the States of Delaware and Maine the accident boards or commissions devote from 50 to 66\% per cent of their time to reviewing uncontested cases. In many other States the commissions devote from 20 to 25 per cent of their time to such cases, and in still other States the commissions give as little as 2 per cent of their time.
to the uncontested cases. The question immediately arises, Is 66\(\frac{2}{3}\) per cent of the commission’s time too much to devote to these uncontested matters? And is 2 per cent of its time too little to allot to them? The answer lies not in the designation of a specific portion of the commission’s time but in the dictation of reason and justice.

In discussing this question, for the sake of clearness let us divide compensation cases into two classes, contested and uncontested, and then for the purpose of this discussion divide the uncontested cases into two classes: First, a class in which liability is admitted by the employer or its insurance carrier and voluntary payments of compensation made; and second, a class where the parties make compromise settlements. These two situations are of vital interest to the employee and of more than casual interest to commissions or boards.

But why should these uncontested cases be of such vital interest to the employee and employer, to the insurance carrier, and to the industrial commissions or accident boards? What is the foundation for such an attitude?

Our answer to these questions is readily found. A little investigation may disclose that the reason there is no controversy is because the claimant does not fully understand his rights under the law, his privilege of appearing before the department in person, or because he has minimized the seriousness of his injury. Moreover, he may be a victim of hard circumstances because of long-continued illness; debts may have accumulated, and the claimant may be worried and in his eagerness to meet the indebtedness may not take sufficient time to inform himself as to his rights under the law. Furthermore, he may be the victim of a prejudiced adjuster who has a perverted conception both as to his duty and as to the policy of the company he represents. In any event, it is the duty of the department to see that justice is done. But how, you ask? Where the law provides that a final settlement receipt is not binding upon the commission and is not final and binding upon either of the parties unless it is according to the facts and the law applicable thereto, should such receipts merely be filed and permitted to remain there until some complaint is registered by an employee—who may never know what his real rights are? Should the commission consider itself a guardian to men and women who are sufficiently competent to earn a living for themselves and their families, who are sufficiently competent to hold property and to hold responsible positions? No; personally I do not believe that the commission should regard itself as a guardian to the employees. However, unfortunately, many of our injured employees are not educated and great care should be exercised in the administration of uncontested cases. An administrative body should be constantly on guard to see that in every case of reported injury the injured workman is informed as to his rights and is given an opportunity to present his claim to the department and to develop all the facts pertinent to his case.

It will be of interest to see what the better practice is, in some of the States where adequate facilities are provided for handling uncontested cases. In New York this is done by scheduling such cases on a regular calendar and notifying all parties concerned as to the specific case and date of hearing. These hearings are most informal, but everyone is given an opportunity to be heard. If the parties
do not appear and the file is complete with physicians' reports, the referee will approve the settlement received. However, many States are not so fortunate as to be able to get the necessary appropriation from the legislature to allow the employment of a sufficient number of referees and other employees to carry out this procedure. The plan employed in New York, I am sure you will agree, is an ideal way of getting a check on uncontested cases.

Another plan, followed by Maine, appears to be quite feasible as a check on such cases. After receiving a settlement receipt, a notice in the following language is sent to the injured employee on a post card:

According to reports before the industrial accident commission, it appears that arrangements have been completed with you for all compensation due you, both for medical services and for loss of time, on account of the injury received by you while working for the above-named employer on the above-mentioned date.

Will you kindly notify the industrial accident commission on the attached postal card if you have fully recovered from the effects of the injury, and if the arrangements as to compensation, both for medical services and for loss of time, fully comply with the provisions of the workmen's compensation act, as you understand it?

If you have suffered any permanent impairment to any of your limbs or to your eyes because of the injury, or if there remains unsettled in your mind any question concerning any rights accruing to you because of the injury, the commission desires to know it before approving the final settlement receipt.

Attached to this card is a return post card addressed to the commission, with space provided for answers to questions, which will give the commission very complete information direct from the claimant, and after he has had some little time to consider the agreement he has made.

I would remind you that we are now considering only that class of uncontested cases wherein the period of liability is admitted and there is no controversy over the extent of disability. These cases can cause little trouble where such procedure as that just related as in effect in New York and in Maine is followed, but in those States where little or no attention is paid to uncontested cases the administration of just settlements with ignorant claimants who are overly eager for lump-sum settlements and with adjusters who have perverted ideas as to the policy of their company and an overzealous desire to serve their company even to the exclusion of justice to the claimant may be compared to a one-eyed rifleman's attempt to hit a bull's-eye through a hedge on a dark night. If a direct hit is registered and justice done to all parties concerned, the matter will be forever closed. But if dissatisfaction arises from any of the enumerated causes the uncontested case will be reviewed in the form of a contest and general dissatisfaction, with added detail, added expense, and loss of time, will be the result. Though the method employed in handling uncontested cases in Oklahoma is not so haphazard as that in some departments, unfortunately we have not had sufficient money to engage office employees to carry out such a procedure as the practice in Maine.

In Oklahoma we are required to consider these settlement receipts without any special communication from the claimant direct, aside from the stipulation itself, but we do insist that we be furnished with sufficient reports from attending physicians, and in addition
from examining physicians selected by the commission where it appears there is a possibility that there may be some discrepancy in percentage loss of use of a member. In the office of the Industrial Commission of Oklahoma we have 21 employees, two of whom give their entire time to scrutinizing carefully these receipts for the correct amount of compensation for the disability given, and also that the extent of disability is properly reported. Any discrepancy that is not corrected within five days by the insurance carrier or employer is reported to the commissioners and the matter given our immediate attention, either by way of ordering special examinations or by setting the case for a hearing. Thus you can see that while we do not devote as much time in Oklahoma to uncontested cases as is done in Maine or New York, nevertheless it is not altogether a hit-or-miss situation. We have found from experience that uncontested cases of the first class, where liability is admitted and the final settlement has been agreed upon, often prove a source of dissatisfaction when they have to be reopened.

There remains the other class of uncontested cases, namely, compromise settlements. This class of cases is not nearly so difficult to handle, because no compromise settlement is approved until the claimant has appeared in person before the commission. Here again the claimant is liable to be the victim of circumstances or of an exaggerated conception as to the size of the lump-sum settlement, measured in terms of his customary amount of cash, and an inflated idea as to the purchasing power of such sum, but these dangers in compromise cases are largely imaginary, while in the uncontested cases where liability is admitted the dangers are more real, because in the compromise cases the commission will not permit the claimant to settle for an unfair amount. Similarly, a little closer scrutiny by the commission or accident board in uncontested cases where liability is admitted might bring better results and make the administration of justice more certain and speedy as well as promote general satisfaction with the law.

Thus far we have been considering the amount of time that should be devoted to uncontested cases after the accident occurs, or in their vital relationship to the claimants and their interest. In the beginning we said that these cases were of more than casual interest to the commissions and boards. As to the truth of that statement I believe you will agree. The proper administration of the law as applied to these cases will create respect for the commissions and boards, and approval of the law generally, both among the employer or its insurance carrier and the claimant. Such satisfaction alone will put an end to the criticism of the workmen's compensation law, and there can be no doubt that the chief source of criticism is dissatisfaction arising out of cases which were regarded as closed, where the claimant was either duped because of his own ignorance, or because of his eagerness to get a lump-sum settlement, or because he underestimated the seriousness of his injury. In fact, after a case has been closed and then reopened, some one is bound to be dissatisfied and the result is that the commission or board gets the blame.

Such dissatisfaction on the part of the claimant or other parties concerned should be avoided where possible, but how to avoid such dissatisfaction is one of our problems. Why wouldn't a little
more time devoted to an educational campaign—for the education of
the employee and employer, before accidents occur, on what to do in
case of accidents—be of inestimable value not only in reviewing these
settlement receipts but possibly in eliminating some of the contested
cases? We know that accident prevention campaigns are common,
and there is no question that good has resulted from such cam-
paigns. Then why not conduct an educational campaign relating to
the rights of the injured employee, informing him of at least a few of
his fundamental rights under the compensation law? He should be
educated especially as to the necessity for immediately notifying the
employer that his accident has occurred; as to his right to medical
treatment and as to who shall furnish it; that there is a branch of his
State government to whom he should fully describe his injuries, and
the name of that branch of government and its place of business.
Furthermore, he should be informed as to the waiting period, if there
be one, as to the manner in which the rate of compensation is fixed,
and as to the difference between a temporary disability and a perma-
nent injury. When this is done, the employee will be in a better
position to help himself. This can be accomplished through the
medium of pamphlets distributed by the employer to his employees or
by means of bulletins posted on the premises which will fully inform
the employee as to what is required of him in case of accident and as
to his relief. At the same time include in the educational program
some means of enlightenment to employers as to what is required of
them under the compensation law; as to their duty to report these
accidents; as to their seeing that the men injured have immediate
treatment, and that there is posted and kept posted on their premises
bulletins which will fully inform the employees as to their rights.
The objection to placards is that too frequently they are torn down or
become soiled beyond reading and are not replaced.

In the more hazardous and larger industrial establishments one
hour of instruction every three months given by the employer or by
the insurance carrier’s representative or by the department inspector,
any one of whom should be interested, would keep the employees
properly informed as to their rights under the compensation law
in case of accidents. This might be included as a part of the acci-
dent-prevention campaigns, with a slight addition of time required
for such instruction. In fact, I believe, if it is not already included,
it should be made a part of the accident-prevention program, for
some accidents are inevitable and instruction in what to do in case
of the inevitable should be made an essential part of such campaigns.
In industrial establishments where there are foreigners who do not
understand the English language, it may be necessary to reach them
through their leaders as is done in safety campaigns.

The results from such educational effort would justify the time and
expenditure required. With the employee and employer informed
as to their respective rights and duties under the compensation law,
we not only would reduce the amount of time to be devoted to un-
contested cases but also would eliminate a large number of contested
cases, because, the employee and employer being properly informed
as to their rights and duties, misunderstandings, out of which many
contested cases arise, would be removed. Such hopes are not the
idle fancies of a Utopian dreamer, but are in the realm of practical
accomplishment, and when they are no longer things hoped for but not seen and become the rule rather than the exception to the rule, the administration of the workmen's compensation act will be less arduous and the results obtained will be more nearly satisfactory to all parties concerned.

The Chairman. Has anyone anything to say on the paper just read? If not, we will pass to the next. Mr. O. F. McShane, member of the Industrial Commission of Utah, is going to address us on a matter which requires a great deal of diplomacy sometimes, common sense, and sound judgment, "Right of injured workman to select his own physician."

RIGHT OF INJURED WORKMAN TO SELECT HIS OWN PHYSICIAN

By O. F. McShane, Member Industrial Commission of Utah

Perhaps the exciting cause which brings this question before our convention at this time is an article appearing in the February issue of the International Typographical Journal under the caption "Health Insurance v. Workmen's Compensation," and over the signature of L. A. Compton, chairman of the relief committee of Typographical Union No. 16, Chicago, Ill.

You will no doubt recall that article as a rather severe indictment of employers, doctors, and compensation boards. Its intemperate tone might justify caustic comment; but such a course, in my opinion, would only manifest an impatience on our part inconsistent with our duties and responsibilities as members of compensation boards who have to meet from time to time criticisms of this character.

It seems also that good will flow from this unmerited castigation, rather than evil. If Mr. Compton has done nothing else he has brought to the forefront a matter which should be carefully studied and honestly dealt with. If this article serves as an irritant which will excite inquiry and sober consideration of the entire medical problem, then it will have served a useful purpose. I believe it will do just that thing. We will, in our respective jurisdictions, find out just what is going on; and where it is found that evil practices have crept in they will be corrected. The wave of criticism which will follow the discovery of improper practices will deter employers and physicians from like action in the future and compensation boards will be more wide awake to their duties regarding medical procedure. As a matter of fact, this medical problem was already ripe for an airing, and this article seems to have simply precipitated it into our immediate presence. Let us therefore proceed to a discussion of the subject, ignoring entirely the thrusts of Mr. Compton, for the reason that all informed people know the history of compensation legislation; they know those who waged the fight for its enactment; they know how little insurance influence has been used in securing such legislation, and they know how carefully the rights of injured workmen are guarded by compensation boards.

While much discussion has been indulged in concerning this question, it is still being debated. That it is a matter upon which men may honestly differ does not admit of doubt. Good arguments have been made in support of the employer's right, and perhaps equally good arguments have been advanced in favor of the employee's right.
of selection. It seems that experience of a character and sufficient volume which could be used to reduce the matter to a mathematical certainty is not accessible and therefore no one can speak with finality. Our arguments, pro and con, must be based largely upon theories or what we may choose to term the equities of the case. However, there is one matter upon which we may all agree and that is that the interests of employer and employee are not antagonistic, but on the contrary are identical. Mention of this is made only for the reason that some persons, in what appears to be an excessive zeal, while discussing the question have left the inference that such is not the case. The mutual interest of both is so apparent that no argument is needed in support of it. A shortened healing period not only means an earlier resumption of full wages in lieu of compensation, less mental anguish by reason of destitute dependents, less physical pain and suffering, and less likelihood of permanent partial disability for the injured man; but to the employer it means less medical expense, less compensation, and an early profit upon the workman’s labor. Therefore, it is apparent that the parties in interest are both benefited by a wise choice and both are prejudiced by a poor one. Both seem to be in the same boat, no matter upon whom the right of selection ultimately falls.

The very fact that this question is being discussed may convince us that the interest of either may be prejudiced by the exercise of the right of the other. This is not true unless the one exercising the right takes a course which is detrimental to his own interests.

In the interest of brevity, certain matters about which there ought to be no dispute should be admitted as facts; by so doing our records will not be congested with arguments pertaining to matters not in controversy.

It would seem that the following may be so admitted:

(a) The employer or his agent in the first instance pays for the service rendered.

(b) A great majority of legislative bodies seem to have experienced no difficulty in arriving at the conclusion that the employer should exercise the right, since but few States have, in so many words, placed the right of selection in the hands of the employee.

(c) The employer, due to his usual extensive acquaintance and greater experience, is in a more favorable position to make a wise selection than is the employee. He knows the doctors who have secured the maximum anatomical and functional results within a minimum period of treatment in injuries of various kinds and those who have failed; that he will choose the first and avoid the second is beyond question.

These important considerations being admitted, you ask: Is not that the end of the matter? If the reply is negative, you call our attention to the fact by way of argument that the employer pays for the service; that a great majority of legislative bodies seem to have intended to keep the right of selection in the hands of the employer, and you therefore assume that this is for a good and sufficient reason; that the employer is better fitted to make a wise selection than the employee; that the workman will probably, if given the right, select his family or his lodge doctor. This latter proposition may be and undoubtedly is true in some cases.
What of it? Are you going to assume that all family doctors and all lodge doctors are to be classed as incompetent? Such an assumption would be unwarranted; but if you are going to deal in assumptions you will find that they may not be indulged in favor of the employer alone.

Have you in your experience ever noted an employer trying to force all his injured workmen to go for treatment to a son-in-law who has just finished his internship? Others have.

Have you ever found some “high-up” insurance official pulling strings here and there and manipulating matters so that most of his industrial cases gravitate to a brother or other near relative? Others have.

Have you ever found a seemingly close relationship existing between some insurance adjuster and some doctor trying his hand at industrial surgery for the first time and a stream of infected cases flowing regularly from this doctor’s office? Others have.

These practices are only referred to as an offset to the matters assumed against the workman. We know that such cases are few and far between, but we also know with equal certainty that they do exist. Personally I am convinced that on the average as many unwise choices will be made from ulterior motives on the part of the employer as there will from ignorance and lack of experience on the part of the employee.

Our practice is to give injured workmen the right of selection when it can be conveniently exercised, and we find them asking for the best. Within the past year we have sent two patients to the Mayo Clinic at their request.

No State where the right of selection is exercised seems to have experienced any serious consequences as a result.

Let us face this situation with but one object in view, that of serving the employer and the employee. This can not be done if we spend our time entirely upon the question of the right of an injured workman to have treatment at the hands of a physician of his own choice. You, even though you concede the right of choice to the workman, must protect him against an unwise selection. This also holds good regarding the employer. This can only be done by the exercise of an arbitrary power on the part of a compensation board by which it may, at any time it deems it advisable, and in the interest of the injured workman, transfer him to some other surgeon or specialist or other place of treatment. General practitioners should not be permitted to treat injured eyes; physicians dealing principally with internal medicine should not be permitted to handle all cases of bone involvement which come to them. Doctors may not be available to treat industrial cases for other reasons.

At this point let us inquire what factors determine the availability of a doctor in industrial cases. Among those finally arrived at I assume you will accept the following as being important:

1. Professional honesty.

Will the doctor, when selected, use every effort to return the patient to his employment in the best possible physical condition within the shortest period of treatment consistent with the interest of both employer and employee? Will he entirely disregard the fact that one or the other of the interested parties has engaged his services and
hold high his professional honor? Will he disregard the importunities of a safety director and refuse to order a man back to work before he is surgically healed? Will he, when closing the case, examine and rate his patient for permanent partial disability uninfluenced by his relationship to either the employer or the employee, or will he, because of an itching palm overtreat the case, unreasonably prolong the healing period, and in the end be influenced in his judgment by reason of his relationship to one or the other of the interested parties?

(2) Training and skill.

You will agree that professional honesty alone is not sufficient. A doctor may be ever so honest and yet be deficient in both training and skill, or having had a thorough training may be devoid of skill. One physician may because of poor coordination of hand and brain be incapable of doing the most delicate class of surgery; on the other hand, another may be markedly skillful and yet lack the training necessary to render him capable. One who possesses professional honesty, has been properly trained, and is sufficiently skillful is available if he has had—

(3) Experience.

In major injuries it is unwise to place a very seriously injured man in the hands of one who has not had considerable experience in such cases. It is not to be understood that the case should be taken from a practitioner because he does not have as much experience as some other members of the profession. To do so would in a few years see the passing of experienced men. It would, however, be proper to insist upon adequate consultation and that proper supervision be had in delicate surgical procedure.

The matter of professional honesty I have approached with some degree of hesitancy and wish to say that as a class the medical profession stands very high, and my experience in dealing with physicians has been very pleasant. Their organizations everywhere are exercising diligence and industry in order to keep out practitioners of questionable character. Yet we are all subject to human frailties, and there is perhaps no class or profession in which members may not be found to disgrace it.

Were it not for these factors, which affect the availability of a physician, it would make no difference who makes the choice or what the choice is, because all injured men would receive the standard treatment under standard conditions with the same degree of skill and professional honesty. However, because of this fact, the likelihood that some doctor will be willing to give an opinion which serves his personal interest best and that many who are admitted to practice are inefficient, the matter of choice becomes important.

Since I expect to meet this question squarely—to choose and defend one position or the other—I shall select that phase which in view of past expressions in this body seems the unpopular one—that is, that the injured employee should have the right to treatment by a physician of his own choice.

You would deny this right on the theory that a great majority of our laws so intend, that the employer is best fitted to make a wise selection, and that the employer pays the bill. This has been ad-
mitted. But let us now inquire just what dangers beset the employee who must submit to treatment by a physician chosen by his employer, and follow this up with an inquiry as to whether or not he has any rights in the matter which should be respected.

The first danger which besets an employee who is compelled to submit to treatment by a physician chosen by his employer is that he will be returned to work before his injuries are healed. To deny that many doctors who serve the employer will manifest this weakness is to deny something of common knowledge among compensation boards.

The second danger is that after the man has been healed surgically and comes in for examination and rating for permanent partial disability, he is at a distinct disadvantage; the attending physician, who knows more about the case than any other living man except the patient, is called in, gives a history of the case, discusses the nature and extent of the injuries, describes the treatment given, estimates the permanent partial disability, and usually closes with a favorable prognosis, such as "further improvement"; but in an apparent burst of liberality recommends settlement at this time on the basis of disability as now existing.

Send this man to an independent examiner and you will find few willing to challenge the findings of the attending physician when he has access to such findings. However, if you refer the man without making known the opinion of the attending physician, you will in four out of five cases get a greater disability rating.

An honest physician in the pay of the employer will not use the proper yardstick in measuring a disability. He will invariably give an opinion based on the mechanical loss alone and never take into consideration the industrial displacement.

[Oral discussion of cases.]

Aside from all these dangers, I ask you: Does the injured man have any rights worthy of our attention? Of this there can be no doubt. In asserting these rights we take the high ground—

First. That they are inherent;

Second. That they would seldom be exercised if given, while to acknowledge them will produce psychological results of inestimable value; and

Third. That the injured man pays the full price of all services in the final analysis.

Can it be said that the injured man's rights are subordinate to those of the employer, who loses no wages, who undergoes no period of physical pain, who suffers no anguish because his dependents are not properly housed, clad, and nourished during a prolonged disability period, who does not have to face life at the end of the healing period permanently and partially disabled, and who is only called upon to advance premiums until such time as by sale of the products said premiums are returned as a part of the manufacturing cost plus a profit?

Let us pursue this matter a little further. There seems to be an impression generally accepted that the employer who advances the premiums pays the compensation arising out of industrial injuries to his workmen. Of course, such is not the case. No employer pays
any part of the compensation cost in the industry in which he is engaged, except as any other member of a consuming public pays it. It is true he advances premiums, but in making up his cost sheet he never fails to consider the item of compensation premiums. That item of expense is figured into the cost of production just as carefully as the cost of material, labor, taxes, freight, and interest on the investment, or any other item. When the cost per unit is finally ascertained, a reasonable profit is added and the financial burden passed on to the consuming public. It is therefore easy to understand that the employer is not only reimbursed for his compensation premium but that he receives a profit on this item the same as upon any other cost item which enters into production. Followed to its logical conclusion, it is quite evident that the higher the compensation cost to the employer the greater his profit. His most valid objection to a high compensation cost is that it may become a competitive factor where his goods have to be sold upon a market in competition with goods from other States.

There is and can be no doubt that the consuming public pays the cost of workmen's compensation insurance.

Who is the consuming public? No one questions that there are more workers than employers; that there are on the average more children in the families of the workingmen than there are in the families of employers. It must be apparent to the honest person that there are an infinitely greater number of working people to shelter, to feed, and to clothe than in the employing class. This being true, it necessarily follows that the workman himself not only pays the price of workmen's compensation insurance in lost wages, in physical suffering, in mental anguish, and in a maimed and broken body, but also the greater part of the cash burden. To deny this is to deny the fundamental principle upon which all compensation law is based.

To refer again for a moment to the inherent right of an injured workman, I wish to state that to compel injured workmen to expose their persons for diagnosis and treatment to those for whom they have a very pronounced distaste as well, perhaps, as an absolute lack of confidence is unjust in principle and harmful in its effects. Where such feelings are entertained cooperation will not be had and the disability period will as a result be unduly prolonged, with increased compensation cost. You may say: But such cases will be few in number and ought not to be seriously considered in determining a general policy. The answer is that if men be given the right to select a physician of their own choice the cases will be few where they will exercise the privilege. If it be called to their attention that the management is tendering the services of men especially skilled in their profession, the exercise of the right will never be a disturbing element in any large percentage of cases; but the denial of such right will always be a source of irritation to the greater number of employees. It will be something for the agitator to seize upon in order to inflame the working class at every opportunity. It will lower the morale in the particular plant; it will create a gulf between the employer and the employee and interfere seriously with a proper understanding and a mutual confidence and interest in each other.
It seems to me that the lack or loss of confidence in an attending physician is sufficient in itself to disqualify the doctor for further treatment in a given case. Your patient will never make the progress upon his road to recovery when he has an antipathy for or antagonism against the attending physician or where he lacks confidence in his skill, that he will make when his mental attitude is one of confidence and cooperation.

The fact that the employer makes the selection may be sufficient to prejudice an otherwise fair-minded man against the employer's choice. I can not convince myself that a confiding mental state and a sympathetic cooperation on the part of the injured man is not a factor of prime importance in the length of time necessary to heal a wound as well as in the functional result finally obtained.

If this be true in cases where there is objective evidence of injury, how much more true and how much more important is it in cases where the symptoms are all subjective and can only be ascertained and given currency by the patient himself. In cases of disability resulting from head injuries, back injuries, and the like, where the man claims inability to work on account of pain, do you mean to tell me that he will make satisfactory progress when attended by a physician in whose skill he has no confidence and against whom he is prejudiced? Doctors are human beings, and in many cases the antipathy entertained by the patient is reciprocated by the doctor, with the result that there is no team work and no progress made in the matter of recovery. Many a patient is driven to a state of hopeless neurosis by imposing upon him the services of a physician distasteful to him.

Not only do I believe that it is right and proper that an injured man should have the right to select his own physician, but I believe it is profitable to the employer as well.

In closing I wish to state that the exercise of this right by the employee will not in itself be so very valuable. In order to get the best medical service you must—

First. Amend most of your laws and make your medical service unlimited as to time and as to amount, so that when the injured employee makes a selection it will mean something. I would not give a fig, if seriously injured in some States, to choose the doctor to give the treatment, for the reason that the legal obligation of the employer is so limited that hardly a tithing of the amount necessary for a proper handling of the case is available.

Second. You must eliminate contract doctors. Give industrial cases a free range instead of sewing them up for the benefit of a few. This class of doctors is not only objectionable on account of their relation to the employer, but also because so great a volume frequently falls into their hands that they can not properly attend to the work. Often doctors of this class are good traders and get many contracts, which seems to be their chief concern. I do not feel that they have a proper place under a compensation act.

Third. Give to the injured man the right to select his own physician for the psychological effect. It is the right rather than the exercise of it that counts in many cases.
Fourth. You must give the compensation board the right to take the injured workman from the attending physician when the patient is not responding to the treatment and place him under the care of specialists.

Fifth. You must in all cases where permanent partial disability is the issue have the man examined by an independent medical advisory committee.

Without these five essentials you will not get the best medical care, no matter who makes the choice of doctors.

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Mr. Kennard. There is one question I would like to ask Mr. McShane, if I may. He says that the commission should have the right to change the man’s doctor when he does not feel that he is being properly treated. I wonder if he appreciates just how large a hole he would give for a commission which attempted to interfere with the medical profession to the extent of telling when they were really treating the man right and when they were not. Is a lay member of the commission qualified to pass upon that, or would he call in an advisory committee? Would he call in some other physician? It sounds good, but I tell you that the practice is something we would not encourage in Massachusetts.

The Chairman. I am going to suggest that we discuss this paper of Mr. McShane’s later this afternoon, if that is agreeable to everyone. The next speaker is the Hon. James A. Hamilton, Industrial Commissioner of New York, who will speak to us on “Independent contractor or employee, when?” That is a question in which we are all very much interested.

INDEPENDENT CONTRACTOR OR EMPLOYEE, WHEN?

BY JAMES A. HAMILTON, INDUSTRIAL COMMISSIONER OF NEW YORK

The question of independent contractor was one of the early problems arising under the New York workmen’s compensation law. On July 1, 1914, the day on which the New York law became effective, Robert Rheinwald was killed as the result of a scaffold accident, while repainting a large sign on an outside wall of a three and one-half story brick stable owned by a brick and supply company in New York City. He was not a regular employee of the brick and supply company, but was employed as a sign painter for this specific task, and had no assistants. The workmen’s compensation commission (at that time in charge of administration of the law) denied an award to the widow on the ground that Rheinwald was not an employee but an independent contractor. No mention of contractors, subcontractors, or independent contractors was at that time contained in the compensation law. The appellate division, on appeal, held that Rheinwald was an “employee,” and directed the workmen’s compensation commission to make an award. This was done, but on second appeal the same court reversed the award in the light of another decision made in the meantime. On further appeal the court of appeals denied compensation on the original ground taken by the workmen’s compensation commission, namely, that Rheinwald was an independent contractor.
The confusion illustrated by this early case has been clarified to some extent by amendments to the New York law and by judicial decisions. Further changes are, however, necessary in order to abolish the twilight zone of doubt which still surrounds so many of these cases, whether before referees of the department or for adjudication by the courts.

Naturally the situation varies as between different States, but there are without doubt in every State meritorious cases which, under the statute, have to be disallowed because the status of the injured worker is not definitely established as that of "employee." The judicial record in such cases as have been before New York State courts is summarized in this paper. Information is not available as to the number of cases disallowed by the department on the ground that the injured worker was an independent contractor.

The question of independent contractor antedates the establishment of workmen's compensation systems. It rests far back upon common-law decisions.

Corpus Juris (vol. 31, p. 473) defines the independent contractor as follows:

Generally the term signifies one who, exercising an independent employment, contracts to do a piece of work according to his own methods, and without being subject to the control of his employer, except as to the result of the work, and who has the right to employ and direct the action of the workmen, independently of such employer and free from any superior authority in him to say how the specified work shall be done or what the laborers shall do as it progresses; one who undertakes to produce a given result without being in any way controlled as to the method by which he attains that result. It is impossible to lay down a rule by which the status of men working and contracting together can be definitely defined in all cases as employees or independent contractors. Each case must depend on its own facts, and ordinarily no one feature of the relation is determinative, but all must be considered together. Ordinarily the question is one of fact. The principal consideration in determining the question is the right to control the manner of doing the work. Generally speaking, it may be stated that, if the employee is under the control of the employer, he is a servant or employee and not an independent contractor. However, it is not the actual exercise of the right by interfering with the work but the right to control which constitutes the test.

To show that an injured worker was entirely independent of control as to the manner or method of doing the work—that is, was an independent contractor—a brief may set forth: (a) That the work was one requiring special skill or training; (b) that the worker could choose his own time for the doing of the work within reasonable general limit, not being bound down to certain days and hours; (c) that the work was casual, not regular, being directed to the attainment of a single object rather than to general service; (d) that the remuneration was a lump sum, regardless of the time spent upon the work, as distinguished from wages by the day or the hour; (e) that the injured worker furnished tools, materials, and other workers at his own expense; (f) that the injured worker carried his own compensation insurance upon his helpers or himself; (g) that the injured worker could have assigned the job or contract to someone else; (h) that the injured worker was not subject to discharge for disobedience; (i) that the injured worker had assumed liability for accidents, in writing or otherwise; (j) that the injured worker had held himself out to be an independent contractor, maintaining...
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a business office or shop, advertising by cards or letter headings, presenting itemized bills, etc.

As suggested in the Corpus Juris definition, a single one of these factors will scarcely be determinative but all must be taken together. The more of them that can be marshalled, the more likely will a case of independent contractor be made out. If I take my watch to a watchmaker for regulation or my shoes to a shoemaker for mending, I will clearly not be liable for compensation in case the watchmaker or the shoemaker gets hurt while doing the job that I have assigned to him; but if a man of no special reputation comes to me and undertakes to paint or patch my front porch, I providing brushes, tools, material, etc., but not especially overseeing his work, I may have difficulty in proving him to be other than my employee.

Thirty-six cases in which the courts of New York have held claimants or middlemen to be independent contractors are classifiable as follows: 16 mechanics, 8 truck or wagon owners or operators, 5 timber workers, and 7 miscellaneous contractors.

The 16 mechanics included: 7 painters, 4 carpenters, 2 plumbers, 1 automobile repairer, 1 smokestack erector, and 1 tinsmith. All of these except one were engaged in building work, and all were individual workers without employees of their own.

Of the eight truck or wagon owners or operators, four were individual workers without employees of their own, and four were employers of teamsters. One of the employers was a labor organization.

The five timber workers were all individuals, with no employees of their own.

The seven miscellaneous contractors were a cheese maker, a collector, an ensilage cutter, an excavator, a junk gatherer breaking a wheel, an oiler of revolving signs, and a whitewasher. The cheese maker employed members of his own family; the excavator supervised employees furnished by the party with whom he had entered into contract; the other five were individuals working alone.

Twenty-eight cases in which the courts of New York have held claimants to be employees, in contradiction of the pleading that they were independent contractors, are classifiable as follows: 8 timber workers, 3 mechanics, 2 awning removers, 2 car unloaders, 2 cleaners, 2 home or piece workers, 2 salesmen on commission, 2 truck operators, 1 interne, 1 hotel coat-room manager, 1 junkman cutting iron from a bridge, 1 State highway engineer working for a village, and 1 stone breaker.

This takes no account of cases in which the question was one of identification of the employer, with unsuccessful pleading that an intermediary agent or special employer was an independent contractor, except that four of the eight timber cases involved the point along with the question whether or not the injured person was an independent contractor.

Of the eight timber workers, four were so-called “partners,” in teams of two persons each, and four were individuals working alone. The three mechanics comprised two supervised helpers and one working alone. Of the two car unloaders one had a force of helpers, and one had a “partner.” The State highway engineer supervised vil-
These 64 cases are practically all of the cases in which the question of independent contractor has been decided by the New York courts in connection with workmen’s compensation. They furnish some pointers relative to the situation, but an important question is: In how many and what kind of cases that have never reached the courts have the referees and the board of the department of labor denied compensation upon the ground that the injured persons were independent contractors? If there are such cases, conditions would seem to be serious. No statistics appear to have been compiled covering the point.

The question of independent contractor is bound up with the question of noninsurance. How many general truckmen, job painters, or other casual workers with little or no capital, living somewhat from hand to mouth, are seeking and obtaining employment without being protected by workmen’s compensation insurance? It is plain that these persons, in case they are crippled, and their families, in case they are killed, are about as liable to go to the poorhouse as are clearly defined employees, unless protected by workmen’s compensation or other insurance against accident.

Speaking for New York State, an amendment requiring any person performing labor as an independent contractor to carry compensation insurance would largely remedy the evil. I strongly favor for every jurisdiction a provision that acceptance of premium by an insurance carrier on a policy securing compensation to any person shall estop the carrier or such person from pleading that such person is not an "employee" within the meaning of the compensation law.

An amendment forbidding the issuance by any State or municipal board or department authorized to issue licenses for the carrying on of any trade, occupation, or business involving the employment of skilled labor of any such licenses unless such applicants shall carry compensation insurance would also be helpful.

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Mr. Scanlan. I would like to ask Mr. Hamilton if the question was ever passed on by the authorities of New York that the insurance company be estopped from setting up this defense.

Mr. Hamilton. No.

[A rising vote of thanks was given Mr. Hamilton for his paper. Meeting adjourned.]
[The president presented the following gentlemen connected with the Georgia Power Co., the largest employer of labor in Georgia: Mr. W. Mitchell, vice president and general manager; Mr. Starr, publicity director; and Mr. Hamlin. Mr. Mitchell spoke in part as follows:]

Mr. Mitchell. You are meeting in a convention that it seems to me is of great importance. Your president said that your numbers were not large, but numbers are not what count. Certainly the commissions which you represent are, because of the nature of the things they handle, among the most important commissions in the different States.

We will all agree that a tremendous change has taken place in the last 15 or 20 years in the relation between what is commonly called capital and labor. To a large degree, the employer of labor is no longer permitted—and it is a wise change—to make it a matter of simple barter and trade between himself and the employee. The condition no longer exists that used to, that in case of an accident the employee had no protection, but had to go out and get a lawyer and to fight for those things which we now recognize as properly his. I think that every other large employer of labor to-day who has had experience with the workmen's compensation act and similar laws that have been developed in our various States during the past 10 years will agree that we much prefer this condition to the conditions existing prior to that time. I know our company does. I know the company that I was with for 15 years before coming to Georgia felt that the workmen's compensation act in effect in Alabama was the greatest help that we could possibly have had.

I think employers generally are realizing more and more their obligations to their employees, but that does not in any way detract from the importance or necessity of the State industrial commissions and of proper laws which define our duties should we by any chance tend to forget them.

We know now just what is expected of us. If, in spite of all we do, an employee is hurt, he knows that he does not have to go out and hire some lawyer to take up his case and then to take all the money that he may get in the way of compensation. It is paid willingly, freely, in accordance with the law. We are sorry for the accident that caused it, but we are glad to take care of the employee and do it.

As one who has had personally a good deal of experience with it, I feel that it is a great thing for the employer. Your president has said that our company is perhaps the largest individual employer of labor in the State of Georgia, and I think that goes without question. The point that perhaps is not often thought of is the fact that we also
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have perhaps the most difficult conditions to meet in the handling of our business properly to protect our employees. We are much more interested in preventing the need of making payments in accordance with the law than we are in the other part of it. In other words, a great deal of our time is spent in efforts to prevent those very accidents which the commissions have drawn the laws and prepared wise rulings to take care of after they happen. Our business is perhaps more hazardous in that way than anybody else’s in the State of Georgia. Our street cars of necessity operate on the public streets and highways. Our lines of necessity are strung along the highways. We can not get away from the fact that they offer constant hazards, and in this day of automobile traffic, with our narrow streets and the apparent desire of nearly everyone who operates an automobile to get there ahead of everyone else, our street-car situation and the problem of our motormen and conductors in accident prevention are exceedingly difficult ones. On the other hand, the problem of taking care of service, where you have several thousand miles of transmission lines strung all over the State, is also a difficult job. It means that there are bound to be hazards to our employees, and I want you to know that this company of ours takes the greatest pride in the efforts which it has made and is making to alleviate those hazards and to prevent accidents to the greatest possible degree.

We hear a great deal these days of public safety, safety-first movements, and all that. Our company believes we are leaders in that, too, because we do not simply have a department which writes and talks about it, but we get down to the practical consideration. There is not an accident that is not thoroughly investigated, not simply by the department head primarily responsible for the work being carried out, but, in order that we may get an unbiased view of the thing and see if we can not find a way to prevent such a thing in the future, by a committee on which are men from departments which have nothing to do with the case under consideration.

Last week I had such a report, that unfortunately there had been an accident, an employee seriously hurt. The foreman felt that he was entirely in the clear, had done everything to prevent it. When the report came in from the safety committee, however, it brought out the fact that we should put more emphasis on our foremen, make them realize their responsibility for workmen in these particular and peculiar circumstances. I feel, therefore, that we have gained something from that accident.

Not only that, but we train our employees to give first aid, whether it be artificial resuscitation from shock or drowning or in any other kind of an accident. We go to great lengths to prevent accidents, and I think that a meeting of this sort may perhaps be interested to know that these things are considered by the large employer.

The CHAIRMAN. We will have first a discussion on Mr. McShane’s paper, and after that is closed, the discussion on Mr. Hamilton’s paper. After that the papers that are to come before the convention will be read and the discussion will take place afterwards.

We will now have the discussion of Mr. McShane’s paper, which was read this morning, in regard to the “Right of injured workman to select his own physician.”
Doctor McBride. As I said this morning, I feel it incumbent upon me to discuss this paper, being a doctor and at the same time in charge of administering compensation. The right to select doctors in compensable cases is a moot question. In New Jersey 75 to 90 per cent of injured people are now allowed to select their own doctor. The doctor who first sees them is allowed to continue the case. The employer is compelled, of course, to furnish medical treatment or surgical treatment as long as that is necessary. There is no limit as to time or amount. The only thing necessary for the person to get medical service is to notify the department within 30 days after the occurrence of the accident. The treatment is generally continued by the doctor who first treats the injured man at the hospital or at the home. Perhaps 15 per cent of the number that I have cited are compelled, if they are ambulatory cases, to go to the stations either of the employer or his insurance carrier.

Mr. McShane this morning contended that one side is as likely to give improper service as is the other. That I believe is true in many instances. I know some insurance carriers in our State have not furnished as good service as might be obtained were the patient allowed to select his own doctor. Ability to treat industrial-accident cases is, of course, of prime importance. The person treating an industrial-accident case, the doctor, should be able to treat it to the best possible advantage to the patient. That admits of no contradiction. If every doctor who treated cases were honest and able, there would be no question. It would make no difference then which side selected the doctor, the person himself, or the carrier or self-insurer or employer.

I think the majority of the medical profession appreciate the importance of industrial surgery. There are many perfectly splendid doctors, however, who are not fully competent to treat serious industrial-accident cases. The ordinary trivial accident, laceration without anything other than laceration of the soft parts, or a confusion, or a minor injury to a finger, can be treated just as well by the ordinary doctor as it can be by the specialist, if it is minor in character, but unfortunately a great many accidents are not minor, and require special types of service.

I find that the present tendency—I am talking now about the doctor selected by the carrier or by the employer and the doctor selected by the patient himself—of one side is to minimize the amount of permanent partial disability the person may suffer, and of the opposite side to magnify it. I think that that has been the experience of all of you who are engaged in this work. In New Jersey we attempt to overcome that by insisting on our medical department, the medical department of the various clinics, seeing every case; every accident case that is compensable is examined by one of our doctors, whether it is for an informal hearing or for a formal hearing. We insist on our doctor rendering a report to the deputy commissioner or the referee sitting in the case. That report is for the information of the deputy commissioner or referee only and not for anybody else. We refuse to furnish that report to the carrier or to anyone else; it is furnished to the referee for his guidance and for his information. We insist on the referee or the deputy commissioner in every instance having that report. Before my advent into
the work it was the policy of some of our referees and of our deputy commissioners to hear the report from the doctor representing the injured person and then that from the doctor representing the carrier or employer. There was such a wide variance in the percentage of disability given by both sides that the deputy commissioner or referee would then try to strike some middle ground, say one side is too high and the other too low. We do not now permit that. We insist on that information being obtained. It can be obtained in almost every instance and accurately, and we charge that responsibility to our own department and insist on having one of our doctors—we have 10 doctors in the State—perform that service. They are men of ability, they are skilled, they are able to estimate permanent partial disabilities or disabilities of any character probably as well as any doctor can.

The question in New Jersey has been quite acute, more acute a few years ago than it is to-day because the medical society of our State took the question up very seriously; and when you consider human rights and personal rights, particularly that right that exists between the patient and his doctor, you can not seriously disagree with the desire to give to the injured person the right to select his own doctor. That is natural. I appreciate that. And if every doctor in the State of New Jersey were competent to estimate permanent partial disabilities, and had the ability to treat skillfully and properly all industrial accidents, I would not say a word about it. That is the only thing to do, but unfortunately I am forced to admit to you that all doctors are not so competent. I think it requires a good deal of skill on the part of a doctor and a good deal of training, if you will, and experience gained by a great number of cases, to give him sufficient ability to estimate correctly permanent partial disabilities.

When there is any question about that in New Jersey—our doctors are not specialists in all lines—when we have a question as to an eye disability or a neurological disability, we refer those cases to specialists, despite the fact that both sides may have an opinion from a perfectly reliable doctor. If those opinions are not in accord, we then demand the right to have a third person. We give the carrier and the man's doctor the right to select that third doctor, if they can agree. If not, we furnish the umpire for them. We do not have any difficulty, because they are honest men and men of ability, and they can easily come to a common solution, and for that reason we have very little trouble there.

I want to say further that conditions are steadily improving. I know that several carriers have discontinued the services of certain doctors, not because we asked them to—we never do that, we do not ask them anything of the kind—but because experience has taught them that those doctors were not able to serve them properly. They were men of questionable standing. They would represent any side which would pay them. We found that out, and a number of these carriers have discontinued the services of such doctors. I feel now that in most instances in New Jersey the tendency is to get the very best possible medical opinion that can be obtained.

When the State medical society raised the question that the insured person ought to have the right to select his own doctor, the only reason that it did not insist on that becoming a part of the
compensation law was that it itself preached that there are a number of doctors in the State who are not able to do industrial surgery properly and possibly the person might not always be fortunate in his selection of a proper medical attendant. This was the only reason that deterred the welfare committee of that society, of which I am chairman, from insisting that that become a part of the act. It appreciates that there are a number of cults in the State, a number of men who get very few if any industrial accidents but who are not honest enough to admit it and who continue to treat anybody who comes along. Many serious results occurred as a consequence of that—men who did not know a single thing about eyes treating serious eye conditions as a trivial affair until such time elapsed that it was impossible for the eye to be saved at all.

The question is not quite as acute now as it was, but I appreciate now that there is culpability on both sides. I do not say the carriers are without culpability. They are both culpable, and I think it is up to our board to help eliminate improper medical attention.

I thought that, with the amendment offered to the compensation act in New Jersey, giving the injured person the right to select his own doctor, we might in our department, although we never do, offer this alternative: That the employer would have the right in all ambulatory cases, if he so elected, not to treat them himself but to send them to the State rehabilitation clinics to be treated. I thought that would protect the employer and that the interests of all involved would be properly conserved.

Personally, I would oppose Mr. McShane’s suggestion of allowing the compensation board or any member of it to take a patient away from one doctor and place him in the hands of some other doctor. I do that for the protection of the compensation board itself. It would surely give rise to very serious questions, particularly in the minds of some, because it would surely become the habit of selecting men in certain localities in whom the board had confidence, but the very selection of these men might lead to serious criticism on the part of other members of the profession in that particular locality. You might be charged with favoritism; and even though the results obtained were the best possible it might be questioned if better results might not have been obtained in the hands of some other men.

Mr. Stewart. I would like to say a few words in regard to this. On broad general principles I agree with Mr. McShane absolutely. I know most of you do not. But it is a situation which is radically changing from several points of view. This is especially true since occupational diseases are beginning to be put into the compensation law. We were told yesterday that only 2 per cent of the lawyers knew anything about the compensation law. I should say that probably 50 per cent of that 2 per cent do not know much about it. That is just as true of the doctors when it comes to occupational diseases.

We were told the other day in this convention of a man who was hustled off to a hospital to be operated on for appendicitis. The Du Pont people, for whom he worked, sent the factory doctor out there, and he found that the fellow had lead poisoning—painter’s colic—instead of appendicitis. Now there isn’t one doctor in twenty who knows what lead poisoning—blue line across the gums—means, and they are entirely ignorant when it comes to occupational diseases.
Few ever ask a patient what his occupation is. For that reason I think, when it comes to occupational diseases, Mr. McShane and I will both eventually have to soft pedal a bit upon the divine right of the employee to be chopped up for appendicitis when he has painter's colic.

Another thing, I ought to have reported in one of the committee reports that Stanford University is about to establish a department of industrial medicine and surgery in its medical school, which means that the doctors who are turned out from there will know something about occupational diseases; they will know something about industrial accidents. In other words, the situation among the doctors is going to be better and better when California gets that established.

By the way, this association has been asked to be a sponsor for that thing, and I haven't any question but what all they have asked us to do the executive committee will approve.

I want to say one word about that article Mr. McShane mentioned. What Compton said was practically this: "Go to the hearings of any compensation commission and see how quickly the injured man is faced by the physician of the insurance company, who tells the commission in words that the employee can not understand that there is nothing the matter with him." I do not quote him exactly. I wrote to every compensation commission inquiring as to how much of that was true. I think that is a serious charge. Only one or two of the compensation commissions answered it directly. They side-stepped it except in one or two cases, and the answer from one State reads like one of the statements of David. Very few of the commissioners that answered knew of any such circumstances but said they would investigate. As far as what Compton was driving at is concerned, it was all right. What he was driving at is to have every printers' union of the United States have a doctor, employed by the union, who will look after the printers' diseases. I do not believe there is a compensation commission in the United States that has objection to that if the union wants to stand for it and to pay for it. But in that letter he did make a lot of serious charges against compensation commissions. The most serious one was this one that I have stated.

I do not believe that that happens very often, but my faith was not greatly strengthened by the little backing I got from the commissioners. I sent all of these letters to Mr. McShane. Apparently he was mad when he started, and the more he read the reports the madder he got.

Mr. Kennard. My excuse for addressing you at this time is because possibly we have had as much experience with controversial matters of this kind as any of you. Our act started out with a provision that the insurance company should furnish all medical treatment except in emergencies, when, while the emergency existed, any doctor who was interested in the case would be paid for by the insurance company.

It is well to find out what the foundation of our debate is. It is not a question of medical treatment; it is a question of who is going to pay the bills. Any man can get his own physician any time he wants to; that, of course, is his constitutional right. The real question involved in this is who is going to pay the bills.
Our act provides that medical treatment shall be given for only two weeks at the expense of the insurer except in unusual cases, and we have found that in most cases the result of that limited amount of medical treatment given by our statute has resulted in this situation—that of the benefits paid in Massachusetts for disability and medical treatment one-third of the total amount is now being spent by the insurance company in medical benefits. Of some six or seven million paid, two million or more is spent on the medical side of the account.

The question with which we are confronted is one of policy. Is it a compensation act for the doctors? Is it a compensation act for the man who is injured? The doctors insist that the only thing of importance is, of course, the medical treatment. That it is of greatest importance there can be no question.

The whole question has arisen, as I say, over the payment of the bills. Mr. McShane went, at some length, into the psychological effect upon the employee of choosing his own physician. As a matter of fact, I think comparatively few of the men who are injured have any real choice about who shall doctor them. A great many of them have never been in the hands of a doctor before. They do not know any doctor. The psychological effect of getting a doctor of their own choice is, in the majority of cases, limited. Many of the doctors with us treat a man for two weeks and if he then becomes an ambulatory case they, of their own accord, send him to the insurance company, realizing that there is no more money in it for them and wanting the man to get treatment. In some instances they will call up the insurance company inquiring as to whether they should continue the treatment, and if the case is one in which the insurance company thinks the treatment should be continued, in the class indicated by Mr. McShane, it says, go ahead with the case, and pays the bill for a longer period than two weeks. I have known a company to pay the entire medical bills for months without a controversy, up to $2,700 or $3,000. That is not an uncommon thing for them to do on a medical case, although according to the provision of our law medical benefits cease at the end of two weeks.

That is our principal trouble. We have to spend a good deal of our time in determining what amount the insurance company shall pay for medical expenses. It is an interesting thing and perhaps will be to you that after the experience we have had with both methods, every member of our board not so very long ago went on record before the legislature in a recommendation that the insurance company should be given the right to furnish the treatment and that the employee, if he saw fit to go to his own physician, should pay his bill there for medical treatment.

Our situation is perhaps different from that of most of you, because Massachusetts is a small State. There isn't a place in Massachusetts but that is near a center of population, the biggest center being Boston where hospital facilities are of the finest, and the other cities in the State have excellent medical facilities. All the larger companies in Massachusetts maintain hospitals, not for strictly hospital cases, but rehabilitation hospitals, speaking from the medical standpoint, where they give massage, baking, and all those things which are so essential to bring a man back onto the job. The doctors them-
selves, to a very considerable extent, represent that attitude I have indicated by telling a man when he gets to that point to go to the insurance companies, where he receives excellent treatment.

Our reason for feeling as we do about it is the one that has been indicated by Doctor McBride, that some of the medical men are not in touch with the necessities brought about by the results of industrial accidents and have not the experience to bring to bear upon the situation. They have not the equipment, they have not the facilities, which will put that man back on the job at the earliest possible moment. For that reason, we have felt that, with the facilities that are furnished in Massachusetts by the insurance companies, the workmen themselves would, in the long run, probably be better off if the insurance companies furnished the medical treatment.

We have met the situation indicated by the secretary's question, as far as it is possible to meet it, by provision of law which requires the insurance companies to supply to us copies of all the reports which they have in their files with reference to the case which they have treated. We have their medical reports about the original injury, what treatment has been given, what the trouble has been, and how the matter is coming along. We check that up with our impartial physicians when we feel it is necessary.

Of course we have another situation in Massachusetts which is not prevalent throughout the United States. We do not estimate the disability. We pay a man compensation while he is disabled up to the statutory period. We are not called upon to estimate how long he is going to be disabled. The only question we pass upon is whether or not at a given moment he is disabled, and therefore that question does not enter into the matter and skill in that direction is of no consequence.

But the question that you have to face in this whole thing is one of policy. Are you going to play with the doctors or are you not? It was the doctors themselves who had the law changed in Massachusetts. They instigated the movement which resulted in the legislature changing the law so that a man has the right to choose his own physician. They did it because in those early stages of the act, without making accusations of a concrete character, the evidence in the case was that the insurance companies were supplying for medical treatment what is called the contract doctor. They had a man in the community to treat the cases which arose under their policies. At that time they were more shortsighted than they are now, and were inclined to get men to do that work who would do it at a price that was satisfactory to them, without regard to the result which might be reached. I think I am perfectly safe in saying that the insurance carriers themselves now appreciate the fallacy involved in that sort of a policy. At the present time the insurance companies, when they furnish treatment in Massachusetts, give as good as they can get. If the case is one calling for specialists of a high character and of great experience, they get them and pay for them, and they do it of their own initiative. If it is a case requiring hospitalization in an ordinary hospital, they pay the hospital bills without argument. And they supply the clinic treatment, to which I have referred, which follows directly what we might term the convalescent period.
The profession of medicine is to some extent becoming a business as the profession of law has already become. The laborer is worthy of his hire, and the doctors, seeing this large amount of business on the horizon, naturally, have felt that they should further their profession. That is the basis of the movement for the choice of the physician. The laboring man, left to himself, has very few ideas on the subject. What he wants is medical treatment and, generally speaking, he has no particular choice where he gets it. In some instances he has his own physician, with whom he has previous experience, or with whom some friend possibly has had experience, and he wants him.

We do not find the antagonism that Mr. McShane has referred to. I won't say it is not present. That would be a very foolish statement for me to make, but that it exists to that extent is not so. The employees who come before our board who have been treated by the insurance companies rarely have any complaint to make about the kind of treatment they have gotten or any desire to change their treatment. Occasionally, by reason of a long period of illness or a slow recovery, they feel that they would like to try some other doctor. That is not compensation law, however; that is human nature.

As I say, our own experience has led us to believe, so far as the rehabilitation of injured employees is concerned, that with the facilities that our insurance companies have—I do not know how it is in your sections—the care which they receive at the hands of the representatives of the insurance company will in the main be a more skillful, a more experienced, and a more efficacious treatment than that which they will get at the hands of the ordinary practitioner in their own locality whom they may select.

But when the doctors get together, and come to the conclusion that they want a legislative enactment put through, they are going to put it through for this reason as I see it. The doctors rarely interest themselves in legislation. They are interested in medicine. The doctors are, generally speaking, pretty close to their business, fully as close as in any line of business that I know of, but when they do get together, the very fact that they have not interfered in any way with legislation makes a proposal on their part have a very much greater influence than that of a man who has taken a great deal of interest in the subject. Every member of the legislature, generally speaking, has his own family physician. The influence of the doctors upon the members of the legislature, when they see fit to exercise it, is immense. I should suppose all of you would be confronted, sooner or later, with the proposition as to what position you shall take in the matter.

You do not want to antagonize the doctors by taking the position that they shall not be permitted free access to injured employees because, remember, the background of it is financial altogether; the whole background is financial, not medical. You are confronted with that proposition. It is one which sooner or later will probably confront you all, and you will have great difficulty in stemming any
A doctor who is treating a case with a solvent insurance company as his creditor will always give as much treatment as he would if he had an independent employee. That we can take for granted. A considerable proportion of them will feel a sense of liberality in the treatment toward the man who is able to pay for it; and I do not mean that they purposely make any remissions or run up a big bill. A doctor who is treating the family of a man of wealth in the community is apt to yield to the importunities of the family and make a visit every day, whereas his own judgment might possibly be that every other day would be all right. In that way your medical expenses, where the employee hasn't charge of his own physician, are bound to mount. I do not see any escape from it and I do not see any possible way of getting away from it. I am not now considering at all that class of physicians, who do exist, who will purposely and intentionally run up a bill if the insurance company is going to pay. That class exists. I do not think you can call it a factor, except in communities where your act provides for the payment of full medical expenses. We can handle situations to some extent by virtue of the power given to us to restrict the amount they can collect in a given case and make findings with reference thereto. If the law gives them a free hand and a free rein, I do not think it takes very much imagination for you to see that inevitably, subconsciously, your medical expenses are going to go up by leaps and bounds. As I say, under our law to-day, limited as the treatment is, already one-third of the payments which are made on account of compensation is going to the medical society. Again I say it is a question of policy.

Do you feel that your act should be gradually changed so that the man who is injured is getting his compensation and medical benefits, or do you think he should get his compensation in the form of weekly payments, or future awards, or whatever the case may be? You may ask, Why can not we have both? The obvious answer to that, as I see it, is that you can ride a horse about so far and he will drop dead. Down South they can drive a mule so far and he will stop, they tell me. When you have crowded into the compensation law expenses which are great enough, then you are going to have the trouble which is indicated by our friend from Virginia; or if the law is not compulsory, you are going to find those who have the option dropping out from under the act. So I say the question, as I see it and as we have had it in Massachusetts, is deeper than a question of mere medical treatment. It involves a question of evolutionary policy—the practical question, as I suggested before, of what is to be your individual relationship with your doctors, your individual policy toward them and to what extent their good will and their kind wishes and cooperation with your law are to enter into it, and if the latter is desirable, whether you can afford to pay the price.

Mr. Duxbury. I was impressed in this discussion by the fact that we have such varying provisions in the different States with reference to this question that what might seem to be important in one State is not in another. I was about to ask the last speaker a question which he answered before I got it asked. I was going to ask him, in
case the injured employee had the right to select his own physician at the expense of the employer or insurance carrier, if some wise fellow down there selected Doctor Mayo out in Minnesota, at Rochester, and went out there and incurred an expense of a considerable amount, whether or not the insurance carrier or employer would have to pay that without any question, but he answered it by citing the provision of their statute which makes it possible for them to limit the amount. But what are you going to do in a case like ours where we do not have that power? It is absolutely unlimited, and if the man concludes to go to Baltimore or to Vienna in Europe, for the purpose of selecting a doctor to treat him, wisely or unwisely perhaps, and unnecessarily, that is going to be at the expense of the employer and insurer. Where are these things going to lead? But I can see that it depends upon the peculiar provisions of each particular law and the practices that have grown up thereunder.

I am impressed with this thought, that there are very few cases in practice where there is any controversy about who shall select the doctor. That is our experience. In those few cases that is the only time when this privilege would be of any importance. In most cases, as has been indicated, and as we all know, they have no family doctor; they have nobody in particular. Where they have a family doctor, it is the policy and the good judgment of the employer to permit that family doctor to take care of them, because that is the best situation, and he does practically select his own physician, but in fact the employer has the control of any abuses.

In Minnesota we hold by construction, and it is rather a strange construction, that the employer and insurer have the primary right to designate the doctor, but practically, in cases where the choice would be at all important, the employee really does select his own doctor. We are getting along without any difficulty and I hope we will not have any agitation to change it because it works well with us. It might not with some others.

Mr. HUBER. We have heard this question of whether or not injured employees are to select their own doctors only from the commissioner's standpoint. Answer me yes or no, shall he select?

Mr. McSHANE. I think I answered you in the paper, Mr. Huber.

Mr. HUBER. I and the man differ. Another man says that McShane is in favor of the injured man selecting his own doctor and I say he is not. There we are. It is possible that papers may be arranged in the way the little boy's pants were. They were so wonderfully built that if the mother looked down the street she could not tell whether the boy was coming or going. Sometimes papers are that way. Shall he select his own doctor? Yes or no.

Mr. McSHANE. I answered the question in my paper.

Mr. HUBER. If injured employees are not allowed to select their own doctors, tell us how we can overcome it, because they are doing it. If they should select their own doctors, tell us how we can get away with the insurance companies selecting particular doctors. Now I have had experience in both directions. When I hooked up with the Empire Companies, 34 in number, we had a head physician who appointed doctors in all places, and we had more trouble during the two years and a half before those doctors were
removed than we have had since. I leave it to the Oklahoma Com-
mission whether we ever had any trouble with doctors before.

We would not select doctors such as insurance companies select
in the towns where they have them. I would not recommend a single
one. We allow a man to select his doctor, but by talking to him a
little while, he selects the doctor that we want. Allow them to
select their own doctors, but use psychology so that they take the
doctor that is your choice.

Mr. Williams. I find myself able to know what an injury is. Ten
or twelve years ago I saw a lot of fellows in there who did not put
iodine or mercurochrome onto a lacerated wound, and my nostrils
told me before I looked about what had happened. Then there
were a lot of people who did not do surgery but of course they did
finger surgery, but after I had seen a lot of stumps where the bone
had not been rounded off, and nail-bearing areas stitched in with
sensory nerves, and so on, and somebody had to be paid for a
proper reconstruction job, it became gradually apparent that every­
body could not do finger surgery.

I wonder what a doctor is. I know what a physician is and a
surgeon, and I have listened to so-called medical evidence from a
a chiropractor and naturopath—I never found out what he did—and
I have had one so-called Indian magician. But a new field of thought
has opened up to me since I came down to Georgia. It might be
a psychological advantage. I understand that a large proportion of
the laboring class here, if they had an opportunity, would go out
as hoodoo artists, and they might be beneficial from the psychological
point of view. We changed to get adequate treatment.

Mr. Livdahl. It appears to me there are two phases to the situation
and the question under consideration. They are the legal aspect of it
and the practical aspect. In the absence of statute, just as when
there is a statute, the question is, of course, What is the legal side
of it? What are the inherent rights of the parties? It appears to
me that the employer must have that right, and that I get from the
underlying principle of the enactment of compensation acts. We
like to think of it as an act only to protect and help injured em­
ployees, but that is far from being all there is to it. The employer
receives protection just as much as the injured employee, and if the
act provides that the employer must pay these bills, it seems to me
there is an inherent legal right on his part to choose the physician.

But there is also a practical side to it. In the first place, when the
injured employee chooses his own physician there is the right,
whether it is constitutional or statutory, that the doctor will not have
to give the industrial commission or the compensation bureau infor­
mation which might be vitally important in the case, for the reason
that it is private knowledge and privileged testimony. You are up
against that feature. And you realize that where accidents happen
the employer is not on the ground to tell the injured employee where
to go for his medical assistance. They usually happen when there is
nobody there but some person who is anxious to get medical assist­
ance at the first moment possible, and a doctor is gotten and he
goes on.
We do not like to change doctors after one has taken hold of the case. Nobody does, neither employer nor employee, and certainly not the commission in charge. I think, therefore, that it is quite useless for us to discuss this matter. If we have the legal aspect of it settled in our acts, then there remains the practical side, and each and every one of us will have to do the best we can under the circumstances.

Mr. McShane. To deny that the objections made by the gentleman who takes exception to my conclusions are not worthy of consideration or that they do not possess some merit calling for reply would be to take an untenable position. It would also be equally untenable to maintain that a subject of such importance could be presented in the time limit fixed by the program and not leave much unsaid. In other words, details and explanations must of necessity have been passed by hurriedly.

The fear of men leaving the locality where they are injured to seek medical aid, or even to leave the State and travel to some distant point for that purpose, is not likely to materialize, as in all such cases either by statutory enactment or by rules of the board or commission administering the law, permission would first have to be obtained by the injured man to do so. Most laws forestall such a practice; Utah’s law is very definite on this point, and even in jurisdictions where the law is silent the good sense of the commission may be relied upon to promulgate and enforce reasonable rules which would entirely dissipate such a possibility. Were the commission clothed with the arbitrary power suggested, it is unthinkable that it would not be exercised with discretion and common sense; such power would seldom be invoked, and when used hasty and ill-advised action would not be taken if I have properly evaluated the personnel of the various boards and commissions who are members of this association.

The possibility of injured men seeking treatment at the hands of fakers is not, I believe, seriously urged; but if it be, the commission, in the exercise of its discretion, would not permit such a happening even though the law did not interfere. In other words, the power pleaded for on the part of the commission would be exercised in protecting the man against his own folly.

The bugaboo of the commission getting in bad with the employers, insurance carriers, and doctors by taking an arbitrary stand in defense of an injured workman’s right to select a physician of his own choice does not impress me; we should be concerned only with the soundness of the stand taken. Where an important right is involved and the proper thing is done, even though arbitrarily, no action should be controlled by the possibility of making enemies. If in the exercise of such arbitrary authority it be found, after investigation, to be in the interest of the workman, then the board or commission charged with the responsibility of exercising it would be guilty of moral cowardice to fail to do so. Irrespective of the class offended or of their numbers, a man’s body is not to be the subject of experiment by any profit-making group. You know from your own experience that the average workman alone and unaided is utterly incapable of fully protecting his rights against the avarice of the classes with whom he has to deal. This is true when he sits across the table from a keen and experienced claim agent in trying
to arrive at an agreement; it is true when he finds himself alone pitting his wits against the contract doctor at the time of rating for permanent partial disability; and you know that he is utterly helpless when his employer, as a condition of his employment, arbitrarily filches from his wages a monthly sum to be paid to a contract doctor for services in addition to those provided in compensable cases. Admitting the average workman's inability to meet on equal terms those with whom he deals, may I ask who is going to protect him against exploitation if not the boards and commissions administering compensation laws?

The Chairman. This will close the discussion on this paper. The discussion will now take place on the paper of Commissioner James Hamilton, "Independent contractor or employee, when?"

Mr. Livdahl. I was wondering if Doctor Hamilton had access to a pamphlet issued by a committee of the American Bar Association about two years ago on that subject. I mention it because it is a splendid little pamphlet on the question of master and servant, or employer and employee, and develops the question of the independent contractor. Those are the main features of the pamphlet. Anyone who is interested in that subject to the extent of wanting further information than he can get from Corpus Juris, certainly can get it out of this pamphlet and it will be of vast help to him. You know how very little people generally know on this subject. Oftentimes information that will decide that question is lacking and it is at times very perplexing, but we have found that pamphlet very much to the point. I think if you consult with any member of the American Bar Association at your home he will probably tell you just where to write and get it.

The Chairman. Does anybody else have anything to say on this paper?

Mr. Duxbury. The paper was one of the ablest that I have ever listened to upon the subject. There is no one, I think, who has had any experience in compensation work but realizes the perplexity of the subject and that there are cases in which people are bound to differ. We have had some difficulty in that line and some instances where I was wrong according to the supreme court, and other instances, I presume, where members of this body would divide half and half with reference to what it was. There was just one feature that I found helpful to my own consideration of the subject that I did not hear brought out by the paper.

In my perplexity in these things, I try to determine, as well as I can, what is the subject matter of the contract in question. By that I mean, for instance, that when it appears to me to be the personal services of the one party to be rendered to the other party, I regard that as a contract of employment. It does not make any difference if that personal service carries with it the furnishing of instrumentalities because the personal services which an ordinary carpenter usually renders are accompanied by the kit of tools which he furnishes himself as instrumentalities of that service, and those instrumentalities connected with that service, which is the subject matter of the contract, may be rather complex.

In one case, for instance, I felt constrained to hold that on the whole the man was an employee, although he furnished the equip-
ment of a drilling outfit to perform the service which was implied in that contract. That is rather an extreme case but it seemed to me, from all the circumstances of that case, that the primary subject of the contract there was the services of that individual to perform that certain thing, together with the instrumentalities which he furnished as a part of that contract and employment. On the other hand, if the subject matter of the contract is the accomplishment of some definite result, that is the subject matter of the contract. If some particular thing was to be done, as for instance if a man took his watch to a watchmaker to have a certain thing done upon the watch, the subject matter of that contract was a definite result, and he was not concerned, and it was not a part of that contract, whether the man to whom he took it did it himself or whether he did it with the help of employees. He could perform as the result of that contract and produce a definite result, which is the subject matter of the contract, without regard to his own personal services. I have found that helpful to me in trying to figure out that particular question. If I feel that the subject matter of the particular contract is the personal services of one party to the contract, I regard that man as an employee; I do not care whether he is working on a commission, so called, or what measures the consideration of the contract may be.

Of course, the consideration for a contract, if it is a contract of employment, may be called wages or salary. That is a technical name for the consideration of the contract, and you may have any variety of ways to determine the consideration of the contract. That is not important. The thing that to me is important is what is the subject matter of the contract; if it is a personal service, either physical, manual, or otherwise of the particular individual, it seems in our work generally to be a contract of employment.

In the employment of a man for professional service or something of that kind that may be subject to some exceptions; but ordinarily, in cases that I have had to consider, it seems to me that that is usual, that you can satisfy yourself upon that one thing. You can guess the rest about as well as anybody can guess it.

Mr. McShane. The paper read by Commissioner Hamilton is a splendid legal exposition of the subject and, of course, is directly responsive to the question. It no doubt states the law thoroughly and concisely, but as I see our duty we should not only interest ourselves in what the law is but in what the law ought to be. It seems to me that there is an aggravating phase of this subject that should have the attention of this association. I have reference to that class of employers who avail themselves of the law of contracts for the purpose of shunting several groups of employees into the class of independent contractors. Of these groups we may mention coal heavers who are engaged by retail coal yards in unloading cars of coal at a fixed price per ton, the workmen engaged by small contractors in the construction of homes, and several other groups which could be named did time permit. It is the practice of the second group of employers mentioned to build a great number of homes on identical plans; they let some employees a contract to do the excavating for the basement and foundation for a fixed sum; they let to another group the cement work, and to another the brick work; and the carpenter work, plumbing, plastering, and painting jobs are all
let in the same manner. The work of the general contractor is so arranged that the trenchers, cement men, and other groups of workmen go from one job to another and are for all purposes regular employees of the general contractor, yet by skillful management and the application of the technical definition of an independent contractor, thousands of men thus employed are held to be outside of the protection of our compensation act.

Details concerning other groups could be given, but time will not permit, as it is my purpose to discuss rather fully the status of these workmen from the standpoint of the law of contracts and the ridiculous aspect which they present as independent contractors.

It should be remembered that compensation laws are enacted primarily for the benefit of the workingman; that these laws are remedial in character and will be liberally construed in the workingman’s favor. The provisions of our acts which exclude independent contractors from the compensation benefits are included to prevent a conflict with section 10 of article 1 of our Federal Constitution, which provides that no State shall pass “any law impairing the obligation of contract.”

In law an independent contractor is generally understood to be a person, firm, or corporation engaged by another in the performance of a given piece of work, according to agreed plans and specifications, within a given time and for a fixed amount, and that while engaged in the performance of said task said person, firm, or corporation is not subject to the jurisdiction or control of the one for whom the work is being done; that said person for whom said task is being done is not interested in the details of the operation but in the end result alone; that is, that the work be done within the time specified according to agreed plans and specifications and for the consideration named.

In view of this definition, which may be generally accepted, it would seem desirable to call attention to the group of workers who seem to come by first impression within said rule.

There are many pursuits in which this class of workmen to which I wish to refer are engaged, but I shall discuss one class only at this time and leave you to search out for yourselves the other classes of unfortunate workmen who find themselves in an unenviable position in so far as the securing of workmen’s compensation benefits is concerned.

Workmen of the class whose case I will present are commonly known as coal heavers in retail coal yards and are engaged in the unloading of cars of coal by some retail sales agency. These men are alleged to be independent contractors because they agree to unload cars of coal at a fixed price per ton and before the demurrage regulations of the railroad company will operate against their employer.

These men seek employment at the unloading yards of the coal dealers each morning, and, if successful, are tendered a car to unload at a fixed price per ton within a given time and in a workmanlike manner. Visualize these men, if you can, as being independent contractors, and then on the other hand visualize your concept of what an independent contractor should be.

Workmen’s compensation legislation of this and other countries represents the cumulation of honest effort on the part of society to
place upon industry the burden of industrial accidents and injuries resulting therefrom sustained by employees in the legitimate course of their employment. This legislation is the fruit of centuries of thought and conflict and embodies a principle of justice in recognition of the rights of workingmen as against those of the employer; it offers a basis of compromise and agreement upon which all parties in interest may share the responsibilities and hazards of industry.

The compensation award is at most a temporary alleviation of the distress suffered by the injured workman and those dependent upon him. The underlying principle of such a law has unquestionably for one of its purposes an effort to guarantee to the injured employee an effective and speedy consideration of his interests. It is intended to reduce to a minimum the delay and cost of litigation in the settlement of claims.

The justice of such a purpose is obvious from the fact that an injured employee and those dependent upon him are deprived of the income on which they depend for sustenance and the further fact that the injured man requires medical attention and frequently hospitalization. The fundamental principle of a compensation law is to alleviate the distress which injured workmen must otherwise suffer singly and alone and to pass the burden on to society.

Under an industrial act independent contractors are required to assume the industrial liability of laboring men and to relieve the proprietor or owner of a property being worked or built, improved, or operated. Under this provision efforts are naturally made by proprietors and their agents to place technical legal construction upon terms and to place men who are performing given pieces of work by ordinary day's labor, such as the coal heavers referred to, as independent contractors, thereby relieving the proprietor as far as possible from liability growing out of industrial accidents.

This is not intended by compensation legislation, as in our general industrial practice a contractor—eliminating the refined distinction made by lawyers—is a person, firm, or corporation who, by means of experience, skill, resourcefulness, and working capital may upon his own responsibility perform specified services for another person and in so doing supply his own labor, tools, and equipment, and possibly purchase his own materials and have control of his men in the performance of his contracts, and is capable of responding in damages in case of failure to live up to the terms and conditions of the contract. He does all of this in the hope of increasing his remuneration above that of the common workingman, either as a skilled or unskilled workman.

In given lines of industry it becomes obviously desirable to place single employees on an alleged independent contracting basis. The primary purpose in so doing in the case to which we are referring is twofold: (1) To secure a full and faithful performance of the task required and at the lowest cost and within the agreed time; (2) to maintain uniform cost of delivery of products and thereby secure retail prices and assured profits for handling products.

This is exactly what is done in the coal-mining industry, namely, the per ton basis of cutting and loading coal. These men, because they undertake to unload a car of coal within a given number of
hours to conform to the demurrage rules for a specific price per ton are technically construed to be independent contractors. They have no special skill, no training necessary, no capital invested, no particular resourcefulness, or they would not be unloading coal; no tools and equipment—nothing but their naked hands with which to work—and in their undertaking there is no hope of an enlarged remuneration for their services.

It is obvious that the necessary inducements held out to or hoped for by an independent contractor—namely, enlarged remuneration—is totally absent in such cases, and it is reasonable to assume that if such employees were capable of making wages somewhat in excess of those earned by other workmen in similar occupations, the rate per ton would be reduced accordingly, as employers do not pay higher wages than is necessary to secure the service sought.

This class of employment does not reflect in any sense the aspect of an independent contractor according to the use of that term in general industry. It does, on the other hand, possess and typify all the aspects and qualities of a day laborer and workingman earning his daily wage. It is my opinion that dependents should not be deprived of the protection in such cases; that compensation legislation intends to give this class protection for injury or death sustained in the performance of their work, and that it is only a technical and strained interpretation of the law which can thus thwart the fundamental purposes of this great social remedy.

In the administration of compensation laws it was intended that refined legal distinctions and technicalities were not to be used so much as ordinary common sense. The rules of evidence do not apply in industrial cases with the same exactitude as in courts at law.

I believe that this refined distinction, when used to defeat the purpose of compensation legislation by throwing men into the class of independent contractors, is vicious, and that it is the duty of administrators of compensation law to work out some means by which men engaged in the class of work herein referred to should be given the protection which common sense dictates they are entitled to.

The Chairman. I will ask Mr. Hatch to make any remarks he wishes to in regard to Mr. Hamilton's paper.

Mr. Hatch. In New York, under the guidance of court decisions which have been rendered on the matter, we are inclined to emphasize very much the question of whether or not the details of the work being performed are subject to control and regulation by the employer or the one who lets the work. That I think is the characteristic thing about the relation of employer and employee, that the employee performs personal service, as Mr. Duxbury puts it, and the characteristic thing about that is that the employer controls the manner of the performance of this service or work as it goes along; whereas, in the case of the independent contractor, how the man who agrees to deliver the end result does it, provided the end result is satisfactory, is within his own control.

Coming to the question of the coal contractor in the anthracite coal mines, it does not seem to me that, so far as I understand the conditions of his work, he fits the definition of independent contractor which Commissioner Hamilton quoted. Let me refer to it again. "Generally the term signifies one who exercising an inde-
pendent employment”—that is rather significant—“contracts to do a piece of work according to his own methods and without being subject to the control of his employer except as to the result of the work, and who has the right to employ and direct the action of the workmen independently of such employer and free from any superior authority in him to say how the specified work shall be done or what the laborers shall do as it progresses.”

There is that same element I referred to a moment ago, and I hardly see how the coal contractor in the anthracite coal mines is entirely free from control of the owner or manager of the mine as to the way in which he shall carry on the work of mining that coal. I think if you study the union agreements you will find that work is being carried on according to certain stipulated rules, which are a matter of agreement between the two and represent what the employer requires as to the manner in which the work is performed; so I question whether it is correct to say that their situation fits this definition. However, if I had a case of that kind before me to settle and the issue were raised, I should insist on a great deal more evidence as to exactly what their situation was and how the work was done before I undertook to decide the question.

Mr. Duxbury. It seems to me that in that case so much a ton and all that sort of thing are only a means of determining what I said was the consideration of the contract. That is all. And very frequently that is done. In the woods they have what we call piece-workers—so much a post, and so much a pole, and so much a tie. That is the method of determining the consideration of the contract, but what the nature of the contract is depends upon whether or not they have a definite thing to do, a definite result to accomplish, or whether or not it is the services of the individual with whom that contract is made which is really the subject matter of the contract. We find a lot of those cases that are really pieceworker employments that seem to be puzzling, but they really are not when you get the right attitude toward them and see those elements of control. That word “control” is extremely dangerous in this connection, because you will find lots of undoubtedly independent contracts where there is control of certain things. It depends upon the subject matter of the control. If the employer controls their services, that is the control which distinguishes this contract of employment, but very many contracts are made in which one party has control of many things with reference to when it should be done in order to fit into the stipulations of the general contract. There are provisions for control of certain things, but not of those things which are peculiarly characteristic of the control of a master over the application of the services of his servant. When you control those things then that control is the significant thing of the contract of employment.

Mr. Kennard. I think I may have something which may be helpful. Let me tell you the provision we have in our statute, which has not entirely eliminated the contracting question, but which has reduced it to a point where it gives us very little trouble. Our definition of employee is one who has a contract of hire, expressed or implied, except one whose employment is not in the usual course of business.
The Chairman. This closes the discussion on this paper, and the first paper is "Tendencies in workmen's compensation laws," by Mr. Hatch.

TENDENCIES IN WORKMEN'S COMPENSATION LAWS

BY L. W. HATCH, MEMBER NEW YORK STATE INDUSTRIAL BOARD

INTRODUCTORY

The purpose of this paper is not to make an enumeration and description of all the developments which may be found to have occurred in American compensation laws. Such a recapitulation of changes would require time far beyond that here available because in very many ways our compensation laws have been in process of growth and development since their original enactment. In fact, two phases of the movement in compensation legislation are very evident.

On the one hand, there has been the initial phase, the movement for adoption of the compensation system in the first instance. This great movement has in the course of but little over a dozen years made almost universal this system which at the outset seemed so revolutionary. It awaits only the action of five States to be completely established in all States. These five, as is well known, are among the southern sisters in the great family of States, and none of us can doubt that these five, as the modern industrialization movement now more and more in evidence throughout the South brings more vividly to view the need of the compensation system as the soundest and most practical way to deal with industrial accident disability, will soon make the vote of the States unanimous for the system.

But a second phase of the movement for compensation legislation is to be found in the changes and developments which have occurred in laws already established. I am inclined to think, after some survey of these changes for the purposes of this paper, that this part of the movement has been more extensive and important than is generally realized. It is this part of the compensation movement that is here under scrutiny.

Now there are not lacking those who, contemplating the developments which have been going forward in compensation laws, think they see therein tendencies that are dangerous. Such views have been painstakingly set forth and disseminated in printed form. Into controversial argument with such views I am not going to enter. I have no desire to stage a polemic debate over particular items, or over correctness of point of view. But the existence of such views suggests the desirability of examining some of the more important developments which have occurred in our compensation laws and of attempting to set forth just what they do signify in the way of tendencies in such changes. Having had occasion to do this recently on another occasion, the program committee suggested that I present the matter to the association at this meeting, and this paper is the result.

THE POINT OF VIEW

Obviously appraisal of the significance of any line of legislation and especially of the tendencies it represents is a matter of judgment
and in such a case a correct point of view from which to observe is indispensable. I should say it is equally clear also that for weighing changes in compensation laws the necessary point of view must be that of the principle and purpose of the compensation system. Its principle and purpose are no longer debatable matters. The civilized world generally is now committed to them, and there is no longer any voice to combat them. So what we want to find out most of all concerning tendencies in our supplemental compensation legislation is whether these changes are in line with the basic principles of the compensation system and are calculated to bring its purposes to practical fruition.

It is almost like carrying coals to Newcastle to remind a convention of this association what the principles and purpose of compensation for industrial accidents are. Certainly to state them briefly is all that is needed here. We are to bear in mind, then, as fixing the point of view, that—

(1) The purpose of the compensation system is to shift a part of the financial burden of accidental injuries in industry from wage earners to society at large, the shifting in the first instance to the employer being only a first step in ultimate transfer to society as consumer of the products of industry;

(2) That social expediency is the justification of the system, it being better for all concerned that the financial loss in accidents be more widely distributed than that it should be left so largely on wage earners unable to provide their own security against such losses; and

(3) That equal treatment of different individual employees or classes of employees under the compensation system is fundamentally important.

THE CAUTIOUS BEGINNINGS OF COMPENSATION LAWS

In appraising what the tendencies have been in the development of our compensation laws we shall get a truer perspective if we bear in mind the generally cautious way in which the first laws were formulated. That such is the fact will scarcely be disputed. That caution manifested itself particularly in the matter of limitations on the extent of their application to industries and on the extent of the benefits they provided. This was natural enough at the outset. The adoption of the compensation system involved at the start a revolutionary change in principle from that of the old employers’ liability system and—especially in the face of the conflicting views and interests concerning that change—it was only the part of wisdom, as well as practically necessary tactics to secure its adoption at all, to begin with limited and conservative application of so radical a change.

PRINCIPAL LINES OF DEVELOPMENT

With the above background of proper point of view and conservative beginnings briefly indicated, let us examine some of the more important developments in our compensation laws to see just what they really signify.
EXTENSION OF EMPLOYMENTS COVERED

There have been many extensions of the jurisdiction of compensa­tion laws beyond the industries and occupations covered in the first statutes. Speaking generally, it is probably correct to say that the tendency has been to apply compensation more and more widely to the various fields of employment in which the problem of accidental injuries is found to exist.

Of this tendency, it is difficult to understand criticism, if the soundness of the compensation principle and the principle of equal treatment by the law are accepted. Consider, by way of illustration, the recent and perhaps most notable occupational extension of all—namely, that by Federal statute to cover longshoremen who are beyond the jurisdiction of State laws. Essentially this is none other than the righting of an injustice to large bodies of citizens in a number of States who have been deprived of the relief guaranteed by law to others of their fellow citizens, for which their need was the same and for which there was the same justification in principle. In this particular instance such unequal treatment grew out of legal complications under our combination of Federal and State jurisdiction of government. But the truth is that in other present restrictions of coverage in our laws there is the same element of unequal treatment of citizens employed in different occupations, and extensions of coverage to new industries or employments have only been essentially in the nature of removal of practically arbitrary discriminations between citizens.

EXTENSION OF INJURIES COVERED

Less notable than in the matter of employment extension, but nevertheless definite in the development of our compensation laws has been the tendency to extend coverage as to classes of injuries defined to be compensable. Here the most notable instances perhaps have been extensions by inclusion of occupational diseases along with purely accidental injuries.

When such extension is weighed in the light of the fundamental principles involved, it takes on essentially the same color as that relating to industrial extension; namely, that of removing discrimination for which in principle there is no justification. If an accidental injury "arising out of and in the course of employment" is a matter to which compensation is soundly applicable, so also is a disease which "arises out of and in the course of employment." I believe I state the case correctly when I say that in those States where we still hold back from including such diseases under our compensation system we do so not on the score of any difference in principles involved but on the ground of technical difficulties of administration. It is chiefly the practical consideration that it is more difficult to determine when a disease is due to the employment than when an injurious accident is due to it that has stood in the way. Such points concerning handling details of course have no bearing on the general equity of including occupational diseases under our compensation laws. In this connection I can not forbear from digressing long
enough to remark that several of the States have found it possible to solve these practical difficulties under coverage of all occupational diseases without wrecking their compensation administration or impoverishing their industries.

**INCREASES IN COMPENSATION BENEFITS**

It is sometimes said, and truly enough, that the heart of a compensation law is the scale of benefits which it provides. This touches sensitive nerves in more directions than one. For employees it determines the degree of relief they may look for if injured. For employers it affects the matter of costs of production. For society at large it determines both the extent of social relief applied and the cost paid by the consumer.

Experience as to changes in benefit schedules has, of course, varied much from State to State, but as a whole that experience has been characterized by a considerable number of increases in benefits. The general tendency has clearly been upward. In order to appraise the character of these developments in our compensation laws, let us examine some of the more important ones, as follows:

**Weekly rate of compensation.**

The typical method of fixing the weekly rate of compensation in the laws has been to specify that compensation shall equal a certain proportion (commonly two-thirds) of the average weekly wages of the injured employee, but with an important limitation added in the form of an absolute maximum rate which may not be exceeded in any case. These maxima have as a matter of fact proved of great significance, and some of the most important developments as to the scale of compensation benefits have been effected by changes in these limits. Now when one examines into just what effect raising these upper limits in the weekly rate has had on the degree of relief from their actual wage loss afforded to injured employees, it is found that their true meaning is quite different from what might at first sight appear. In order to make clear just what I mean let me refer to New York experience, concerning which I have at hand the necessary data.

Under the New York law the basic rate for weekly compensation has always been two-thirds wages. But this basic rate has always been limited by flat maximum weekly amounts. For temporary total disabilities (which as is well known make up the large majority of compensated cases) the weekly maximum was fixed at the outset in 1914 at $15, but in 1920 it was raised to $20, and on October 1 of this year it will become $25. Now, if the level of wages had remained the same during this period these increases in the maxima would have amounted largely to increasing the proportion of injured employees compensated for as much as two-thirds of their wage loss (after the waiting period); yet it is common knowledge that the wage level rose very much during those years, and as a matter of fact it has risen so much that the increases in the maxima have not raised the proportion of injured employees compensated for two-thirds of their wage loss. On the contrary, that proportion has
actually declined very substantially in spite of the increases in the maxima.1

Another test of the real effect of the changes in maxima is a comparison of that change with the change in the cost of living that has occurred. Compensation is designed to afford the injured man or his dependents something to live on in the period of his suspended earnings. If the cost of living remains the same, raising the weekly rate of compensation means increasing the actual amount of relief by compensation; but, just as in the case of wages, the cost of living has risen in the period of our law changes, and this has largely, if not entirely, offset the increases in maximum weekly rates which have occurred. Thus in New York, for example, the rise in cost of living has been such that living expenses covered by $15 in 1914 are not quite covered by $25 in 1927. To have kept fully up with the rise in living costs $27 would have been necessary in 1927 to be on a par with $15 in 1914.

Now, this analysis is not in the least intended to disparage what has been done in increasing weekly rates of compensation. Those changes reflect a progressive attitude. However, what we are endeavoring to get at here is an idea of whether they can reasonably be regarded as in the nature of unsoundly increasing compensation benefits. When we find, as above, that largely if not entirely such increases have but readjusted nominal allowances in the law to changing conditions in our economic life affecting wages and the cost of living so as only to maintain rather than raise the original standards of relief with which we started, no ground is left for any such view, unless indeed one is opposed even to keeping up, let alone advancing, our standards of compensation benefits.

Maximum amount of compensation.

It is common for our compensation laws to set up a flat limit of total amount beyond which compensation payments may not go in connection with temporary total or partial disabilities. Increases in these have to some extent occurred. What are the considerations which have led to such changes? Here plainly we are dealing with a genuine increase in the scale of benefits. What has dictated such increases? To that question, one might well reply with another—that is, On what principle of equity do we have any such limits at all? I venture to say any such element in them is hard to find. Mostly they exist as arbitrary limitations on the cost of compensation or convenient means of avoiding uncertainties of ultimate cost in

1 Figures for the entire period under the New York law are not available, but the following definitely establish the general fact stated:

<table>
<thead>
<tr>
<th>Year ended June 30</th>
<th>Total compensated temporary disabilities</th>
<th>Per cent of temporary disabilities in which compensation rate equaled two-thirds wages with maximum of—</th>
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<tbody>
<tr>
<td></td>
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<td>$15</td>
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<tr>
<td>1917</td>
<td>49,219</td>
<td>80</td>
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<tr>
<td>1920</td>
<td>48,554</td>
<td>80</td>
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<tr>
<td>1926</td>
<td>81,185</td>
<td>72</td>
</tr>
</tbody>
</table>
indeterminate cases. If I may judge of the reasons for raising these maxima by those which I know obtained in New York, such maxima have been raised because they were found in practice to impose purely arbitrary limits in the most serious kind of cases and so to cut off compensation precisely where the need was greatest, namely, where disability was most prolonged. Such changes have really been only in the direction of doing away with cautious mechanical limitations found to be standing in the way of full application of the compensation system at a point of special need.

**Permanent partial disability schedules.**

In our American compensation laws we have almost universally (what is not so common in other countries) the system of fixed schedules of allowances in terms of numbers of weeks for permanent partial disabilities where a definite loss of member or function occurs. From time to time in the various States the lists of specific injuries included in these schedules have been added to and allowances for particular injuries increased.

The elaboration of such schedules by increasing the list of specified injuries has patently been along the line of simply carrying out more fully the basic plan embodied in them, as experience revealed new types of permanent injuries not previously listed but equally entitled to be included. Such changes have only been common-sense development making for justice and simplification of administration.

Increases in weeks allowed for various injuries have represented, of course, more liberal compensation benefits. Have these been too liberal? I suggest that this question must be considered in the light of two general considerations. In the first place, the original permanent disability schedules in our statutes had very little scientific basis of data as to the length of disability which the various injuries actually do cause. That general fact was clearly brought out in previous conventions of this association when the standard schedule proposed by your committee on statistics was under consideration. Their original adequacy or correctness, therefore, have always been very much open to doubt. In the second place, and this is more significant, the conclusions reached by the committee on statistics as embodied in the standard schedule reported to the association definitely indicated that existing schedules are largely too low. Strikingly confirmatory of this view as to one of the most important items in such a schedule, loss of an eye, is the report of the American Medical Association's committee on compensation for eye injuries, as I indicated at the Hartford convention last year. In the face of those findings as to the general character of the allowances in our permanent disability schedules, there is little room for criticism of the limited increases which have thus far been made in various items, on the score of going too far.

**Reduction of waiting period.**

The feature of compensation laws which, more than any other, has illustrated the cautious spirit of first steps in compensation legislation is probably the setting up of the so-called waiting period in case of temporary disabilities. Consequently it is not surprising that there has been a quite general movement toward reduction of the period below the original limits, such a reduction amounting of course to an increase of benefits.
Well, is there anyone now prepared to hold that this change has been unjust or harmful? The truth is that it is difficult to find any theory of equity by which to justify any waiting period. Why we should discriminate between employees according to differences of periods of disablement passes understanding as a matter of justice. Apparently waiting periods are supposed to be practically necessary as a deterrent of malingering. Whatever may be said of this as a reason for some waiting period, it is safe to say that neither experience nor theory has availed to establish it as sufficient reason for the two weeks’ waiting period with which our laws commonly started out. It was realization of this, which left that length of waiting period in the category of overcautious, if not wholly arbitrary, which has so generally led to reduction of waiting periods as in the interest of justice.

Extension of medical benefits.

Compensation laws usually provide in addition to compensation for wage loss compensation for medical expenses for treatment of the injured employee. In this feature also of the benefits guaranteed by the laws there has been history similar to that of other items as above noted, i. e., conservative beginnings with such treatment at the employer’s expense limited to a certain period, followed by lengthening of the period, or by removal of the limit entirely and allowance of all medical expenses. Also, this development is found to have been induced by the same considerations of fairness, condemning arbitrary discriminations between injured employees and seeking fuller realization of the benefits intended by compensation, as have inspired other developments here reviewed. In addition there has been in this matter of medical benefits a special consideration aiding the movement growing out of the discovery by experience that adequate medical care may be an important factor in reducing disability and hence in lowering the major item in the cost of compensation which is the compensation for wage loss. This gives to developments in this matter a color of gain not only to injured employees but to employers as well.

SUMMARY AND CONCLUSION

The foregoing brief examination of some of the more significant developments in our compensation legislation, which is all that the time available will permit here, and which I trust has not involved too much recalling of what must be more or less familiar to the members of this association, is sufficient, I think, to indicate the true character of the general tendencies of such developments. I believe that more detailed study of the points here covered, or extension of the examination to others, would not alter but would only confirm the following conclusions to which the present survey points.

It is true that our laws have not remained stationary at the point at which we started. On the contrary, there has been a progressive development quite steadily in evidence up to the present time. It is also true that this development has been in the direction of greater liberality of coverage and benefits.

But it is not true that this development either in kind or degree has been dangerous or unsound unless we are to take a reactionary
attitude in opposition to the principle and purpose of the compensa-
tion system itself; because the developments which have come have
been essentially only (1) extensions of those standards to cover
inequitable omissions or remove arbitrary discriminations as applied
in the first statutes; or (2) readjustments to changing economic con-
ditions in accordance with the original standards of the laws; or (3)
limited advance of standards where experience has proven the equity
and soundness of such higher standards. Still less can these de-
developments be characterized as unwholesome on the ground that they
constitute departures from the original principles and aims of the
compensation statutes. Most certainly to the contrary they repre-
sent only more general realization of the fundamental purpose and
intent which inspired and molded the first laws. It has been only in
careful and prudent pursuance of the same end, that, as experience
has dictated necessary changes, they have been made.

All of this simply means that in examining our compensation
system to-day we have been studying an organism that is alive and
growing, still in its youth, and, who can doubt, with much more of
growth still ahead.

The Chairman. We will now have the paper by Mr. Wilcox,
chairman of the Industrial Commission of Wisconsin, “How can
accident reporting be used to the best advantage?”

HOW CAN ACCIDENT REPORTING BE USED TO THE BEST
ADVANTAGE?

BY FRED M. WILCOX, CHAIRMAN WISCONSIN INDUSTRIAL COMMISSION

In the discussion of this subject I presume that one ought to
treat it from the standpoint of the different types of commissions
that are administering workmen’s compensation. In Wisconsin,
as in many States, there is committed to our commission not only
the administration of workmen’s compensation but the admin-
istration of safety laws and of various other acts, which influence
in a measure the value to be obtained from a report of accident.
That is particularly so with respect to those departments charged
with the administration of the safety and sanitation laws as well as
with workmen’s compensation. So I say that I suppose one ought
to discuss the matter from the standpoint of the other commissions
which are charged only with the responsibility of administering
workmen’s compensation.

In the first place as to the benefits to be obtained from the report
of accident is the fact that the report is the point where adminis-
tration of the compensation act must start, at least so far as the
board administering the law is concerned. What can you know,
what can you do, until you have notice of this accident, and from
that point of view the sooner that report comes to this administering
body the sooner you may get on your job and be assured that the
purposes, the ends, the aims of the compensation act itself are
carried into effect. These laws will not administer themselves of
their own force. That is why you are set up as an officer to see
that they are carried out in letter and in spirit. If you can not
know of the accident, if you can not have the report, then you can
not get started. And so it is essential to have some sort of report.
There has been laid down in the report of the committee on statistics a recommended form of report, and with us, as I am quite sure it is with you, we are following in the main that type of report and are calling for it. On that report you get the information as to the names of parties; the age of the injured person; the character and the cause of the injury; the kind of machine; the failure there was in the machine or equipment which was responsible for the injury; and usually you get some estimate of the possible disability; if injury has resulted in death you get that information and information as to the dependents; and that equips you to start away.

It has been proven, I think, by experience that there is a necessity for some of the things in the report that to the administering department may sometimes seem to be doubtful. Why do we ask for a report of the age of the employee? Why is it essential that we should have a report of that, and what benefit is to be obtained from it? A number of the acts, many of them perhaps, make no distinction as to the amount of liability because of age; but age after all is an essential factor, whether it varies the compensation or not, because it is important that whatever we do shall eventually be turned to the perfecting of these laws, to the end that essential justice shall be done to injured employees, and likewise to the employers, and that interest shall be stimulated in safeguarding against the injury that has made necessary the payment of compensation. As we go along, I am certain we will come more and more to see that age, after all, is a very essential thing to know, and our laws will have to be amended until they come to the point where age will vary the amount of indemnity, especially so far as healing periods and the measuring of permanent partial disability and permanent total disability are concerned.

There are only a few States—two or three—where age plays any important factor in the measuring of disability. It seems to me that it goes without saying that with the man who is 30 years of age and the man who is 70 years of age, each of whom has lost an arm at the elbow, while their injury may perhaps work apparently the same effect upon their weekly earning ability thereafter, their working expectancy is a different thing and the sum total of their recovery must be a different thing.

It is important that it shall be known what the wage is, because that is the basis of compensation, and statistics upon wage ought to be carefully gathered and they ought to be gathered from the employer. May I emphasize here at this point that we do not permit in Wisconsin, and I do not think any State can afford to permit, insurance companies to make the report of the accident, though I know they do it in many States. We do not accept their reports; we do not allow them to use their blanks; we do not allow employers to use insurance companies' blanks. We do not want the report of this accident in any of its details to be edited by or come under the supervision of the insurance carrier before it is submitted to the commission. We want this report to come directly from the employer to the commission.

Now, wage is important and as that information can be known alone by the employer, it ought to come directly from the employer.
The necessity of seeing that wage is reported correctly should be a follow-up matter, because if, in the consideration of the case and in the final development of the matter, it be found that the wage was not reported accurately, then this employer ought to be checked right then and there. He ought not to be allowed to continue reporting the wage at something other than what it was. He ought to be made to say why it was that in the report of this accident he gave the commission a wage different from that the man was actually earning. You should be right on his neck if he gives you a statement of the wage different from the fact.

Then there should be a report of character of injury. I can understand that in those States where they administer nothing but workmen's compensation, the need of a report as to the character and cause of the accident and the extent of the injury may not seem to be wholly apparent. But I hate to think that when this case comes before you it is a matter of taking your schedule or whatever it may be and measuring out the dollars and cents that this man or this woman is going to get, forgetting entirely the question of how this injury occurred.

We were told by these men who came in here what a wonderful factor workmen's compensation is in encouraging better safety conditions within their plant, that they are more concerned in preventing these accidents than they are with any law that has to do with the compensation of the disabled person. Their thought was the inspiration you can get out of workmen's compensation for protection against these particular injuries. Even though we are administering a workmen's compensation law, compensation boards, as I view it, still owe this obligation to the State they are serving to see that every bit of available information—and that is all the information that may come more clearly and certainly and definitely to you than to any other agency in the State, all of those things that may come to you on these reports of accidents and your subsequent investigations—shall be turned after all to the elimination of accidents in the future. We can not afford to think that our job is the settlement or adjustment of the measure of compensation benefits as between the employer and the employee in the particular accident alone and forget about the injury. I want to have my eye riveted on the thing that causes this man to lose his hand or his eye or his arm or whatever it may be, when I figure out the amount of compensation, because I know that after all it is not the employer who is paying, but that eventually the cost will be turned back to the public that I am serving. I also want to have in mind that the benefits paid this injured man are not compensating him fully but only partially, and that after all my first and foremost duty is to see that that information is turned to the effect that the accident shall not happen to my brother worker.

Many of our laws carry in them provisions that the character of the accident shall increase the injury; for example, if it is a machine accident or an accident of various other types, compensation shall be increased. I think New York and several other State laws do. Wisconsin has a provision that in certain types of injuries benefits are increased. In that particular case you must of course have the nature of the injury. It is the most wholesome thing in the world to require an
employer to answer the question as to what it was that caused this injury, what it was that failed, and how could it have been prevented.

That is another matter that will call for follow up, because I say to you frankly that unless you go right after it, the employers will edit their reports to shield themselves. So you will have to be on your guard as respects that accident. The employer will tell you almost invariably, unless he knows you are checking, that this machine was guarded. Was the machine guarded? They tell us yes, although the machine has never seen a guard, and the only way you can stop that sort of thing is to be right after them.

I am now handling the case of a sawmill in the northern part of our State, which I know about from information I obtained from the insurance carrier, because we had to send our inspector in to investigate this sawmill. It was in an out-of-the-way place and we did not reach it, but I suspected that the insurance company had been in there and asked it for the reports of its inspections. I found it had been in on three different occasions and asked this particular employer to put a guard upon this saw. I know that he lost the credit to which he was entitled under his insurance policy because of his failure to have a guard upon this saw, and still this employer answered us that there was a guard upon that saw at the time. Our inspector went in there and found there wasn't any guard and there never had been a guard. That was his information. This particular employer who answered and had been carrying on the correspondence up to this particular time, assuring us there was a guard there and it was all the fault of the injured man, is now in a thoroughly embarrassing position. I am perfectly sure before I get back home he will have to write a letter to me, telling me that he deliberately undertook to mislead the commission as to the cause of that accident and admitting that there was no guard upon the saw at the time. He must now come through and make payment of the increased compensation.

It is essential, if you are going to accomplish anything for the prevention of injuries to others, that these employers shall see that their processes or machines are guarded as they ought to be. They will not protect against all injuries even at that, but will protect against a considerable portion of them, and to that extent they ought to be required to answer these things definitely and honestly and squarely. That is what we are trying to have them do, meet their responsibility, and we are getting quite a ways along.

It means constant effort. You have to be right back of it all the time, but in the end you will have accomplished your purpose. You will have prevented the injury to the next man because you will have gotten him to do something that he ought to do. The most wholesome thing that can come to any employer is having to write out an accident report and tell State authorities that an injury occurred in his plant, under these conditions, with this kind of a machine, and the man has lost his fingers or his hand or arm or eye.

It was frequently said in the early days of compensation that employers never knew in the days of common law how many accidents were occurring in their plants, and I believe it. Lots of the institutions really did not know. Reports went to insurance carriers and were forgotten. Now they are coming across in their places, with the result that we are getting better character of guarding and safety work generally, and general reduction of accidents.
In death claims it is important that we have and have immediately a report on dependents. In your law I am almost certain and in mine—in every one of the State jurisdictions—total dependency draws certain definite benefits. You will have differences when there is partial dependency but when you have total dependency, given the fact of marriage, given the names of the children and their ages on the date of the accident—and those things are all determinable at the date of the accident—there is not a single thing in issue as to what the benefits are in the case, and the death cases are the ones that find announcement in the newspapers and are the first fruits for the ambulance chaser. He watches the death columns and he is right out after that particular case. The sooner we can have reported to us all the circumstances with regard to a fatal accident and be in shape to notify the widow as to what her benefits are, that she does not need legal advice, that the benefits, up to a certain amount, are going to be paid as a matter of course, and that no lawyer, nor no doctor, nor anyone else is going to influence the amount she is going to get, the better it will be for all of us.

In Wisconsin we are not collecting reports of injuries with disability of a week or less. I think the committee called for that. We are not doing that because no compensation benefits follow. We have made some investigations in those States where they are collecting such reports, and we are rather disposed to think that it is a desultory affair. We are getting only a small portion of such reports and for statistical purposes they are not of great value. I am frank to admit that if you made the same kind of effort that you do on some other things you have to do you could get all those accidents reported. I think we ought to follow out as fully as we can the type of report that is called for in the recommendation of the committee of statistics adopted by this association, and that we ought to take those statistics often and then tabulate them so we can make them useful for any purpose for which they may be used.

You are called upon for the experience in your State. Whenever your legislature meets you ought to be ready to respond and tell what the experience is in your own State, and you can not unless you tabulate all of this experience. You ought to have it available, whether or not you are administering the sanitary laws of your State, so as to advise the public and the safety departments as to what is going on in your particular State.

I emphasize again the fact that even those boards that do nothing but administer workmen's compensation have this other and finer duty to discharge: That of making certain that the information that can come to them better than any other body of men shall be so tabulated and so used that it can be turned into dividends in further reduction of accidents. I believe with the philosopher that there is nothing under God's heaven that so justifies our creation and our citizenship as this gospel, that next to the creation of life comes the saving of life.

The Chairman. The next paper will be by Dr. C. B. Bowyer, entitled "Mine accidents and workmen's compensation." Doctor Bowyer is chief surgeon of one of the largest employers and he has under him 11 other physicians who assist him in the care of the employees of this large company.
Coal, one of the basic commodities in man's existence, has become one of the major industries and ranks high in furnishing employment to a great number of men. Coal mining, however, is inherently one of the most dangerous occupations man can follow. The natural hazard of falling slate and coal from wall and roof exposes every underground worker to a class of accidents which does not confront the worker in any other occupation. In recent years the keen competition in this industry with its growing complications is harnessing the mines with electrical equipment and mining machinery to increase production. Electricity and machinery have added two more great sources of mine accidents almost equal to slate fall. To-day, mine accidents and safety methods are among the greatest economic problems which confront industrial boards. Organized safety methods and accident prevention in the coal industry are making marvelous strides and demonstrating results of great importance. Coal mining, being necessarily one of the most dangerous of our great industrial occupations, naturally causes more claims for adjustment under the compensation laws than any other industry employing the same number of men. The hazard of life and limb in the coal industry is its greatest foe, and in all man's efforts in management to increase efficiency in operation none has been more fruitful than the campaign to reduce accidents inaugurated because of compensation laws. Accident prevention still offers one of the greatest possibilities in the mining industry for the elimination of waste and the conservation of man power.

It is not the purpose of this paper to call to your attention the marked benefits the employers and employees derive from compensation law. We do know it has caused more efficient treatment for the injured, which enables him to return to work much earlier. Results formerly considered good are no longer accepted as satisfactory when brought before the referees. The efficiency of the methods employed are now accurately judged by the restoration of function. The time element and end results must now be accounted for in every traumatic injury. I will further digress from my paper to mention this impressive fact, that since the enactment of compensation laws there has been a constantly growing demand for improved industrial health conditions and environment. Public health measures, preventive medicine, and personal hygiene have shown marked advancement. Health promotion is now one of the important factors in the organization and management of the coal industry. Even the public has caught the spirit—life extension and periodic examinations. The principles of compensation not only demand that you have your injured man on the job at the quickest possible moment in the best physical condition, but more, they demand that the accident which incapacitated him must not be allowed to happen again. These measures—safety methods, surgical care, health promotion—also have a practical effect in building up loyalty and tying the personal interest of the employee to the service from which he gains his livelihood.
Having been connected with a large coal company for the past 20 years, and having the responsibility of the care, health, and accident treatment of nearly 4,000 employees, together with a general supervision of the accident claims, I wish to call your attention to some of the perplexing questions and difficult problems in my work in connection with the compensation law, which might be helpful in enabling you to furnish further constructive contributions to a more equitable solution of this great economic problem. Compensation originated from the idea that the consumer should pay the injured something for his disability, and it does seem that there should have been some provision at the time for an organized attempt to formulate principles or to lay down certain rules as a working basis for evaluating injuries. When the compensation act came into effect the medical profession was charged with the duty of appraising injuries and converting them into dollars and cents. Our ability to take on this great work had its limitations. Evaluation of injuries had never been studied in such a way that we could even approximate, on a sound basis, the effect of a specific injury on the loss of use of a member. The estimation of a disability should never be decided on an expression of personal opinion, but always on measurements and tests of functional action based on definite principles. Some relative exact standards can be worked out by which we can measure the end results of an injury, and not leave it to a matter of guess. Most all awards are necessarily based on opinions which are entirely of a medical nature. The award is often based upon such proof as a physician may give in accordance with his good judgment and opinion after a very superficial examination, the examination frequently being made in the court room. The wide difference between awards for identical disabilities in the same coal district is often very noticeable. Such a method of placing values is not good economics, nor is it fair to the injured party. Before the days of compensation it was often claimed by the courts of justice that some lawyers were a menace to the proper adjustment of a claim; but, after compensation, claims must be adjusted on statements and opinions of doctors who have had no occasion to familiarize themselves with the compensation law or to give any thought whatever to the question of values in regard to accidents. I do not accuse any doctor of being dishonest, but I have seen many of them who evidently did not realize the great responsibility of their full duty when designated to defend society from unjust or fraudulent claims or to secure for the working man his lawful rights under the compensation act. As I see it, one of the greatest contributions this association could make would be to introduce some method or plan by which the problems of evaluation would be analyzed so that we could adopt some scientific and uniform method in placing evaluations.

There are many cases in the coal industry where the medical attention provided and the compensation paid can not restore their earning power or enable them to carry on their regular work. I care not how long their compensation runs, they still remain an economic loss, because the character or kind of work in the coal mines is so limited they can not be rehabilitated. They can not even be furnished work much less favorable to their condition that they can do. I am seriously concerned about these unfortunate cripples, who should not
be permitted to go underground again, and for whom there is no work to be had that can be adjusted to their needs. The rehabilitation boards are not taking care of many of these cases. To-day when an injured man loses his ability to produce coal he must cease work because society has made no satisfactory provision for an opportunity in some other field of labor. Such a condition is not healthful for the laboring man or for society.

Economically, prevention of accidents is the desire and ideal in the management of any industry. Entrance and periodic examinations have become very popular in the last few years as an accident preventive and for efficiency in production. There is a growing feeling among coal operators that recent policies and awards show a tendency to penalize them for hiring physically defective men. At first the entrance and periodic examinations were made with a view to placing a man where he could work to the best interests of both himself and the employer, at the same time hoping to impress upon him the importance of guarding his health and remaining an asset. Now, the examination is made with a view to sifting out the physically unfit, because often they are taking advantage of the present rulings and law and draw unjust amounts, out of proportion to the extent of the real disability. Make a record of the imperfections of those you employ—crooked elbows, stiff knees, flat feet, heart murmurs, varicoccele, Wassermann, and so on, for the purpose of suitable work or of making a more accurate estimation of any damage from an injury. Of what advantage is your record of his heart if he claims a traumatic heart and says he is no longer able to work in the mines? He is willing to admit he had flat feet when employed, but now he claims a very slight accident aggravated his condition and that he is no longer able to do heavy manual labor. Your record may show a Wassermann and an old ulcer on shin, but let it become slightly inflamed, then he makes a strong plea of "bank poisoning," and you will regret for many months that you ever passed him for employment.

We are doing much for the underprivileged child, and when he becomes of age, though physically defective, he is just as much entitled to special recognition in securing work or provision for going into the labor market in competition with his more fortunate fellow man. But with our present compensation laws and the attitude the courts are taking toward their interpretation and administration the industries through entrance examinations are branding these men as undesirable and not to be employed. The law says, you examined him and employed him knowing his defects, therefore you must pay him. Often big damages are awarded, although the accident was trivial, because he charges the accident has affected him differently from a well man. With such opportunities for fraudulent claims and the industries knowing they are often penalized for trying to fit the unfortunate with a job, physically defective men are now being refused employment. A good percentage of our population who we say live from hand to mouth are the ones who started life with a physical handicap. They are the ones without lands or capital, restless, flexible, changeable, and always dependent on the organs of industry and wealth for support. To give this mighty army recognition, an opportunity, in the new order of things,
to see that these men have a stabilized place and can coordinate their
energies in our great industrial system, is not the least of the prob­
lems in the future provisions and developments of compensation law.

Now, I will mention some of the difficult problems which con­
front me daily in making recommendations for adjustments based
on the spirit and purpose of the act. There is a growing feeling
among miners that the workmen's compensation law is unjust, in
that it does not fully compensate them for their injuries or time
lost. They are loosely taught that the law is a social measure only,
instead of being basically an economic one. Many of them seem to
feel they are justified in trying every conceivable plan to collect as
much as they can for an injury. With the feeling that the amount
of compensation is not adequate pay for time lost, a big percentage
of those who sustain injuries of any consequence feel that it neces­
sarily calls for a claim involving a reduction in their earning power
and that they should have additional compensation added to time
lost. In all cases of fractures of long bones or injuries to joints,
when union is established or the joint healed, a short period of
light work should be provided. This calls into action unused
muscles, improves circulation, and limbers up joints, gives a quicker
healing period and better function for the man. We know the end
results have not been attained and the percentage grades of per­
manent incapacity can not be estimated, as light work is really
follow-up treatment. But just as soon as you place a man with a
fracture at doing light work he demands that a percentage be placed
on his specific injury—loss of use of the member. If you refuse on
the ground that he will continue to improve, he seems to feel that
you are taking advantage of him by robbing him of his just and
lawful rights, and he often follows this up with a letter of grievance
to the commission.

Ever since the adoption of the workmen's compensation law
alleged hernia of traumatic origin has been one of our biggest prob­
lems. In recent years there has been quite a lot of valuable work on
the etiology of hernia, yet there still remains in the minds of the
laity and even of many medical men certain ancient beliefs and opin­
ions regarding hernia. Many still insist there has been an actual
rupture and that many hernias are of traumatic origin with the sac
suddenly acquired. A great many miners, when old age comes on,
find it a profitable avenue to end their period of active service by
claiming damage for various degrees of hernia which they have found
to be developing. They are always able to show some kind of con­
nection between a sudden strain or body twist and the appearance
of hernia while at work. Rupture, the old English term used to
designate hernia, seems to be responsible for the traumatic theory of
hernia. There are many men with hernias, honest in their belief that
it could not have occurred unless something had been torn or rup­
tured. Young men feel that hernia shows weakness in their mascu­
line make-up and no one wants to admit his hernia is of congenital
origin following defective development or weakness and atrophied
tissue. They invariably insist on associating it with some sudden
strain. All claims for compensation based on an alleged rupture,
following a severe strain or lift, should be viewed with suspicion. It
should be proven that the injury caused actual violence to structure or tissue, and not simply that there was a connection between a strain and the appearance of a hernia.

Coal mining produces many eye injuries. We have accepted standards for normal vision; we can agree also on what constitutes industrial blindness. There is, however, much difference of opinion on the evaluation of the partial loss of sight. No systematic way as to how eye injuries should be determined or the manner in which the amount of vision should be estimated has been adopted by the boards. Eye injuries continue to be one of the most disputed subjects coming up for consideration before compensation boards.

The greatest economic question in regard to health which always looms the largest with the wage earner is tuberculosis. He must earn a living wage. For the past few years I have attempted a special study of the influence of coal mining as an industry on tuberculosis. Extensive compilation of data shows us that tuberculosis in a coal miner is rare; that it is lower than in any other trade. It is our experience from records and observation that tuberculosis seldom develops in a coal digger, and that an advanced case is surprisingly rare in an old coal miner. It is my firm belief that coal mining is one of the safest trades or occupations that a man can engage in who is susceptible to respiratory trouble or who even has a slight tubercular infection, regardless of the many claims he makes on account of poor ventilation, powder smoke, and poisonous gases.

The difficulty in reaching an agreement in many cases is not because there has been no strong effort to follow some definite rule or schedule on which to base accurate opinion but because we have failed to try to understand the mental make-up or psychology of the injured workman. Much of our traumatic neurosis is nothing but a man hiding behind his injury, using his disability as a means to an end. Often an injury is an exit from an unpleasant obligation or a disagreeable situation. Many a man exaggerates and prolongs a trivial disability because there is some domestic, social, or financial problem involved. Man hates anything that blocks his inborn desires. When an injury suddenly blocks certain definite plans or desires, hate is the emotional response. You simply can not change one with a gloomy, repulsive, irritable mind into one who is willing to cooperate with you and use his entire will power to overcome his disability. Two men can sustain identically the same injury, have the same recuperative powers, and one of them will return to work in one-half of the time it takes the other to recover. In nearly every injury we have the mental as well as the physical condition to consider in adjusting claims. Physically the injury may be slight, but mentally the damage is great from the standpoint of the injured party. Many a workman we consider agreeable and fair minded will, as soon as he is injured, become in a receptive mood to adopt plans or suggestions which will enable him to commercialize his injury. Subjective symptoms develop and we see in the make-up of the man traits of character never before suspected. The intricacy of the problems presented by these kinds of cases, I fear, has not been adequately appreciated by the boards.

In conclusion let me say that self-interest is the ruling spirit of man. Painful as it may be, we have to recognize the moral infirm-
ties in man, none of which are more despicable and frequent than fraudulent claims for money gain. Many students of industrial medicine and industrial science claim that idleness, with its allied compensation benefits, is a special product of the workmen’s compensation law and that it is growing. This situation is impregnated with grave possibilities of harm and ill both to employers and to wage earners, and presents a problem of greatest importance to all boards, deserving their most careful scrutiny and consideration.

The Chairman. These papers we have just listened to are very valuable additions to the records of our association.

[The next paper on the program, “Court system of administration as we know it in Tennessee,” by Harry L. Nelson, superintendent of the division of workmen’s compensation of the Tennessee Department of Labor, was read by Mr. Hatch, as Mr. Nelson was unable to be present.]

COURT SYSTEM OF ADMINISTRATION AS WE KNOW IT IN TENNESSEE

BY HARRY L. NELSON, SUPERINTENDENT DIVISION OF WORKMEN’S COMPENSATION, TENNESSEE DEPARTMENT OF LABOR

[Read by Leonard W. Hatch]

The Tennessee workmen’s compensation law went into effect July 1, 1919. It provided for court administration; it also provided that all settlements, to be binding, must be approved by the courts and copies of said settlements filed with the bureau of workshop and factory inspection. Previously, during 1913, an accident-reporting law had been passed which provided that all industrial accidents causing disability for one day or more be reported to the same agency.

The Tennessee State government was reorganized during February, 1923. A department of labor was designated, and therein was instituted a division of workmen’s compensation, which assumed all of the duties relating to workmen’s compensation that had theretofore been performed by the bureau of workshop and factory inspection.

The division of workmen’s compensation, having no authority under the law to make settlements in disputed cases, could only do the best thing possible: First, acquaint injured employees and their dependents of their rights under the law prior to making settlements; second, keep a close check on those settlements not approved by the courts to see that the settlements are made in line with the law.

While the law provides that all settlements must be approved by the courts, it is my opinion that less than 2 per cent of them are presented to the courts for approval, the settlement being made direct with the injured and a copy of the same filed with the division of workmen’s compensation.

After four years of checking these settlements, including those approved by the courts and those not so approved, I do not hesitate to state that, in my humble opinion, court administration in Tennessee is a failure; that injured employees are not receiving the full benefits of the law; that in most cases the courts will approve any kind of settlement presented to them by the interested parties regardless of whether said settlement is in line with the law.
It is a matter of record that in some fatal cases settlements are commuted on a basis of 50 per cent, notwithstanding the law provides that lump-sum settlements may be made when agreeable to both parties but must be commuted on a 6 per cent basis. The dependents and the attorney, both being anxious to secure a lump-sum settlement, petition the court for approval, and same is granted, thereby repudiating the principle underlying the whole workmen's compensation system.

Our files will prove that, under court administration, attorneys have been permitted to collect 20 per cent of the award in fatal cases, notwithstanding the fact that there was no contest—the employer or insurance carrier desiring to pay the dependents every penny due them—the dependents, disregarding instructions from our division, being informed by some outsider that the attorney could secure greater damages and also a lump-sum settlement. I have seen the same thing in the case of an ignorant negro laborer who had lost his forearm in a sawmill accident.

The Tennessee act provides that attorney fees may be as high as 20 per cent of the amount recovered; this amount is due an attorney where the case is contested, but not due an attorney for drawing up a petition for approval to submit to the courts, as this should be performed by the attorney for the employer with no cost to the dependents.

In contested cases court administration in Tennessee does not provide an agency for quick relief for the injured employees or their dependents, but claims are permitted to drag and the injured denied compensation when most needed—at the time of the injury when their earning capacity is destroyed.

In Tennessee the employer may qualify as a self-insurer, and many are doing so. I saw the settlement made of a case where the injured workman had suffered the loss of an eye while employed by a self-insurer. The attorney, in making the adjustment with the injured, contended the employee had been negligent and had violated some safety rule, and so settled with the injured on the basis of 50 per cent, said settlement being approved by the courts. This injured employee accepted the compromise settlement offered him by the employer because he dared not incur the ill will of the management, since he knew that when he was again able to work he would be seeking employment from that same management. This serves to illustrate that in court administration there is no agency to initiate the movement to see that the injured employee receives a fair settlement in cases of this nature.

The division of workmen's compensation communicates with the injured and informs them of their rights, what is due them, how to proceed to collect same, and even insists on corrected settlements from the self-insurer or insurance carrier. We receive many corrected settlements, but in many cases they are a compromise, due to the fact that the injured does not wish to have the ill will of the management.

Under court administration in Tennessee it is possible, and has come to my attention, where employees receive injuries that appear at first not to result in any "permanent partial disability," that final settlement will be made on the basis of "temporary total disability," amounting to probably four or five weeks' compensa-
tion; yet from these injuries may result some “permanent partial impairment,” such as injured spine or back, or stiff wrist, limb, finger, or toe that should entitle the injured to additional compensation, amounting in many cases to five or ten times the amount granted them, and the statute of limitation of one year will run against such a claim before the injured is aware that he has not received a fair settlement.

In the four large cities of the State, where over 50 per cent of the injuries occur, the insurance carriers have centered on two or three physicians who specialize in compensation injuries, and as a result in these communities a spirit of distrust and suspicion exists on the part of the injured employees, who think they are pronounced able to return to work too soon by the insurance physician, and also that the estimates of the percentage of permanent partial disability are low and therefore unsatisfactory. From my observation and experience this feeling of suspicion on the part of the employee is well founded, although there are just as honorable members of the medical profession attending compensation cases in Tennessee as will be found anywhere.

Under court administration where no medical examinations are made by the State and where there is no board to appeal to by the injured for a hearing the following is the usual procedure in claims covering permanent partial disability, especially where the injured is not satisfied with the estimate of the company doctor and is intelligent enough to appeal to some one concerning his rights under the law.

The insurance doctor estimates the percentage of permanent partial disability at 30 per cent. The injured person goes to his own doctor and there his disability is estimated at 60 per cent. There being no hearings and the State furnishing no medical examinations, the injured, rather than employ a lawyer and have further examinations at his own expense and go through a long, uncertain, and expensive lawsuit, will accept anywhere from 35 to 45 per cent. In many claims of this nature where a lawyer has been secured a lump-sum settlement is offered as a further inducement, and the resulting compromise settlement is approved by the courts and the lawyer granted 20 per cent of the compromise. This is what happens regularly in Tennessee under court administration.

Only recently a settlement was approved by the courts where two reputable doctors estimated the permanent partial disability in a spinal injury of a young man 18 years of age at 50 per cent. The estimate of the insurance company’s doctor was 35 per cent, but notwithstanding this estimate of its own doctor the company would settle only on the basis of 30 per cent, and this was accepted by the parents in preference to a lawsuit.

In Tennessee, under court administration, there is no authority except the courts to settle the numerous small claims upon which the interested parties can not agree. The amount involved is not large enough to attract an attorney to accept the case and go into court and the result is that the employee accepts any kind of compromise which is offered. The same situation exists in regard to medical benefits.

In Tennessee first-class lawyers as a rule do not desire compensation cases and the contested cases before the various county courts for
settlement go before a judge without a jury, which does not result in a uniform application of the law, as would be the case if we had a commission of trained men who devoted their entire time and study to the compensation question. As a result, many cases are appealed to the State supreme court for final adjudication.

Especially, under court administration in Tennessee, is there a tendency on the part of the adjusters to compromise all claims for serious injuries where the nature of the disability can not easily be determined. In over four years' experience I have not received reports of a half dozen settlements where the injured employee is being compensated on the basis of "permanent total disability." There does not seem to be any such "animal" in Tennessee. Cases of this nature are compensated for a couple of years and then a lump-sum compromise is arranged and approved. The fact that the injured party has to give 20 per cent to the attorney in the event of a lawsuit, and that the adjuster knows this, causes many of the injured to accept compromises when they are entitled to more compensation. This is a condition that should not exist in Tennessee nor in any other State.

A workmen's compensation law should at least guarantee to the injured employees and their dependents the full benefits of the law regardless of how high or how low the benefits may be, for it must be remembered that it is a compromise law to start with and the workers should receive the full benefits thereof. It should be remembered that they have no other remedy in court, regardless of how negligent the employer may have been, and that in many cases if there was no compensation law the amount of their recovery would be many times greater than under the compensation law.

I do not believe the people of Tennessee are acquainted with what is going on in their State regarding the administration of the Tennessee act. They are not familiar with the compensation theory and have not studied what other States are doing in this matter. I feel sure that if the fair-minded, intelligent citizenship of Tennessee had the question fairly submitted to them and were made acquainted with the abuses under the present court administration form, they would favor a commission form of administration, such as is in effect in most of the other States.

The contention of the opposition to a commission under the Tennessee act that it is too costly is not sufficient. Tennessee received during the year 1926 approximately $90,000 from insurance carriers writing workmen's compensation insurance, or 4 per cent on all premiums, and appropriated approximately $8,000 for the administration of its compensation law. Neighboring States are maintaining commissions on yearly appropriations of from $40,000 to $50,000; therefore the State could maintain a commission on 50 per cent of the amount of revenue that is at present received from the compensation law.

With a commission and hearings substituted for the various district and county courts there would be a saving to the State, due to the fact that most of these claims would be settled by the commission. There would also be uniform application of the law, and in most cases the injured employee would receive the maximum benefits with a minimum cost to both the State and the employer. There would be no long delay due to court action, the worker receiving his compensation when injured and when most needed.
Where there is a commission and formal hearings are conducted, students and authorities on workmen's compensation generally acknowledge that this is the better and proper form of administration. No State that has ever adopted the commission form has gone back to court administration. A commission will initiate the movement to see that the injured receives his compensation and will follow up same until the final payment is made in line with the law.

Therefore, from the foregoing, after over four years as superintendent of the division of workmen's compensation in Tennessee, where court administration is in effect, I submit that it does not meet the requirements of an efficient, progressive compensation act and does not function in the manner that the pioneers of the compensation movement intended, and in conclusion submit that for an efficient, fair, and impartial administration of the Tennessee act a commission should be appointed whose members will become trained in the compensation theory, which will insure for the injured worker the maximum benefits with little delay and at a minimum cost.

DISCUSSION

The Chairman. Mr. Munroe was appointed to lead the discussion in regard to the court system of administration. He is unable to be present and Mr. Hatch will read his paper.

Mr. Munroe (by Mr. Hatch). It is a difficult matter to criticize an attitude assumed by someone else when, in the main, one already agrees with what has been said or written.

It seems to be the practice of many delegates at various assemblages of this, as well as similar, organizations, when called upon to criticize a speech or paper to give a few lines to criticism and much space to the airing of the various provisions of the acts of their own jurisdictions. The Alabama act stands in such urgent need of amendment and revision at this time that the writer has no inclination to expose its many peculiarities and shortcomings.

Speaking from a purely unbiased viewpoint it appears that court administration of compensation laws stood condemned at the outset on account of its contradictory principles. The compensation theory was primarily based on simplified procedure and speedy justice. Court administration impedes both.

As an illustration of the effects attending court administration, without safety rules and State administration thereof, in any given State where such a lamentable situation exists, compensation premium rates are bound gradually to increase from time to time through constantly cumulating unfavorable experience and lack of State supervision of hazardous industrial conditions, resulting in the forcing of a majority of employers into self-insurance regardless of their ability gracefully to carry that burden. The paradox existing at this time in Louisiana and Alabama is that the interests opposing a change to the commission method are the ones that are members of the self-insured group. The writer wishes to stress the point, however, that the really large corporations give much less trouble than the smaller ones, inasmuch as they handle compensation matters in the manner in which other essentials of their businesses are attended to, viz, systematically and efficiently.
To my mind the most dangerous feature of the court administered law, next to the absence of any State supervision, is the self-insurance feature. Without machinery properly to supervise accident reporting, the State has no possible means of ascertaining whether or not all accidents are reported. All reportable accidents should be reported in order that the settlements may be properly scrutinized by the State. A small self-insured employer too often unintentionally or perhaps purposely disregards the duties imposed upon him by law with reference to reporting accidents.

Court administration with no vestige of supervision, either as regards accident prevention or settlements effected, is indefensible; court administration with accident prevention minus settlement supervision, or vice versa, is almost as bad; and court administration with both of these desirable features still falls short of the ideal we have in mind. Employers who through their associations or otherwise combat the elimination of court administration stand in the light of their own interests. Only the cheapest insurance coverage, or no coverage at all, can follow as the result of such an attitude. For example, in Alabama only one insurance company covers the entire coal mining field. The company in question is a strong one (the insurance department sees to that) and there is little danger of insecure coverage, but with the catastrophe hazard ever present the danger of too great a spread for the one carrier is evident.

Every settlement effected in compensable cases bears the closest scrutiny on the part of the compensation division of the Alabama Insurance Bureau. During one year, in which the record was accurately kept of short settlements and also by closely following newspaper accounts of accidents and deaths in the industrial field, it was discovered that approximately $10,000 had been saved citizens of Alabama. It should be borne in mind that this was accomplished with an office force of two clerks.

The lump-sum settlement danger (and it is a danger) is not of such serious consequence in Alabama. Settlements of this kind, incidental to major disabilities and deaths, are required to be reviewed in each and every instance by the courts. The circuit judges have all been furnished by the State with discount tables and in the larger counties these cases are adjudicated with commendable exactitude.

In summing up the evils of the court system in the sequence of their undesirability the writer is attempting to be fair minded and recall the numerous instances wherein the exact legal requirements have not only been met but exceeded, but on the other hand it is difficult to forget the ignorance on the part of many employers of the actual existence of the law on our statute books; the claim-shaving attitude too often assumed by adjusters (both insurance and self-insured) in settling for major disabilities and deaths; the constant complaint of insured employers that compensation insurance is daily becoming an unbearable overhead cost; and the knowledge that the State department has its hands tied by insufficient legislative authority and flagrantly inadequate personnel and funds.

The writer is moved in closing to defend the attitude taken by the courts of Alabama in adjudicating contested compensation cases. He feels safe in the assertion that their findings have hewn as strictly
to the legal line of cleavage as any industrial commission or board that could be instituted. Contrary to popular opinion compensation decisions in Alabama are not a hodgepodge of conflicting angles and opinions, but follow out the spirit of the compensation principle and the findings of court in other sections of the country.

Court administration, in spite of some favorable arguments in its behalf, will never prove as effective and speedy as supervision by an industrial commission. The argument that the latter is too expensive is too flimsy to entertain as administrative machinery can be fitted to suit the conditions existing in a given situation and locality.

The Chairman. The discussion is to be continued by Frank E. Wood, commissioner of labor of Louisiana.

Mr. Wood. Workmen's compensation laws have been placed on the statutes of practically every State in the Union and are recognized throughout the Dominion of Canada and in fact almost throughout the civilized world.

Compensation laws were enacted to care for the injured during the period of disability and further to provide for the dependents in case of death of the injured. Such laws are just and humane, since they pave the way at least to help take care of these unfortunates, thus preventing them from becoming objects of charity or public charges.

In the enactment of these laws, evidently every feature was given due consideration. Doubtless the lawmaking bodies were convinced that the employer was not only morally bound but should be legally compelled to care for his maimed employee and the dependents of the workmen who sacrificed their lives in the performance of duty. Society itself has been outspoken in this regard. The enactment of compensation laws was to secure prompt adjustment of claims, to prevent delays, and to provide ways and means whereby legal compensation might be paid without resorting to the courts or incurring attorneys' fees to accomplish these ends. Each State in its respective law designates just what percentage of wages is to be paid and the time period of allowance for each injury causing a loss of time or resulting in the loss of life. In most instances these laws are plainly written and free from misconstruction, but unfortunately we have annually hundreds of cases contested in court apparently because some of the insuring companies seem inclined to the belief that the injured can not for lack of finances, or will not by reason of fear, fight their cases in court. And here I regretfully admit that Louisiana is one of only five States that still permit court administration.

I have been at the head of the Department of Labor of Louisiana for practically 11 years and from observation after assuming charge of the department it did not take me long to realize that court administration of this particular law was a joke; and while I have absolutely nothing to do with the enforcement of compensation law, the department being a “clearing house,” so to speak, of all complaints, I soon came to know there was a loose screw somewhere in the administration of the law. As time passed and opportunities presented themselves for investigation, I became more thoroughly convinced that court administration was wrong both in theory and in practice; and so thoroughly was I convinced of this fact, that be-
ginning with the first report published under my tenure of office, I submitted a recommendation to the lawmaking bodies—and this recommendation has been submitted every two years thereafter—that an industrial insurance commission should be created for the purpose of enforcing this particular law; but the only progress that has been made in this respect has been the passage of joint resolutions authorizing the appointment of a committee from each body to investigate the advisability of the creation of such a commission and to submit to the lawmaking bodies such recommendations as said committees might deem advisable. However, on each occasion these committees consisted largely of insurance agents or their attorneys, or some other attorneys who often handle compensation cases in court, and it is not hard to surmise the result of their submission. The only assurance given was the cooperation of all concerned to eliminate existing evils and to do better in the future, but even these promises have been ignored. Notwithstanding the fact that practically every one of the insuring companies writing compensation in the State of Louisiana persistently maintained that their business was being operated at a loss, strange to say they were united in their efforts in opposing the creation of a commission; and I have never been able to understand why this should be the case if they are actually operating at a loss.

During the last few years I am convinced that many cases have been compromised out of court or approved by the court whereby the injured was denied just compensation, basing this conclusion on the increased number of complaints coming to my personal observation and because of certain attorneys going into court virtually before the law is violated. This practice has grown to such proportions that the large employing interests filed a protest with the representatives of the workers and advised that unless this practice was abated compensation, being elective, would be discontinued, and the employers would effect settlements between themselves and the injured workmen. They protested such policies because the employers were often taxed with useless court costs and the injured were paying large attorneys' fees, the intent of the law thus being defeated. Because of such abuses of the law the last session of the legislature, at the request of labor itself, in conjunction with the employing interests, amended the law defining under what conditions cases might be brought into court, and fixed the attorney's fee at not to exceed 20 per cent of the amount involved, with a maximum of $1,000; and it is through these restrictions that we look for material improvement in the future.

Compensation laws were enacted to prevent having to resort to court action, to save delay, and, most important of all, with the view of the injured getting the full compensation that was rightfully and lawfully due him. Everyone who has given this matter consideration knows and must admit that court procedure is slow and expensive and that the injured or their dependents are the ones who suffer.

With the object of showing that court administration is lax, I beg to refer to a few cases, omitting names, coming to my personal observation, with the assurance that I have the correspondence to substantiate all claims.
In one particular case the workman was injured while felling a
tree, and was declared by the court "non compos mentis," and a
judgment was rendered in solido against the employer and the insur­
ing company, this being made a matter of court record. A certain
banking institution was made trustee of the funds, to be paid weekly,
and a curator was appointed to look after the welfare and to protect
the interests of the injured. The weekly compensation in this particu­
ar case was fixed at $14.85 a week, to cover a period of 400 weeks. The
rightful weekly allowance was paid for approximately 6 months,
when for some cause not known to the injured or his dependents pay­
ments ceased. After the lapse of many months this case was brought
to my attention, and an immediate investigation was instituted, not
that I had any legal authority to do so but from a humane stand­
point and to secure, as far as possible, evidence to show how lax
court administration is. After securing a statement from the curator
to the effect that he had received no payments for several months, I
got in touch with the insuring company, and also took the matter up
with the attorneys who had prosecuted the case in court. No sooner
had my investigations become known to all concerned than I was
advised by the curator that he had received a check for approxi­
mately $400 for accrued compensation; but, strange to say, everyone
disclaimed responsibility for the delay or irregularities connected
therewith, and there are no records to show that the court had made
an effort to secure the necessary reports required by law to enforce
its own edicts.

I might cite other cases to show that unscrupulous employers some­
times deny their injured workmen just and legal compensation, and
further, can name certain insuring companies guilty of the same
offense. While many of these cases were not approved by the court,
we know of many other cases that were approved by the court, and it
is safe to state that in a vast majority of these the law was violated
and the injured were the sufferers. We have other evidence to show
that certain practitioners employed by certain insuring companies are
in the habit of discharging injured workers who are incapacitated to
return to former employments and in some cases are not able to per­
form any kind of work, but upon such notification to the insuring
companies, compensation is immediately stopped and nothing remains
for the injured to do except to forfeit compensation legally due or to
take his case into court. From observation I state frankly that I am
convinced that in many cases such procedure was for the sole purpose
of compelling the injured to accept a compromise either with or with­
out the court’s approval; and it is not an unusual occurrence for the
court to approve settlements that contravene the law. It is not a diffi­
cult task to secure proper awards by judgment of the court when tried
in open session, but when settlements are made between the injured
workman or his dependents and the employer or insuring company, the
courts seem to accept any settlement reached between the two factions
whether or not the law is violated. The courts seem to pay little
or no attention to the wording of the law or to seeing that its awards
are carried out, seeming to be satisfied with the old slogan, “Let
George do it.”

The compensation law of Louisiana carries with it a provision that
all settlements must be made in conformity with the law and
approved by the court, and further provides a penalty that increases the compensation to one and one-half times the regular allowance should illegal lump-sum settlements be made. Very recently a settlement was made and approved by the court in violation of the law, but later was reopened in court, and not only was the regular compensation awarded but the penalty was also assessed. Later the case was appealed to a higher court, and strange to say, while the higher court sustained the constitutionality of the penalty clause, the award, so far as the penalty compensation was concerned, was reduced one-half. Just why this was done is one of those mysterious things the average man is not quite able to understand, and I am not above the average. In this particular case, the injured was entitled to receive approximately $6,000, but the insurance adjuster by strategy induced the injured to accept about $800, and then discounted this sum at a greater rate of discount than is provided by the law for "lump-sum settlements." Yet in the face of these conditions, the court approved this settlement; and this, no doubt like many other cases, would have been finally disposed of had not the injured by mere chance learned that he had been literally robbed of his just compensation.

Other cases might be mentioned, but since you gentlemen having to do with law enforcement applicable to workers no doubt are more or less familiar with just such conditions, I am sure that each and every one of you and others familiar with court administration of workmen's compensation laws will admit that it has proven a complete failure, since the courts will and do approve settlements contrary to the spirit and wording of the law, which plainly and specifically provides just how much is to be allowed for each and every injury, from the slightest that causes loss of time to that of total disability or loss of life. I am thoroughly convinced the application of "court administration" is a misnomer and that we might well refer to this subject as "court nonadministration."

As before stated, I have absolutely nothing to do with the enforcement of the compensation law of our State, but I am familiar with its provisions and am always glad to inform those seeking advice concerning their cases, and never fail to impress upon their minds as very important to stay out of court if possible, and never to accept any settlement or compromise not in keeping with the provisions of the law. I sincerely hope I may yet accomplish the undertaking of placing the administration of this law under the supervision of some board or commission, as I am more thoroughly convinced each year that courts are not the proper authority to administer the workmen's compensation law.

Mr. Stewart. In explanation of the next feature on the program, I want to say that I corresponded with two of our associate members, the Republic Iron & Steel Co. and the Du Pont people. The question has been asked me why large self-insurers, members of your association, who are doing business in compensation commission States, apparently on friendly terms and satisfied, oppose the change from court administration to commission form in two of the court administration States, which I named. I had been asked that question and I passed it on to the associate members. The Republic Iron & Steel Co. has answered; Mr. Fell telegraphs that he can not be here, but he sends his paper. The Du Pont
people are here. As I understand the position of the Du Pont people, they are willing to answer questions and may be willing to make a statement from the floor. The paper from the Republic Iron & Steel Co. is here, and after that is read I would like to know just how far the Du Pont people would like to go, whether they want to say anything or whether they want to answer questions.

The Chairman. I understand that Mr. Duxbury will read Mr. Fell's paper.

Mr. Fell (by Mr. Duxbury). The suggestion was made to me that it was singular that large corporations operating with apparent satisfaction under commission in various States could use their influence in Alabama to secure court administration of the compensation law. So far as I know, no such corporation has so used its influence. In our own case I can say that our corporate officials took no part whatever in attempting to influence the legislature in adopting the compensation law. Our opinion was requested as to the merits of the Ohio plan with its monopolistic State fund, which we were advised was being urged by the leaders of union labor in Alabama. We informed the parties making the inquiry as to our experience and drew a comparison between the Ohio plan and the plan in force in Pennsylvania. Beyond this advice we took no part whatever, so far as I know, in the adoption of the compensation act in Alabama.

However, in theory at least, judicial administration is sound. The compensation act takes away the right to damages and substitutes a right to compensation, which arises without respect to the negligence of the employer and which is, more or less, specifically controlled in amount by the act itself. It seems natural that disputes which may arise as to the right to compensation should be settled and adjudicated just the same as all other disputes among individuals. I know of no sound reason courts should not adjudicate such disputes.

In many industrial States commissioners and referees were provided for the hearing and settling of compensation disputes. Had this not been done it would have been necessary to have provided additional judges, as the court dockets were in such condition that compensation disputes could not be properly and speedily administered. If, however, a State is so situated that courts already functioning have the time to hear compensation cases and dispose of them, such a procedure should be satisfactory. Certainly the judges are better qualified in respect to determining law questions which arise than would be any commission or referees. In the matter of questions of fact which may arise a judge is better qualified to arrive at a sound conclusion from the evidence offered than is a commission of laymen. His training has taught him the relative values of evidence and he is familiar with the rules and principles which have developed through centuries of English jurisprudence.

If it is true that the courts will approve, in most cases, any kind of settlement whatever presented to them by the injured parties, regardless of whether such settlement is in line with the law, it is a sad commentary on the judges of Tennessee.

 Likewise, if the insinuations which have been made in respect to the lawyers of Tennessee are true, they fall below the standard of lawyers even in industrial States where the ambulance chasers flourish.
It seems inconceivable that conditions should be as bad as pictured. I suppose in the average industrial State over 99 per cent of all cases are settled according to compensation provisions without troubling court or commission. The great bulk of employers wish to be fair. I know this is true in Ohio and believe the same kind of folks live in Tennessee. If the cases cited can not be explained by unrevealed facts Tennessee needs a revival more than she needs a new compensation act.

It seems that much of the criticism directed against court administration in Tennessee should be directed against the provisions of the compensation act. The act gives a right to compromise. This is a right which is exercised in every other domain of human relations. It would seem that compromise might many times be desirable, but if it works out unsatisfactorily court administration should not be blamed therefor. Likewise in the matter of attorneys' fees. If the legislature is generous in the matter of attorneys' fees criticism should not be directed to court administration. It might, had it wished, allowed attorney fees in disputed cases which go to a commission.

Practically all of the cases which have been cited turn upon the provisions of the Tennessee compensation act, although they are cited against court administration. It is to be regretted that only one side of these cases is discussed. There must be another side. A month ago I wrote the superintendent of the division of workmen's compensation of the Tennessee Department of Labor asking that he cite me cases which, from his point of view, showed the inefficiency of court administration, believing that investigation and presentation of the other side would be edifying. Though my letter was not returned I have received no citations and am unable to comment on the cases cited to show that judicial administration in Tennessee is not a success.

In conclusion I wish to point out that under no system has it been possible to secure for the injured employee compensation at once when there is a dispute as to his right to receive same. Every commissioner knows that attempts at fraud have been made in the matter of compensation, and that aside from that many a claim is honestly made which is in fact without merit. Also under no system has it been possible to avoid a conflict of medical testimony.

Contested cases turn on a question as to how the injury was received or on the question of extent of disability. In deciding either the training of a judge should give him an advantage over a layman. I would indeed be surprised if a thorough review of cases showed that the courts of any State had failed.

The Chairman. This ends the program as far as the assigned discussion and the papers are concerned. We are open for discussion from any of the members present. I would like to hear from the Du Pont people if they have anything to say in regard to the matter. Our secretary has intimated he wrote to the Du Pont people at the same time he wrote to the Republic Iron & Steel Co.

Mr. Klaw. I am glad that I have an opportunity to make a few remarks while the contents of the last paper are fresh in your minds, because I do not agree with a single thing that gentleman said. He may be older than I am and he may have had more experience in this work than I have had—I have been in this work for only eight
years—but I doubt if his experience covers a greater field than mine does, because for the past eight years I have handled cases under compensation laws in some 32 States of this Union. We operate in approximately that number of States and I handle all compensation cases that involve questions of law with reference to injuries to employees. So that at the outset I want to make that point clear, that so far as I am personally concerned I do not agree with anything that gentleman said.

It is probably a little unfair for me to make that statement when he is not here. I am a lawyer and I believe in the inherent right of cross-examination, and as I say it may be a little unfair for me to make a statement when the gentleman is not here.

Now, I wish you to understand this also before I go any further. I do not speak the policy of the Du Pont Co. I am not authorized to speak for the Du Pont Co. Matters of policy are not in my hands, and I generally try to confine my activities to what I am being paid for. However, I am going to undertake in a few words to express to you my personal feeling.

I shall continue my association with the Du Pont Co. just so long as the working conditions that are set before me are agreeable to me and to my conscience, and whenever any of the higher-ups in the company lay down a policy which does not jibe with my personal feeling of what is right—and I do not think that will ever come to pass—at that time I will try to earn my living somewhere else.

We have had some activities in the State of Tennessee since 1920 when the law went into effect there and we have had experiences in Alabama which has court administration. I know of no phase of the administration of compensation laws which is so incongruous to the original purpose of the law as the provision of the law which provides for court administration.

We hear a lot about attorneys. You have discussed the matter of attorneys from various phases, and while it may seem strange to you, I honestly dislike attorneys in a case probably more than you do. I say that for this reason: I do not get into a case until an attorney has been employed by the other side, and therefore when the employee turns in too many cases it gives me too much work to do. But, seriously, the injection of an attorney into a case is a real menace. It impedes the administration of the law and does not do justice to the injured employee, for the reason, I firmly believe, that if the case is left in the hands of the commission both the employee and the employer will receive their just due.

My experience has been that we are safer in the hands of the commission in any State than we would be in the hands of the courts. That has been our experience. We have found as a matter of fact that we get off cheaper in dollars and cents when a case is administered by a commission than we do when it is administered by a court.

That may sound strange to Mr. Wood. I do not know what kind of corporations operate in his State, but judging from the reputation that some of the corporations in that State have, I am glad that our company does not operate there, because I would not want to have to work under that reputation they have established.

When it comes to adjudicating a compensation case, I have found that judges do not know the compensation law. The last paper
referred to the fact that the judges were learned in the law and understood the technicalities of the rules of evidence and this, that, and the other thing. My experience has been that the judges of the common pleas courts do not know an awful lot about compensation laws, and that is why I say we get off cheaper when it is adjudicated by a commission, because the judge has in mind jury cases, jury verdicts. We all know that jury verdicts have always been against big corporations, and the judge gauges the compensation case more or less by what his experience has been with jury cases.

One of the most beneficial things to be derived, as I see it, from the commission administration is the advantage of personal contact between the insurance company (we are not an insurance company; we carry our own insurance in every State) and the commission. For example, in many instances where we have puzzling questions we merely write a letter to the commission or go to see a member of the commission and discuss our problems with him; he tells us what to do, and we go along and do exactly what the law requires, feeling satisfied that we have been given a square deal.

In Alabama, for example, when I have a puzzling question come before me, I can not find out much about what is going to happen in the case, and unless I want to take the time to come down to Alabama from Wilmington I have to hire a lawyer in Alabama and let the court decide the particular question for me, and that costs us money. We try to save our money, not by gouging the injured employee or by keeping him from getting all he is rightfully entitled to, but in overhead expense. That is why I am never called into a case until the other man has hired a lawyer. As long as he keeps away from lawyers the man at the plant, a layman, drawing probably in most cases less money than the injured man draws, is the man with whom he has to deal.

So you see we benefit in that regard by the opportunities for discussing matters informally and for securing the aid and advice of the commission. I think that is one of the greatest benefits that any employer can derive from a commission form of administration.

Of course insurance companies may not feel that way about it. I would not undertake to speak for insurance companies. They are in business to make dollars and cents, and they gauge their success at the end of the year by how much money they have on the black side of the ledger. Our company does not operate that way. We undertake to do what we think is right toward our employees, and even if it costs more in one case than it should, we are satisfied if the injured employee has received the benefit of every possible doubt.

As an example of that attitude, our company has a benefit plan of its own which is greater in its benefits than the compensation law. For example, every man who is injured working for us is paid compensation on a two-day waiting period. In States where the maximum compensation is less than $20 a week he is paid $20 a week during temporary disability. Our medical services are absolutely unlimited. Just this afternoon one gentleman, I believe it was Mr. Kennard, made reference to insurance companies spending $2,500 for medical services in a case. Doctor McBride called my attention to the fact that our company spent between $7,000 and $8,000 on one case of insurance, but I am not here to exploit the Du Pont Co. I
am probably getting a little afield. What I was originally trying to get across was the fact that we do not measure our success by the same rule that the insurance companies do.

I have in mind, as an example of how court administration works a hardship not only on the employee but on the employer, a case which has recently come up where a widow made application in Tennessee for compensation. We investigated the case very closely and assured ourselves that her reasons for asking the compensation were good and that the compensation should be granted. So the case was turned over to me for the reason that the service department could not operate with the commission, because there is none. So I wrote to this woman and said, “Take this letter to the clerk in court. I know him and he knows me. Ask him to present your petition for compensation to the court and tell him, and show him this letter as evidence of the fact, that we will not oppose it.” I thought that she could go down there, and the clerk could go to the judge and say, “This woman wants $300, and these people do not object to it. Will you approve it?”

Instead of getting a reply from her that everything was O. K., I got a letter from a firm of attorneys in Nashville who have occasionally represented us, which said, “This party has been brought to our attention. We can not represent you and her at the same time.” I had not even asked them to represent us. “We can not represent you and her at the same time, so we have sent her to another lawyer in Nashville, who is a very reputable man and will take care of her interests, and the charge will be $50.” Then they concluded by saying that when the petition is presented in court “we will protect your interests and accede to the request, so there will not be any hitch in the matter.” Naturally, we will have to pay them a fee. The woman has to pay her lawyer a fee to do something that we are satisfied to do, that we know is the proper thing to be done, and in addition to those costs for attorneys, the matter has been delayed about—well, I have had the case now for about six weeks, I guess, and we have been working on the entire proposition for over two months, trying to get this money to her. We are willing to give it to her any moment the court says so, but we have to get the court’s approval.

There is another side of court administration that I have found. For instance, in Nashville, there are three judges, I believe, three or four. I have met all of them. We can never tell before which judge the case is going to come, and I have had occasions where one judge would rule one way on a particular point one week, and maybe a few weeks later one of his associates would rule another way. Well, we do not want to spend money to take cases to the Supreme Court of Tennessee to get uniform rulings, so in some cases we abide by the consequences. That is another proposition that is worthy of consideration.

The matter of determining a man’s permanent disability is one that can certainly be taken care of better by a commissioner than by a court for this reason: You go before a commissioner. The whole proposition is more or less informal. He asks the doctors questions. If he is not satisfied, he will ask for an examination by somebody of his choice. You have an opportunity informally to talk to the
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doctor on the other side, and there is also more chance of that doctor
telling a little when he is sitting around a conference table, when he
knows somebody will laugh at him if he makes a ridiculous state-
ment, than when he is sitting up on a witness chair with a space
intervening between him and the man questioning him. I think that
phase of it means a lot to both sides, to both the employer and the
employee. There is more chance for arriving at a true estimate of
permanent disability.

Those matters have occurred to me as being ideas which might
tend to indicate that the commission form of administration is bet-
ter than the court, and I thought it might be interesting to you to
have me state them.

Mr. Wilcox. I am sorry Mr. Fell has found it impossible to be in
attendance at this convention and to present his own paper—first, for
the reason that this membership is always glad to meet with those
who are giving thought to the administration of workmen's com-
pensation, and second, because I find myself in sharp disagreement
with his principal conclusions—disagreements that might be over-
come by open discussion.

To Mr. Fell's observation relative to workmen's compensation that
"In theory, at least, judicial administration is sound," I answer that
it begins and ends in theory. While the administration of any com-
pensation act will often call for construction and interpretation of the
provisions of the law, the all important and overshadowing task
of the administrator in disputed claims is the fact-finding job. Be-
cause disputes over liability for industrial accidents under negligence
laws have been the special problem of the courts, we assume without
rhyme or reason that administration of a system of compensation
should also be the province of the courts—this because personal in-
jury to an employee is involved in each case. Days are spent in the
common-law liability suit over the question of fault (negligence) as
against minutes in the determination of the extent of injury. The
first and most important and trying consideration of the courts is en-
tirely out of the compensation picture. Moreover, the extent of
injury under common-law liability is not a question for the judge
but for the jury, and that jury is made up of "the butcher, the
baker, and the candle-stick maker," selected not because they have
any special schooling or training or experience in the employment
out of which the injury grows, or of its hazards, or of the effect of
injury types upon wage-earning ability, but because of their admis-
sion of ignorance of the subject matters.

Mr. Fell would have a judge determine the facts, and again
observes that, "In the matter of questions of facts that may arise,
a judge is better qualified to arrive at a sound conclusion from the
evidence offered than is a commission of laymen." If that be so,
then why retain in our judicial systems the right of trial by jury—
trial by inexperienced laymen? The fact remains that judges are
not better qualified to determine issues of fact than are the com-
pensation commissions of the States. This follows because they
lack the experience that comes to a commissioner, and where such
opportunity as comes to a judge for the determination of disputes
of fact under compensation is just an incident in the daily round
of his judicial duties, he will never match the grounded judgment
of a commissioner who devotes himself wholly to the field of compensation administration.

A man who happens to be selected or appointed to some judicial position has no monopoly on the horse sense of a community. Compensation commissioners whom I have met in my day have just as fine judgment as the rank and file of judges. And the years of experience that are behind them in this special field of workmen’s compensation administration is the promise to injured workmen and their employers of that intelligent and expert handling of disputes that can never be approached by one who functions just now and then, like the judges of the courts in those States that have the system we are here considering.

Efficient administration of a compensation system is something more than sitting as a judge in a matter of dispute. It involves the obtaining of prompt information of the accident, advice to the parties as to their rights and responsibilities, adequate follow-up and investigation to make certain of a full and complete meeting of obligations, aid to parties in preliminary arrangements for the hearing of dispute, and ex parte inquiries and examinations where material and sharp dispute of extent of disability is involved.

These are only a few of the duties imposed upon the real compensation administrator.

In this field the court system is a colossal failure—not by reason of any fault of the judges but for the reason that they have neither the time nor the funds nor the facilities to render such a service. In fact, if they were to take on all of these responsibilities within their respective jurisdictions they would find little time for other duties. The only bright spot in the court system of administration is the advice, counsel, and investigation that has been furnished by the labor departments in such States.

Mr. Fell assumes as a fact that disputes arise in only 1 per cent of the indemnity cases. The figure in commission-administration States is more nearly 5 to 10 per cent. I have no doubt that in those States where the system is court administered probably 1 per cent is an outside figure, but that again is mute evidence of the inefficiency of the plan. Injured men can not afford to take on the burden of presenting their claims in court and therefore accept what is tendered to them. Lawyers and their fees are the only avenue of relief against overreaching.

Compromises are discussed in the paper. They have a real place in any system. However, the system that leaves the parties to their dealing without the advice of some administrative authority which is charged with the duty of initiating inquiries into the facts and circumstances is bound to entrench the strong as against the weak. Approval of a compromise is not a guaranty against injustice. Approval is just a barrier against further proceedings, and if not cautiously considered is more apt to work injustice than to conserve the rights of all parties. Court approval is just a perfunctory matter, and that again is not the fault of the judge. Inquiry by one who has not the facilities for knowing whether he is getting the facts and all of them is of little value, and that is just the predicament of the judge in these compensation proceedings.
Let it be understood that I am not criticizing the court system of administration of compensation because of lack of regard for the ability and integrity of judges. I criticize it because it is an impossible plan. It is an attempt to use the forms and procedure of courts in the doing of an administrative job that calls loudest for those things that courts are not constituted to do—a job that is better off freed from the bulk of the ceremonies that make courts what they are.

Courts sit in judgment upon issues that have been defined with all the skill that attorneys possess. The law and the testimony are marshaled by these same experts. The rights and interests of the parties are guarded by these lawyers. Always there is between the litigant and the court these hired advisers. The whole system is keyed to this plan of procedure. Is there anyone to argue that such a system meets the needs of compensation administration?

The great majority of States agreed at the outset that court administration was unsuited to the purpose. Of the States that tried to use the courts, nearly all have abandoned the system. None have gone from the commission to the court plan and such action is not even within the range of possibilities. For the good of those whose interests are involved, for the sake of judges who are being called upon to do a service which they have no fair chance of doing well, it is to be hoped that those States with a court system of administration now get away from such a hapless, hopeless, helpless plan and put a full-time commission on the job. It is a big enough task in any State to command such attention. And the interests of the employees, employers, and the public are of such tremendous importance that administration should be in the hands of those who become expert by the doing instead of having some small portion of the real task parcelled out to those who must, for the lack of other course, handle it perfunctorily.

Mr. Stewart. To complete this record and throw the matter open to the floor, I want to say that as secretary I wrote to every State having court administration compensation law. I won't say anything about the States that have been heard from here. I asked them, first, how many compensation cases they had that they knew of. One State says, "Our records show for each 5,000 cases involving compensation, 79 petitions were filed for the period beginning May, 1926, and ending May, 1927." Then he analyzes it, which we won't go into. "There seems to be no general demand for a change in our procedure. There is no review in cases settled between the employer and the employee." Another states, "As a rule very few cases go to the courts in [our State]. We have no data upon this subject, as there is no provision in our act for an industrial accident board." That is in answer to the question of how many compensable accidents there were in the State—he does not know anything about it. "The settlements made between employers and their injured workmen which have come to my personal attention"—he having nothing to do with the case, as it is practically the same as the situation complained of in another letter—" complied with the letter of the law. There are several companies in this State who do even better than the 50 per cent provided in the act. We take no
part in settlement, etc." Then there is a reply from another State: "As to the workmen's compensation law we know of no cases which have been brought into the courts of [this State]. We have a compensation law, and the same seems to be working very favorably. In case of accident the different mining and milling companies and railroads, etc., have to our knowledge settled satisfactorily to the injured people or their relatives."

Mr. Kennard. I should like to ask the secretary if he made any inquiry as to why it is that in England for these many years since the inception of the act and up to the present moment one act is being administered in the courts and presumably to the satisfaction of all involved. I have never known of any suggestion being made for a change.

Mr. Stewart. No.

Mr. Kennard. Would not that indicate perhaps what the trouble was with the procedure here—as to whether it rests with the body for which it is the administration machinery or whether it rests with the personality of the force?

The Chairman. Any further discussion? I must say that I am rather favorably impressed with Mr. Klaw's statement with regard to the Du Pont people. His company did make a very favorable impression in the former session of the meeting here, and I hardly believe that he would take a stand like that of the Republic Iron & Steel Co., of Youngstown.

Mr. Stewart. An associate member from New Orleans is here, Mr. Kernan, and I think he should be requested to say what he has to say about court administration.

Mr. Kernan. I have only had experience before the court in the administration of the Louisiana workmen's compensation law, and have derived that experience from representing the street railroad interests of the city of New Orleans. I can not, therefore, speak as to whether administration by the commission form or by the court form is the better. Nor, like my friend from the Du Pont Co., am I authorized to speak for the public service company as to its policy on this. Expressing my inexpert opinion, I could side with him, but I think perhaps the workman would get more attention to his needs and to his rights were there some one to follow up his claim for injury sustained in an industrial accident. In Mr. Woods's paper he seems to blame the courts for not doing this, but the courts under their constitutional duty can exercise only judicial function. The duty is not upon them to follow up and see that the judgment which they pronounce is carried out. That duty devolves upon the person who represents the injured person.

It is true, unfortunately, that there are many employers of labor who have not that idea as highly cultivated as it should be, and they, too, in making settlements with injured employees, are blind to the provisions of the act. I can speak only for my own personal administration of the cases that come under my jurisdiction. I have frequently to act as judge, as a member of the commission, and also as a representative of the person who is paying for the injury. I have always endeavored to give the injured man all that the law says he is entitled to, and in many instances I feel that I have given...
him more than he was entitled to or that he would get under a com-
mission, doing that because I realized that there was an awful burden
resting on him, that of seeing that his family was compensated and
kept from charity.
I have at times advised the company to pay a claim that it could
have legally side-stepped paying. Our law provides that where no
claim is made for a year the claim is void. A man came into our
employ who said that he had no dependents. He was killed by
working in the installation of an electric line. Shortly before the
year expired a claim was filed from his parents or those claiming to
be his parents, in Holland, that they were dependent upon him. In
face of his own signed statement on his application that he had no
dependents, I had to advise the people that the company could not
pay unless satisfied that the claimants were dependents, and to advise
the person who preferred the claim, inasmuch as the time was so
nearly up, to file suit. The party who was handling it did not care to
do so and sent it back to Holland, and by the time the mail could
carry any communication a year had passed. It was represented that
the parents were dependent upon him to the extent of $2 a week, and
I advised the company to pay him a thousand dollars, which would
represent about $3 a week for the 300 weeks that the law allows in
a death case, which it did.
So you see there are employers of labor who endeavor to do just
what the commissioners would do for the injured employee in indus-
try. The courts are as a rule more favorable to the claims of the
injured employee than they are to the employers, and they have gone
on record that the law is one which must be most liberally construed
and that wherever they can bring the workmen within the protection
of the act they are going to do so; and they have gone far afield to
bring the workmen within the protection of the act. The court
endeavors to see that the workmen, so far as it can do so, are
compensated. The difficulty seems to be in the follow-up machinery
to see that the claim, when presented, is presented to the best interests
of the workman.

The Chairman. Is there further discussion?
Mr. Wood. I did not intend to make a broadsided assault on all
the courts in Louisiana. I mean practically those in the rural dis-
tricts. We do not have any trouble with big people; we do not have
any trouble in New Orleans. Back in the rural districts is where
we have most of our trouble. Only last Saturday, looking at the
paper, I saw that a particular lawyer, just one, in the last five years
had over $5,000 worth of fees—his portion will be that in claims
that have been filed in the courts of the northern part of the State—
and we have been checking up that record to see how many of these
cases were filed before the law was really violated. That was why
this provision was put into the last act of the legislature, that no case
could be carried into court until the law was actually violated.
Our trouble is not in New Orleans; our trouble is not with this
brother’s company nor with any other big company. We had a
brother here this morning who represents, I think, the Southern Bell
Telephone, which is connected with the Southwestern Electric in
New Orleans, and he came up and voluntarily said, “I want to con-
gratulate you on that paper. I know it is true, because we have a
BUSINESS MEETING

The CHAIRMAN. We have discussed the matters before the association this afternoon pretty fully. I will now call Mr. Stanley, the president of the association, and he will take the chair for the business meeting.

BUSINESS MEETING

CHAIRMAN H. M. STANLEY, PRESIDENT I. A. I. A. B. C.

The CHAIRMAN. The next matter before the convention is the report of the auditing committee.

[The auditing committee reported that it had examined the report of the secretary-treasurer and found it correct. It recommended that the question of investing funds of the association be referred to the executive committee. The report was accepted, and the recommendation adopted.]

The CHAIRMAN. Is the resolutions committee ready to report?

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 fourteenth annual meeting of the International Association of Industrial Accident Boards and Commissions, held at Atlanta, Ga., September 27-29, 1927, we do hereby express our grateful appreciation.

Resolved further, That the thanks of this association be extended to His Excellency the Hon. L. G. Hardman, Governor of the State of Georgia, to the mayor of Atlanta, to the Hon. H. M. Stanley of the Industrial Commission of Georgia, and to the many 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. 251. Paterson, N. J., was chosen as the place of the next meeting, to be held September 11-14, 1928. Invitations had also been received from the Governor of Ohio, the mayor of Columbus, and the president of the Chamber of Commerce of Columbus to hold the next meeting at Columbus, Ohio.

Dr. A. F. McBride, the incoming president, took the chair and expressed his appreciation of the honor paid him and asked the cooperation of the members of the association during the coming year.]

Mr. STEWART. In the secretary's report I raised the question as to whether you want to bind the printed proceedings of the past conventions and include the index, or whether you want to wait until we can print and index the proceedings of this convention and put them in. I ask you to refer that to the executive committee.

The PRESIDENT. If there is no objection it will be referred to the executive committee.
Mr. Wilcox. It occurs to me that there are two or three subjects that stand out as ones that ought to have consideration at our next meeting, but the nature of them is so delicate that there are not many who would care to undertake the survey or the discussion. It seems to me that perhaps, if the executive committee should think it wise that they be given consideration, those questions could be worked up and then assigned to some member by the committee and presented. Then whoever did it would do it at the request of the convention itself, and there would be removed that delicacy that otherwise might be present.

So I move that the executive committee be requested to give consideration to the question of whether some one of the commissioners should not be assigned the task of giving us at the next convention a survey of relative benefits under each jurisdiction on a representative group of specific injuries, the factors to be considered in each case to be designated by the executive committee; and second, the question of whether there should not be committed to some commissioner the study and discussion at the next convention of the relative costs of administration in the various jurisdictions, grouped according to character of insurance protection, and otherwise, as the committee may direct.

[The motion was seconded and carried. Meeting adjourned.]
APPENDIXES

APPENDIX A.—OFFICERS AND MEMBERS OF COMMITTEES FOR 1927-28

President, Andrew F. McBride, M. D., commissioner New Jersey Department of Labor.
Secretary-treasurer, Ethelbert Stewart, United States Commissioner of Labor Statistics.

EXECUTIVE COMMITTEE

Andrew F. McBride, M. D., New Jersey Department of Labor.
Ethelbert Stewart, United States Commissioner of Labor Statistics.
H. M. Stanley, Georgia Industrial Commission.
William W. Kennard, Massachusetts Department of Industrial Accidents.
G. N. Livdahl, North Dakota Workmen's Compensation Bureau.
W. H. Horner, Pennsylvania Department of Labor and Industry.
George A. Kingston, Ontario Workmen's Compensation Board.

COMMITTEE ON STATISTICS AND COMPENSATION INSURANCE COSTS

Chairman, L. W. Hatch, New York Department of Labor.
Secretary, Ethelbert Stewart, United States Commissioner of Labor Statistics.
E. I. Evans, Ohio Department of Industrial Relations.
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.
S. W. Wilcox, Illinois Department of Labor.

MEDICAL COMMITTEE

Chairman, William J. Arlitz, M. D., associated with the New Jersey Department of Labor.
Vice chairman, Charles W. Roberts, M. D., associated with the Georgia Industrial Commission.
Robert P. Bay, M. D., Maryland State Industrial Commission.
Nelson M. Black, M. D., associated with the Wisconsin Industrial Commission.
H. H. Dorr, M. D., Ohio Department of Industrial Relations.
Harley J. Gunderson, M. D., Minnesota Industrial Commission.
M. D. Morrison, M. D., Nova Scotia Workmen's Compensation Board.
F. H. Thompson, M. D., Oregon State Industrial Accident Commission.
Mannice 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.

* Deceased.
SAFETY COMMITTEE

Chairman, John Roach, New Jersey Department of Labor.
Thomas P. Kearns, Ohio Department of Industrial Relations.
R. McA. Keown, Wisconsin Industrial Commission.
James L. Gernon, New York Department of Labor.

COMMISSION ON INVESTIGATION OF RESULTS OF COMPENSATION AWARDS

Chairman, Ethelbert Stewart, United States Commissioner of Labor Statistics.
Secretary, W. H. Horner, Pennsylvania Department of Labor and Industry.
Miss R. O. Harrison, Maryland State Industrial Accident Commission.
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.

SECTION 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 FOURTEENTH ANNUAL MEETING OF THE INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS, HELD AT ATLANTA, GA., SEPTEMBER 27–29, 1927

CANADA

Nova Scotia

F. W. Armstrong, vice chairman Workmen's Compensation Board.

Ontario

Henry J. Halford, vice chairman Workmen's Compensation Board.

UNITED STATES

Alabama

George W. Kalkman, manager Maryland Casualty Co.
Mrs. George W. Kalkman.

Connecticut

Albert J. Bailey, member board of compensation commissioners.
F. M. Williams, chairman board of compensation commissioners.

Delaware

C. W. Dickey, assistant manager E. I. du Pont de Nemours & Co.
G. H. Gehrmann, M. D., medical director E. I. du Pont de Nemours & Co.,
Abel Klaw, attorney, E. I. du Pont de Nemours & Co.
Walter O. Stack, president industrial accident board.
Mrs. Walter O. Stack.

District of Columbia

Ethelbert Stewart, United States Commissioner of Labor Statistics.
Charles H. Verrill, commissioner United States Employees' Compensation Commission.

Georgia

T. F. Abercrombie, M. D., State commissioner of health.
T. M. Brumby, president Georgia Manufacturers Association.
O. T. Bugg, Globe Indemnity Co.
Bishop Warren A. Candler.
Mrs. W. G. Causey, industrial commission.
Charles E. Dowman, M. D.
J. H. Duggan, jr., industrial commission.
Lewis M. Gaines, M. D.
P. E. Glenn, Exposition Cotton Mills.
Robert Gregg, vice president Georgia Manufacturers Association.
Fred Hames, M. D.
Hon. L. G. Hardman, Governor of Georgia.
George S. Harris, Exposition Cotton Mills.
J. J. Hogg, industrial commission.
Linton Hopkins, jr., Atlanta Journal.
Fred Houser, executive secretary Atlanta convention bureau.
Sharpe Jones, secretary-treasurer industrial commission.
W. T. Kolter, Travelers Insurance Co.
Judge Max E. Land, commissioner industrial commission.
J. P. McGrath, secretary Georgia Manufacturers Association.
B. N. Moss, United States Fidelity & Guaranty Co.
R. C. Norman, State tax commissioner.
Robert R. Pattillo, 90 Fairlie Street NW.
Judge Arthur G. Powell.
James H. Queen, Travelers Insurance Co.
Miss Elizabeth Ragland, assistant secretary, industrial commission.
Hon. I. N. Ragsdale, mayor of Atlanta.
George E. Reid, United States Fidelity & Guaranty Co.
C. W. Roberts, M. D., medical director industrial commission.
O. W. Russell, Maryland Casualty Co.
Ralph G. Smis, Ocean Accident & Guaranty Corp.
Hal M. Stanley, chairman industrial commission.
Lawson Thornton, M. D.
Hon. Clifford Walker, former Governor of Georgia.
W. J. Welsh, Maryland Casualty Co.
T. E. Whitaker, commissioner industrial commission.
Frank L. Wilkins, American Mutual Liability Insurance Co.
E. E. Williams, American Mutual Liability Insurance Co.

Idaho
G. W. Suppiger, chairman industrial accident board.

Illinois
William M. Scanlan, chairman industrial commission.
Sidney W. Wilcox, chief bureau of industrial accidents and labor research.

Iowa
Ralph Young, deputy commissioner workmen's compensation service.

Louisiana
Benjamin W. Kernan, New Orleans Public Service (Inc.).
Frank E. Wood, commissioner bureau of labor and industrial statistics.

Maine
Donald D. Garcelon, chairman industrial accident commission.

Maryland
A. E. Brown, secretary State industrial accident commission.
George Louis Eppler, commissioner State industrial accident commission.
Miss Rowena O. Harrison, State industrial accident commission.
Miss Ethel Walker.

Massachusetts
Samuel B. Horovitz, attorney Boston Legal Aid Society.
Mrs. Samuel B. Horovitz.
William W. Kennard, chairman department of industrial accidents.
Mrs. William W. Kennard.

Minnesota
F. A. Duxbury, chairman industrial commission.
Henry McColl, member industrial commission.

Missouri
Albert I. Graff, legal adviser workmen's compensation commission.
Alroy S. Phillips, chairman workmen's compensation commission.
LIST OF PERSONS IN ATTENDANCE

Mrs. Alroy S. Phillips.
Evert Richardson, commissioner workmen's compensation commission.
Mrs. Evert Richardson.
Orin H. Shaw, commissioner workmen's compensation commission.
J. W. Smith, statistician workmen's compensation commission.

New Jersey
Andrew F. McBride, M. D., commissioner of labor.

New York
James A. Hamilton, industrial commissioner department of labor.
Leonard W. Hatch, member State industrial board.
Mrs. Leonard W. Hatch.
W. H. Quirk, Western Electric Co.

North Dakota
G. N. Livdahl, commissioner workmen's compensation bureau.

Ohio
Francis T. Casey, industrial commission.
P. F. Casey, chairman industrial commission.
E. I. Evans, actuary division of workmen's compensation.
E. E. Watson, consulting actuary.

Oklahoma
G. T. Bryan, member industrial commission.
Mrs. G. T. Bryan.
I. K. Huber, chief adjuster Empire Companies.
L. B. Kyle, chairman industrial commission.
Earl D. McBride, M. D.

Pennsylvania
W. H. Horner, director bureau of workmen's compensation, department of labor and industry.
Joseph S. Lord, jr., department of labor and industry.
William J. Maguire, director bureau of statistics, department of labor and industry.
Charles A. Waters, secretary of labor and industry.

Utah
O. F. McShane, commissioner industrial commission.

Virginia
C. B. Bowyer, M. D., Stonega Coal & Coke Co.
Parke P. Deans, commissioner industrial commission.
Parke H. Handy, chairman industrial commission.
Frank E. Handy, M. D., Virginia Iron, Coal & Coke Co.
Wade M. Miles, deputy commissioner, industrial commission.
Mrs. Wade M. Miles.
P. D. Pence, M. D., Benedict Coal Corp. and Blue Diamond Coal Co.

Wisconsin
Fred M. Wilcox, chairman industrial commission.
Mrs. Fred M. Wilcox.

Wyoming
Arthur Calverly, department manager, workmen's compensation department.
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OF THE

INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS, 1925 TO 1927

BY GLENN L. TIBBOTT
OF THE UNITED STATES BUREAU OF LABOR STATISTICS

EXPLANATION

The references in this index are to Bulletins Nos. 406, 432, and 456 of the United States Bureau of Labor Statistics.

An index to previous proceedings of the International Association of Industrial Accident Boards and Commissions was published as Bulletin No. 395 of the United States Bureau of Labor Statistics.

A name index follows the subject index.
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1925 TO 1927

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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.

Conciliation and Arbitration (including strikes and lockouts).

*No. 124. Conciliation and arbitration in the building trades of Greater New York. [1913.]
*No. 133. Report of the industrial council of the British Board of Trade in its inquiry into industrial agreements. [1913.]
No. 139. Michigan copper district strike. [1914.]
No. 144. Industrial court of the cloak, suit, and shirt industry of New York City. [1914.]
No. 145. Conciliation, arbitration, and sanitation in the dress and waist industry of New York City. [1914.]
No. 191. Collective bargaining in the anthracite coal industry. [1916.]
*No. 198. Collective agreements in the men's clothing industry. [1916.]
No. 233. Operation of the industrial disputes investigation act of Canada. [1918.]
No. 255. Joint industrial councils in Great Britain. [1919.]
No. 287. National War Labor Board: History of its formation, activities, etc. [1921.]
No. 303. Use of Federal power in settlement of railway labor disputes. [1922.]
No. 341. Trade agreement in the silk-ribbon industry of New York City. [1923.]
No. 402. Collective bargaining by actors. [1926.]
No. 448. Trade agreements. [1928.]

Cooperation.
No. 313. Consumers' cooperative societies in the United States in 1920.
No. 314. Cooperative credit societies in America and in foreign countries. [1922.]
No. 437. Cooperative movement in the United States in 1925 (other than agricultural).

Employment and Unemployment.
*No. 109. Statistics of unemployment and the work of employment offices in the United States. [1913.]
No. 172. Unemployment in New York City, N. Y. [1915.]
*No. 183. Regularity of employment in the women's ready-to-wear garment industries. [1915.]
*No. 195. Unemployment in the United States. [1916.]
No. 206. The British system of labor exchanges. [1916.]
No. 235. Employment system of the Lake Carriers' Association. [1918.]
*No. 241. Public employment offices in the United States. [1918.]
No. 310. Industrial unemployment: A statistical study of its extent and causes. [1922.]
No. 409. Unemployment in Columbus, Ohio, 1921 to 1925.

Foreign Labor Laws.
*No. 142. Administration of labor laws and factory inspection in certain European countries. [1914.]
Housing.

*No. 158. Government aid to home owning and housing of working people in foreign countries. [1914.]
No. 283. Housing by employers in the United States. [1920.]

Industrial Accidents and Hygiene.

*No. 104. Lead poisoning in potteries, tile works, and porcelain enameled sanitary ware factories. [1912.]
No. 120. Hygiene of the painters' trade. [1912.]
*No. 127. Dangers to workers from dusts and fumes, and methods of protection. [1918.]
*No. 141. Lead poisoning in the smelting and refining of lead. [1914.]
*No. 157. Industrial accident statistics. [1915.]
*No. 165. Lead poisoning in the manufacture of storage batteries. [1914.]
*No. 179. Industrial poisons used in the rubber industry. [1915.]
No. 188. Report of British departmental committee on the danger in the use of lead in the painting of buildings. [1916.]
*No. 201. Report of committee on statistics and compensation insurance cost of the International Association of Industrial Accident Boards and Commissions. [1916.]
*No. 207. Causes of death by occupation. [1917.]
*No. 209. Hygiene of the printing trades. [1917.]
No. 219. Industrial poisons used or produced in the manufacture of explosives. [1917.]
No. 221. Hours, fatigue, and health in British munition factories. [1917.]
No. 230. Industrial efficiency and fatigue in British munition factories. [1917.]
*No. 231. Mortality from respiratory diseases in dusty trades (inorganic dusts). [1918.]
No. 234. Safety movement in the iron and steel industry, 1907 to 1917.
No. 236. Effect of the air hammer on the hands of stonecutters. [1918.]
No. 249. Industrial health and efficiency. Final report of British Health of Munition Workers' Committee. [1919.]
*No. 251. Preventable death in the cotton-manufacturing industry. [1919.]
No. 256. Accidents and accident prevention in machine building. [1919.]
No. 267. Anthrax as an occupational disease. [1920.]
No. 276. Standardization of industrial accident statistics. [1920.]
No. 280. Industrial poisoning in making coal-tar dyes and dye intermediates. [1921.]
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