PROCEEDINGS OF THE NINETEENTH ANNUAL MEETING
OF THE
INTERNATIONAL ASSOCIATION
OF INDUSTRIAL ACCIDENT BOARDS
AND COMMISSIONS
HELD AT COLUMBUS, OHIO
SEPTEMBER 26–29, 1932

APRIL 1933
# ANNUAL MEETINGS AND OFFICERS OF THE INTERNATIONAL ASSOCIATION OF
INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS

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MONDAY. SEPTEMBER 26—MORNING SESSION

Chairman, Wellington T. Leonard, President I. A. I. A. B. C.

The nineteenth annual meeting of the International Association of Industrial Accident Boards and Commissions convened at the Neil House, Columbus, Ohio, September 26, 1932, Wellington T. Leonard, chairman of the Industrial Commission of Ohio and president of the association, presiding.

President's Address

By WELLINGTON T. LEONARD, Chairman Industrial Commission of Ohio and President I. A. I. A. B. C.

Sixteen years ago when this association was in its infancy this city had the honor of entertaining the members of this organization. A number who attended that convention are here to-day.

Many changes have come since that time, both in the growth and influence of this association and in the widening of the field of workmen's compensation.

You have again honored Ohio by returning to the State where 1,600,000 workers and 43,000 employers are included in the coverage of the State insurance fund, and Ohio industry, labor men, and employers together welcome you.

You are here to attend one of the most important gatherings ever held in the history of the United States and Canada; here at a time when problems undreamed of confront you as administrators—problems of reserves, of rate increases, of medical costs, and of average weekly wage—which have come with the industrial slow-down and which have had a tendency to perplex you in their solution.

Industry has been at low ebb. Shrunken pay rolls, followed by greatly reduced premium payments, have resulted in the necessity of increased premium rates in practically every State and of falling back upon the reserves set up against the claims. It has been difficult for many employers to realize why they should be confronted with an increase in their rates when commodity prices have been lowered, but
it must be remembered that when industry's pay rolls were normal rates were reduced through good accident experience and other favorable factors. While the average rate increases put into effect have been below the decreases in rates when industry was in full swing, there is every reason to believe that these rate increases, made imperative by the unprecedented situation affecting workmen's compensation, will swing downward as industrial activity swings upward. There must be sufficient revenue to take care of every obligation to the injured worker and the dependents of those who have lost their lives through an industrial accident, but those charged with the administration of workmen's compensation must also take into account the additional burdens confronting the employer at this time and see to it that only absolutely necessary rate increases are put into effect.

Another problem to-day is the matter of medical cost. It is the obligation of industry to provide the injured worker with the best medical care. However, there has been a tendency on the part of many in the medical profession to prolong medical care unnecessarily and for many claimants to try to remain on compensation payments for a longer period because of the uncertainty of securing employment.

When industry slowed down it was necessary for many thousands of injured workers, together with able-bodied employees, to be laid off. These injured workers had been given employment in many instances at a normal wage. Realizing that they could not find other employment, disabled workers have looked to the workmen's compensation fund for further compensation (and it was perfectly proper that they should do so), thus greatly increasing the compensation problem.

At a time when economy programs have been necessary in the different States, the problem of securing adequate appropriations is a considerable one. In some States it has been considered necessary to reduce the personnel of workmen's compensation administration to a point where there is danger in decreasing its efficiency. It must be kept in mind that this is a time when compensation payments and adjudication of claims necessitate prompt attention, and cutting of appropriations and reduction of personnel is regrettable.

Hundreds of thousands of injured workers and dependents of deceased workers are being supported through workmen's compensation payments. Workmen's compensation is not a dole. It was never intended to be, but was brought about by industry for the protection of both the employee and employer. Industry set out to care for its own. The compensation laws were planned for the benefit of the injured worker and the widows and the orphans—with compensation and medical, hospital, and nursing care from the time of injury until the time the worker was again able to take up gainful employment; for life, if the worker were never able to work again. It was planned to safeguard his dependents in the event of his accidental death.

Workmen's compensation is not an old-age pension nor is it unemployment insurance. It is an insurance against misery and want for the widows and orphans—an insurance against poorhouses and orphans' homes, with industry bearing the burden, the cost. What an additional burden there would be upon the taxpayers of every State were they called upon to assume the responsibility that would
have been theirs had there been no workmen's compensation in the United States and Canada to-day. This is a time when it is necessary that the administration of workmen's compensation should be given considerate attention by the legislatures and by the courts in the various States. In some States court decisions have given friends of the compensation law much concern.

Every effort must be made to see that the principles on which workmen's compensation was founded are adhered to. Great care must be exercised to see that workmen's compensation continues to be conducted on a common-sense, sane basis, with the utmost regard for the rights of the worker and the employer and for the protection and benefit of both. The impractical theorist must be kept from meddling in that which is a matter between the worker and his employer.

The leaven which has been put into industrial life through workmen's compensation has been invaluable. It has had the effect of bringing about a better understanding between the worker and the employer, and many employers consider that of more importance than the matter of premium rates.

It has been heartening during the last year to note the continued interest in the safety movement which is so closely related to the compensation movement. Campaigns have been under way in many States in the interest of industrial safety despite industrial conditions. Employees have realized that safety is better than compensation and the employers realize that safety devices and training their employees in safety has a humanitarian as well as a money-saving side. With the revival of industry the safety movement will go forward with renewed vigor.

Industry has appreciated the fine assistance given by the rehabilitation bureau in the training and the placing of injured workers in other lines of gainful occupation. There is certain to be an increasing field for this work with a corresponding demand for its services.

The most satisfactory arrangement ever made between the workers and employers of America must be jealously safeguarded. Workmen's compensation has been built upon a foundation that will endure, but it is imperative that the countless friends of this law be consistent that nothing be permitted to undermine the structure but rather that it be further strengthened. It has met the big test.

The particular system of workmen's compensation in the various States is a matter for industry in each State to decide, but whatever plan is to endure there must be taken into consideration the principle that humanity must be emphasized above dollars in the matter of workmen's compensation coverage and the adjudication of claims.

General Review of Workmen's Compensation During 1932

Legislation—United States

During the legislative year 1932, only nine States (Kentucky, Louisiana, Massachusetts, Mississippi, New Jersey, New York, Rhode Island, South Carolina, and Virginia) met in regular session. In some nine other States, special sessions were held, but these were called primarily for the relief of unemployment and the subject of workmen's compensation did not receive consideration. From press
reports it has been indicated that other States will hold special sessions before the expiration of the current year.

Four States (Massachusetts, New Jersey, New York, and Virginia) acted upon the subject of workmen's compensation, while Kentucky, Louisiana, and Rhode Island took no action. Mississippi and South Carolina are two of the four States (Arkansas and Florida being the other two) which are still without laws on workmen's compensation, but no action was taken in either in the 1932 session toward the adoption of such a law.

The Seventy-second Congress of the United States has been in session since the eighteenth annual meeting of this association in Richmond, but no change was made in the basic compensation laws applicable to Federal employees, longshoremen and harbor workers, and private employees in the District of Columbia.

The Legislatures of Puerto Rico and the Philippine Islands also met in regular session, while that of Hawaii held a special session. No changes were made in the Hawaiian or Puerto Rican compensation laws. Official information has not been received as to whether any changes have been made or are contemplated in the workmen's compensation law of the Philippine Islands.

The Legislature of Virginia made several important amendments to the compensation law. The act was clarified as to third-party suits, by reason of several decisions by the State supreme court of appeals. (Horseman v. Richmond F. & P. Co., 157 S. E. 158; Norfolk & Western R. Co. v. Faris, 157 S. E. 819; Williamson v. Wellman, 158 S. E. 777.) An employee hereafter may receive the full amount of any recovery against a third party, less the amount of compensation already paid. Horticultural laborers are excluded from the act, and the total amount payable in partial disability cases is increased from $4,500 to $5,600. A statute of limitations is placed on old claims, by providing that a review of an award must be made within 12 months from the date of last payment. A new section was added to the workmen's compensation law, which is of interest to us as compensation administrators. Hereafter, an employer is prohibited from deducting from the wages of an employee the cost of workmen's compensation insurance.

The Legislature of New Jersey repealed an act, adopted in 1931, regarding procedure in appeal cases. Hereafter, judgments of the workmen's compensation bureau are to be reviewed by the common pleas court instead of (as provided by the 1931 act) by certiorari direct to the State supreme court. Another change in the New Jersey act excludes from the definition of "employee" persons engaged in selling newspapers, etc., or acting as sales agents or distributors of same.

In Massachusetts, three acts of minor importance were passed amending the basic compensation law.

In New York the legislature enacted several laws which strengthened, clarified, and liberalized the basic compensation law. Perhaps the most important measure is the one assuring the employee on construction work that his employer is covered by compensation insurance. This was accomplished by refusing to issue a permit for work which involves hazardous employments unless the employer produces satisfactory proof to the industrial commissioner that compensation insurance has been secured. Other measures adopted in-
cluded provisions to safeguard the employees of a self-insurer who has
gone out of business or changed to another form of insurance, and the
strengthening of the claimant's right to unpaid compensation in case
of the employer's insolvency. The law was also amended so as to
liberalize the position of an employee totally disabled by two inde­
pendent accidents; under the amendment if such an employee is
subsequently able to establish an earning capacity in a new employ­
ment, his changed status is taken into consideration and an equi­
table rate of compensation is provided during the continuance of his
employment. Two minor amendments were also considered relative
to the coverage of private chauffeurs in New York City, and the per­
mitting of volunteer firemen in political subdivisions to be included in
any mutual self-insurance plan. An amendment was also made to
the civil practice act which provides for preference on the trial calen­
dar of actions brought by a person entitled to workmen's compensa­
tion and electing to sue the third party causing the injury.

Legislation—Canada

Of the eight Canadian Provinces having compensation laws, all but
Quebec and Saskatchewan acted on the subject during 1932. No
changes were made in the compensation law administered by the
Dominion Government or the Yukon Territory. A bill for a compen­
sation law was introduced in the Legislature of Prince Edward
Island, but was subsequently withdrawn.

Under the provisions of the Ontario workmen's compensation law
as amended, medical aid will hereafter include dental treatment. The
list of compensable industrial diseases was enlarged so as to include
infected blisters, bursitis, dermatitis, and cancer arising from the
manufacture of pitch and tar. An employer who fails to report an
accident is liable for the payment of medical treatment in addition to
compensation. The amount of an employer's contribution to the
accident fund may be reduced provided the plant and machinery con­
forms to up-to-date standards of safety.

The only change in the workmen's compensation act of Manitoba
is the provision giving the compensation board wider jurisdiction in
the payment of hernia claims, while the change in the Nova Scotia
compensation act was only of minor importance and did not affect
any substantive change.

The principal change in the workmen's compensation act of British
Columbia was to enlarge the powers of the compensation board, by
authorizing it to adopt a system of individual experience rating, and
to pay medical treatment to an injured employee without the neces­
sity of a formal claim. An actuarial valuation of the accident fund
was also ordered.

The compensation law of Alberta was amended in several respects.
The principal changes include the following: The coverage of the
act was enlarged to include restaurants and retail shops, and police
officers going to and from their places of duty, while extraterritorial
effect may be agreed upon by the various provincial boards. Here­
after, Sundays and holidays will be excluded in computing the time of
notice in hernia cases. Other subjects acted upon by the Legislature
of Alberta included lump-sum payments, vocational training of
injured employees, and a new method of computing compensation.
A new workmen's compensation act was enacted in New Brunswick. The new law is largely based upon recommendations contained in the report of the Royal Commission.

Court Decisions

A large number of workmen's compensation cases were appealed to the high courts of the States during the past 12 months. The Supreme Court of the United States also had occasion to pass final judgment on several workmen's compensation cases. (Baltimore & Ohio Steamboat Co. v. Norton, 284 U. S. 408; Boston & Maine R. v. Armburg, 285 U. S. 234; Bradford Electric Light Co. (Inc.) v. Clapper, Admr., 284 U. S. 221; Crowell v. Benson, 285 U. S. 22; Dahlstrom Metallic Door Co. et al. v. Industrial Board of the State of New York, 52 Sup. Ct. 202.)

In the case of Crowell v. Benson, the Supreme Court upheld the constitutionality of the Federal longshoremen's and harbor workers' compensation act. The court declared in this case that in regard to jurisdictional facts, the courts can not be constitutionally prevented from determining questions of fact on their own record by a trial de novo. In a memorandum opinion, the United States Supreme Court also upheld the New York provision as to the determination of fact by the State industrial board. (Dahlstrom Metallic Door Co. et al. v. Industrial Board of the State of New York, 52 Sup. Ct. 202.)

In California the supreme court had occasion to rule on the compensability of the loss of a wooden leg. When this case was first presented to the court for determination, it was held that an injury to a wooden leg was not compensable. (Pacific Indemnity Co. v. Industrial Accident Commission of California, 5 Pac. (2d) 1.) Subsequently a rehearing was granted and the court held that compensation was recoverable for the loss of the artificial leg. The court therefore granted compensation for the cost of another leg in addition to compensation for the period of disability. (11 Pac. (2d) 1.)

The Supreme Judicial Court of Massachusetts upheld the constitutionality of an act of the legislature passed in 1930, which provided for the assessment of costs, including attorney's fees, against the insurer if a claim for review was made and such claim was lost. (Mohammed Ahmed's case and Rafael Di Felici's case, 179 N. E. 684.) There was no provision to cover the contingency of a claim for review, and subsequent loss of claim by the employee. The Massachusetts Supreme Court held that such a provision violated neither the State constitution nor any rights secured by the fourteenth amendment to the Constitution of the United States.

The Supreme Court of New Jersey held in the case of Damato v. De Lucia (159 Atl. 526), that a minor illegally employed could recover double compensation for injury notwithstanding the fact that a prior recovery of judgment was received in a common-law action. The court held that the contention of the employer that the employee had no right of recovery other than the one at common law which he had successfully pursued ran counter to the course of the court's decisions and to the intention of the State workmen's compensation law as construed from time to time by the courts.
The Georgia Court of Appeals held that economic conditions cannot change an employee's compensation status. (General Accident Fire & Life Assurance Corp. et al. v. McDaniel, 160 S. E. 554.) The employee in this case was receiving compensation for partial disability; he lost his employment upon the closing of the plant and was unable to find other work. He could not, the court held, claim compensation for "total incapacity." The court said:

The fact that an employee may be partially disabled, and thereafter is able to find and does find remunerative employment suitable to his impaired physical condition, which he continues to perform until the work itself is shut down, for reasons in nowise connected with his previous injury, and that on account of economic or other conditions he is unable to find other work suitable to his impaired physical condition, does not authorize a finding that the original injury rendered him totally incapacitated to perform physical labor.

* * * The injured employee, after successfully working at other and different employment suitable to his impaired physical condition, became idle on account of economic or other causes entirely disconnected with his injuries, and we therefore think that the only compensation he is entitled to under the findings of fact as made by the commission is the compensation originally allowed as compensation for his partial impairment.

Other cases which may be deserving of mention are as follows:

(1) The Court of Appeals of Georgia held that a person employed as a woods rider in the turpentine business was not a "farm laborer" within the meaning of the compensation law. The court held that this was true even though the person engaged in such business is sometimes referred to as running a "turpentine farm" and the trees may be worked in groups described as "crops." (Pridgen v. Murphy, 160 S. E. 701.)

(2) The Supreme Court of Michigan denied compensation to a member of a religious order who was injured while performing work in a laundry of the institution. (Blust v. Sisters of Mercy et al., 239 N.W. 401.)

(3) Rabbit fever contracted while handling a shipment of rabbits was held to be a traumatic injury by accident by the Court of Appeals of Kentucky, in the case of Great Atlantic & Pacific Tea Co. v. Sexton (46 S. W. (2d) 87).

(4) The Supreme Court of Ohio held that the State industrial commission was justified in imposing on an employer a premium rate exceeding that prevailing in the same industry but based on the accident experience of the individual employer. (State ex rel. Powhatan Mining Co. v. Industrial Commission of Ohio, 181 N. E. 99.)

(5) The Court of Appeals of the District of Columbia handed down several opinions determining the compensation law of the District. Thus, (a) "remuneration" was defined in the case of Harris v. Lambros; (b) death from sunstroke was held compensable in Fidelity & Casualty Co. of New York v. Burris; and (c) a common-law marriage was upheld in a workmen's compensation case (Hoage v. Murch Bros. Construction Co.).

It may be said that while the courts of the Nation adjudicated perhaps the usual number of workmen's compensation cases, the legislatures of the various States, with the exception of Massachusetts, New Jersey, New York, and Virginia, made no contribution to the cause of workmen's compensation in 1932,
BUSINESS MEETING

[Mr. Ethelbert Stewart, secretary-treasurer, read the following report:]

REPORT OF THE SECRETARY

During the past year, which has been a critical one in the life of the association, two active members, the Idaho Industrial Accident Board and the Montana Industrial Accident Board, have dropped out, the active membership now being as follows:

- United States Employees' Compensation Commission.
- Arizona Industrial Commission.
- California Industrial Accident Commission.
- Connecticut Board of Compensation Commissioners.
- Delaware Industrial Accident Board.
- Georgia Department of Industrial Relations.
- Illinois Industrial Commission.
- Indiana Industrial Board.
- Iowa Workmen's Compensation Service.
- Kansas Commission of Labor and Industry.
- Maine Industrial Accident Commission.
- Maryland State Industrial Accident Commission.
- Massachusetts Department of Industrial Accidents.
- Nevada Industrial Commission.
- New Jersey Department of Labor.
- New York Department of Labor.
- North Carolina Industrial Commission.
- North Dakota Workmen's Compensation Bureau.
- Ohio Industrial Commission.
- Pennsylvania Department of Labor and Industry.
- Utah Industrial Commission.
- Virginia Industrial Commission.
- Washington Department of Labor and Industries.
- West Virginia Workmen's Compensation Department.
- Wisconsin Industrial Commission.
- Wyoming Workmen's Compensation Department.
- Department of Labor of Canada.
- New Brunswick Workmen's Compensation Board.
- Nova Scotia Workmen's Compensation Board.
- Ontario Workmen's Compensation Board.
- Quebec Workmen's Compensation Commission.

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.

The number of associate members remained the same. Mr. George E. Beers dropped out, while the Pennsylvania Self-Insurers' Association joined the association.

Walter F. Dodd, 33 North La Salle Street, Chicago, Ill.
E. I. du Pont de Nemours & Co. (Inc.), Wilmington, Del.
A. Gaboury, secretary general, Province of Quebec Safety League, Montreal.
I. K. Huber, The Empire Companies, Bartlesville, Okla.
Industrial Accident Prevention Associations, Toronto, Ontario.
Leifur Magnusson, American representative, International Labor Office, Washington, D. C.
Puerto Rico Industrial Commission.

The resignation of the Idaho Industrial Accident Board carried with it the resignation of our vice president, Mr. Joel Brown, so that we have to fill both the presidency and the vice presidency with new men this year.
As directed by the Richmond convention, in compliance with the request of the National Council on Compensation Insurance, a committee on forms was appointed by the association to work with a similar committee of the National Council to consider the desirability of uniformity in forms used by the compensation boards and commissions in the administration of the compensation laws. On November 10, 1931, your secretary sent a letter to all members requesting full sets of all forms used by them, and these were furnished to the chairman of the committee for use in its deliberations.

In connection with the resolution passed by the Richmond convention at the request of the United States Children's Bureau, Mr. O. F. McShane, of Utah, was appointed to represent the association on an advisory committee on regulation of employment of minors in hazardous trades. Mr. McShane attended a meeting of the committee in Washington, D. C., in May, 1932.

At the request of the United States Bureau of Standards, attention is called to the new edition of the National Directory of Commodity Specifications issued by it in 1932.

Your association has continued its cooperation with the American Standards Association in its work of drafting national safety codes. On January 19, 1932, the secretary requested that the American Standards Association take steps to develop a safety code in regard to safety standards for work in compressed air and methods of protecting workers using compressed-air machinery. Steps have been taken looking toward the formulation of such a code.

In reply to our inquiry as to whether or not the Mexican Government would be interested in calling an All-American workmen’s compensation law administration convention, a letter was received from the Mexican Embassy in Washington, D. C., February 11, 1932, stating that the Mexican Government did not feel that it was in a position to call such a convention at present, owing to the special conditions prevailing there at this time. The matter was therefore dropped for the time being.

As secretary-treasurer, I have one suggestion to make relative to the financial situation. The net assets of the association, deducting all probable bills payable, and probable expenses growing out of this convention, are sufficient to maintain the association, without any other income than interest, for a period of two or possibly three years. It is probably unwise to change the annual dues as written in the constitution. It would seem to be unwise to accumulate unused funds in times like these. It is unwise to attempt to legislate for more than one year at a time. I suggest, therefore, the suspension of collection of all dues for one year.

The proceedings of the Richmond convention have been published by the United States Bureau of Labor Statistics as its Bulletin No. 564, and copies are available at the headquarters here or will be sent from the bureau upon request.

Respectfully submitted.

Ethelbert Stewart, Secretary-Treasurer.

[Mr. Stewart also read the financial report of the treasurer, which was received and referred to the auditing committee.]

[President Leonard appointed the following convention committees:]

Committee on resolutions.—James J. Donohue, of Connecticut, chairman; Abel Klaz, of Delaware; Lee Ott, of West Virginia; Charles F. Sharkey, of Washington, D. C.; and R. E. Wenzel, of North Dakota.

Nominating committee.—F. W. Armstrong, of Nova Scotia, chairman; T. A. Edmondson, of Ohio; Parke P. Deans, of Virginia; Dr. Walter O. Stack, of Delaware; and Joseph A. Parks, of Massachusetts.

Auditing committee.—E. B. Patton, of New York, chairman; W. E. Hunter, of Arizona; A. J. Altmeyer, of Wisconsin; W. F. Bursey, of Virginia; and E. I. Evans, of Ohio.
Committee on officers’ reports.—Fred M. Wilcox, of Wisconsin, chairman; Marie Brindell, of Kansas; George A. Kingston, of Ontario; Charles A. Nowak, of Illinois; and W. C. Preckel, of North Dakota.

[Mr. S. Kjaer, of Washington, D. C., chairman of the committee on safety and safety codes, submitted the following report:]

REPORT OF COMMITTEE ON SAFETY AND SAFETY CODES

By S. Kjaer, Chairman

Your committee on safety and safety codes has no report to render at this time so far as its own activities are concerned because during the last year nothing has come up for consideration or action by the committee. Some activity has, however, been displayed by individual members of the committee in connection with the safety code projects of the American Standards Association.

Floor and wall openings, railings and toe boards (A12).

Representatives, J. L. Gernon, New York Department of Labor; and C. H. Weeks, New Jersey Department of Labor.

Approved as American standard May 3, 1932.

Safety code for the construction, care, and use of ladders (A14).

Representatives, R. J. Cullen and J. L. Gernon, New York Department of Labor; R. McA. Keown, Industrial Commission of Wisconsin; and J. P. Meade, Massachusetts Department of Labor and Industries.

A final draft has been submitted to letter ballot, and it is expected that the code will be completed by the sectional committee, approved by the sponsor, and submitted to the American Standards Association for final approval within the next few months.

Safety code for elevators, dumb-waiters, and escalators (A17).


A tentative draft has been prepared of a supplementary handbook for inspectors.

Safety code for walkway surfaces (A22).

Representative, T. C. Eipper, New York Department of Labor.

After considerable delay on this project, some activities are being displayed and it is hoped that in the near future a draft will be prepared which will meet with the approval of the interested parties.

Safety code for window washing (A39).

Representative, T. C. Eipper, New York Department of Labor.

A final draft is now before the safety code correlating committee for recommendation to the Standards Council on question of its approval.

Safety code for the use, care, and protection of abrasive wheels (B7).


A revision of this code is now in the hands of the sectional committee.

Safety code for mechanical refrigeration (B9).

Representative, J. F. Scott, New Jersey Department of Labor.

Revisions covering two new refrigerants have been submitted to the safety code correlating committee for recommendation to Standards Council.
Safety code for cranes, derricks, and hoists (BS).  
Representative, S. Kjaer, United States Bureau of Labor Statistics.  
A final draft has been submitted to the sectional committee for consideration.

Safety codes for the prevention of dust explosions (Z12).  
Representative, John Roach, New Jersey Department of Labor.  
Safety codes covering the enlarged scope were approved on September 24, 1931, and these have been printed as Bulletin No. 562 of the United States Bureau of Labor Statistics.

Safety code for amusement parks (Z13).  
Representative, S. W. Homan, Pennsylvania Department of Labor and Industry.  
Drafts submitted by subcommittees are now being edited and correlated.

Standardization of methods of recording and compiling accident statistics (Z16).  
Representatives, L. W. Hatch, New York Department of Labor; Evan I. Evans, Ohio Industrial Commission; W. J. Maguire, Pennsylvania Department of Labor and Industry; O. A. Fried, Industrial Commission of Wisconsin.  
A final draft of Part 1 of this code has been submitted to the sectional committee for letter ballot, but differences of opinion of the parties interested will probably prevent final action until another meeting of the sectional committee can be held.  
A meeting of the safety code correlating committee will be held during the National Safety Congress in Washington to take final action on several projects now before it.

Work is now in progress on revision:

Logging and sawmill safety code (B12).  
Representatives, R. J. Cullen, New York Department of Labor; R. McA. Keown, Industrial Commission of Wisconsin.

Safety code for conveyors and conveying machinery (B20).  

Code for pressure piping (BS1).  
Representative, A. L. Wilhoit, Youngstown Sheet & Tube Co.

Safety code for the protection of the heads and eyes of industrial workers (Z2).  
Representative, C. W. Roberts, M. D., Atlanta, Ga.

Presumably due to the economic conditions prevailing during the year, the activities of the States were confined to statutory changes in existing regulations. Other important steps affecting the administration of safety regulations were, however, taken in several States. In Georgia the department of commerce and labor, the factory inspector, and the industrial commission were abolished and their powers and duties transferred to a department of industrial relations. In Maine a safety engineering division was created in the department of labor and industry. In New Mexico a labor and industrial commission was established and given limited powers for inspection, but not authorised to issue orders or make decisions. In North Carolina the department of labor and printing was superseded by a department of labor, which included a division of standards and inspection. In Illinois a coal mine investigating committee was created to
investigate methods and conditions with special reference to safety of life and property. In Virginia a safety codes commission was created, consisting of the commissioner of labor, a member of the industrial commission, and the State health commissioner, for the purpose of studying and investigating all phases of safety and industry and making recommendations to the general assembly for safety measures.

The following list shows the statutory changes in safety regulations during the year, by States, including changes in regulations for mining:

**Arizona.**—Regulations for hoisting equipment in mines changed, increasing operating speed to 1,500 feet per minute and providing for a signal code.

**California.**—Regulations for dry-cleaning establishments changed to include small establishments, under the direction of the division of fire safety in the department of industrial relations, which was also directed to formulate rules for installation of equipment presenting unusual fire hazards in and building exits from factories, theaters, and other places where large numbers of people work or congregate.

**Colorado.**—Changes in coal-mine regulations, covering inspection, foremen, ventilation, and explosives.
- Extending metal-mine regulations to cover pits, quarries, and tunnels, and mining other than coal mines.
- Changes were also made in the boiler law.

**Illinois.**—Part of regulations for industrial sanitation extended to cover railroad workers.

**Michigan.**—Regulations for dry-cleaning establishments changed to prevent fire hazards.

**Minnesota.**—Regulations for dry-cleaning establishments modified.

**Nevada.**—Regulations for mines extended to tunnels, drifts, and other underground work.

**New York.**—The industrial board was empowered to make rules for demolition of or excavation for buildings.
- Regulations for elevators and dumb-waiters changed.
- **Ohio.**—Manufacture, storage, transportation, and sale of fireworks regulated in detail.

**Wyoming.**—Changes made in regulations for coal-mine cars.

The following list shows the various subjects affected by the statutory changes, by subject:

- **Boilers.**—Colorado.
- **Building exits.**—California.
- **Construction.**—New York, Utah.
- **Dry cleaning.**—California, Michigan, Ohio.
- **Elevators.**—New York.
- **Explosives.**—Colorado, Ohio.
- **Fire and panic, protection from.**—California, Michigan, Minnesota.
- **Quarries and pits.**—Colorado.
- **Sanitation, industrial.**—Illinois.
- **Tunnels.**—Colorado, Nevada.

In Kansas an agreement was entered into by the commissioner of labor, insurance carriers, and employers, providing that inspection of factories by the State, by insurance companies, or for self-insurers by own inspectors, be accepted by the other parties to avoid duplicate inspections unless disputed. In California the American Standards Association safety code for mechanical refrigeration was adopted by the Pacific Coast Building Officials' conference and included in its Uniform Building Code.

[The report of the electrical safety code committee, submitted by Charles H. Weeks, chairman of that committee, was read by Evan I. Evans, of Ohio, Mr. Weeks not being able to be present.]
REPORT OF ELECTRICAL SAFETY CODE COMMITTEE

By Charles H. Weeks, Chairman

[Read by Evan I. Evans, of Ohio]

At the last convention held in Richmond the association created a new standing committee to be known as the “electrical safety code committee” which resulted in the following committee being named: Charles H. Weeks, of New Jersey, chairman; Levin J. Chase, of New Hampshire; J. Fred Cherry, of Virginis; L. L. Elden, of Massachusetts; B. T. Foster, of Delaware; C. P. Keogh, of New York; E. Kimball, of California; A. H. Meier, of Indiana; George F. Sheridan, of New York; and J. E. Wise, of Wisconsin.

This committee was very carefully selected and is comprised of men who are thoroughly versed on electrical problems; and they have rendered valuable assistance in regard to practical information that was to be furnished and decided upon by this committee. However, the program of work to be accomplished was not carried out as anticipated, due to the fact that the different States were undergoing a severe strain caused by economic conditions, the desire to cut expenses, the public criticism that the State bodies were receiving, and the desire in the different States to cut down the personnel of the different departments. This affected in some degree a number of the different organizations connected with the International Association of Industrial Accident Boards and Commissions to the extent that they were fearful that something was going to happen to their organizations which would eliminate them from some of their important activities. However, our committee was able to obtain what it originally set out for—recognition from the National Fire Protection Association—and through the efforts of our secretary, Mr. Ethelbert Stewart, representatives from the International Association of Industrial Accident Boards and Commissions were restored to the electrical committees from which they had previously been eliminated. One representative with an alternate was decided on, and your chairman, with Mr. B. T. Foster of Delaware as alternate, was selected to serve on the electrical committee, which finally resulted in Mr. Charles H. Weeks being placed on article 30 committee (cranes and hoists), article 34 committee (motion-picture studios) and article 35 committee (motion-picture projectors and equipment), and Mr. B. T. Foster on article 31 committee (elevators). These representatives have been receiving all releases from the electrical committee, which have been studied and properly recorded, to be finally considered by the electrical committee of the International Association of Industrial Accident Boards and Commissions in the near future.

There have been no meetings during the past year of the electrical committee of the National Fire Protection Association, but arrangements are being made for a combined meeting of all the article committees to be held in Boston on Monday evening, October 24, which your representative and his alternate will no doubt attend.

The unfinished work of the committee, consisting of the following program, is contemplated being carried out, and I earnestly request the continuation of this committee for another year to complete this work, during which time we hope business and other conditions will be improved so that we will not suffer any interruption.

To encourage cooperation in connection with preparing practical and effective electrical safety legislation.

To help members of the International Association of Industrial Accident Boards and Commissions in solving electrical safety problems which confront them from time to time.
To further constructive cooperation with the International Association of Electrical Inspectors.

To further cooperation with the American Standards Association and the National Bureau of Standards in their preparation of adequate safety codes.

I am very sorry that I could not personally present the electrical code committee report at this convention, but on account of our State curtailing all traveling expenses of representatives attending affairs outside of the State, I was compelled to submit my report to you in this manner.

[A motion was made, seconded, and carried that the report be received and the committee continued. The report of the committee on workmen's compensation legislation was read by Mr. Klaw, chairman of that committee.]

REPORT OF COMMITTEE ON WORKMEN'S COMPENSATION LEGISLATION

By Abel Klaw, Chairman

The committee on workmen's compensation legislation does not have a great deal to report. Our activities during the year have been limited to an effort in the direction of having the proposals adopted at the Richmond convention enacted into the laws in the various States.

During the early part of this year I ascertained from Mr. Stewart the States in which the legislatures were in session, and I immediately communicated with the chairman of the commission in each of those States, inclosing a copy of the three proposals which were adopted at Richmond, and asked their cooperation toward having those proposals enacted into their own law.

Unfortunately I received no response or acknowledgment from any of those to whom I had sent these proposals, and after the legislatures had adjourned I found that Kentucky, Massachusetts, New Jersey, New York, and Rhode Island, to which States I had sent these communications, had taken no action whatever. The only action that was taken was taken by Virginia, and in that case the legislature did not adopt the proposal which the association has approved. It did clarify its law with respect to the third-party provision, the amendment being designed primarily, as I understood it, to meet the decisions of the supreme court of that State and to clarify the act.

Personally, I regret that the members of the association in those particular States have not taken a more active part in trying to put these proposals across. If anything is to be accomplished as a result of the time and effort put into adopting these uniform provisions, it must come about by the members of the association taking the initiative to have their particular legislatures consider the proposals which have received the approval of the association.

It is the suggestion of the committee that the members of this association exert a more active effort toward securing the enactment of the uniform provisions which have received the approval of the association, and I close my report with the hope that during the coming year, when some of the legislatures will be in session, the members of the association will take the initiative in presenting our proposals to their particular legislatures.

[On the suggestion of Miss Perkins, Mr. Klaw was asked to state briefly what those recommendations were.]

Mr. Klaw. What discourages me most is to find that the proposed amendments to compensation acts in the various States do not come
within 300 miles of what we consider the proper sort of provision. As a rule, they are proposed by people who are absolutely unfamiliar with the problems of the administration of compensation laws and are designed to accomplish one particular purpose, and in many cases that purpose is a very selfish one.

The amendment on insurance we propose is:

Insurance.—(1) No company shall enter into any contract for insurance of liability under this (act) unless such company is at the time licensed so to do by the commissioner of insurance.

(2) All policies of insurance companies insuring the payment of compensation under this act shall be conclusively presumed to cover all the employees and the entire compensation liability of the insured. Any provision in any such policy attempting to limit or modify the liability of the company issuing the same shall be wholly void, unless the industrial commission has theretofore by written order consented to the issuance of a contract of insurance on a specific part of the employer’s operations.

(3) Every policy and contract shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this act be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions, and awards rendered against the employer for the payment of compensation under the provisions of this act.

(4) Every contract for the insurance of compensation liability shall be written for a period of not less than one year. No such contract shall be canceled or revoked within the policy period until a notice in writing shall be given to the industrial commission, fixing the date on which it is proposed to cancel or revoke such contract, such notice to be served personally or by registered mail on the industrial commission at its office. No such cancellation or revocation shall be effective as against the claim of an injured employee until 10 days after the service of such notice unless the employer has obtained other insurance coverage for the protection of such employees prior to the time of the injury for which claim is made.

(5) If any insurance company licensed to write workmen’s compensation insurance shall fail to pay claims promptly for compensation for which it shall become liable, or if it shall fail to make reports to the industrial commission as provided in the workmen’s compensation act, the industrial commission may recommend to the commissioner of insurance that the license of such company be revoked, setting forth in detail the reasons for its recommendation. The commissioner of insurance shall thereupon furnish a copy of such report to the insurance company involved and shall set a date for a hearing at which both the insurance company and the industrial commission shall be afforded an opportunity to present evidence. If after such hearing the commissioner of insurance is satisfied that the insurance company has failed to comply with the provisions of the workmen’s compensation act, he shall promptly revoke the license of such insurance company, otherwise he shall dismiss the complaint.

You remember, one of the problems was to have an all-coverage insurance policy so that the insurance company could not duck out and say it did not cover this particular operation or that operation. Then there is an amendment on extraterritorial effect and one on third-party liability.

Extraterritorial effect.—Where the injury occurs outside of this State, the provisions of this act shall apply if the contract of hire was made in this State: Provided, however, That if the injury occurs in a State that has provided workmen’s compensation for such employee and his dependents, an election of benefits under the law of such other State shall be held to waive the claimant’s rights under the provisions of this act. Such an election to waive the benefits of this act shall be evidenced by an instrument in writing, to be signed by the injured employee, indicating his acceptance of the provisions of the law of such other State, which election shall be binding after approval by the industrial commiss-
sion of this State. Credit shall be given an employer or insurer under this act for all benefits paid or furnished to an employee or his dependents under whatever assumption made.

Third-party liability.—The acceptance of compensation benefits from or the making of a claim for compensation against an employer or insurer for the injury or death of an employee shall not affect the right of the employee or his dependents to sue any other party at law for such injury or death, but the employer or his insurer shall be entitled to reasonable notice and opportunity to join in any such action or may intervene therein. If such employer or insurer join in such action, they shall be entitled to repayment of the amount paid by them as compensation from the net proceeds of such action (after deducting the reasonable costs of collection), as hereinafter provided.

The commencement of an action by an employee or his dependents (or legal representative) against a third party for damages by reason of the injury, or the adjustment of any such claim, shall not affect the right of the injured employee or his dependents (or legal representative) to recover compensation, but any amount recovered by the injured employee or his dependents (or legal representative) from a third party shall be applied as follows: Reasonable costs of collection as approved and allowed by the court in which such action is pending, or by the (industrial commission) of this State in case of settlement without suit, shall be deducted; one-third of the remainder shall in every case belong to the injured employee or his dependents, as the case may be; the remainder, or so much thereof as is necessary, shall be used to discharge the legal liability of the employer or insurer; and any excess shall belong to the injured employee or his dependents.

An employer or compensation insurer who shall have paid compensation benefits under this (act) for the injury or death of the employee shall have the right to maintain an action at law against any other party responsible for such injury or death, in the name of such injured employee or his beneficiaries, or in the name of such employer or insurer, or any or all of them. If reasonable notice and opportunity to be represented in such action by counsel shall have been given to the compensation beneficiary, all claims of such compensation beneficiary shall be determined in such action, as well as the claim of the employer or insurer. If recovery shall be had against such other party, by suit or otherwise, the compensation beneficiary shall be entitled to any amount recovered over and above the amount that the employer and insurer shall have paid or are liable for in compensation or other benefits, after deducting the reasonable costs of collection; but in no event shall the compensation beneficiary be entitled to less than one-third of the net amount recovered from the third party.

In case of settlement of any action before the trial thereof, such settlement shall be subject to the approval of the court wherein such action is pending, and settlement before an action is brought shall be subject to the approval of the (industrial commission) of this State. Distribution of the portion belonging to the dependents shall be made among such dependents in the manner provided for in the compensation law of this State.

Note.—Following to be inserted in States where applicable:

In case of liability of the employer or insurer to make payments to the State treasury under the provisions of if the injury or death creates a legal liability against a third party, the employer or insurer shall have a right of action against such third party for reimbursement of any sum so paid into the State treasury, which right may be enforced in the action heretofore provided for or by an independent action.

The committee considered the conflicting decisions of the courts in the various States on this subject, and this was the end result of our study and was considered by the association as a model third-party provision for the compensation act.

President LEONARD. It is a very difficult thing to get enactments in all of the States which would be uniform in third-party suits because of the different State laws.

[The following report was submitted by the committee on rehabilitation:]
The committee on rehabilitation in its report at the Richmond meeting stated: "In the final analysis the principal value of compensation awards is in providing the disabled employee and his dependents with living maintenance for a period after injury during which time he may become readjusted vocationally. The nature of a great many industrial accidents is such that the employee may profitably return upon recovery to his former or a similar job within a given industry. On the other hand, however, a large percentage of industrial accidents leave employees so impaired physically as to handicap them seriously in their former occupations. The return of injured employees to a productive status is a matter of concern to all compensation boards and is not only highly desirable but an economically sound policy."

That purpose is hereby reaffirmed. Statistics had at that time been carefully collected showing the state of the law in the various jurisdictions in re rehabilitation, and those statistics were given at length in that report. We think there has been no material change during the year and for that reason will not undertake to restate the record.

How rehabilitation strengthens compensation and what compensation boards should expect of rehabilitation

Your committee conceives of rehabilitation as a service which strengthens and extends the benefits of compensation to those disabled employees who of their own accord might with great difficulty attain again a status of self-support and the cooperation compensation boards may render in making it more effective. And, too, because of the very nature of such cases rehabilitation departments should be expected to expend their utmost effort in the vocational readjustment of the industrially disabled.

In general, disabilities are rated under compensation on the basis of the earnings of the injured person in the "same or other suitable employment." It will follow that the injured, particularly the "skilled employee," will often be found, because of not very serious injury, to be unable to follow his trade. These men should and must be rehabilitated if compensation laws are to function decently. While the industrial depression has reduced the opportunity for the handicapped again to enter employment, it has on the other hand lent material encouragement to many such men to secure for themselves the benefits of rehabilitation. In these times when even physically fit find it nearly impossible to secure suitable employment, the physically unfit may well seek the advantages offered by rehabilitation in overcoming their physical disadvantage and in ultimate return to gainful occupation.

Compensation boards may offer indispensable cooperation: (1) By reporting cases resulting in vocational handicaps; (2) by adjustment of awards to suit best the rehabilitation program of the case; (3) by creating on the part of the employer a willingness to give the disabled worker a chance in jobs for which he is not handicapped; (4) by guarding the employee against any possible inclination on the part of the carrier to discriminate against the worker who is disabled but who is not handicapped in the job provided him; (5) by insisting upon proper and adequate medical attention after injury rather than a mere compliance with the law; (6) by advising employer and employee of the availability of rehabilitation service and recommending its utilization; (7) by supporting compensation legislation tending to make rehabilitation more generally available and by a liberal interpretation of such laws.
Committee recommendations

Your committee, therefore, recommends:

(1) That the fullest possible cooperation of rehabilitation departments be sought as a means of strengthening compensation benefits and providing a service of adjustment for disabled employees. It should be affirmative cooperation and not merely passive.

(2) That in order to allay any prejudice on the part of carriers and employers against the reemployment of disabled workers in jobs in which they are capable of satisfactory service a second-injury fund be more generally advocated.

(3) That in order to make rehabilitation service available in more industrial-accident cases laws providing maintenance allowances while undergoing rehabilitation be advocated.

(4) That provisions be more generally made for using the rehabilitation departments' services in the matter of granting and expending lump-sum awards.

(5) That since workmen's compensation and rehabilitation are to an extent supplementary services intended to provide means for readjustment of injured employees in remunerative occupations and useful citizenship, the International Association of Industrial Accident Boards and Commissions and the National Rehabilitation Association each make provision in its annual conference for a discussion of the two services to be led by a representative of the other service.

By such provision it is felt that a clearer mutual understanding of the two services may be reached which will accrue to the benefit of employers and disabled employees.

DISCUSSION

Secretary Stewart. I am not going to oppose the acceptance of this report at this convention, but once more I want to go on record against the use of workmen's compensation money, which is intended as a temporary substitute for wages to maintain the wife and children, by the rehabilitation association. That is not what compensation is for. The association has ample grounds to make a fight for an appropriation of its own.

Workmen's compensation is to bridge over the gap and to take care of the family until the man is able to work again. We ought to help the rehabilitation people, but not by giving them the money that belongs to the wife and children. I do not like that particular clause in the report which intimates that we ought to make lump-sum settlements to rehabilitation groups in lieu of compensation.

Mr. Wilcox (Wisconsin). I am not in disagreement with this suggestion Mr. Stewart makes. You will note that in the report it is suggested that, as a part of the compensation, maintenance should be provided while disabled workers are undergoing rehabilitation. That is a program that is in vogue in a number of States. In Wisconsin, in addition to the legal compensation, we provide $10 a week, for a period of 20 weeks during rehabilitation, for maintenance. That neither increases nor decreases compensation.

I suggest that that particular feature of the law ought to be emphasized. Perhaps it ought to be carried as a recommendation of the committee on the modification of compensation laws, in order further to direct our attention to the need of providing in our compensation laws for maintenance while the man is undergoing rehabilitation.
As the committee discussed the matter this morning I said that in those States where maintenance is not provided you have to lump certain sums to enable the injured man to take care of his maintenance while he is being rehabilitated, because his family is going to need his compensation benefits. His compensation benefits amount only to two-thirds of his former earnings, and he can not maintain his family and then go to another city to take training and get through with it all. So we ought to provide a maintenance plan for him.

I may be wrong but I do not think that any State is turning the maintenance money over to the rehabilitation board. In Wisconsin it has never been suggested that we do anything of that sort, and we have not undertaken to do it.

President Leonard. The rehabilitation board furnishes the training?

Mr. Wilcox. It provides the tuition and everything in connection with the rehabilitation except pay for the man's board and lodging while he is taking training. If he is taking training in the community in which he lives, of course that item is not so much of a burden to him. But frequently—more often than otherwise, I think—these men have to be removed from their homes to take this training. When that occurs, of course you have to pay for their room and board. The money has to come from some source, or else they can not have rehabilitation.

Throughout all this depression period, the labor groups have been arguing very strongly for the furtherance of vocational education for those who are unemployed. They urge that we should do something to give unemployed people an opportunity to busy themselves with something worth their while. If you provide maintenance, as Mr. Stewart and I have suggested, there never has been in the history of the country so fine a time as right now in this period of depression to get attention for the matter of rehabilitation. These men have no jobs to go back to, and now is the time when you could go out and do something for them.

Our experience has shown us that it is difficult, when a man's injury is not such as to take him out of the industry and make it hard for him to get back on the job, to encourage him to take intensive training along some line. If he has a job to go to, he is not much interested in this training. He can earn money, so why should he bother himself with rehabilitation? But just now is a wonderful time to carry on rehabilitation work if we have ways and means of maintaining the man while he is taking training.

President Leonard. Rehabilitation is confined mostly to young people of immature age; that is, the boards specialize on them.

Mr. Wilcox. I think that the vocational boards have found that men along in years do not take kindly to retraining, and the chances of producing real results are pretty poor.

Doctor Stack (Delaware). Do I understand you to say that the $10 maintenance is included in the report made by your commission?

Mr. Wilcox. Our law provides that if in any case it has been determined by the vocational board that rehabilitation of the injured man is a desirable thing, then, if the injury interferes with his con-
In the employment, the commission shall award maintenance not exceeding $10 per week for a period of 20 weeks while he is being rehabilitated.

Doctor Stack. That is charged against the State experience in the classification in which he was employed?

Mr. Wilcox. What do you mean, insurance rates?

Doctor Stack. Yes.

Mr. Wilcox. Anything that is paid out on account of compensation goes into the classification experience.

Miss Perkins (New York). Do you actually charge the maintenance during rehabilitation as a charge of that accident case on the particular employer's record in the case?

Mr. Wilcox. Yes.

President Leonard. Do you have provision for rehabilitation, Miss Perkins?

Miss Perkins. We have a similar provision, but we do not charge the maintenance against the individual employer's record. That comes out of a special fund built up by contributions.

Doctor Donohue (Connecticut). May I ask what particular cases give the greatest return in advantage in rehabilitation?

Mr. Wilcox. I am not a rehabilitation man. My interest in this field grows out of the fact that I find the men who are seriously and permanently injured are so handicapped in carrying on the occupation they were in before, particularly with any degree of expertness, that they lose pretty largely their opportunity for reemployment. It is difficult for anyone who has been seriously injured to be reemployed and the vocational people, who have made a study of this injured man, find some occupation that one so handicapped can do very well, whereas if he is allowed to blunder along by himself, looking for his niche, he will not find anything that is desirable.

There are a great many types of cases where we do not compensate adequately in our State, and I presume that is true in every State. That was referred to in the committee's report. There are cases in which a rather minor type of injury causes serious disability to the particular man from a wage-earning standpoint. For example, take the plasterer who has an injury to his right arm which makes it impossible for him to raise the arm above the shoulder level. That type of injury will affect alike the painter, the paper hanger, and the bricklayer. Those are skilled workers, who have followed the trade down through the years, who have trained themselves for a particular type of occupation and have learned it well and are earning well. This man who gets an injury that does not allow him to get his arm up above the shoulder level is out of that particular industry and has no chance of again following his trade.

Do we compensate him in any State on the basis of the effect that that particular injury has on him in his particular trade? Maybe there are some States that do take care of him in that way. Wisconsin does not; we give him the same amount of compensation we give to any other man who has an injury that interferes with his working above the shoulder level.
We know that in most occupations probably 80 or 90 per cent of the operations are performed below the shoulder level, and the type of injury I have reference to is not a very serious handicap to the average worker. To this plasterer, however, it means total disability; he can no longer follow his trade. The only way he can be given a fair chance is to give him retraining. It is the only way we have to level up the measure of benefits. There are many illustrations of that sort. You have known of very simple injuries that meant total disability in the particular occupation that the man was following at the time.

Doctor Donohue. The reason I speak of that is because there are certain types of injuries where a mental process develops; there is a great amount of catering to that particular type of injury.

Some years ago, in Hartford, I read a paper on that particular subject, and Mr. Stewart wanted to know if about one-half of 1 per cent of the type of injuries I referred to were of the type that could be considered in the class of neurosis and that variety. Probably the number is not great, but still it is that small number, that small proportion, that makes all the disputes and all the trouble in compensation. The vast majority of compensable cases automatically adjust themselves, but it is this infinitesimal, this small number that makes the trouble. Where there is excessive catering to these cases I think that instead of restoring them it will make them worse, though there are certain types of cases that can be improved.

As to the type of case which Mr. Wilcox cites, the fellow who can not use his right arm above the shoulder level, that is probably some medullary strain, which takes a year or a year and a half to get well. Of course that man is a disabled man and is entitled to compensation, but I do not think rehabilitation is going to amount to anything for him. I think, as Dr. Fred Albee says, the best way to rehabilitate that fellow is to get him to work, get him to doing the things that will develop him in the line of employment he has been following.

President Leonard. You are referring to head conditions?

Doctor Donohue. No; I am referring now especially to the medullary strains which Mr. Wilcox mentioned.

Mr. Wilcox. I am not talking about a case that is going to clear up in a year; those are temporary injuries, not permanent disabilities.

Doctor Donohue. Some of them are. If the mental process gets to working and you encourage it, the disability will become permanent.

Mr. Wilcox. I do not understand that.

Doctor Donohue. You have an organic condition together with a mental process that is working.

Mr. Wilcox. I am talking not about the type of case where the disability may be overcome by use, but about permanent impairment—the fractured shoulder where the deformity or bony exudate or other results make it impossible for this man to do work above the shoulder level. I used that as an illustration. I am talking about a case that is permanent, not one that will clear up within a year or two. It would be foolish to retrain a bricklayer or a plasterer or a skilled worker who had worked at his trade all these years and was earning high wages—teach him some other occupation—when within a year, by using his arm, he can rehabilitate himself and return to his trade.
Miss Perkins. May I say that in the State of New York our rehabilitation commission has had a fairly long experience, and it has now come to making it almost a general rule not to attempt to rehabilitate the so-called neurotic cases. Those cases are settled under the compensation law in the usual way, and the rehabilitation work is confined to cases where there has been an injury so serious that the man is permanently unable to go on in the trade to which he has been accustomed, and where he must, for the best interest of society, learn a new occupation. I refer to such cases as the loss of a leg, for instance, where there is no question that the man has lost a leg and can no longer follow an occupation that requires constant standing or climbing. He must be taught some trade which depends either on his head or his hands.

I recall the case of a man who had worked for a long time with the same employer and was a skilled workman in the factory. He lost his right arm. In this case, through the cooperation of the employer and the rehabilitation committee, which gave him training in English—this man did not know how to speak the English language properly and how to express himself, although he knew the article he had been making and its value—he became a traveling salesman and was put on the road with great success.

We have cases of the loss of one eye, where the man has done a careful piece of work which depends upon the use of his full eyesight. He can no longer continue this work and must be trained for some other work where he uses his gross muscles and does not depend on his eyesight. The committee has had great success in training those men, as you know, for welding operations, for motion-picture operators, and for other types of skilled work.

There has always been great success in training young people who, when cut off from the enterprise to which they thought their lives were going to be given, found it difficult to find a new occupation. Frequently the mere addition of an ordinary education to their equipment will make it possible for them to enter some of the clerical fields which are open to them in their semidisabled state.

I think we ought to be very careful to distinguish between this particular type of injury and the type of injury which results in a neurosis. In the latter case the injury is probably superimposed upon the neurotic individual, and the situation is complicated, but we ought not to judge nonneurotic individuals and their need of rehabilitation by the few cases of neurosis which never work out successfully under compensation or rehabilitation.

Doctor Donohue. What do you do with psychoneurotic cases?

Miss Perkins. We settle them under the compensation laws as well as we can. There is no policy about it. In some cases a lump sum is recommended; a lump-sum settlement of two years' compensation is paid for the purpose of therapy, in the hope that that will be a complete settlement. It often is.

Doctor Donohue. Of course, many of those cases have positive organic infections and it is practically impossible to disassociate from the organic condition a simple nerve-element condition. In other words, it is difficult to disassociate the mental process from that organic effect you speak of—amputation or positive organic defect.
President Leonard. At the meeting in Richmond in commenting on neurosis or head injuries, I stated that it was very important that a sympathetic attitude be taken in many of these cases. I think that in a head injury it is a personal problem. Sometimes if these men are made to think that their cases are over it does a whole lot of good. I do not think pills or medical attention mean a thing. A great many experts who examine our patients recommend that the best medicine is mental medicine, and that has worked. Of course, every case must be handled on its own merits.

May I tell you about something that happened in Ohio? A young Hungarian punch-press operator got both hands in the punch press and they were terribly mangled, so that they were just stumps. The rehabilitation department took charge of the young fellow and gave him a course in architectural drafting. To-day, as the result of the training he received following his injury, that young fellow is making $60 a week. He has a wife and three children and owns his own home.

To my notion, the matter of rehabilitation must be carried on very carefully. In Ohio there are no funds set aside to pay compensation to the men who are training, but we try to be liberal. In a great many cases, if a worker is partially disabled we put him on temporary total compensation during the period of his training. That does not work against him when his case for the loss of a leg or an arm or a functional loss comes up, but during the time of training we try to carry along.

We have a provision whereby we may give a young person a maximum compensation. A young person whose wages may be $10 or $12 may have a maximum of $18.75, on the basis that his earnings would have been expected to increase.

Mr. Kingston (Ontario). In Ontario we have had for a number of years a provision by which we may spend up to $100,000 a year on rehabilitation. We have gone slowly, however, on the use of that amount. I do not think we have ever exhausted that amount in any one year.

There are three or four different types of people to whom, naturally, you seek to consider whether or not rehabilitation is applicable. You can not do much with neurotic people under rehabilitation. The best rehabilitation for them is to let them know finally that, so far as compensation is concerned, this is the end—either a lump sum or a final pension award, or whatever may be the appropriate award for him. You may have to bring the case up again at a later date, but that is that particular type of case.

The other type of case is the young man who is so seriously injured that he must make a change in his life work. We usually seek to take that young man and reeducate him. A case came to my notice only last week where a man had his hand so seriously injured three or four years ago that that is almost the position of his hand [indicating]. It is not possible to extend the fingers at all. We have given him for three years now reeducative work for mechanical draftsman at a technical school. He expects to graduate this summer.

Another type of case that we try to rehabilitate involves rehabilitation of another type—the reeducative type of exercises, which we have found to be very useful. Only this year we have established,
in connection with our office in the city, a clinic which we call the compensation clinic. We are training there 30 or 40 people every day, giving them reeducative exercises on all sorts of mechanical devices that will tend to loosen up a wrist, an elbow, a knee, a foot, or a finger.

Mind you, a man has to go a long way toward helping himself. It does not take our experts in the clinic very long to determine whether or not a particular fellow is worth going on with. If he is the type whose mentality helps him to respond to the educative influences of these mechanical devices, he can be helped a great deal. It is surprising how a man who, when he comes to us, can get his hand no farther than that in the way of abduction [illustrating], is able, before two or three weeks are over, to move his arms in every direction.

Our chief medical officer has been studying on this for a number of years. He brought it to the point of final recommendation last spring, and we authorized the establishment of this clinic. We are very much pleased with the result. To pay the cost of this particular work, each lesson or each treatment is charged for at a nominal rate which is considered just enough to bear the actual cost.

Doctor Stack. In Ontario is not the rehabilitation work done under your commission rather than the Federal commission?

Mr. Kingston. Rehabilitation work of the type of which I first spoke, where we are retraining young men for entirely different vocations, is done by sending them to a technical school or some institute where they can be retrained for a different profession. That is done under the direction of the boards, in the sense that we pay his weekly compensation—probably his full regular compensation award—as if he were totally disabled. When the time comes when he is through with the rehabilitation work he will receive his compensation award for his functional disability, whatever that may be—the loss of an arm or the loss of a leg or a hand. The cost of this compensation clinic is paid as medical aid. It is not paid under our rehabilitation allowance.

[The report of the committee on forms was read by Sidney W. Wilcox.]

REPORT OF THE COMMITTEE ON FORMS

By Sidney W. Wilcox, Chairman

Your committee calls attention to the copies of proposed standard forms which have been placed on the chairs in this room. The forms, five in number, are made a part of this report and are as follows: Employer's first report of injury; employer's supplemental report of injury; standard form for agreement as to compensation; final compensation settlement receipt; surgeon's report.

These forms embody the result of much thought and effort and not a little expense on the part of the forms committee of the National Council on Compensation Insurance with which your committee has cooperated. Your committee has been represented by the chairman at three meetings of the carriers' committee and by two of the members, Hal M. Stanley and A. J. Altmeyer, in conference at the office of the National Council with the chairman of the carriers' committee, H. F. Richardson. Lack of expense money has made it impossible

1 The forms are not reproduced here, as they were later adopted in a revised form. (See p. 112.)
to call a full meeting of the forms committee of the International Association of Industrial Accident Boards and Commissions during the year, but your chairman wrote to each member urging him if and when he should be on a trip to New York City to call at the office of the National Council on Compensation Insurance and learn full details from Mr. H. F. Richardson.

Some indication of the importance of standardization may be had from noting that in 38 States where the carriers do business there are a total of 397 claim forms required by the different commissions, varying in number from 33 in one State to only one in another. There are 17 different colors of paper, one State using as many as 9 different shades. The report of accident form in one State asks as many as 60 questions, whereas the lowest number of questions is 18. Differences in the sequence in which the questions occur are a further source of annoyance and expense in the offices of the insurance carriers since they must make use successively of the forms of different States. This is likewise true of corporations operating in different States. The aggregate unnecessary printing and office expense imposed on the insurance industry due to the lack of standardization is no small item.

The forms which are in your hands have come from the presses of different casualty insurance companies. It is understood that at the time of final editing attention will be given to a more compressed style of type, perfect alignment for use on typewriter, the choice of colors to distinguish the various forms, and uniformity of style. The first task, however, is to agree on the substance and wording of the forms.

To secure the benefit of adequate criticism and comment, the forms were mailed out a few weeks before this meeting, not only to the members of the committee, but to each of the commissions or jurisdictions administering workmen's compensation laws. The resulting suggestions, together with those growing out of this meeting, will be worked up as rapidly as possible. Those present are urged to jot down their comments and hand them to any of the members of the committee.

The chairman of the committee took the liberty of writing to the secretary-treasurer of the International Association of Industrial Accident Boards and Commissions asking him to provide a place on the program for a representative of the carriers' committee to make oral argument and explanation of the significance of the proposal for standard forms. It turned out that the programs had already been printed, but informal arrangements have been made with the program committee. H. F. Richardson, chairman of the forms committee of the National Council and other members of that committee who have made a study of standardization are here, and your committee recommends that this report be supplemented by their statements.

[At the suggestion of Mr. Wilcox the following members were appointed by the president to serve with the committee in meeting with the representatives of the carriers' committee who were present: A. C. Dale, of Pennsylvania; W. E. Hunter, of Arizona; and S. Kjaer, of Washington, D. C.; also at the request of Mr. Wilcox, the president called upon Mr. H. F. Richardson, secretary-treasurer of the National Council on Compensation Insurance and chairman of its forms committee to speak.]

DISCUSSION

Mr. Richardson (New York). Perhaps I had better point out what the National Council on Compensation Insurance is. It is an association of all of the insurance carriers who are writing workmen's
compensation insurance in the United States. It comprises stock insurance companies, mutual companies, reciprocals, and to some extent State insurance funds.

Last year at the convention of insurance commissioners in Chicago, the convention asked, along with a suggestion for certain amendments in rates, that the insurance companies do what they could to economize on their administrative costs. The carriers have been doing what they can in all directions, and this work on the standardizing of forms is one of the phases of the work that we are trying to accomplish.

Mr. Stewart mentioned the fact that at the convention of your organization at Richmond it was decided that there should be some cooperation with our company, and, as Mr. Wilcox stated, there has been. We would like very much to have a joint session with your committee at this convention. It has been difficult to meet with the whole committee because of the territorial arrangement of the members of the committee. I can say that we have here today five members of our committee. If a joint meeting could be arranged, it would be very helpful.

The insurance companies are vitally interested in this project. As Mr. Wilcox said, there are 500 different forms that are required by an insurance company that is doing a nation-wide business. The number of questions, the way they are asked, and the manner of report are so different in different States that it is extremely difficult for the insurance carrier and for the employer to know just what they should do here, there, and in the next place.

If we could get the sympathetic cooperation of this organization and of your committee, we would be greatly pleased. If we could arrange for the meeting of such a committee soon, it would be helpful to our members at least.

President Leonard. In other words, you think it is time for them to go into a huddle on this?

Mr. Richardson. We should like that very much. If we could take the best of every form that is used in compensation and consolidate it into a joint form, it would be particularly helpful. Undoubtedly one State may have a better way of going at one particular phase of the problem; another State may have a better way of going at another phase. If those things could be consolidated and the number of questions minimized, I believe we would get better cooperation on the part of the employer in answering the questions. For that reason we would appreciate your cooperating with us.

[Meeting adjourned.]
Chairman Wilcox. Anyone who has administered workmen's compensation will appreciate just what medical attendance upon the injured worker means, and how desirable it is that our laws should treat the medical provision as the most important in the law. It is not such a difficult matter to make certain that the proper amount of benefits is paid to an injured worker. If we fall down in that particular field, our administration is in a sad plight. There is something wrong with us when that end of this work fails. Administrators, however, do find it a difficult matter always to make certain that the proper type of medical attendance is given to these injured workers. So it is outstandingly important, not only that the attendance is what it ought to be, but that our laws are so framed as to make it lawfully possible for us to see that proper medical attendance is given. In most of the States it has become one of the very large burdens of compensation. The percentages will vary according to what the benefits are.

It is my great hope that the time will come, and come very quickly, when every State will provide full medical, surgical, and hospital attendance to every injured worker, and not this 60-day, 100-day, or 150-day limit, and what not, that many laws are still carrying. This afternoon Miss Perkins is to discuss the subject of Medical and Hospitalization Costs in Workmen's Compensation Cases, with Comments on the Lambert Committee Report.

Review of Medical and Hospitalization Costs in Workmen's Compensation Cases, with Comments on the Lambert Committee Report

By Frances Perkins, Industrial Commissioner of New York State Department of Labor

In the State of New York, we have in the last year or two come to feel—and I think the people who read the newspapers have come to think—that the medical aspect of the workmen's compensation law and the medical problems connected with it are the outstanding problems. Those of you who administer workmen's compensation laws in other States know that this is not the case, that the medical problems are among the problems but that they are on the whole among the minor problems. We must remind ourselves constantly that, although there may be controversy about this, that, or the other aspect of the medical problems, the prime duty of those who are charged with enforcing and carrying out the workmen's compensation laws is to see to it that injured workmen have adequate and proper medical attention. All other things are subordinate and subsidiary to that main duty.
For the last year and a half—perhaps for the last two years—there has been, for the readers of the New York City papers at least, a sense that something is wrong in the medical aspects of the administration of the workmen’s compensation law. Perhaps some of the statements have thrown the thing out of proportion in the eyes of the reading public, even in the eyes of the fairly well informed public, and that is very likely with all of us.

May I say this, with all due respect to the doctors present—and I think they all know that I regard the medical profession perhaps more highly than do most, because they have been the great benefactors of mankind—that I think perhaps the doctors themselves are to blame for the agitation with regard to the excessive problems surrounding the medical aspects of workmen’s compensation, because, for the most part, they have not been willing to go through the usual orderly procedure and fill out all the tiresome forms. I get very tired of reading those forms; I wish they knew that. I get just as tired of reading them as they do of filling them out. They do not like to fill them out, and they complain about it. I do not mean to imply, as has sometimes been implied in these conventions, that the doctors are the prima donnas of the compensation law, but they are a little excitable sometimes about these very things.

Perhaps I ought to sketch briefly the background on the basis of which this Lambert report and the whole Cullman Commission report were forthcoming. In the first place, there have been regularly, for a period of years, charges on the part of the hospitals, particularly of New York City and of Buffalo, or the larger cities where the hospitals were quite disassociated from the community thinking, of nonpayment of the hospital bills in cases of injured workmen’s compensation cases or of the underpayment or very long delayed payment of such cases.

For the most part, those maintaining the hospitals have seemed to me, when they came to me with direct complaints, to have had no knowledge of the workmen’s compensation law or its coverage, for I have been faced with having to explain to them that, of course, in the case of a claimant who said that he was injured in the course of his employment, and whose claim was later disallowed because he was not injured in the course of his employment, they could not expect to collect from his employer; and I have usually been met by a very marked resentment on the part of the hospital authorities that the bill in that case should not be paid with the same promptness as would a bill where the question of the man’s having a compensable case was admitted by all concerned. In other words, they have felt that the hospital ought to be taken care of. That has been a matter of real controversy between the insurance carriers, the administrative offices of the department, and the physicians generally throughout the State for a number of years. There has been a lot of difficulty about it.

Moreover the hospitals have come to feel, and to state their feeling and their opinion vigorously, that the ordinary ward rates which they had set up were ward rates based upon a conception of the charitable function of the hospital and not upon the cost of maintaining the particular case. They have told us that $3 a day, which had been the usual rate in hospitals in the city of New York—and it is about the same up-State—in no way represented the cost of maintaining a ward case in any hospital, but that the cost varied somewhere be-
tween $5 and $8 per day, depending upon the efficiency of the hospital and the number of cases they had in the wards, and all that sort of thing. The charitable rate, they said, was a rate which was meant for those who had no resources and was the rate which the city paid for those who were in a sense paupers; that the workmen's compensation claimant should not be put upon that basis, and the carrier or the employer, as the case might be, should pay the full cost of maintaining the case while he was a patient in the ward.

That has been a subject of great controversy. The carriers maintain they have written their insurance with the reckoning of the medical costs based upon the usual average ward rate of $3 a day, and they can not afford to pay more. So the controversy has raged for a year or two.

Then there has been the charge on the part of the doctors of some communities, and the county medical societies in the State of New York have been very vociferous about this, that the insurance companies were not paying their bills or that they were underpaying and beating down their prices. There is great resentment that a clerk—they all say this, and I do not know whether they mean to insult me or not—that "a girl calls me up and says, 'Won't you take $17 in settlement of your $35 bill?'")"

At any rate, they do resent having a clerk negotiate. They feel that, at the very least, if there is to be a question of the revision of their bill downward, they are entitled to the attention of a medical man, who is in a position, they believe, to appreciate the kind of service they have rendered and its real value and the value of the skill in training and education that went into it. So there have been complaints coming from them. When I say "coming," I mean they have been made a matter of statement in the meetings of the county medical societies, they have been addressed to the industrial commissioner, to the industrial board, to groups of insurance carriers, and to industrial physicians. It has been a general sort of complaint.

There has been a statement by many physicians—by the county medical societies in particular—that there was discrimination and favoritism shown by the insurance companies in the selection of the doctors whom they would use for the treatment of their compensation cases. Whether it was true or not, thousands of doctors believed that it was so, and that it was not just convenience or adequacy of equipment and training that governed the selection of the doctor but some kind of strange connection. What do you call that? When it exists in a public office we call it nepotism. It is what mayors and others do when they give jobs to their brothers and cousins. When it exists in a private profit-making institution, it must have some name, but I do not know what it is. There is an undercurrent of belief that the physicians are selected, not alone for their competence and skill and convenience, but also because of some individual favoritism. That has been greatly resented by the rank and file of physicians in the county medical societies.

There has always been, when they made their complaints, an implication of false testimony. I do not know that they have ever brought forward cases upon which they based this complaint. They have made rather loose and unsubstantiated statements that it must be that these men are satisfactory to the insurance companies because they will testify that the claimant is ready to return to his work or
that the injury is of less disability force than it really is, and so forth. At any rate, that has been the basis of their complaints and of their discussion.

Then, of course, there is always the repetition of their dislike of having to come to hearings and give testimony. That is one of the greatest grievances which the physicians of the county medical societies have had, that they were obliged to come into hearings and give testimony. Most of them believe, in their innocence, that a letter written on the back of a prescription pad will satisfy all the requirements of law as to real evidence as to what is the matter with the man, how long he has been disabled, and so on.

There has been great dissatisfaction and a great deal of public complaint, again without very much actual case evidence to substantiate it, about the "lifting" of cases, as they call it. By that they mean that a case once sent by somebody, either by the employer or by a friend of the claimant, to a physician for treatment, is after a period of time directed away from that physician and to some other physician.

About that there is, as you know, always the greatest bitterness, and this bitterness is shared by the hospitals. Many of them have set up, in addition to their regular bed care in their wards and in their private rooms, a system of out-patient care, which they think could easily and should be substituted for the posthospital care after the patient is discharged as a bed patient. They think he should return to the clinics and to their out-patient care for his follow-up treatment before he is able to return to work, and they are very resentful of the fact that many insurance companies regularly, after the patient leaves the hospital bed, direct him to come for his follow-up care either to a clinic conducted by the insurance company or to some private physician whom the insurance company or the employer designates. There has been great resentment on that account, and there has been open expression of it.

I think I ought to tell you the other side of it, because, sitting as I do in an administrative office, they all come with their complaints. There has been a constant complaint on the part of the insurance companies and the self-insurers that many doctors padded their bills, added 1 treatment, 2 treatments, 3 treatments more than was absolutely essential to the recovery of the case. That is one of the most difficult problems with which to deal. How can any one of us who is a layman say that one more treatment was not indicated in the particular case? Yet if you take a man who is seeing a great many compensation cases, the adding on of one more treatment to each of a hundred cases, at $2 a treatment at the office, will net a little $200, which will go far toward paying the rent in these unhappy days. These days are particularly unhappy for physicians, remember, for they do render valuable service to all classes of society, and at the present time they are having a terrible time collecting the bills which they should collect from their private patients.

Also the insurance companies have complained to me that sometimes they received scandalously incompetent treatment from the physicians to whom claimants were sent in the first instance and that they were obliged to transfer the case. They have complained and have shown me case evidence in a number of cases that in hospitals—even in hospitals that were recognized—there had been such incom-
petent and unsatisfactory medical treatment that in order to save
the man's life and save themselves the cost of a death case, they were
obliged to lift the case and transfer it from one hospital to another.

There have been cases, of course, where the transfer has been made
from one hospital to another merely to save the cost, because the
second hospital had a contract with the insurance carrier and gave a
bed rate much lower than the first hospital, but I have had case
evidence where I have agreed that the case must be transferred.

I know of one case that was transferred from a hospital where the
man had been for seven weeks and was growing worse and worse, and
the physicians of our department and the physicians of the insurance
carrier all believed the man's life could be saved. Yet he was in
danger of death. With my consent, and in the face of great protest
on the part of the hospital and all the doctors in that county, the
man was transferred, and got well and is alive, with a very light
remaining disability.

At any rate the complaint of the insurance companies is that they
are obliged to "lift cases," as it is called in the slang of the profession,
not only from hospitals but sometimes from physicians, where in
their belief the treatment is inadequate and the skill and knowledge
of the physician having it under charge are not adequate to carry on
the proper treatment; and also that they are obliged, as they say, to
lift cases under some circumstances where they think that an unneces-

sary and elaborate medical treatment is being recommended, with a
fearful amount of reference for X ray and for examination by an eye
specialist, an internal medicine specialist, a bone specialist, a nerve
specialist, and all that sort of thing. They feel that in those cases
they are justified in lifting the case from that kind of treatment,
which is running into unnecessarily high medical expense.

They resent also the fact that hospitals have sought to get, as they
say, money out of them, without recognizing that they, too, have a
cost accounting department and that they have to give account for
every cent of other people's money which they spend. The carriers
have sometimes resented that, as they say, some of the smaller hos-
pitals in particular have sought to live off the payments made by
insurance carriers in compensation cases in order that their physicians
may do more free, interesting research work.

In other words, we have had a battle between these two opposing
forces and these are some of the charges which have been made.
Then we have had general complaints—coming not so much from
one side or the other in this matter, but coming sometimes from the
public, sometimes from the claimants, and sometimes from organized
medical societies—against what are called the commercial clinics and
their method.

I do not think the commercial clinics exist very much outside of
New York State. I think there are some in New Jersey, but they
seem to have been one of those things which the genius of New York
State has invented to plague its public officials. They have certain
virtues and certain disadvantages. The commercial clinic is a clinic
set up by one or more physicians who specialize in the treatment of
workmen's compensation cases, where the clinic through its business
organization regularly solicits from employers and insurance com-
panies opportunities to treat by reference the claimants who are
injured in the employ of that particular employer or of the employers insured by the particular insurance company. Having solicited that, they proceed to give medical treatment in these clinics by a form of group medicine, in which there is in the best-conducted ones supervision of younger men by older men and by specialists, and by which they claim in the better conducted ones—and I think with reason—they have been able to reduce the average cost of medical treatment in compensation cases.

There are one or two extremely good clinics which are run on just that basis—commercial clinics which make a profit on the whole, in which the physicians working there are properly recompensed and maintain an ethical relationship to each particular case, and in which the business management is a separate kind of an organization. But there are a number of others which, having seen that these one or two well-conducted clinics have made a success, have come in in an effort to get the business away, and there has come to be a very unseemly competition between these commercial clinics for the business of treating injured people.

Of course, it is repugnant to all of us to think of there being a form of ambulance chasing, a scramble to get the job of taking care of a man who has a terrible cut on his arm or has broken his leg or has had a bad acid burn, or something of that sort. It is very repugnant to us to think there are harpies waiting outside of the factory to take him off to their clinic, with the consent of the employer, because in the State of New York, as you know, the employer designates the physician who is to give the medical care and is therefore responsible for his bill through his insurance company.

These commercial clinics have resorted to practices which have sometimes resulted, I am sure, in bribery of foremen or something that very nearly resembles that. We have had evidence of their hiring boys to go about and tear down the advertising signs of one clinic and put up the advertising signs of another. They have adopted names which are misleading to the general public and the average injured claimant, some of them calling themselves the State Compensation Clinic, others calling themselves the New York Compensation Clinic, and such names as that, which tend to mislead both an employer and an injured worker and also the general public in the feeling that this is something which has to do with the official body which adjudicates the workmen's compensation claims.

Our State of New York requires that every employer post a notice in his plant, stating that he is insured under the workmen's compensation law and pointing out to the workmen their rights under the law. It has become the practice for these commercial clinics to go around and tack up their own advertising matter in much the same official form, so that it looks a great deal like the rest of that blank which we put up, directing the employer to send his man, when injured, to a certain address, and directing injured workmen to go there.

All this has become what is to-day known by the popular and much used term of a "racket" perhaps, but it is a thing which has grown up slowly and which has created great resentment among physicians, which is I think frowned on by the better insurance companies, which is not fully understood by the employers, and which
forms a very real complicating factor in the true administration of justice in a claim.

There have been cases—I have the evidence in some cases—of men who, if their bill was paid and paid promptly, would be willing to testify that the disability was four weeks, when perhaps it had been seven or eight, and who, if their bill was not paid promptly or perhaps resisted entirely by the insurance company, were perfectly willing to testify that the disability was three months on the same case. In other words, they have been willing to get their bill paid by the utilization of any kind of testimony which they thought would do it.

This has been a very complicating factor. You can not blame either the insurance companies or the Workmen's Compensation Bureau of the State of New York; nor can you blame the claimants in these cases. The claimants are perfectly innocent in the matter; they do not know; it is not their doing. They do not select the man; he is selected by the employer, who does not know what he is about. That does not mean that there have not been very good clinics of this sort, which have done a perfectly good job, but I wanted to describe them to you so that you may know the basis of some of this resentment.

Also there have been complaints about the insurance company clinics. Some of the insurance companies in the State of New York maintain clinics themselves, at which they treat claimants when they are ambulatory cases and can come to the clinic for treatment. That has created resentment on the part of some claimants, and apparently outside people who look into the subject are always somewhat horrified when they find that these injured workmen are required to go to the insurance companies' offices or the insurance companies' clinics for treatment. It does not seem so bad perhaps to me or to those of you who are regularly administering this law, because we have learned to distinguish between this doctor and that doctor. We know there are lots of doctors connected with insurance companies, and that some of the best industrial surgery that is done to-day is done by men who are working in connection with and under the salary of the insurance companies. But apparently there is criticism whenever that is looked into by a committee of lay people, and I think frequently by committees of doctors, for I find that all the doctors from the academy of medicine or the county medical association who look into it do not like this idea of clinics conducted by the insurance companies.

I think we ought to say right here that the insurance companies are extremely hard pressed at the present time. Their losses have been great. Of course, this is due very largely to the failure of pay rolls, but under such circumstances every insurance company is under the greatest pressure to scrutinize its costs. All kinds of incidental costs enter in. In one or two insurance companies where I have been privileged to get the complete picture of their costs, it is true that the medical costs have been mounting, and mounting out of proportion to the reduction in the compensation losses which one would have expected to follow if those expenditures were really resulting in better and more adequate and more complete treatment of the cases. Over a period of time a reduced compensation loss ought to show on a large
number of cases, but apparently there has been an increase in the medical costs without that corresponding decrease in the compensation losses.

So it is a great problem with insurance companies, and they are within their rights, of course, when they make every effort to solve the problem of this cost in their own way. We as public officials must insist, as do the insurance commissioners of the State, that in making these efforts to solve the problem and reduce their costs, the interest of the claimant, which is the prime interest, must always be kept to the forefront, and that nothing must be done which in any way modifies his rights, his privileges, or his best interests for recovery to as nearly perfect health as possible.

Then there has been for some time a continuing complaint in New York State against the presence of the doctor in the examination rooms of the department of labor at the time of hearing or of final settlement. We have in our law a provision that a claimant must submit himself for examination at a convenient place, and that at that medical examination there may be present a representative physician of the carrier or employer and a physician representing the claimant. The claimant, of course, rarely brings in a physician to represent him or express his point of view, because he can not afford it, and in recent years the carriers have developed a practice of being represented by a physician.

That has created great resentment in some circles. It is partly due, I think, to the fact that none of us has perfect manners, and that the doctors are no exception to that rule. An insurance company physician in the examination room has been heard to say to the examining physician of the department of labor, "Oh, you are way off! That isn't a third of an arm. That isn't more than 10 per cent of the arm. It is too much." The claimant has heard our doctor defend his view that it was a third of the arm, and then has heard him back down, under a little argument, "Perhaps it isn't a third; perhaps it is 25 per cent." The man has therefore come to the conclusion that he is used as a bargain, and that the doctor of the insurance company is trying to beat down the price or the degree of disability and that is all that he is doing.

That resentment has spread, and I think you will find among representatives of organized labor generally in the State of New York a real resentment against the presence of the examining physicians of the insurance company in the medical examination room of the department. However, it is the law of the State of New York that they be permitted to be present, and while that remains the law we shall, of course, permit them to be present; but there is constant agitation on the part of labor to remove that privilege from the law in the State of New York, as it has been abused in so many cases. There is no doubt about that.

I am as certain as I stand here that some physicians who come to the department of labor have deliberately attempted to conceal what they knew about the case so as to mislead our physicians as to the real situation, and have taken advantage perhaps of one of the younger and less experienced physicians, when he was new, to minimize more or less the total result of the injury. However, those have been, on the whole, rare cases. There is, however, this to be said, that for the most part the physicians who come to represent insurance
carriers in these examinations are not the physicians who have given the treatment during the process of the curing and healing of the case. That, theoretically, is the person who comes. Theoretically the insurance company, in defending his presence, points out "Doesn't this man who has been treating the case surely have a better understanding of it than your man, who examines him once here in the examination room?" But the fact is that, in the city of New York particularly, the man who comes up for that hearing is rarely the man who has been doing the treating. That, of course, is because of the fact that we hold hearings every day, and that, in the larger companies particularly, a doctor who came to testify would not be able to do any treating because he would be testifying all the time.

It has come down again to a situation where a few physicians—and this is one of the things which we all regret—have practically made a business for themselves of picking up in the corridors of the department of labor the job of representing insurance carriers. They are not allowed to solicit business. We are pretty stern about that, but of course there are lots of ways of soliciting the opportunity to examine a claimant without actually making a written application or even saying anything. I understand that a number of secret signals have developed whereby a doctor indicates he would like to examine this case and he thinks he could cut down the award a little if he examined it, and the adjuster for the insurance company nods "All right."

We have done everything we can to starve out that particular kind of thing. It is one of the most inglorious activities of the medical profession. It is one of the things that embarrass and humiliate me, and I have had to ask men who had medical training and experience, men whom I know to be pretty good doctors, to stop that sort of thing. I have had to send for them to come to my office and have had to say to them, "We can not permit you to do this thing." It is a humiliating thing to have to say to a grown person, "What you are doing is so cheap and so shyster that I can not permit it in this building." That has been a very unfortunate development with a few doctors who have built up for themselves that kind of trade.

Then there have been, of course, constant complaints on the part of claimants and their representatives that the medical treatment given by the insurance companies was too brief. This offsets the complaints of the insurance companies that many doctors gave too many treatments and padded their bills accordingly. I am one of those who think there is some truth in both statements, and that both sides probably have grounds for their complaints, but not in the same cases.

Claimants are discharged in some instances, we know, long before they should be discharged from medical treatment. We made an experiment, about two years ago, of sending right into the medical examination room, for a period of two weeks, every man who came into the outside information room to register a complaint that he had been discharged from treatment, that the doctor had told him not to come back, and that he was too sick and must have treatment. I think about 60 per cent of those who went into our own medical examination room within a period of two weeks were found by our chief medical examiner to be needing further medical treatment of
some sort. So there is ground there also for the complaints that are made. We have to watch out on that particular score.

Then, of course, there has come up recently this complaint with regard to fee splitting. That, I may say, is a complaint never made to me. It was left for Mr. Seabury to discover this fee splitting in compensation cases. I do not know that it was news to men who have been long and realistically associated with insurance companies, but certainly until that time we had not been made the focus of complaints that physicians to whom cases were referred for treatment by the employers or the insurance carriers were regularly splitting their fees with those who had referred them.

That is, of course, always possible. The possibility of it is inherent in the very situation itself. It is inherent in the structure of an insurance company’s office. It is inherent in the structure of a large employer’s office, where there is organization and organization within organization, and it is possible, of course, with a certain class and type of physician. I am told by those who are high in the circles of the State and county medical associations that fee splitting is a problem in all sorts of medical practice.

There are honest men who openly defend the practice and say that it is a perfectly appropriate one, and that without that sort of arrangement, which should be made openly and honestly, a physician would be under constant temptation to keep a case under his own care, when in reality it ought to go to a specialist; that he would be a very strong-minded man who would be able to send a patient, who was going to have a long period of illness and therefore would pay a large fee, to some doctor who was more skilled in that particular line, unless he himself was to have some remuneration for his skill and judgment in the diagnosis of the case, which enabled him to put it at once under proper treatment.

However, that has not been, I think, the basis of the complaints in the Seabury investigation, which were, as you know, that certain physicians, by political favoritism, were able to get assignments and then split fees with the physicians who did the actual treating. At any rate, that has come up only recently as a serious problem, and on the whole I think that can be adequately handled.

As I said before, our main problem as public officials is to see that we have proper and adequate medical care in each case and that the costs for this medical care are reasonable. I think it is our essential duty to see to it that we are guaranteed honest reporting in all medical cases. That is one of the most difficult things we have to face. I hope we are not going to be treated to scandals in our large cities about medical rackets, but there is always the possibility that we do not get honest reporting and that there may be collusion between unprincipled doctors and unprincipled pseudo claimants, between unprincipled doctors and unprincipled employers who are willing to use an ignorant man as a tool, and between unprincipled doctors and unprincipled people in the insurance companies. All that sort of thing is possible, and we have to call upon the medical associations and the honest medical people to keep themselves and their own organizations well within the limits of common honesty.

It may be well to indicate briefly some of the attacks made upon these problems in New York State. Early in 1921 the industrial commissioner of New York held a conference out of which grew three
committees, each to work on a specific problem, namely, administrative procedure, standardization and simplification of forms, and procedure for hearing and determination of claims. These three committees met frequently, held numerous hearings, and rendered reports. It was found that the medical questions were so obtrusive and pervasive that a new committee was organized for their special study. A group of physicians representative of different groups in the profession were added to the membership, and the entire committee was given authority to require the production of records and the examination of witnesses. Its report was rendered in December, 1922, and was published as Special Bulletin 115 of the New York State Department of Labor. As a result of widely advertised public hearings in the five largest cities of the State a mass of testimony and opinion was developed upon specialized medical service, the payment of doctors' bills, lifting of cases, free choice of doctors, schedule of fees for doctors and hospitals, and the records and reports of doctors and hospitals.

But the medical problems continued to be troublesome after the issuance of this report just as, I dare say, they have continued after similar investigations in many of the jurisdictions represented here this afternoon.

In the early part of 1929, shortly after becoming industrial commissioner, I undertook, through the medium of the industrial council, of which the industrial commissioner is chairman, to study afresh the whole situation. The industrial council, in New York State, consists of 10 members, appointed by the governor, to consider and advise with the industrial commissioner on all matters submitted to it by the commissioner. Several successive lengthy meetings of the council were devoted entirely to the whole set of questions and problems arising out of the medical aspects of the compensation law. Every interest having a stake in the matter was represented—the State medical society, the various county organizations, the State hospital association, and local hospitals, compensation clinics, and individual physicians. Very much the same subjects were discussed, and the same grievances aired, as in the case of the earlier committee. A better understanding of the problems of the various groups was reached and some helpful suggestions were developed.

Largely as an outgrowth of these discussions, and particularly at the suggestion of hospitals and physicians, Governor Roosevelt appointed in March, 1932, the committee to review medical and hospital problems. The governor said, in appointing it:

It has been brought to my attention that the adequacy of medical treatment of injured workers in compensation cases is frequently lost sight of in the maze of problems connected with the payment of compensation and particularly in connection with the hospitals and professional aspects of this treatment. It is possible that the hospitals and medical men are operating under burdens in no wise intended by the passage of the workmen's compensation act.

The committee was asked to report upon:
1. The payment of adequate rates to the hospitals for bed and clinic care when handling workmen's compensation cases.
2. Suggestions as to the elimination of causes for delay in payment of hospital bills.
3. The subject of hospital record keeping in workmen's compensation cases.
4. Study of medical and hospital treatment and payment therefor in certain cases which have regularly eluded payment of medical and hospital costs in the past, such as third-party actions, noninsured employer cases, injuries unreported to the department of labor either by the employer or employee, etc.

5. Standards of medical and hospital treatment in workmen’s compensation cases.

This committee named four subcommittees—hospital problems, medical problems, departmental activities, and legislation. A tentative report of the whole committee was made to Governor Roosevelt on February 23, 1932, containing preliminary reports of the four subcommittees. The report of the subcommittee on medical problems, of which Dr. Adrian V. S. Lambert was chairman, is the one which I am asked to comment upon this afternoon.

Occupational Diseases

The committee recommended coverage of all occupational diseases, citing in support the attitude of this organization at the Buffalo convention in 1929. Many here present will recall that session and the resolution adopted at that time calling for “the inclusion of all occupational injuries and disabilities” in every State, and in the Canadian Provinces. Governor Roosevelt urges this complete coverage, as opposed to the limited schedule plan, in New York State.

Presence of Insurance Company Physician at Examination of Claimant by Department Physician

On this point the committee recommended as follows: “For the best interest of everyone concerned, your committee recommends that the insurance doctor be excluded from such examinations.” It was felt that the claimant under examination would inevitably regard the insurance doctor as a hostile witness, and would therefore look upon him with suspicion.

In New York our department has long been aware of hostility upon the part of claimants to the presence of insurance physicians, and has recently fostered experiments, by voluntary action of the carriers, of examinations without their presence. One of the largest compensation carriers in New York has, as a result of these experiments, withdrawn from participation in examinations, stating that its experience has been entirely satisfactory. Incidentally, its loss ratio has been the lowest in the State for the first half of 1932. The majority of carriers are not, however, as yet convinced as to the wisdom, from their point of view, of absenting their physicians from the examinations. Their absence does remove any suspicion of collusion between the department physicians and those of the insurance company. Further, it puts the claimant in a better frame of mind about the whole examination, and there is no, or little, evidence that the presence of the insurance company physician does help the diagnosis of the case.

It might be pointed out that barring the company physician from the examination would also bar the presence of the claimant’s physician in the relatively few cases where claimants wish their physicians to be present. It is also argued, sometimes, that the carrier’s physician might, because of his previous knowledge of the case, be able to point out conditions which would otherwise have been overlooked.
by the department physician. This is negatived, however, in our New York experience, by the fact that in practically no case has the insurance physician present at such examination ever seen the case before. He is not the physician who has previously treated the patient, but seems to attend and take part in the examination for the purpose of protecting the carrier as to awards for schedule losses.

There might also be a possible argument as to the constitutionality of barring the insurance physician from the examination. Such argument is extremely weak and need not be considered seriously.

**Lifting of Cases**

"Lifting" was defined, by the Lambert committee, as a change made by the injured worker from one medical attendant, either private physician, clinic, or hospital, to another, "induced to this action by an agent of an insurance carrier by means of a threat or by a suggestion or offer of a pecuniary character." Such practices, the committee believed from the testimony before it, are "still indulged in." The committee recommended a specific prohibition of lifting, as above defined, in the compensation law, with a penalty of $50 to $150.

The question involved obviously offers some difficulties. It is at times true that better treatment can be secured by transfer of a patient. Where this is the case such transfer is proper, even though it may mean a monetary saving to the carrier. Anything smacking of commercialism is to be condemned, and wherever the circumstances of removal suggest commercialism suspicion is aroused. The best interest of the patient is the goal to which all concerned should strive. The Lambert committee "approved of the transferring of patients from one medical authority to another in all cases in which it can be conclusively shown that a change of medical service is essential for the purpose of maintaining proper medical care." The report of 1922, referred to earlier, made the following recommendation:

In case an injured employee is being treated by a physician and the employer or insurance carrier believes that another physician should be put in charge of the treatment of such injured workman, the employer or insurance carrier shall notify the industrial commissioner of the reasons for such transfer and of the name of the physician to whom such case is transferred.

**Operation of Clinics by Insurance Carriers**

Public hearings elicited testimony which indicated that cases have been lifted to these clinics in some of which treatment has been unsatisfactory, and that workers have been inconvenienced by the inaccessibility of such clinics. The conclusion was that—

The committee does not feel this activity, except in certain special instances, is essential for the successful operation of insurance carriers, and in proof of this there are certain successful companies that do not maintain such clinics.

Eight members of the committee as a whole, including Doctor Lambert, chairman of the subcommittee on medical problems, made a much stronger statement in "disapproval" of the maintenance and operation of clinics by insurance carriers. Their reasons were the encouragement to lifting of cases; the fact that medical records would

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1 E.g., in localities where facilities for adequate medical care do not already exist.
come from physicians employed by an interested party and so arouse suspicion in the minds of injured workers; annoyance and inconvenience to claimants due to remoteness and inaccessibility of clinics; refusal by insurance companies to continue payment of compensation unless patients attend such clinics has fostered the general conviction that the prime object of insurance carrier is "pecuniary gain and not the welfare of the patient."

These eight members recommended the maintenance of clinics by the industries themselves in communities where adequate medical facilities are not otherwise available, rather than their operation by insurance companies.

The above statements by no means cover the entire question since the number of clinics in New York operated by insurance companies is small. The great bulk of clinics are operated by individual physicians and by medical service agencies, and it is in connection with these that the majority of the complaints come. More concerning this will be said further on in this paper.

As to clinics operated by the industries, the same objections would seem to lie as against those conducted by insurance carriers. Would not the same prejudice and suspicion arise on the part of the claimants?

Medical Records from Insurance Company Physicians

The attitude of the Lambert committee on this point was an added indictment against insurance clinics on the ground that "so long as insurance companies maintain clinics the records must necessarily come from insurance company doctors." There was no charge by the Lambert committee of falsification of the records by insurance carriers or their physicians, but that "there is a certain degree of impropriety in the present situation."

Medical records are of supreme importance both as to diagnosis and treatment, and as to length of disability and resulting amount of compensation. One suggestion would be an amendment to the law giving the right to every claimant of one examination by the department physician at the expense of the insurance carrier.

Improper Care and Too Early Discharge

On the two questions of (1) careless or improper care of patients at insurance company clinics, or clinics patronized by them, and (2) whether patients are discharged too soon and without adequate treatment, the committee made no definite report. Funds were lacking for the careful follow-up of a group of closed cases by physicians, and without this it was deemed unwise to pass judgment.

The committee did, however, introduce into its report a copy of the Meyer committee report which was made to me in January, 1930. As a result of the hearings, previously referred to, held by the industrial council of the New York State Department of Labor, I appointed a committee, of which Mr. Max Meyer was chairman, "to make a cross-section study of the medical service agency system." That committee, after personal inspection of clinics in New York City of three types—insurance carrier, large medical service agency organizations, and those operated by individual physicians—summarized their findings as follows:
1. The clinics conducted by the insurance companies and the larger agencies are on the whole suitably housed and maintained. They have adequate equipment and are staffed with a competent personnel.

2. Of the smaller agencies, some are located in wholly improper quarters, are not clean or orderly, and lack essential equipment and medical attendance.

3. Between these two extremes there are a large number of industrial clinics presenting great individual variations as to housing, equipment, and personnel.

Some clinics were found in highly unsuitable quarters, with poor ventilation, and incapable of proper sanitation. The personnel was inadequate in numbers to attend promptly to the demands made upon them. Worst of all, perhaps, were instances of nurses, or sometimes persons without even nursing training, in sole charge of clinics for a large part of the time and rendering treatment. Many persons were found administering physiotherapy, although not licensed to do so.

Personally, I believe strongly that all clinics of every character should operate in accordance with standards of competency and cleanliness, established and enforced by public authority. Were this done, the abuses of the clinics would be largely eliminated. I agree with the following recommendations of the Meyer committee:

It is therefore recommended that suitable legislation be procured restricting the treatment of injured employees, upon the authorization of the employer, to such physicians, nurses, physiotherapists, etc., as are specially registered therefor by an appropriate official department; that each clinic or station be similarly registered, such registration to include a requirement for the attendance of a licensed physician at all times. Such registration should be granted only after a suitable examination and inspection (including, in the case of clinics, examination of the suitability and condition of its quarters and equipment); and provision should be made for periodic reexamination, and for inspection upon the receipt of any complaints. These requirements can be enforced by the simple expedient of refusing to honor, in making awards, any bill for medical service rendered upon authorization of the employer by an unregistered physician or clinic, and by prohibiting the payment of any such bill by any carrier.

Free Choice of Physicians

Under the existing circumstances the Lambert committee opposes free choice of physicians by the injured worker. They recommend, however, some method by which physicians desiring to handle compensation cases should have their qualifications for such practice certified to and receive license or designation therefor.

I, myself, do not favor absolutely free choice by the patient. Where the character of the injury or the nature of the disease is such as to require specialized treatment, not available by the ordinary physician, the best good of the patient requires that such treatment be rendered. The patient may be, and often is, unaware of the need for such service.

Professional and Clerical Staff of the Department

It is properly pointed out, in my judgment, by the Lambert committee, that the proper functioning of the medical division in the New York Department of Labor requires a larger number in the professional personnel. It believes that physicians of a higher grade could be obtained if such positions were placed on a part-time rather than full-time basis. I know of some instances in which this has been done by private carriers with satisfactory results.
Equal Compensation for Total and Partial Disability

Under the New York law total disability is compensated at the rate of $25 per week and partial disability at $20 per week. This difference in compensation rate introduces an element of complexity in determination of compensation awards. The Lambert committee recommends that the total disability rate be paid until the injured man is able to return to the occupation at which he was engaged when injured, with deduction for any partial earnings in the meantime. The New York department has urged this for several years.

Supreme Court of Medical Review

The Lambert committee recommends the establishment of a panel of 75 eminent medical men from whom committees of three or five would be selected for determination of particular medical issues, the findings of such committee to be binding upon both sides of the controversy. No details of the plan were presented but further study of the principle was recommended.

Personally, while the plan seems to have possibilities, I would want further consideration before its adoption.

How serious this whole situation is is a matter which I think is for you to debate. How seriously we have departed from the standard of medical ethics in our great cities, in conjunction with the practice of workmen's compensation medicine, is another thing which I think we should seriously consider and seriously debate. If we feel there has been a lessening of those fine old ethical standards which the medical profession built up over years and out of which they gained this respect which we all have for them, I think it is our duty to call it to the attention of the more important and significant and leading medical associations and medical bodies of this country.

Nothing could be more disastrous, both to their professional reputation and to the real welfare of the American people, than to have us come to distrust the integrity and the intelligence and willingness to perform good service which this ancient and honorable profession has built up for so many years.

DISCUSSION

Mr. Wenzel (North Dakota). I want to ask Miss Perkins one question. Have you never had any complaints from or concerning the modern aristocrat of the medical profession, the chiropractor?

Miss Perkins. We do not have any difficulty with chiropractors in the State of New York because they are not recognized as giving medical treatment; so, although they do give medical treatment, they can not collect their bills, and their testimony is not competent evidence, except as to matters of fact to which a layman might testify. I mean a chiropractor can testify that he saw the man walk with a limp, just as I or anyone else can, but he can not give a medical opinion; so we have not had very great difficulty with them. Of course, we have the designation of physicians by the employer, so the question of the chiropractor rarely enters.

Secretary Stewart. I would like to ask a question, not for the purpose of starting a debate, but simply for information. Do you
find this sort of honeycombing that you have described both under your State funds and under your private-carrier work?

Miss Perkins. You mean physicians attempting to "muzzle in," as I think they describe it in the lower corridors of my department. The State fund has its own medical staff and is not permitted to engage the services of any man outside its own employ to represent it before the industrial commission in the examination room. It does, of course, when the man has been under treatment by a specialist of its designation, bring in the specialist and pay his fee for coming in to testify, but it is not permitted by its administrative officials, whose superior I am, to engage any of these men who flock in our corridors to go into the examination rooms to examine for it. It has its own physician there regularly.

One of the companies that participated in this experiment with us kept its physician out, but it felt it got a better situation or better "break," as it calls it, if its own physician was present. It had no proof for it; it was merely an impression.

Mr. Kingston (Ontario). I wish to ask Miss Perkins if, under the law in New York State, they are entitled to say to any doctor who has acted in a way which in your judgment or in the judgment of your board is reprehensible, "The New York State compensation board will not hereafter recognize your reports and will not permit you to practice in workmen's compensation cases"? We do that in Ontario. It is about our only remedy. We have in a number of cases made such a remark to a doctor. The reason we have said that is sometimes threefold: (1) He refuses to give us a report along a certain line; (2) he is slow in answering correspondence or giving reports; or (3) he has made overcharges, or, as you pointed out, has charged for attendance which he did not give. Are you entitled to write that man off your books and say, "Hereafter we will not listen to your reports at all"?

Miss Perkins. No; we are not. Under the law, if the medical treatment is designated by the employer or the doctor is an agent of the insurance carrier to give treatment and to bear witness in any case, and is a physician in regular standing and entitled to practice medicine, we must listen to his testimony. Of course, we may weigh it as we choose, and if a man is of notorious character, and we know him to be untruthful and unreliable and to have given false testimony in other cases, we may give that evidence the weight it deserves, and we do.

There is one physician who regularly haunts the department of labor corridors, against whom we have used the most drastic weapons that we have under our control. We have told every carrier that we do not believe him; that we think him to be dishonest; that we know that he has given false testimony; that we know he has testified in certain cases one way on one occasion and another way on another occasion, depending upon who paid him. He has been known to come in with a carrier and testify against a claimant, but when the carrier refused to pay his bill or refused to pay the sum which he thought proper—and he charges a very high rate—he has been known to seek out the representative of the claimant and offer to come in and testify for him, and has done so. Still we are not able to exclude this doctor.
We set up an elaborate system of calls and checks and counterchecks, and of passes countersigned by various people in the department, to keep that man out of the actual examination rooms except on the occasion when he is sent there by a carrier in a particular case, and still we have to battle with him every single day. Under the law we have no choice but to take his testimony when he is assigned to the case by the employer. I think he is the most extreme example that I have. There are only one or two others who even moderately approach that situation.

Secretary Stewart. Don’t the ordinary laws of perjury apply in such cases?

Miss Perkins. Yes; except that he has, of course, a perfect alibi in that in his opinion in that case the condition has changed, and it is his best medical opinion that when he examined the man in March he was all right and when he examined him in June he was all wrong.

Mr. Kingston. Under our law every doctor who treats a compensation case is in theory an employee of the board, not the employee of the employer or the injured man. We pay him. Neither the employer nor the workman has an inherent right to choose a doctor. In practice the employer probably more frequently than the workman chooses the doctor, but if there is a dispute it comes to us in the board to say who shall be the doctor.

Chairman Wilcox. We shall have to bear in mind that those jurisdictions that are under the exclusive State fund plan are in a very different situation than those that are relying upon the employer and the insurer to pay directly to the injured man and to furnish the medical attendance.

Doctor Stack (Delaware). Miss Perkins, under your act can you not drive from your State carriers known to employ physicians who are perjurers?

Miss Perkins. Yes; if it is persistent, I can make complaint to the superintendent of insurance, who has the right to revoke a license. There have been two cases in the past year where I have reported a situation of that sort to the superintendent of insurance, who has dealt with it and effected, not the driving of the carrier out of the State, but what is much more to be desired, a reform of character. That is the only way we have to handle it.

Mr. Parks (Massachusetts). Miss Perkins, you were telling about the Lambert committee finding that there were a number of filthy clinics; that there were people there administering massage who were not nurses. If I remember correctly, there were some giving medical attention who were not doctors, and there were several others, to me, horrible instances which would not be tolerated in Massachusetts. My question is, Who supports these clinics that are so filthy? Where do they get their income?

Miss Perkins. They get their income by charging for medical treatment per case, rendering the bill to the employers, who, if they O. K. it, send it to the insurance companies, who pay them.

Mr. Parks. You have no control over that?

Miss Perkins. We can and do report the filthy clinic to the board of health, which tells us that the filth does not matter; that if the dressing is put on the hand and the dressing is clean that is all right;
that the dirt on the floor and the fact that the walls have not been washed does not matter. I know it to be true, although I know it is not good hospital practice.

As to giving treatment by persons not entitled to practice medicine, there is, of course, a law to take care of that. When we have actual evidence of that, it has been corrected by the department of health. The giving of improper treatment by licensed physicians is a much more difficult thing to handle, because there, of course, he has his defense before the board of medical regents.

Mr. Parks. The reason I asked who supports it is that if we found an insurance company supporting that sort of thing in Massachusetts, that insurance company would not do business very long. We would not tolerate it for one minute.

Miss Perkins. I ought to say, in fairness to the insurance companies, that the insurance companies do not support these clinics. The employer has a right to designate medical treatment. These clinics do business directly with the employer. We have a very large number of small employers in New York who employ only a few workmen, whose contact with the insurance company is rather remote, and whose contact with the neighborhood is very close. The clinics get in touch with these employers and they get the cases.

It is a very difficult thing for the insurance company in every case to be there quickly enough to get a transfer of the case from that clinic to some other clinic. Moreover, the doctor has a legal right. He has a signed authorization from the employer. On the basis of that he can go into court and collect his pay. The insurance carriers have gone into court in some of those cases, and the courts have forced them to pay those bills, even when they went in and testified, and their own physicians testified, they did not think the man capable of rendering the service.

Chairman Wilcox. You say the employer has the right to make a selection of the doctor, to the exclusion of any interest of the insurance company?

Miss Perkins. Yes.

Chairman Wilcox. Would that be a difficult matter to get under control; that is, in so far as it would make it possible for the insurer of the risk to make the selection of the doctor?

Miss Perkins. Public opinion in the State of New York, I think, would take the position that it would be worse to have the insurance company designate the physician; that on the whole, with the employer designating the medical treatment you are, in the case of well-intentioned employers, more likely to get a physician who is friendly disposed toward the claimant. Whether or not there is any justification for that feeling is another matter. I think that would be the general state of public opinion if the matter were brought up.

Chairman Wilcox. I should think that was a debatable question.

Mr. Parks. I would like to make a suggestion. Where that situation exists, I think the best system is to let the insurance company engage the physicians and pay the bills. An employer in Massachusetts may hire a doctor, but the insurance company does not have to recognize the bill. It does not recognize his authority. We get along a great deal better by putting the burden on the insur-
ance company. We can reach the insurance company, if it harbors clinics of that description. I can safely say that nothing of that sort exists in Massachusetts; we would not tolerate it for a minute, and it would not be attempted.

Miss Perkins. I think we bureaucrats always tend to like to deal with the smallest possible number of units. It is easier for us to deal with a few great organizations, because we can get hold of responsible people in them, but I think in a matter of public policy of this sort we have to consider and reconsider the general state of mind of the community; that that is just as important perhaps as our easier form of administration; and that the good relations between employer and workmen are often endangered by the interposition of an insurance company in this matter of medical treatment, which is such an intimate personal thing. All those things have to be taken into consideration in considering changes in the law.

These clinics have grown up recently; they are the work of the last few years. We are hoping they are going to disappear in the course of the next five years. They have not always been with us in New York State.

Mr. Parks. I am interested in what Miss Perkins said about the relation between the employer and the employee. We have no self-insurance in Massachusetts, but there has come up in recent years a sort of self-insurance in disguise. The insurance companies are letting the employers have more to say about the payment of compensation.

We find it is a great detriment to the settlement of claims. Before that intimate relationship sprang up between the employer and the injured workman, we got along a great deal better with the insurance companies. Now, when we are dealing with insurance companies, the insurance representative will say, "Well, I am afraid that employer won't let us pay. We have to sell it to him." We find it a very difficult matter sometimes to adjust some of the cases because that intimate relationship is springing up. I wish it were not so. I would rather deal with the insurance company. We have had better results from dealing with the insurance company than from dealing with the employers under this disguise.

Doctor Stack. In Delaware we have dealt with the employer rather than with the insurance company. Under our act, as Miss Perkins has stated, the insurance company has no place in the picture at all. It is all between the employer and the employee. The employer provides medical service and can designate the medical service. We have found the relation between the employee and the employer most delightful.

Mr. Leonard (Ohio). We have found, as all other commissions have found, that medical costs are mounting. Of course, in Ohio we give a man unlimited medical service. In self-insurance cases the self-insurer has the right under our rules to provide his own hospital and medical attention.

We have had very little trouble with doctors. Our rates are fixed through an agreement between the commission and the Ohio Medical Association. We had a meeting recently in which we made drastic changes in our medical rules to meet the circumstances. We have very drastic regulations relative to the number of treatments, the hospital attention, and the time the man should be in the hos-
pital. We want to give the claimant every medical attention that
money can buy, but we do not want to be imposed upon, and we
have been imposed upon by a number of doctors. The doctors of
Ohio, realizing that it is to their interest to play the game, have
said to us, "We would like to meet you with reference to the rules."
We say, "We will make the rules first; then we will meet you."

There is no question that during the time of the industrial slow­
down the disability has been continued in a great many cases beyond
the time that it was necessary. We had a number of cases where
medical attention in the hospitals was prolonged, but it was not the
fault of the hospital. The hospital would say, "We rendered the
service, but the doctor insisted that the patient be kept there."

Our rules are all designed to get a line on the people who are being
-treated at the hospitals. We have had cases where doctors did not
put in bills for a year or two or three years. Now they must present
their bills to us within 60 days. There must be reports of doctors
in the hospitals at stated periods.

We had a good many complaints as to a man changing from one
doctor to another. They would say, "We try to be honest and
certify a man when he is actually able to go back to work. Then
that man goes to someone else and he starts him up again." Under
our new rules, before a claimant changes doctors it is necessary for
him to get the authority of the commission.

We have had very little trouble with our self-insurers. The doctors
furnish medical and surgical attention. They look over the cases
very carefully.

Chairman Wilcox. I feel that all this trouble which is developing
between the administrative bodies and the employers, and the insurers,
and the employees, and the public, and the doctors who attend the
injured parties must finally bring us to the point where in order to
protect those rights of injured men, which ought to be pretty much
inalienable, we must allow the employee to select his own doctor.
We are going farther and farther from that.

We have run the whole gamut in Wisconsin, from allowing the
employer absolutely to make the selection to allowing the insurance
carrier to make it. I can not help thinking that those States that
are maintaining a tripartite plan with regard to this attending doctor
are standing in their own light. I would rather take my chances
with an insurance carrier selecting the doctor and then dealing with
him directly. So far as the employee is concerned, I think he is in
better hands than if he depends upon his employer, who may or may
not have a real interest in the final determination of this case.

I repeat that the time is coming when we must allow the employees,
if we are going to respect their rights, to have at least the major
portion of the authority in the selection of the doctor, though I do
not know just how the plan can be set up. Otherwise men are carted
around as if they were so much property just being repaired, and
that must not come to be the policy in any State.

We can not expect under any other circumstances that impar­
tiality of expression of opinion that is due from the doctors who have
attended these cases. We must build a system that is calculated to
get impartial opinions, not only good treatment. I am not ques­
tioning the treatment; that is generally good. This injured man is more concerned about the estimates of disability than he is about any other thing. He is satisfied with the treatment, but the thing that stays with him all the rest of his days and which will do damage to any institution is the fact that after he had had his treatment and was ready for work again or perhaps unemployable the doctor who attended him minimized his disability.

If we are to give doctors a chance to maintain the kind of ethics they would like to maintain, then we must do something to make certain that neither the employer nor the insurance carrier nor the employee himself have had the exclusive right in the selection of this doctor, so that he need feel that he is the representative of any one of these parties in interest when he comes to testify as to the extent of the disability. As I view it, we have set up a system in most of our jurisdictions by which we encourage the doctors to be partial rather than impartial in their estimating of disabilities.

I am recognizing that an employer or an insurance carrier will know a good deal more about the kind of doctor who ought to be called to take care of an injury than the man himself will. The workman has had few occasions in his life to call in a doctor. Now he has had an accident and must have immediate attention. The employer knows, without referring to a telephone directory, who is the proper man to call in that case; so does the insurance carrier. The injured man will not have the remotest notion as to whom to go. So it becomes important that the system be so balanced that we can do away with partiality and still not sacrifice good treatment.

Mr. Wenzel. It seems to me that until men and women approach the doors of the millennium, you will have the same classes of doctors that you have of farmers and lawyers and any other profession or business. You will find good ones and bad ones, honest and dishonest ones. Therefore, it does not make a particle of difference who selects the doctor.

In our State we permit the claimant in nearly all cases to select his doctor. You will find some doctor is interested in his fee just as some other is interested in testifying for an employer or insurance carrier. You will have to meet these problems no matter what system is devised.

So far as the difference of opinion regarding permanent disability is concerned, I think you will find a great deal of that can be eliminated by requiring the doctor to state the anatomical and functional findings upon which he bases his opinion. So far as temporary disability is concerned, you are running up against what the claimant thinks and what he feels, and you will have to rely, to a large extent of course, upon the actual objective findings.

Mr. Ott (West Virginia). We have the same system in West Virginia. We allow the injured person to select his own physician, regardless of what the case may be in the first instance. We found it worked for a while, but at the present time the injured person is not selecting his physician. The employer, as a usual thing, picks out some doctor and sends the employee to him; the injured person has the privilege though.

Chairman Wilcox. It seems to me that perhaps some committee—probably Mr. Klaw's committee—ought to have the assignment
of trying to work out a statute which represents the best thought in this country on the matter of medical selection.

Doctor Patton (New York). The Lambert committee, on which there were many of the most eminent physicians of New York City, unanimously reported against the selection of the physician by the employee.

Chairman Wilcox. I now recognize Sidney W. Wilcox, of the forms committee.

Mr. Wilcox (New York). The joint committee met this noon. We are on the way to a report, but I feel that I represent the consensus of opinion when I suggest that we hear from Mr. Richardson and Mr. Bartlett and others who have done the research work in preparing these tentative forms which are offered as suggestions and not as final determinations.

[The chairman called on Mr. Richardson, who stated that he was not so familiar with the technical details of the necessities of these forms as are the men who represent the insurance companies, his function on the committee having been one largely of secretary, and suggested calling on Mr. Bartlett.]

Mr. Bartlett (Maryland). To outline briefly what was done in the past on forms, in conjunction with the two committees, an exhaustive study was made of every accident report used by 38 States in the United States. Our committees came to the conclusion that some good could be accomplished by adopting a standard form of accident report, in line with the general policy of adopting standard forms where possible, and weave into it the various laws in the various States.

Take one item, the compensation policy itself. We have a standard compensation policy in effect throughout the country. At first it was thought that such a thing was not possible, but by getting together with an exchange of ideas it was brought about that we could issue one policy throughout the United States to cover the employers' responsibility under the law. There are certain deviations here and there.

That suggested the possibility of adopting an accident report which would meet the needs of every industrial accident board and commission in the administration of its particular laws. First, before any mechanics of handling a case are started in the individual States, you have to have a notice of the accident, and that report of the accident in no way conflicts with any of the procedures in the various States or with any particular kind of law. That is the first thing, that sets in motion all others.

After studying this situation from every angle, we drew up a tentative form of accident report to submit to this organization for your study and for your recommendations and suggestions, to see whether or not such a thing was feasible; and if it was, whether or not the report which had been gotten up could be used, and if not, why not; and where it could be amended here and there along the line to meet the individual needs of the respective States.

It seems to me the best thing to do would be to take that accident report, make a study of it, look it over carefully, and see whether or not each commission in the respective States feels that that particular
report could be used. I think, if we start with the accident report, there may be other forms that we can work along with it and probably accomplish some good with them.

Doctor Donohue (Connecticut). I think I can see this situation not only from a medical standpoint but also from the workmen's compensation standpoint. I have not always been a compensation commissioner, although I have been at it for 15 or 16 years now, with intervals of being off the board.

In getting out forms, the most essential thing that should be borne in mind is brevity. If you send a form a yard long, with a great number of questions on it, to a doctor, he is going to throw it into the waste basket. I have done it myself when I was not interested in this particular work. I can cite instances of other doctors doing the same thing.

If you want to get a practical working form, you want to eliminate every unessential detail. I looked your forms over hastily, and I am not ready to comment on them in detail, but my criticism is that there are too many questions in those forms, and to me some appear absolutely unessential. They are really the work of an adjuster, or someone whom you might send out to seek information. You are asking a medical man to write all that information on there. He will not do it; he has not the time to do it.

I think the trouble with the forms in the past has been that they asked too many questions to be practical. I will cite an instance in our own State. I think it was about 12 years ago that there was submitted to the five commissioners the question of getting up a form for doctors reporting finally on specific injuries. There were three lawyers on the commission. One had about 20 questions; another had about 15; and another one had half a dozen or a dozen, I do not know which. Finally I said, “This is a medical matter. Let me have something to say about it.” I got out a form, and there were just three questions on it. It has been working very satisfactorily for 10 years. If it had 20 questions on it, I know no doctor would answer them; he would probably consign the form to his wastebasket, which, in my opinion, is where it belongs—with all due respect to the lawyers. I think brevity is the soul of wit in this thing, and it is what you have to pin your work down to.

Mr. Leonard. The doctor talked about the medical profession not having time to make reports. In a lot of cases, though the doctors have a very brief report and fill out the form, it is just meaningless. We are paying them for it. We are insisting to-day that the hospitals and the doctors give us the history of the case, because we are paying for it. The doctors always talk so much about the trouble of book work. It seems to me that in a great many cases they have gone the other way—they have not given us enough information. We do not want the medical profession to be burdened with a lot of useless detail, but certainly the doctor is the one we have to depend on. It is up to him to give us a reasonable history of his treatment and the care of the claimant. The compensation commissions may be at fault because they have asked too many details, but certainly the vital things should be in every case where the medical angle is concerned.
Doctor Donohue. Do I understand these reports are to be paid for? Do I assume that you intend to pay the doctors for filling out these reports?

Mr. Bartlett. I think not. I think it is included in the fee. I do not think you pay an extra fee for making out the report.

Mr. Leonard. Oh, no. We give him the forms to fill out.

Doctor Donohue. You are asking for a lot of detail work which, in my opinion, is neither illuminating nor very helpful.

Chairman Wilcox. It may be necessary, in the approval of these forms, to have a certain number of questions under each division, numbered alike, that will be uniform standard practice throughout the States, with the elective questions following closely after them, so that those States that really want the additional information can get it.

At the meeting of this association in Seattle in 1915, I remarked on the difference in the situation in our States. I made a comparison of the situation in California with that in Connecticut on this matter of the administration of compensation. They have five commissioners in Connecticut and each one has his own district. The commissioners are supreme in their own districts. Their districts are not very large; they can traverse their districts in a day. They have an entirely different situation than the one which prevails in a State like Wisconsin or Pennsylvania or in Lee Ott's district or in Ohio, and almost all the other States. We have to get this information because we have no other contact with the medical attendant in that particular case. We do not have the daily contact you have in Connecticut. We can not see the injured man.

Doctor Donohue. Aren't you working with a centralized system? We are working with a district board, and each man takes a section of the State. Can not that thing be worked in these other States as well as ours and be more practical?

Chairman Wilcox. If it is essential, in order to find out what the doctor knows about a case, that every State revise its plan of compensation administration and set up independent administration districts here and there, all over the State, that is another matter.

Doctor Donohue. I do not think that answers my question fairly.

Chairman Wilcox. I know what you have in the back of your head. I want to say, in this connection, that after all the doctors are after these compensation cases. They have never had such a fine class of business before in all their days.

Doctor Donohue. Pickings.

Chairman Wilcox. No, I do not say "pickings"; I say business; business that is cash, that brings in to them returns they never had before. They owe an obligation to the compensation departments of this country to make it their business to give us the last word on this thing. If they will not do that, they are not fit for a position in compensation at all.

Mr. Butler (New York). I am one of the insurance representatives, and I am quite certain from the enthusiasm displayed here that we will get somewhere.

Analysis made of the various forms used now by the States shows that Alabama uses 7 different forms, California 8, Colorado 8, Con-
necticut gets along with 4, Delaware gets along with 4, the District of Columbia demands 30, Georgia 10, Idaho 10, Illinois 10, Indiana 10, Iowa 8, Kansas 9, Kentucky 11, Maine 11, Maryland 18, Massachusetts 8, Michigan 12, Minnesota 8, Missouri 9, Montana 9, Nebraska 5, New Hampshire 2, New Mexico 1, New Jersey 10, New York 33, North Carolina 16, Oklahoma 11, Pennsylvania 23, Puerto Rico 6, Rhode Island 8, North Dakota 5, Tennessee 4, and Texas 15.

Enough is said to show the confusion and diversity of thought among the various authorities that got out all of these forms, and we will all agree at a glance that they can not all be anywhere near accurate and that a getting together would simplify the situation very much.

We have had many meetings among our insurance people to try to agree on four forms, and we have agreed among ourselves. We do not mean at all that our agreement will be acceptable to the commissioners. We expect that it will not be. We did believe, however, that if we had a committee from the insurance commissioners or the compensation authorities, we could get together with them and agree. That will take a little time.

We know the very best we can hope for here is that your association will appoint a committee with authority to deal with us and agree on certain forms that you will all agree to and abide by. If you can do that, we will have accomplished our purpose.

That probably will entail some little finance on your part. On our own part, we are entirely willing to meet our own expenses in traveling wherever necessary to meet with your people, but if your organization could arrange some way to finance the expenses of your committee so that the members themselves would not have to shoulder the expenses, the whole job would be solved very nicely.

Mr. Parks. I have gone over these forms very carefully. I have been wrestling with these forms for the last 20 years in Massachusetts. Year after year we have been trying to eliminate. I have been studying, since I was honored by being made the chairman of our board, how I can do away with some of the forms that we already have. We have eight I am told. Perhaps we could get along with four; I hope we can. I have been discussing it with some of the insurance men.

In going over this report, I notice it is the report of Sidney Wilcox, our chairman, a man appointed by this convention, with the committee under him, to study these various forms in the various States. They must have given it a great deal of study, because out of all these forms of the various States—33 from New York and on down to New Mexico with 1—they finally worked out this very comprehensive report—5 simple forms. Of course, in giving us 5, I suppose they had in mind not to offend New Mexico too much, which has only 1, and not to be too harsh on New York, which has 33. They sought to work out of all the reports these 5 reports.

Let us go over the employer's report. Of course, there are a lot of questions, but the employer does not have to answer them all. We would not expect to get an answer to every question on that report. There are a good many things that are unnecessary because of the nature of the injury, and it is a very simple thing for the employer to fill that out.
The supplemental report could be made a little simpler. We have a supplemental report on our accident report. There are not many questions there. Most of them may be necessary. You can not do away with the standard form of agreement. That is the essence of the man's compensation; that gives him his legal right to come before the board. Then there is the final settlement. You might do something on that, but it is a simple thing.

The surgeon's report seems to be the bone of contention here. I would like to ask any physician who may be here to tell me just what question he would eliminate.

Doctor DONOHUE. "5. State in patient's own words where and how accident occurred."

Mr. PARKS. Pardon me, Doctor, if I disagree with you. Many times, when I have had a physician testifying before me as to a man's ability to work, what he did, and what his physical condition was, his evidence seemed to be so far afield, after my looking over the accident report, that I wondered if he knew just what had happened to the man when he got hurt. I have asked the doctor, "Doctor, do you know what happened to the man when he got hurt?" In looking through his notes, he has not a single note about that. Half the time the doctor did not know what happened to the man. He is probably treating his heart, and the injury was a foot injury. It is important to know what happened to the man.

The question of injury may be an issue before the commission. We want to know what story he told the doctor to whom he went in the first place. We want to know what he said happened to him, so that we may know he did not go to the doctor for treatment for the grippe, and a week later, when some one asks him, "Why didn't you tell him you had a strain and call it a sacroiliac?" go back to the doctor to tell him, "Oh, yes, doctor, you thought I had a cold, but I strained my back that day I came to you." Of course, it is important. You need the patient's own story of what happened to him, as he told it to the doctor on the first day. I think it is the most important thing on that blank.

Doctor DONOHUE. In my opinion, that does not amount to anything. When you are all through, here is the vital key to this thing, No. 6. You can forget the others. No. 6 is, "Give accurate description of nature and extent of injury and state your objective findings."

Mr. PARKS. We want to know what part of his body was hurt, so that a month or three months after he has been treated for a fractured rib he won't bring in a hernia, as the doctor will say he was not complaining of any pain in his groin. We should get a complete story of what his complaints are—hernia, ribs, head, hand, feet—so that later on he can not come in and work something else on us. I think that is very important.

"Will the injury result in permanent defect?" There is nothing wrong about that. "If so, what?" "Facial or head disfigurement?" Some States I suppose need that. In our Commonwealth we would not need to have that question answered.

"Is patient suffering from any disease of the heart, lungs," and so forth. The doctor should examine him so he can not come in and say, "That heart of mine, it has never been well since that day. It gradually got worse since I got my toe stepped on." Examine his
heart and give a report on it. You might find he had an old chronic heart disease.

Doctor Donohue. You are making a complete physical examination of him, and you expect the doctor to do that without any charge. The average insurance company would pay him $5 for that.

Mr. Parks. I will answer you as I go along, Doctor. You are not asking the doctor to do it without charge; of course not. The doctor will charge plenty. The doctor will have a nice bill for his services, and the least he can do is to give the insurance carrier and the industrial board some information about what he was treating the man for. A doctor I had before me in New Bedford the other day had been giving a man a baking and massage for five years. The man's evidence before me was, "Are you any better now?" "No, I am worse."

When the doctor took the witness stand, I said, "Doctor, you have been treating this man for five years, two or three times a week, sometimes more than that. You have given him all that you have in the way of what your education gave you?"

"Yes."

"Then aren't you disappointed, Doctor, after treating him for five years, to find him worse?"

"Well, a little bit."

But he was not at all troubled about it, and he had a bill for five years' treatment which he expected some one to pay. Don't you think we ought to ask him to give us a report that might take him 10 or 15 minutes to write?

Then you have, "Date of your first treatment." That is important. "Who engaged your services?" There has been some discussion of that here. Something has been said about splitting fees. If some doctor is slipping a case to some other doctor so he can get a little bit out of it and the doctor who gives it to him can get something out of it, there is a chance to find out. I have not found that splitting of fees in Massachusetts; at least I have not seen it yet. If some doctor has transferred him to another specialist, we ought to know who did it. If some ambulance chaser has sent him over there, we ought to know that.

"Were X rays taken?" Of course, there are a number of questions to be answered there, but if no X ray was taken, the rest of the questions in that column need not be answered. You do not have to give the X-ray diagnosis if there were no X rays.

"Was patient treated by anyone else?" If he was not, you do not have to answer the next question: "By whom?" As you follow it through, there are a lot of questions, following the previous question, that need not be answered.

Then it is important to know when he will be able to resume his regular work. It is also important that the next question, as to when he will be able to resume light work, be answered. I wish some one would tell me what "light" work is. The doctor says, "He is not able to do his regular work, but he is able to do light work." If he died, of course we want to know that. You can not escape that. You ought to have the date.

We ought to know where the doctor got his medical education. I think that is important. Sometimes we have an osteopath or a chiro-
practor come in and testify. He does not tell all he knows in the beginning. He says, "I am Doctor Staten." Then we find out he is not an M. D. at all; that he is one of the other varieties.

Doctor Stack. In Massachusetts, do you, in qualifying the doctor, question his degree?

Mr. Parks. We do not always do that.

Doctor Stack. In Delaware we do it in every case.

Mr. Parks. We started to do that, because we found one or two getting in under the wire who were not M. D.'s.

Chairman Wilcox. You would not do that, though, in the case of a doctor you knew well?

Mr. Parks. Oh, no, there are scores of doctors who come before us, and we say, "Qualifications admitted." But when a doctor is filling out one of these forms, he ought to tell what medical college he graduated from. I think it is important.

I do not know a single thing on there that you can eliminate. Of course, it is useless for this convention, in a brief half hour to study the merits and demerits of the report of a committee which has probably spent a whole year in studying these various forms of the various States.

I want to move the adoption of these forms in the various commonwealths. You do not have to accept them, but they are standard forms. I move the adoption of this report.

Mr. Bartlett. Before that motion is put, for the purpose of enlightenment I may say it was not the intention of the joint committee to suggest that only those five forms be used in every State. We selected those five forms because they were the most universally used forms in compensation cases throughout the United States. New Jersey or New York or Massachusetts or some of the other States may have 1 or 2 or 3 other forms in special cases that they would like used. Of course, they can still use those forms in those States. This was just to get a cross section of the average number of forms that were used in every State in the Union.

Mr. Parks. You are merely recommending those; some of the States may want to add a few or take off a few.

Mr. Hunter (Arizona). I would like to answer Doctor Donohue on the question he raised. It is exceedingly important for the doctor to know how the man received his injury. We have a small State, but we have some pretty good doctors, and our doctors have acquired some knowledge of the compensation law. You might say they are developing into pretty good lawyers.

It is important for a doctor to know how the man received his injury to see whether he is going to get his pay. A man may be working for John Jones and get hurt. John Jones will send him to the doctor, and the doctor will say, "How did you get hurt?" Then the injured man will tell his story to the doctor, and it may be of sufficient importance that, if the doctor knows his job and his duty to himself, it will cause the commission to find out if that is a compensable case. He can protect his bill in that way. We have many cases that run a long time where we find the injury was not received in the course of a man's employment.
As to the length of that report, and what has to be filled out, and what the gentleman said regarding the doctor's time, I think this thing should be considered from a practical standpoint, as to how these things actually work out. The average clinic and the average doctor have some one in their employ (an office girl or a nurse or some one) who will do a good deal of the minor work. She undoubtedly will ask the man's name, and probably in ninety-nine cases out of one hundred will fill out most of this report. The doctor will fill out the things that he has to fill out. I should say that two-thirds of the report can very easily be taken care of by the clerk. I have been in all the clinics in our State, and I know that is their way of handling it; they have a girl who types these things out. The doctors are sufficiently paid in my State for the work they do.

[Mr. Parks withdrew his motion on the suggestion of Mr. Deans, who wished to offer a substitute motion.]

Mr. Deans (Virginia). I move that the report of the forms committee be accepted, including the forms which constitute part of the report, and that the president name three temporary members of the committee to meet with the regular members and with the representatives of the forms committee of the National Council who are present, with instructions to the enlarged committee to bring in a supplementary report at this meeting whose basis will be the discussion from the floor and the further deliberations of the joint committee. In referring this matter to the committee, the association reaffirms its adherence to the principle of standardized forms and urges the various commissions to cooperate with the forms committee in the development of standard forms.

[Mr. Parks accepted the substitute motion. The motion made by Mr. Deans was seconded and carried unanimously.]

Mr. Wilcox (New York). There is one concrete suggestion that I believe deserves consideration on the floor; that is, making an approach toward minimum requirements. I believe the best way is to call on Mr. Altmeyer.

Mr. Altmeyer (Wisconsin). I have served on a number of these committees on uniform this, that, and the other thing, and our committee reports have been adopted by the convention, but none of the States have put into practice what we have recommended. For example, in 1922 we adopted a standard permanent disability table. Not a single State, outside of Wisconsin, ever adopted the principle of that standard permanent disability table, and the last session of our legislature repealed the text that applied to permanent disability. I think it was in 1925 I was on a standard forms and procedure committee. We made a report at this convention and it was accepted, and not a single State has taken the first step toward putting into practice the standard procedure that we recommended.

My belief is that the adoption of Mr. Deans's resolution will mean nothing more than the adoption of similar resolutions at similar meetings. For that reason, I want to ask Doctor Donohue for his reaction to this suggestion, to see whether it is along the lines of a proposition that may be adopted in the future by the various States.

The thought is that this committee draw up a minimum number of questions that have to be included in each one of these various reports. For example, in that employer's report you have to know...
the name of the employer and his address. You have to know the name of the employee and his address. Suppose you get 24 or 25 questions that even Doctor Donohue would agree are necessary; then arrange those questions in each section, as they are arranged here, and at the end of each section list the optional questions that any State may want to include.

Doctor Donohue. When you use the word “optional,” then you add a whole lot to that form, because when the average person is faced with a great line of questions it staggers him. If you allow a lot of optional questions, I think it will be extremely helpful.

Mr. Altmeyer. What we are trying to do is to get standardization. If we can find a form that 25 out of 45 States will agree on, we have gotten somewhere. The States which are not willing to accept that minimum report can add other questions if they desire, but you will have the advantage, that even those States that are not willing to accept verbatim the minimum standards report will have these optional questions in a form recommended by the committee, which will presumably mean that they are in the form that experience has found will elicit the most accurate information.

Furthermore, the questions will be numbered so that insurance companies doing business in a number of States will get these questions in the same form and numbered in the same manner and in approximately the same location on the blank. Is not that an advantage?

Can we then go on record as approving the working out of forms that have a minimum number of questions that all States will need to include, regardless of their peculiarities, and with the addition in each section of the report of questions that the peculiar needs of these States require. Would that meet your approval?

Doctor Donohue. I probably should not be so critical of these forms, because of the fact, as Mr. Wilcox said, that we can almost walk across the districts in Connecticut, but so long as the question is up for discussion, I want to give my viewpoint, not only from the standpoint of a commissioner of compensation but also from that of a layman or a practitioner of surgery or medicine, because I think it will be helpful to some of you to get that viewpoint.

I think it is desirable to standardize the forms, but I do not presume to think that you can make forms that will exactly appeal to every State. If you have optional features in these forms, I think that will go a long way toward helping them.

Mr. Hunter. Before we close this subject, I believe it would be helpful if this committee would take this initial report and the medical report and recommend their adoption. By that recommendation it will be brought more forcefully to the attention of all the commissioners, with the further idea in view that the commissioners will then go over it more carefully and probably correspond with the committee and say, “This would be acceptable to us, if it was not for this particular thing, or this particular line,” and in that way, when you have heard from all of them you will have something concrete to work on.

Chairman Wilcox. If the report finally comes to us with a certain number of questions in each division that are primary and that the committee recommends that our State shall be required to adhere to, and then a certain other number of questions that each State, as it
prints its forms, will eliminate or otherwise as it sees fit, would not clear the atmosphere?

Mr. Hunter. By recommending this, you will immediately get their reaction. That is the way I look at it.

Chairman Wilcox. There is one objection—we hate to go on record and vote that this is a thing we want, and go out and peddle it to the States, and then find out that it is not the thing we want at all.

Mr. Bartlett. After this accident report was made up, we set down on another one of these reports information as to the number of States that had that particular question in their forms, and carried that through in every question on the report, so that we have before us, as a result of our preliminary work, the record of every State as to whether it had or had not the particular question on that standard form.

For instance, take No. 1, "Employer's name"; every State in the Union had that. Every State had No. 2; every State but six had No. 3, "Insured by"; No. 4, "Name and address of principal contractor," we thought was a good question, but only one State had it.

Chairman Wilcox. Is not that just the point? We will have discussion as to whether or not these questions that we are finding on all the reports ought to be there.

Mr. Bartlett. That is just the thing. I thought that might throw some light on the situation as to why those questions are put on there.

Mr. Hunter. I think that question in regard to the contractor was probably put there to cover some State that has a law that in effect makes the principal contractor liable for his subcontractor.

Mr. Bartlett. Exactly.

Mr. Hunter. Other States do not have anything like that. While it would not be of any importance in those States, it would not make any difference if that question was on the form.

Chairman Wilcox. Then the suggestion of Mr. Altmeyer would come into play, because that question would fall into the optional group, and those States in which that was not important could eliminate that question from their forms.

Mr. Parks. Is it understood then that this committee shall take the suggestion of Mr. Altmeyer into consideration in their further deliberations?

Mr. Wilcox (New York). Should Mr. Altmeyer put that in the form of a motion?

Chairman Wilcox. Do we want that to be a direction to the committee, that it shall follow out this idea of setting up the standard questions, those that the association is ready to declare shall be on every single form, and certain questions which shall be optional to each State?

Mr. Butler. That suggestion is quite all right and looks forward with hope, but the difficulty is that your committee is scattered throughout the country, and when replies come back that you do not like question No. 26, we will not be able to get your committee together again for a long time, perhaps a year from now, to find out whether or not we can eliminate question No. 26.

If you will authorize your committee to meet with us, we will meet with them within a month or two months, or any time, and in the
meantime, between now and next year, we will have all these forms straightened out. Can you authorize your committee to meet with us, and can they get finances to meet with us? Can a man from Arizona come to New York next week or to Washington or somewhere else where we can meet him? Who is going to pay his expenses from Arizona? That is the kind of thing you want to solve for us.

Mr. Parks. I have been attending these conventions for a long time. I have seen these forms and heard them discussed time and time again. I misunderstood it entirely. One of these series of forms was sent to me by this committee, and I was asked the very thing the gentleman here was talking about—what my opinion of it was, to give my criticism. I presume every other commissioner got the same sort of letter. Surely I was not singled out for it. I wrote and told the committee what I thought about it.

Now we are back here and the report has come in, and I made a motion that it be adopted. I thought that was the proper procedure, to recommend these forms to the various States. Then I was asked to accept the substitute motion, and was told that the chairman of the committee wanted that done. I thought the committee knew what it wanted, and I acquiesced. Now the whole thing is up in the air, and you do not know where you are.

Doctor Donohue. I see no objection to Mr. Deans’s motion.

Chairman Wilcox. What would you suggest, Doctor Patton?

Doctor Patton. I do not like to say anything, as I am afraid I may be accused of adding a note of despair. Suppose we agree on a set of forms. In nearly all the States the director of the bureau of compensation, or some such individual, regards the compensation form as his own particular preserve. What does this committee or the insurance carrier know about it? If you leave some of the questions out, it will interrupt the numbering.

I realize as well as anyone else that the insurance companies want to save money wherever possible, and certainly the compensation administrators ought to go along with them. Yet, as Mr. Altmeyer said, a resolution adopted by this body, recommending certain forms, would not mean a thing, unless missionary work is done by the department in each of the States to get them to adopt the forms.

We have a committee on forms in the New York State Department of Labor right now. So far as I know, that committee on forms has never heard of the work of this committee. I think it is quite inactive, but it will probably regard its findings as superior to this. It is like the Ten Commandments; we accept them as a recommendation, with certain reservations.

Chairman Wilcox. I think there is too much doubt prevailing at this moment as to whether or not these forms should be adopted outright and recommended back to the States for adoption. There is too much doubt to make certain of progress. It seems to me that what we have to do is to give this committee the type of instructions we want it to follow out and ask it to go about the task as expeditiously as possible in order to get the forms in shape so that they will meet the reasonable requirements of all the States.

Mr. Wilcox (New York). I might say I received from the various States and jurisdictions, including some of the Canadian jurisdictions, very careful replies, and a variety of comments, some of them very
keen. The comments were such that I felt justified in putting in an interim report with further work to be done. Certainly we must not let the matter lag. It should be the policy to put these things in better form at the earliest possible moment and pass them out, and hope for as much of this missionary effort as can possibly be secured.

The difficulty of getting the committee together is obvious. So far as I know, it has never been the policy of the International Association to provide funds to any committee to help them get together. Isn't that correct?

Chairman Wilcox. I think it is.

Mr. Wilcox (New York). We will have to ask the indulgence of some of the committee members who are at a distance to depend on correspondence instead of on contact, and we will have to use various other short cuts. From the reaction from sending out these circular letters I feel there is widespread interest, and yet we are not quite ready to adopt these forms and say that all the suggestions shall be ignored, because there has not been time to incorporate them into the printed form.

Mr. Richardson (New York). I would like to ask one question on the point of the difficulty of territorial alignment of the committee. I wonder whether or not it would be possible to have regional committees, as it were, in which the commissioners of the near-by States could get together and discuss the thing and then pass it on to some other committee of neighboring State commissioners. In that way we could have the benefit of direct discussion rather than trying correspondence, which is usually unsatisfactory.

Chairman Wilcox. Let's leave it to the committee. It knows, in general, what the wishes of the association are. Let's leave it to the committee to work out the plans by which this matter may be given further consideration.

Mr. Richardson. On behalf of the insurance representatives who are here, we wish to thank you for your kind indulgence. We are anxious that the work shall go on and, as I interpret the resolution, that is the intention.

[Meeting adjourned.]
Chairman Deans. This morning we have under consideration Some Questions as to Ascertainment of What Is an “Average Weekly Wage” under Present Conditions, which will be discussed by Dr. Walter O. Stack, president of the Industrial Accident Board of Delaware, who was your president during the year 1929–30.

Some Questions as to Ascertainment of What Is an “Average Weekly Wage” under Present Conditions; Its Relation to “Premium Rates” and Insurance Problems

By Walter O. Stack, President Industrial Accident Board of Delaware

The subject matter of my paper was early recognized by the administrators of the workmen’s compensation laws and the courts of England and continental Europe as a social and economic question of vital importance not only to employees and employers engaged in the many classes of industry operating under the provisions of the workmen’s compensation laws of those countries but also to the State. Therefore, their administrative bodies and courts have, in interpreting those laws, given conscientious consideration to their intendment as a remedial agency.

Many of their decisions, especially those of the English courts, have been read with interest and in some cases have been accepted as controlling by the administrative bodies and courts of the United States and Canada because their workmen’s compensation laws had been largely patterned after those of England. However, the United States and Canada can not, with their 48 States and 8 Provinces, each with an independent legislative body, amalgamate local opinions into a national mind in the construction of their workmen’s compensation laws, due probably to the diversified interests of their people.

Method Favored by Employees

Due to the fact that, until within the last two years or so, employment in the United States and Canada had been reasonably stable since the enactment of their first workmen’s compensation laws, problems growing out of part-time employment and having to do with a basis for determining a fair average weekly wage for compensation purposes were, with a few exceptions, of little moment. But, with a continuation of part-time employment, and in some cases at a lower rate of pay, the basis for determination of an average weekly wage for compensation purposes became a matter of serious controversy between certain groups of employees and employers, particularly in States and Provinces whose laws are believed by these contending forces to be ambiguous or flexibly constructed.
In my paper I shall consider but one class of employees, those whose employment is continuous as far as their connection with the employer goes, but in other respects intermittent or part time, other classes such as seasonal labor, etc., being interested only to the extent that the rule used may be applied to their problems.

It is the contention of those in the class with which I am dealing that the basis used in many of the States and Provinces for determining an average weekly wage for compensation purposes does not, under the present industrial conditions, give adequate relief in case of disabling personal injury or death and is therefore discriminatory. They contend that the days on which, through no fault of their own, they worked part time or not at all, should not be included in the statutory period of six months or one year (depending on the practice of the individual State or Province) used in determining the average daily wage over such period of employment. Taking, for instance, a State using the preceding 6-month period for the calculation of the employee's earnings, it is their contention that if one of their number who sustains a disabling personal injury as result of a work accident had during the six months immediately prior to the accident and resultant personal injury worked but 52 full days because of industrial conditions, only those 52 days should be used as the divisor in determining his average daily wage during the last six months of his employment, multiplying the average daily wage so obtained by 5, 5%, or 6 days, according to the practice of the State or Province in which he is employed.

Let us see how such a plan would work, using for illustration two metal workers employed in a State or Province that pays for temporary total disability 60 per cent of the injured worker's average weekly wage, taking into consideration the maximum weekly rate of compensation fixed by the several acts of the United States and Canada. Let us suppose, further, that these men work side by side in a shop working 5½ days per week at a rate of 50 cents per hour, or $4 for a working-day of 8 hours. There are, barring Sundays and legal holidays, approximately 139 working-days in a period of six months, on the basis of 5½ days per week.

One of the two workers is fortunate enough to get full-time employment, earning $22 per week, or $556 during the six months immediately preceding the accident; the other one works but 2 full days, or 16 hours, per week over the same period, earning $8 per week, or a total of $205. If both should sustain a temporary incapacitating personal injury, the part-time worker would, under the method advocated by the employees, be paid compensation at the same weekly rate as the one steadily employed, for both would under that method be compensated at 60 per cent of $22, or at the rate of $13.20 per week, notwithstanding that the part-time employee's actual average weekly wage was but $8, or 62½ per cent less than that of the full-time employee. In other words, he is paid weekly compensation at the rate of 65 per cent in excess of his average weekly earnings. On this excess the insurance carrier does not receive one penny in premiums.

It is the contention of employers affected that any rule used by administrative bodies that fails to take into account, in computing the injured employee's average weekly wage during the statutory period, the days he worked part time or not at all is destructive of
sound economic principles and contrary to the intendants of all workmen’s compensation laws; that however fortunate it may be for certain classes of employees, the resultant increase in compensation cost adds unfairly to the cost of production that is not reflected in actual hours of employment. It is, they hold, a discrimination, especially against those industries most seriously burdened by low prices and lack of market for their products, to place upon them this additional financial burden which, moreover, with declining wholesale prices can not be passed, even in part, to the consumer.

How the Problem Could Be Solved

Can it not reasonably be said that an impartial analytical examination of the principles involved in the arguments of these two contending forces discloses certain inequalities affecting both employers and employees that call for some readjustment of statute or procedure? This apparent inequality could in my opinion be equitably adjusted without a burden to the employer if we would separate the long and short disability cases from cases of personal injury resulting in death or major losses such as a hand, arm, foot, leg, or eye, using for compensation purposes in the latter cases a definite weekly minimum commensurate with the fundamental principles of compensation laws, in cases in which the average weekly wage of the injured worker falls below, say, $10 or $12 per week. Certainly there is a noteworthy difference in the monetary and social value between personal injuries that merely cause a temporary total or partial disability and those that cause death or specific major losses. So it would seem that dependents and workers suffering death or specific major losses compensated on the basis of either 50 or 60 per cent of $4, $5, or $6, the average weekly wage of the decedent or injured worker, are inadequately compensated in view of the fact that the compensation laws allow no other adjudication. It is possible that employers buying group insurance covering their pay rolls were of this opinion and to meet such exigencies supplemented their compensation coverage with the group insurance. Country-wide statistics available show that in 85 per cent of all compensable accidents of over one week’s duration disability terminates within eight weeks from the accident; that 80 per cent of compensation payments are made in cases exceeding eight weeks’ duration, and one-eighth of the compensation on these longer cases is paid for the first eight weeks of disability. Under this procedure some 30 per cent of the compensation payments would be affected by the scale of compensation arising from intermittent employment. And if in the last percentage having to do with the scale of compensation arising out of intermittent employment we would separate the short and long compensable cases concerned there-with from the fatal and specific cases mentioned, there would be left in the final adjustment only a few cases to be predicated upon the minimum weekly wage artificially determined. Such a plan would not, as I see it, confuse the issue with unemployment insurance as does in my judgment any law or rule that supports cases like the part-time metal worker whose injury caused but a temporary total disability. Distinction must be made between the purposes of workmen’s compensation laws and those of unemployment insurance.
Effect of Depression upon Compensation Costs

The first workmen's compensation laws of the United States and Canada, believed at the time to be liberal in construction, have been amended from time to time giving to the employee greater benefits with increased cost to the employer. With few exceptions these amendments have had the approval of both employer and consumer because both recognized the moral and economic value of this new humanitarian legislation. What further amendments can be made without dangerously undermining the structure upon which rest the fundamental principles and purposes of all workmen's compensation laws is problematical.

These laws were intended to be a means of prompt relief by which a predetermined part of wages would be paid to the injured during disability, or for certain specific losses to which I have referred, or to dependents in case of death, and no discrimination can be charged if for injuries of equal disability compensation payments are based on the amount of wages earned by the injured worker. The most that can be said is to question whether or not the authorities, in drafting legislation fixing the actual earnings as a controlling basis, gave adequate consideration to the financial effect of the application of the law in times of severe depression and intermittent employment as to awards for severe injuries or death—awards which will run into future years during which the economic conditions should improve, with a corresponding increase in the cost of living. No prolonged period of intermittent employment and industrial fluctuations, with attendant reduction in average weekly earnings due in part to reduction of wage scales and in part to working hours, has prior to the present period served to upset the balance between compensation cost and insurance rates, and these two items enter into every case of personal injury for compensation or medical cost or for both.

If compensation costs are maintained and pay rolls decrease, insurance rates must be increased in order to produce premiums commensurate with the cost. This is particularly true if compensation is based upon full-time work artificially determined, while the pay rolls for insurance-premium purposes are based on part-time employment as in the case of the part-time metal worker hereinbefore referred to.

To what extent such a system will affect employment and compensation cost, I can not say, due to factors heretofore of little moment. Nor can I tell you to what extent the "average weekly wage," under rulings made by industrial accident boards and commissions wherein the days the injured worker through no fault of his own did not work during the basic period used for compensation purposes are included in the divisor, will affect compensation cost; it must, however, follow that the ratio will be relatively higher if the part-time worker is compensated on an artificially established full-time basis. And because of this relatively higher compensation cost, I am reliably informed certain classes of industries have discouraged or will discourage the plan of spreading available employment among the greatest possible number of employees, and will instead reduce their numbers to the lowest minimum full-time schedule. Anything that would force employers in times of depression to such a decision would be most unfortunate for labor
and for society. All parties in interest—employees, employers, and the latter's insurance carriers—must therefore give friendly cooperation to the present problems or suffer the natural consequences resulting from the established laws of economics. We must maintain the essential features—stability of compensation insurance against compensation liability, and an adequate reserve. The financial stability of the insurer should at all times be recognized as primary in importance since compensation payments to permanently disabled workmen and dependent widows and children continue through a number of future years. For this reason public supervision of compensation insurance is a recognized function of State government and, because this is so, governmental agencies in the exercise of their duties related thereto must see to it that the parties in interest are equally dealt with. Any ruling or law that gives unequal advantages to a special group is discriminatory and should be discouraged. As premiums must coincide with exposure, it is necessary as a matter of fact to use the pay roll rather than volume of production on man-hours of work as a measure of the exposure, and therefore premium rates per $100 of pay roll determine each annual premium. And as premium rates, therefore, are subject to the same requirement of stability that the principles of insurance require of the collected premium, the fallacy of paying the intermittent worker compensation for temporary total disability based upon full-time work while at the same time collecting premiums on pay rolls based on part-time employment is apparent. Premiums stable over long periods are necessary if the insured employer is to be relieved of the responsibility of establishing reserves against fluctuations in the cost of accident insurance.

To have compensation insurance rates based upon full-time work and insurance premiums based on part-time employment would serve little or no purpose in determining reasonable insurance rates for a future period in which economic conditions are a matter of conjecture. Rates which fluctuate for conjectural reasons must, in all human fallibility, be inaccurate. Conjectural insurance rates are, however, unnecessary, since another method of rate calculation is available. This is a method used in Delaware, which solves the problem of computing reasonable rates with a minimum rate fluctuation. In Delaware we have found that annual rate revisions based on a fixed moving average of experience largely obviate the need of conjectural multipliers in determining necessary rates for annual coverage. For instance, the rates in the present year are based on the experience of the five years 1929–1925; those of last year were based on the experience of 1928–1924; 1930 rates on the experience of 1927–1923, etc., using in each instance the last five years of which we have full record. Under the plan, the compensation costs of this experience are modified only by known facts—amendments to the compensation act, increase in the cost of medical attention, change in wage rates, and the difference between the ratio in accident experience of the larger and smaller industrial plants. Such a system is fair to the employer and his insurance carrier, enabling the latter promptly to meet its obligations to the injured workers and to set up adequate reserve and surplus for all necessary purposes.

If I may, I would here like to digress for a moment to say that Delaware maintains its own rating and inspection bureau under the
control and supervision of the industrial accident board. Every rate that goes into the several classifications is based on Delaware experience and none other. We know the cost of each classification, and the rates are predicated on those known costs. Representatives of insurance companies know it is useless to propose an increase in a rate unless they are able to prove justification. Personally, I believe rates and admission of insurance companies should be under the personal control of industrial accident boards and commissions, and that no one, either the State insurance commissioner or an insurance company, should be permitted to change a single rate without the authority of the industrial accident board or commission, because of the latter's known quantitative knowledge of the perplexing problems concerned therewith.

Among the important factors at present disturbing the balance between compensation cost and insurance rates, in addition to the one already discussed, is the uncertainty of the effect of wage reductions upon compensation costs. I had hoped to be able to give here some reasonably definite analysis with respect to this largely controlling element. Unfortunately, illness made me late in starting my paper. I doubt, however, if I could give you very much more even had I been well, because outstanding actuaries I have consulted during the past month or two have talked only in generalities. They are, however, like ourselves, working. As I have said in another part of my paper, reduction in average weekly earnings is due in part to reduction of wage scales and in part to reduction in working hours. Further observation would indicate that in States and Provinces where the compensation rate is based upon the scale of wages the only rate effect of such reduction in average weekly wages is due to that portion contributed by the reduction in wage scales.

The precise effect of reduction in wage scales necessarily varies as to the average weekly wage, as does correspondingly the percentage rate of compensation. On a country-wide basis it has been estimated that the increase of compensation rates for indemnity necessary to offset a given wage reduction is approximately 30 per cent of the percentage decrease in wages. The increase required for medical cost would be in excess of that percentage reduction by approximately 11 per cent; in other words, an average increase of both indemnity and medical cost of two-thirds of the percentage reduction in wage scales.

If, on the other hand, the weekly rate of compensation is based upon the average weekly earnings instead of upon the hourly wage rate, another factor is introduced into the problem which has the effect of reducing the costs of compensation rather than increasing them. In other words, the reduction in hours of labor carries with it a corresponding reduction in the number of accidents, which has the effect of reducing the cost and reducing rates and serves to offset whatever increase in rates may be due to reduction in wage scales.

Another factor affecting the rates and costs is the lag between the wage underlying current pay rolls and the averaging of wages over preceding years as a basis of compensation cost, so that while process of wage reduction is going on, a higher relative cost is experienced than after it becomes stabilized at a lower level. The effect of this will be experienced by every State and Province using the Delaware plan.
Another factor that, some hold, enters into the problem is that in times of depression the injured workman takes a gambler's chance and sticks to the job unless the injury is so severe that he can not work; lost time therefore simply does not occur, and for this reason there is a decrease in the number of short-time accidents—an offsetting element in determining an increase in insurance rates. Personally, I doubt if this is tenable; certainly it could have nothing more than a temporary effect. I recall receiving a letter from the general claims manager of one of our great western railroad systems, some time after reading a paper on No-Lost-Time Accidents at the Buffalo meeting, in which he told me that as a result of my paper he had caused an examination to be made of a number of so-called “no-lost-time accident” cases on his system where “no-lost-time” records had been made and found decided monetary losses as a result.

The greatest factor in compensation costs, in my opinion, next to those due to reduction in average weekly earnings, is, as disclosed in an informal conference at Richmond last year, the excessive number of insurance companies writing compensation insurance and the damnable practice of some in discouraging the injured worker and in contesting claims. In one year, it was shown, 107 appeals were carried to the supreme court of a single State, while in some States 65 per cent of the cases on the dockets of the higher courts were compensation cases; in many of these cases the only questions involved were questions of facts which courts have held time and again they will not disturb. The fact that 10 or 15 per cent of the insurance companies carry 75 to 80 per cent of the business does not obviate the fact that the premium rates paid must carry the aggregate expense, and in the last analysis employees and employers pay for the waste. Delaware has been unusually fortunate in this respect. The Delaware workmen’s compensation law became effective January 1, 1918, and appeals to the appellate court for compensation cases (the superior court) during the whole period have not exceeded a dozen instances.

It is the policy of the industrial accident board that insurance companies must play fair and show efficiency. Failure of the district managers, adjusters, and field men to carry out the board’s policy results in the board’s going officially to the president or other executive heads of the offending subordinate. This, I am sure, has had a most wholesome effect not only in keeping down the compensation cost in the State, but also in making the law the useful instrumentality it was intended it should be.

Conclusion

It was my intention at the beginning of this paper to incorporate in it excerpts from the workmen’s compensation laws of England, and the principal industrial States and Provinces of the United States and Canada with controlling decisions of boards, commissions, and courts dealing with the questions before us, but found the time allotted me would not permit. Suffice it to say that a careful examination of the workmen’s compensation acts of England, the States of the United States, and the Provinces of Canada regarding the computation of average weekly wage disclosed widely different practices in different jurisdictions. Practically no two State or
provincial laws are exactly alike and, if they were, the practical application of wage computations by the several industrial accident boards, commissions, and courts would undoubtedly vary to some degree. The question, whether in some States and Provinces the term "full time" can to-day be given a different interpretation in view of "part time" now being the "normal time" in many plants under present conditions is one that should be further investigated where such a possibility is not obviously ruled out by the specific phraseology of the individual act.

The importance of harmonizing the various acts is apparent when we consider that a careful analysis of industrial conditions as of June 1 indicated that, due to certain workmen's compensation acts, some employers are finding it difficult without penalizing themselves to spread employment and reduce the unemployment percentage. Fortunately, under a ruling of the industrial accident board, this is not true in Delaware. These laws were intended as measures of equity and justice, and certainly if in a single one of them is found a barrier to employment, especially in times of distress, a revision of that law is desirable.

I grant you the present industrial conditions are daily improving, and indications are that experiences of the past two or three years will be a matter of memory. However, no man can say when there will be a repetition of the present problems, so let us, as administrators of the workmen's compensation laws, profit by them.

DISCUSSION

Mr. Wenzel (North Dakota). In the paragraph of the paper relating to the part-time worker (p. 62), I notice the use of an arbitrary wage schedule for figuring workmen's compensation. If I understand the purport of the statement there, it is to the effect that the man working part time is not entitled to the same compensation as the man working full time. I do not know where people get that erroneous idea, for to me it is absolutely erroneous. I want you to consider that my argument is from the angle that I represent the employers on the Workmen's Compensation Bureau of North Dakota, and not the employees.

After I became a member of the board, one of the first contests I had, with a view to giving injured employees their rights, was that of paying them what they were entitled to when they were injured. The man who works part time during the week—a half day on Monday, on Wednesday, and on Saturday—is entitled, so far as temporary disability is concerned, to the same compensation as if he had worked from Monday morning until Saturday night.

We have been paying compensation on this basis out of our funds since 1924, and we intend to continue through this depression period. This part-time worker is absolutely no hazard to us when he is not working. The only time he is a hazard to us is when he is working, and therefore we have no right to collect premiums from the employer for the time his employee is not working. The worker, however, is entitled to the same wage in both instances.

This came up in two specific cases. Two men were working for two different employers, but doing the same kind of work, draying. I do not remember the wage per hour, but if full time had been worked it
would have amounted to $24 per week in each case. Both men were part-time workers. The first man worked one day and was injured at the close of the day; the other man had worked over a period of three weeks. The first man’s wage was figured at $24 a week and the second man’s wage at $12 a week. One received $8 compensation and the other $16. I said, and I still contend, that was wrong; but that record stands upon our award list.

Doctor Stack. In other words, Mr. Wenzel, the $12 man——

Mr. Wenzel (interrupting). Is entitled to the same compensation as the man who worked only one day and was injured at the end of that day.

Doctor Stack. The part-time man is paid what percentage of his earnings?

Mr. Wenzel. It is based on the percentage of the time he worked during those three weeks. That is the part-time basis you are attempting to employ, if I understand your paper correctly. I can not see the consistency in such an argument. The man is no hazard to you while he is not working. Why should you collect premiums? Of course, there is this to be considered; a great many of those people may be the more inefficient and more inexperienced workers, and because of this they may be more of a hazard than the other workers. I recognize that, but you can not adjust all these things to a fine point.

Doctor Stack. Mr. Wenzel, may I interrupt to see if I have understood you? The days the man worked part time during the three weeks were included in calculating his earnings. You did not exclude those part-time days?

Mr. Wenzel. Absolutely not. The part-time worker is entitled to identically the same compensation as the man who works full time, and there is no injustice in that toward anyone. Neither is there any injustice toward our fund, because he is no hazard to us when he is not working. We are not allowed to collect premiums during the time he is off duty.

Mr. Wilcox (Wisconsin). I hate to take issue with Doctor Stack on his statements as a compensation administrator; but as this is an association of compensation administrators and we are here to help and to be helped, I must take issue with what Doctor Stack has said. In all my experience—and I say this without any personal feeling toward Doctor Stack—in the 15 or more of these conventions that I have attended I have never heard uttered so dangerous, so absolutely unscientific, or so wrong a statement as to what the policy of the law or of the commissions should be. There is not, so far as I am able to determine, one statement in his paper that touches the question of the economics of this thing and its justice that can be substantiated, except one statement where he says that the question of the cost to the employer or to the insurer should be rated according to the hazard to which the employees have exposed that employer or that insurer. I agree with everything that Mr. Wenzel has said.

I thought that Doctor Stack was going to discuss the question of the rightfulness of including the fair value of board and lodging, subsidies and bonuses, and such things in the wage calculation. I know what Delaware is doing in that particular field; it does not include the value of such items unless the parties had an agreement before the man went to work as to what the value was to be. If
board and lodging are a fair part of the earning value of that man's services when he makes a contract to that effect, I submit they are a fair basis for determining his wage at any time, and it should be written into the law so that these men will not be up against the obligation of having to negotiate with regard to the value of a thing they may or will underrate or not rate at all at the time when they make their contracts.

Now as to this question of whether or not the intermittent worker should be paid his compensation on the basis of his earnings on the part-time basis. While Doctor Stack is patting himself on the back because his industrial accident board, by a ruling, had relieved employers and insurance carriers from the necessity of paying indemnity to such workers on any basis other than the actual short-time earnings, we in Wisconsin were patting ourselves on the back because we had written into our law, before we had a depression, that no day on which a man works less than eight hours shall be counted in determining what his average earning ability is. That provision in the Wisconsin law has been the foundation rock which during this period of depression we have been able to fall back upon to protect the injured worker against the very thing Doctor Stack is advocating and that insurance companies in his State are doing to their injured workers. I reaffirm the statement Mr. Wenzel made to you, that this matter is of no vital importance to insurance companies, and no insurance company representative will stand up on the floor of this convention and tell you it makes a whit of difference.

In our State we have a rating and inspection bureau for compensation carriers. We have a compensation insurance board, made up of our insurance commissioner, the chairman of the industrial commission, and an appointive member, to determine what the rates shall be for these insurance companies. In a discussion at a meeting, within the last month, with the instance people as to what, if any, variation should be made in the rates in Wisconsin because of these intermittent workers, they affirmed the statement that it makes no difference in their cost. Just as Mr. Wenzel said, a man is not a hazard on the day he does not work. It is only when he is on duty that he exposes his employer to liability. He will not expose his employer to any more hazard if he works 1 day in each of 52 weeks than he will if he works 52 straight days or 52 straight weeks, unless, as Mr. Wenzel said, he is a less careful worker because of the fact that he works only 1 day a week or 1 hour a day.

Doctor Stack. May I interrupt you for a moment to get your point? For instance, I spoke of the fact that a man who earns $8 a week is paid compensation of $13.20. His compensation is 65 per cent more than his earnings. How is the premium? I am not an actuary nor an experienced insurance man. How is that excess in compensation above and beyond his real earnings taken care of?

Mr. Wilcox. Doctor Stack, if anyone will take the pains to examine into the rate-making plans of the States or of the Provinces, he will learn that they key the necessary premium to pay roll, to the wages earned, to the earnings for the hours that these men work. It does not make any difference whether it is one man or another man who is working, or whether he has worked all the year before or only a day or a week or a month, as the case may be. The insurance com-
panies collect premium on the amount of wage, and they pay on the number of accidents. If the employee is exposed to the hazard on only 1 day instead of on 50 days, he will occasion to this insurance company or this employer only one-fiftieth part of the number of accidents, and there will be just one-fiftieth part of the cost. If he is not working, there are no wages and there is no hazard and no loss so far as the employer or the insurer is concerned.

Doctor Stack. Isn't it written in most laws that the employees shall receive 50 or 65 per cent of their average weekly earnings?

Mr. Wilcox. Yes; and the statutes in all these States planned to pay benefits on that man's fair average weekly earning ability, and they do it by requiring that we first determine what his fair average earning ability was. That is why 5½ and 6 days a week, 300 days a year, 52 weeks, 8 hours a day, and that sort of thing, are written into the laws. The purpose is to have this man's compensation based upon his fair average full-time earning ability, and the laws in all States, as far as I know, endeavor to get to that point in order to determine what his compensation should be.

Doctor Stack. You are considering his ability to earn rather than what he actually earns.

Mr. Wilcox. Yes; and we are paying compensation on his loss of wage for the future, and not for the past. I ask you what his earning ability would be next year. Is his loss of wage for next week established in your mind because he was permitted to work only one day last week? Does the fact of short-time employment during the last week of a worker's life prove that his widow would have had to endure short-time support had he lived? You dodge all around the permanent disability case and the death benefit claim, because you can see the inequity of the thing when you come to figure benefits in those cases. The man is just as seriously disabled when his arm is gone, whether he worked a day or 300 days the year before his injury. It does not make a bit of difference in the extent of his loss. If he is taken out of the world, his wife loses just as much dependency. She loses his opportunity to support her in the future. That is the reason these laws are founded on the idea that justice requires you to get at a man's fair average full-time earning ability.

I want to say just one other word. I suppose there are insurance people here. At any rate, there are State-fund people here who make the rates, as Mr. Wenzel, Mr. Kingston, and Mr. Leonard do. There are people here who know the rate-making end of this thing, and they will not tell this group that there is anything valid in the statement Doctor Stack made.

The doctor worries about the financial status of these insurance companies, as if losses due to intermittent workers was the trouble with them. That does not affect them at all except, as mentioned by Mr. Wenzel, that this worker may be less careful because of the fact that you pick him up here and there and he has not become adjusted to his particular job, and for that reason is more of a hazard to his employer.

We are meeting, on the 14th day of October, with the representatives of the insurance companies of this country, to try to fix an adequate loading for these make-work projects that we have, in which we call in the worker who has had no experience in the job. What
the insurance companies ask is not that they shall be allowed to do what Doctor Stack suggests in his paper, but that they shall be permitted to charge those cities and communities that put on these make-work projects a higher insurance rate, due to the fact of employment of inexperienced men. The number of days or hours they work per week is of no importance to the insurance companies. Do you do that, Mr. Leonard?

Mr. Leonard (Ohio). You mean in charity work?

Mr. Wilcox. Yes.

Mr. Leonard. We have a law which provides that the recipient of charity must do some work.

Mr. Wilcox. I am talking about your rates, whether you have an extra loading in your rates on that classification. For example, you are doing highway construction with these men who are out of employment, as a part of your unemployment relief work. Do you put an extra loading in your rate for that classification?

Mr. Leonard. No.

Mr. Wilcox. The insurance companies in this country are asking for a loading upon that particular sort of thing. They say these men will prove more of a hazard, because they are not used to that kind of work. They are apt to strain their backs or sprain an arm and thus step up the insurance costs a bit, and for that reason the companies say they should have added premium. But they do not ask that it shall be taken from this poor man who has been injured. We are worrying about the employers and the insurers of this country, because they can not make ends meet. And what is it we propose to do? The most intolerable and inhuman program I have ever heard uttered from any source—make up this difference by taking it from the injured workers.

Doctor Stack. I do not understand just what you mean when you say I am advocating taking something away from the injured worker.

Mr. Wilcox. All through your paper you worried about how these people are going to get through this depression—these insurance companies and these employers. Is not that a fact?

Doctor Stack. No, only in part. This is what I had in mind. We had a case in a steel plant, to be specific. For six months prior to the accident and death the man was working, for instance, an hour on Monday, two hours on Tuesday, Wednesday not at all, Thursday an hour or so, and Friday not at all. We took into consideration each day he worked an hour and excluded the day he did not work. Finally we found what he had made during the six months, and the dependents' compensation was based upon what he earned. I have never been able to reconcile myself to the fact that compensation insurance at any time meant that we should so regulate that as to be able to anticipate what a man's earnings would be 90 days from now.

Mr. Wilcox. Just what are you compensating these men for in Delaware? Are you compensating them for part of the wages they earned the six months before, or are you compensating them for a percentage of their fair average earning ability for the future? What are you paying their dependents for? Are you paying them for
something the man earned years ago, or are you taking care of the thing that they lost—an opportunity to have a living in the future?

**Doctor Stack.** I think there is a distinction between death and major accidents and temporary losses.

**Mr. Wilcox.** Just why?

**Doctor Stack.** A man who loses an arm has lost something that has cut off his earning capacity. We all admit that.

**Mr. Wilcox.** If a man has his arm broken and his earning capacity cut off, do you discriminate against him and say he can not have benefits on his full earning ability?

**Doctor Stack.** A man may not be able to use his arm for six months.

**Mr. Wilcox.** You never know, Doctor Stack, with these men, when they are injured, whether or not they would have lived another day but for that injury. You have no notion as to whether or not they will fall and break their arms on the way home. There is no way of rating what is going to happen in the future. What the legislatures of these States have done is to set down a rule by which you shall figure out what his fair, average earning ability would have been if he had lived, and then fix compensation on that basis.

Let me return to the thought I want to emphasize to this group. The intermittent worker does not cost the insurance companies a red cent over what the nonintermittent or regular worker costs them. The insurers have just that many fewer accidents to pay for, just that much less compensation liability, just that much less medical aid, because they have proportionately fewer hazards. So far as they are concerned, they are not involved in this thing at all.

The fact that the insurance companies are now in the throes of this depression, just as the rest of us are, just as the employers are, does not argue a thing in favor of reducing the compensation basis for the intermittent worker. If the rate is not high enough for the classification, it should be increased accordingly. It is your job and mine to see that those rates are put where they belong. The velvet is that premium upon the amount which the employees have earned above the maximum wage limit upon which you figure your compensation. What is it in Delaware?

**Doctor Stack.** 50 per cent.

**Mr. Wilcox.** How many dollars?

**Doctor Stack.** The maximum can not go beyond $15 per week.

**Mr. Wilcox.** The wage?

**Doctor Stack.** No, the wage would be $30.

**Mr. Wilcox.** In past years, the insurance companies counted upon the employees who earned over $30, because they did not have to pay any compensation on that excess over $30. That was velvet to them—that is the insurance term. They had the advantage of collecting that premium and then not having to pay out any loss on that basis.

In these times of depression that is lost to them, as statistics will show we do not have many people earning over $30; so it follows that in all of our compensation cases we are paying 65 per cent, 70 per cent, 50 per cent, or whatever it may be, upon all of their earnings and not on a part of their earnings only.
Then there is the fact that heretofore the insurance companies have not made careful audits of the pay rolls. They have been willing to take employers’ audits of the pay rolls. They have been willing to take reports that have been sent in by mail, and have done a lot of things of that sort, and have come to their present extremity. They will have to get out of that extremity, I presume, by having the rates increased upon the pay rolls in the country. That is the legitimate way to meet it. I again point out to you that you must not think of taking it out of the injured workers in order to bolster up the losing game of any employer or insurance carrier, because of its practices and pay-roll shrinkage.

Doctor Stack suggests that if you do not do this thing, the employers of this country are not going to employ intermittent workers. If I were one of these hard-boiled insurance carriers who want to get the long end of the deal, I would want Doctor Stack’s plan of handling compensation, and would want to figure compensation on the intermittent basis. Then I would go back to the factories of my assured risks and say to these employers, “Hire no one except on an intermittent basis, because on an intermittent basis we take on no added liability and we can pay them off at half price.”

Assume that the employee on a certain machine earns $5 per day and works on each of the 300 workdays of the year. On his earnings of $1,500 the insurer will collect fifteen times the rate for that classification. Assume that the duplicate of that machine is operated by six individual employees, each one working a single day per week. Their combined earnings will be $1,500, the same as the earnings of the one regular employee, and the insurer will collect the same amount of premium from the operation of this machine. If these men are all equally careful there will be an equal number of accidents as the result of the operation of each of these machines, and the compensation benefits should likewise be equal. But Doctor Stack would have the liability on the operation of the second machine discharged at one-sixth the amount because the employee who happened to be hurt had worked only one day in the week. The insurer would then keep the change. He has assumed that accidents and compensation liability are in direct relation to the number of men employed instead of to the hours of employment. His premises were false and so his conclusions were wrong. The whole situation points to the necessity of upholding by legislative limitations this right of every employee to have compensation on his full-time earning ability.

In 1916, in Ohio’s statehouse, I took occasion to discuss a case that arose in Michigan. The man had worked an entire year prior to the accident that took his life, half of the year in the iron mines and the other half in building concrete sidewalks. He was killed in one of these industries. His widow was paid just four times what her husband had earned in the industry in which he was killed. And they called that fair dealing with this widow, who had lost not only what her husband had earned in the industry in which he had lost his life, but also her right to depend on what he had earned in the other employment.

So I urge that these wages be fixed on a man’s fair average earning ability. Laws that do not come up to that standard are defeating the purpose of compensation. Furthermore, a time of depression is
not the time for us to be changing our compensation laws to accomplish the sort of thing that we have had suggested to us this morning.

**Doctor Stack.** Men have found it hard to adjust claims because an employee will say, "I consider my room and board was worth $10 a week to me," and maybe in the same boarding house someone else is getting the same kind of room and board for $7 a week.

**Mr. Wilcox.** We have no specific provision that board and lodging, bonuses, and such things shall be figured in the wage computation, but we adopted the policy very early that that was a part of the man's earnings and had to be taken into consideration if we meant to be square with the worker.

**Mr. Stevenson (Michigan).** I would like to ask Mr. Wilcox whether or not his remarks referred to the companies which carry their own risks as well as to the companies which are insuring their risks.

**Mr. Wilcox.** Yes. May I ask this gentleman a question? Is there any difference between the cost of an employer and the cost of an insurance carrier? What difference does it make?

**Mr. Stevenson.** I am wondering, Mr. Wilcox, about the effect on the esprit de corps of the workingman who is working five or six days a week, presumably because he is the better workman and more efficient than the man who is working one or two days a week, when he finds that the man who is working one or two days a week is receiving the same compensation for an injury such as he himself has received.

**Mr. Wilcox.** In times like this you will find an attitude of mind in the injured worker toward malingering, toward hanging out. If he can recover more in compensation than his short-time wage amounts to, you will have that to contend with in every administration jurisdiction. But so far as the worker's attitude is concerned, there is not one of these men who thinks he is going to be injured. So far as these two men are concerned, as they work side by side, I will wager that the man who has the opportunity to work six days a week instead of one will count himself most fortunate.

**Doctor Stack.** There is one thing I want to make clear. I do not know of a single employer in Delaware who has narrowed employment, or is planning to do so, because of intermittent employment. One administrator in one of our large industrial States did say to me that a certain employer felt that employment would have to be narrowed to the smallest schedule possible because of certain decisions that had been made in that State.

**Mr. Wilcox.** I suggest you make this observation to him, that if he expects by that to save any dollars on his compensation costs, he is hopelessly lost. If the plan that you have in mind is to be introduced, it will encourage the idea of putting on the intermittent worker, because he can be paid off at half price without any additional hazard.

**Miss Perkins (New York).** May I make a suggestion on this point, that one of the things that perhaps we ought to bear in mind—those of us who have any relation to the State funds or any opportunity to advise insurance commissioners of our various States—is the wisdom of insurance companies building up in good times a con-
tingency reserve against just this kind of situation, where protection is needed against fluctuations in wage rates and, therefore, in premium collections. In the same way, of course, those funds which have previously built up a contingency reserve against the fluctuation and value of their investments are to-day in a safe and sound place as against those funds which have not built up such a contingency reserve. That has not been thought of in the past.

I also wish to make inquiry as to what the falling off in general in the accidents reported and compensation claims allowed has been in these years of depression, when we know there has been a great falling off, not only in the total number of persons employed, but even more so in the total pay rolls, due to intermittent employment.

In the State of New York, we found that in 1931 we had an 11 per cent decrease in the number of claims settled, and about the same decrease in the number of accidents reported; and in that year employment had fallen off something over 30 per cent, not for the whole State but in those trades where we had accurate knowledge. So there has been apparently some ground for this complaint that the number of accidents does not fall off in anything like the proportion to the decrease in the man-hours worked that one would expect.

Mr. Leonard. I think the matter of the average weekly wage is more a matter of setting up a reserve. In Ohio it is not so much a matter of the average wage, as it is of putting the reserve against the claim. In other words, in the case of a man who would be expected to be disabled to the extent of $3,750 for temporary total or temporary partial disability, that amount would be paid out, regardless of what the average weekly wage was. That is the way it is figured, whether on a lower or a higher wage.

Of course, in Ohio we have no connection with the insurance companies. Our problem is to see that this is satisfactory to both labor and the employer. We were interested in the matter of the average wage. I wrote to Mr. Wilcox, Miss Perkins, Mr. Nowak, and a number of administrators in different States relative to their procedure in the matter of the average weekly wage. I remember Mr. Wilcox stated that a man who was on total disability was disabled seven days a week, not one or two days, for which he was paid on a wage.

Fortunately, in Ohio, we have no statutory provision. I think a State is fortunate where there is no statutory provision. We must be careful to observe the right of both the claimant and the employer, but primarily we must see to it that the claimant is protected.

We have had very little trouble in the State of Ohio. We have tried to be fair. We have tried to be liberal to the injured worker, and we have had no complaint, either from Mr. Donnelly, who is here to-day, or from the employers of Ohio, in the matter of the average wage. The employers and workers of Ohio look to the Ohio administrators to administer this in a manner fair to both during this unusual time.

We are fortunate, of course, in having a reserve set up against claims. We are paying out of our reserve fund several millions of dollars more a year than we are receiving in premiums. That money was put up for that special purpose. In times of depression we pay the money out of the reserve. We could not hope to-day to pay the
continuing claims on the pay rolls that are coming in. That would be absolutely impossible as we have had a great many people to whom to pay compensation. It has been rather a liability in the courts. Lawyers go before juries and say, "Those fellows down there have a $60,000,000 surplus, and here they are saying that this man should not have compensation."

When a man is off because of temporary total disability, he goes on the average weekly wage. A great many States take the time a man actually worked over a period of six months or a year and divide it by 52 weeks or any other number of weeks, not deducting any time that he was off.

Another very important thing to-day is the matter of the man who is not able to get employment, and who still has a disability. Strictly, under the law, that man would have to go out and get a job before he could be paid. There would be very few workmen receiving benefits to-day if it were necessary for them to go out and get a job and submit a wage statement before they were paid a cent. I think our system of ascertaining what a man's employment would be if he worked, and giving him a wage which will help him along during this period of depression, is good.

I am not concerned about the future in the matter of money. When industry swings upward, there will be very few payments based on the wage that is received to-day. On our pay rolls, taking the case of a bricklayer, we were receiving premium payments on a wage possibly of $75 a week. The bricklayer who receives $28 a week is receiving the maximum under the Ohio law. We are not, however, getting our premium payments on $75, we are getting them on the $28, but the man who is injured receives the same benefits of $18.75 that he would receive if he made $75.

I think this is the time when we must be very careful about the matter of the average weekly wage, keeping in mind primarily that it is for the benefit of the injured worker.

Mr. Kjaer (Washington, D. C.). I was very much interested in the statement of the analysis issued by Wisconsin. One part seems to have quite an important bearing. You probably know that about 18 months ago the rates of compensation in Wisconsin were changed to 70 per cent of the weekly wage instead of 65, but the same minimum and maximum payments, $10.50 and $30, were left.

According to this, an injured worker whose average weekly earnings had been $35 would, if disabled temporarily for more than 10 days, receive only 60 per cent of the total earnings, instead of 70 per cent, on account of the maximum limit. If the actual earnings had been $40 a week, the compensation paid would equal only 52.5 per cent, and at $50 actual earnings, it would equal only 42 per cent. So really, when it comes up to the higher wages, the maximum limit prevents any 70 per cent payment. If the disability terminated in less than 10 days, the percentage received is still smaller.

It is also shown in that analysis that for many years previous to the depression, from 35 to 45 per cent of all compensated cases were settled on the maximum-wage basis, but in 1931 the extensive reduction in wage rates resulted in reducing the proportion of cases compensated on the maximum-wage basis to 24.9 per cent. So I think that plays a very important part in the compensation payments.
Doctor Donohue (Connecticut). We have no State fund, so naturally I have not much interest in the feature of rate making, because I figure that is up to the insurance companies.

Let us reduce this question to a concrete proposition. We will assume that a man who is injured has received an average wage of $40, and we give him $20 compensation. Let us assume that he would work during this period of depression about one day per week; that is what a lot of them have done. This depression has gone on for three years. Suppose it continues indefinitely. Where is the money coming from to pay $20 a week to that man? I presume you are going to say that is a job for the actuary. Is that the answer, Mr. Wilcox?

Mr. Wilcox. I cannot answer abstractly. I will answer the question, Mr. Donohue, but you ask, “Is that it?” and that isn’t it. You worry about where the money is coming from.

Doctor Donohue. I am not worrying about it, but somebody is going to worry about it.

Mr. Wilcox. I suggest that you have to worry about only one-sixth as much money as if he worked six days a week instead of one. Do I make myself clear?

Doctor Donohue. I do not think so.

Mr. Wilcox. Let me say it again then. If your man, throughout the three years you have been talking about, has worked only one day a week instead of six days a week, then the amount of money that you have to raise to take care of compensation to him will be only one-sixth of what you would have to raise if he worked six days a week. Since your premiums are collected on the basis of his earnings, it all washes out. Your insurance companies are collecting compensation rates on the basis of one day’s work, and they are paying for a hazard that is created in one day, as distinguished from six days. They are not out anything. We are just worrying about something that is not so.

Doctor Donohue. Supposing this depression continues indefinitely, and you continue to pay the $20 per week. The question is, How long will you be able to pay it?

Mr. Wilcox. Let me state it another way. The obligation of the employer or the insurance carrier will be just the same to six employees each of them working one day a week as it would be for one employee working six days a week.

Miss Perkins. It is a man-hour basis.

Mr. Wilcox. Yes, and that is all there is to it. The only reason you can get anything more out of it is because these six men will average higher in point of accident than the one man who works six days in the week.

Doctor Donohue. Don’t you think it will eventually result, as Mr. Leonard has intimated, in a final raise in premiums?

Mr. Wilcox. I should say, Doctor Donohue, that these periods will mean that insurance companies will have to readjust their rates so that the employers will pay a sufficient amount to each insurance carrier to take care of the losses. That is one of the things we always have to come back to. You have to raise money enough to
take care of the losses or else the insurance company goes out of business, but, so far as the intermittent workers are concerned, they do not have to raise more money on that account. They have to raise more money because the upper limits of wages which you consider in figuring compensation are coming into play in this period, because the great bulk of these people—Mr. Kjaer read the figures from Wisconsin—are now working for wages of less than $30 a week and the compensation is 70 per cent of the weekly earnings; if they earn $30 they get $21 compensation, whereas in earlier times, if the wage was in excess of $30, the insurance companies still paid only $21 but collected premiums on $35 or $40, or some other figure. Of course, they got a higher premium; that has all to be leveled up.

Doctor Donohue. Then I think you will agree with me that, if this thing continues, there will have to be a raise in your premiums, or your State funds or the insurance companies will be wiped out.

Mr. Wilcox. Those of us who take part in the making of insurance rates know they have been raised. Our rates, with the amendments in the 1931 session, I think cost us a 22 per cent increase over previous rates.

Doctor Donohue. The point comes to this: Are you going to get those rates so high you are going to give the whole business a black eye? Are you working on something that is economically sound when you follow the line which Mr. Wenzel and you have suggested? That appeals to me; I will be glad to see that go through. I am just as liberal for the fellow who is hurt as you or anyone else.

Mr. Wilcox. I want to cast my lot with the group that agrees that what we should do is to increase the rates on pay roll sufficiently to take care of the liability and not take it out of the poor devils who happen to get only one day's work in a week instead of six.

Mr. Kingston (Ontario). I think there has been some confusion of the issue here. When speaking of assessments or insurance rates, I do not think the individual workman finds any place in the mind either of the insurance company or of the board. All the insurance company wants to know and all the board wants to know, where the board is making the rate, is: In a certain industry, how much pay roll is there—$100,000, $200,000, $500,000? We say that a $500,000 pay roll in a certain class, in a certain year, will in all probability produce a certain percentage of accidents, and the rate is based accordingly.

I do not care, and I am sure the insurance company does not care, how many of these men are working only two days, how many are working three days, or how many are working six days a week. All it wants to know is: How many hundred thousand dollars of pay roll is there upon which we are going to get a certain rate?

There comes another question, however, a moment later, and that is really the embarrassing question. I quite agree with what Mr. Wenzel has said and what Mr. Wilcox has said, that if a man is working only one day a week, there is obviously only one-sixth of the hazard that there is if he is working six days a week, speaking in terms of money. But the individual comes into the picture as soon as an accident happens, and then the difficult problem is: If the man who is working only one day a week, by reason of these times, is
injured seriously and disabled for 6, 8, or 10 weeks, how much are you going to pay him? What is the fair rate of compensation to pay that man who has earned only $4 a week, having had the opportunity of working only one day in six? That to us is the real problem.

I think we are probably all embarrassed by this expression in all of our laws, "average weekly earnings." If we were dealing with the average daily earnings, and based our compensation from the point of view of the daily picture rather than from the weekly picture, I think we would have less of a problem.

The question comes to your mind immediately: Do you mean to say you are going to give a man $16 a week compensation when you are getting assessment on only one week's pay? I say you should not look at it that way at all. You have your assessment on the full day's pay. It is a perfectly safe and sound underwriting principle, that you get the assessment according to the hazard, according to the pay-roll exposure.

Doctor Donohue asks, Where is the money coming from when you are getting an assessment on only a $4 hazard? I ask the same question regarding your fire insurance. You may sustain a loss of $6,000 or $7,000 on a house, and you are paying a premium on only $10. Where is the money coming from?

The insurance company knows it is a perfectly sound and safe underwriting hazard that a man with a certain type of house has a certain exposure on which it is willing to undertake the risk. In the case of a man who has the opportunity to work one day a week and does work one day a week, I am perfectly willing, as an insurance representative, to insure that man or to insure the employer of that man, at a certain rate.

Doctor Donohue. You have a big surplus.

Mr. Kingston. But when you do that, is it unsound to say that the basis of coverage for that man is two-thirds of that $4? I do not think it is. I am not speaking for our boards at home, because we do not do it that way. I am saying we are all embarrassed by this statement of "average weekly earnings." I think if the average weekly earnings were cut out of the account and we came down to an expression in terms of days rather than weeks, and then gave a man two-thirds of his daily wage if he is hurt, it would be much simpler.

As Mr. Wilcox has said, we have deprived him of earning to-morrow, if he has the opportunity. You can not stop and inquire whether John Jones, who was hurt to-day, could have worked to-morrow, or next week if he had not been hurt. You say, "Generally in these times the probability is he would not have been able to get work," and you short-change him because of that probability. I say that all that is unsound. If the insurance company or the accident fund has an assessment on a man's daily wage, the day on which he was hurt, I say it is a perfectly sound underwriting principle to ask the insurance company or the accident fund to pay that man on the basis of the day he was hurt.

Doctor Donohue. When your surplus is depleted, and your premium rates are so high that they can not stand up, are you going to be working on an economically sound basis?

Mr. Kingston. It never has been different. Ever since we have had this business of insuring compensation risks, the insurance
companies have been going on the basis, not of so many individuals, but of so many hundred thousand dollars of pay roll. That has always been so and it always will be.

We are indebted to Doctor Stack for laying on the table probably one of the most difficult problems with which compensation boards have to deal. A great many of our small municipalities are distributing what little labor they have over one day or two days a week. A great many of these men are hurt. I am afraid we are not paying them two-thirds of the wages they would earn if they had the opportunity to work six days a week. There is a lot to be said in favor of the statement that they ought to be paid the same compensation they would get if they earned that money six days a week, but with the expression in our law, "compensation on the basis of average weekly earnings," it is very embarrassing, and we can not pay them two-thirds of the wages they would earn if they worked a full week.

Doctor Donohue. Do you think the system can stand up under this program, if the depression persists? That is the question. I want an answer.

Mr. Kingston. From the point of view of assessment, I do not see that the depression makes any difference in the rates.

Mr. Wenzel. I think I am going to raise some issues this afternoon that are of vital interest in this question of wages. I still can not see that there is anything to be said on that particular point that amounts to anything so far as the actual effect upon the rates is concerned. I think we are confused.

We seem to be assuming that every man who works only intermittently or one day out of a week is going to be hurt. You must remember we are collecting premiums—I am talking from the standpoint of the administrator of a State fund—upon all of the wages of the men who worked that one day, just the same as we collect premiums on the wages of all the men who work six days out of the week. When you come right back to the general thing, your hazard——

Doctor Donohue (interrupting). I think we all agree with the statement Mr. Wenzel makes and that Mr. Wilcox made. But the question to me is still unanswered. If these conditions persist, and you get the premium so high that the insurance can not be carried by the employer, what is the answer?

Mr. Kjaer. Eliminate the accidents.

Mr. Jockel (Ohio). I listened to the discussion about the average weekly wage with interest. I came here this morning because I represent the State bricklayers' organization.

Our men have always made a high wage. To-day some men are working only one day in the year. If a man gets killed a year from now, the average weekly wage will not mean much if it reverts back to the year he did not work. I believe that where the State funds have made a mistake is that they make refunds to employers on their 5-year experience. We never anticipated this depression. I think in the future, instead of making refunds to the employers and the insurance companies, we should keep that in reserve, and then we will be able to take care of the weekly wages for the men who have worked only one day a week.

Doctor Donohue. That is sound.
Mr. Wilcox. You have only to think back to 1928 or 1929 to find a period when insurance companies were collecting premiums on wages and were not paying it out, so they were more than making ends meet. They may use a 5-year experience or a 3-year experience in order to level up the thing, because insurance companies figure their premiums on the basis of completed policy years.

Mr. Jockel. My remark is that the State fund would give a refund, as far as the men having fewer accidents is concerned.

Mr. Wilcox. That is entirely different. The 5-year proposition has nothing to do with that, except that the experience is taken into account. It is not just the experience for this year, but the experience for five years.

We go on the basis of taking 40 per cent of the experience in the fifth year back, and then 60 per cent of the fourth year back, and 80 per cent of the third year back, and 100 per cent of each of the last two years. Why is that? That bad experience that the employers had five years ago ought not to stand and have as much influence on their rates to-day as their experience this last year, because maybe they reorganized, maybe they put a safety department in their plant, and maybe they have made their plant safe instead of unsafe. So that experience is kept more attuned with their immediate situation than it would otherwise be. That is the purpose. That does not affect adversely either the insurance company or the employer, but rather the other way.

Mr. Bill (Ohio). I am quite interested in this discussion of the determination of the average wage. I can not agree with Doctor Stack in his article, for the simple reason that he is losing sight of the injured workman entirely.

Doctor Stack. It is not Doctor Stack's purpose to do so, sir.

Mr. Bill. Nevertheless the doctor does, in my estimation. We must, I believe, adhere to the primary purpose of workmen's compensation insurance. That was to compensate the injured worker or the dependents of the worker who is killed in industry, so they will not become objects of charity. If we are going to worry about the business of the insurance company or the employer or about the rates becoming so high that industry will not be able to bear them, we are going to miss the primary object of our law.

Here is the way I look at it: Here is a worker who works one day a week. Another worker in the same industry and the same line of work works six days a week. They are both injured. Possibly both lose their hands. Are you going to compensate them on that basis? Is that justice to the man who has suffered the impairment of earning power and the injury? I maintain that is the primary object which we have had in establishing workmen's compensation laws.

Doctor Donohue. That is all agreed. There is no disagreement on that at all.

Doctor Stack. You recall that I did make a distinction between the man who loses an arm and the man who suffers a temporary total or temporary partial disability. I take the position in this paper that the man who loses an arm should be paid for that arm, whether he has worked one day or six days, and that is our policy in Delaware.
I take the position in my paper that there is a distinction between the loss of an arm or an eye and a temporary total disability of a few days.

Mr. Bill. There is a distinction there; everyone knows that. Still I feel that under your theory of changing the determination of the wage, the worker would be the one who would suffer. I feel that the insurance carriers and those States that have State funds should have made provision in normal times to build up the reserve, the same as Ohio has done. Then we would not have to worry about this. The trouble is, too many of the insurance companies put the excess profits into large buildings and other projects instead of building up an adequate reserve to tide over this depression.

Doctor Donohue. I think we are all agreed with what the gentleman says. But if you are going to pay money out to someone, you have to find a way to get it. That is the point. I quite agree with the last statement Mr. Bill made and with the statement made by the gentleman representing the bricklayers. I do not think you should deplete your funds by making these 5-year returns. You should hang on to it. You should be ready for these situations; they are going to come. They are here now, and we do not know how long they will continue.

Mr. Donnelly (Ohio). I do not know whether I ought to venture into this or not, but I have listened very intently, and with a great deal of interest, to the paper and to the discussion which followed it.

Personally, I am not prepared to say that there is not a greater hazard where six men work one day a week than there is where one man works six days a week. I recognize at the same time that where there are six men working one day a week, as against six men working six days a week, neither the insurance carrier nor the State fund collects the same amount of premium. It cannot be done, because the payroll is not there. I believe there is some difference between temporary total disabilities that exist only for a short time and permanent partial disabilities or deaths.

With many other associates in Ohio, I have, for a great number of years, attempted to solve the problem of the average weekly wage, and we find that it is a very difficult thing to do upon an equitable basis. I think we who have been engaged in this compensation legislation over a period of years accepted the average weekly wage on the basis that it was necessary to have some method by which you could determine a workman's loss, whether he had a temporary total disability or a permanent partial disability, or the loss to the family in case of death.

We did that, I take it, so that we could equitably determine that man's loss for the future. While that might work with a fair degree of success in ordinary times, we find if we apply that rule rigidly in the determination of the amount of compensation to be awarded, that we work a great injustice to many of the workers who have been injured and a tremendous injustice to the families of workers who have been killed.

We talk about the carriers making money. I presume they have made money, although, of course, I do not know anything about it. In Ohio, I think, we pretty generally believe that there is only one way to have workmen's compensation, and that is to have it through an exclusive State fund, and we have worked out our problems, or
attempted to do so, along that line. I do not believe the insurance carriers are much more to blame for having dissipated their funds than are many of our State funds that had an idea that it was necessary to make an exceptional showing as against the rates that insurance carriers are charging in the States in which they were operating. For that reason the rates have been kept at the minimum.

Something has been said about refunds. Under the State fund, as I understand it, there is no justification for charging rates that are higher than necessary to carry the risks. We have actuaries who are presumed to set up adequate reserves. Those reserves have been set up in Ohio with surpluses. They have carried us through to this time, but we are faced, day by day, before the Industrial Commission of Ohio—and the Industrial Commission must face it, too—with this proposition of the average weekly wage.

The Industrial Commission of Ohio, perhaps, has a greater ambition than some of the insurance companies may have—notwithstanding the element of profits enters there—to conserve its funds, to see that it does not make increases in rates which will compare disadvantageously with the rates which may be used by the States in which insurance companies are operating, so it faces day by day the question of further depleting its surplus, of further drawing on its reserves, by liberality in the granting of compensation in permanent partial disability cases and death awards.

I take it that the idea back of the whole proposition of an average weekly wage was to enable administrators of compensation laws to arrive at some fair estimate of what the earnings of a workman had been in a period in the past, so that they could determine what would be the loss in earnings in a period in the future. For that reason they followed that rule. But following that rule in a period of normal times and following it in a period when men—through no fault of their own, because of an industrial depression—have not had the opportunity to work are different things. In giving these men who have not had an opportunity to work every day in the week a lower compensation for permanent partial disability and death award would not seem to me to be carrying out the idea that was in the minds of the people who advocated workmen's compensation some 20 years ago.

I believe this is a temporary situation, and that we must rely to a great extent upon the administrators of compensation laws to take a liberal viewpoint in awarding compensation and to go as far as they can, within the limits of their statutes. I believe, as has been said, that in the States where we have insurance carriers it would be well to have it understood that certain reserves will be set up there, and that the rates which they are permitted to charge will contemplate the setting up of reserves therefrom.

While in Ohio we have had refunds based upon experience, I believe that fundamentally there is nothing wrong with that, but in Ohio and in other States which have State funds we should try to keep premium rates at some figure by which we may have adequate reserves to meet the problems arising during times of depression, in making a determination as to the average weekly wage.

Mr. Case (Ohio). I have had the honor for about 14 years of helping to take care of the State compensation law we have here and
to amend it from time to time, meeting with the employers' association as one of the humble servants of labor.

I sincerely hope that the recommendation we have heard this morning will never be made a part of the Ohio law. I am afraid, if we are going to discriminate against a man because he worked only a day or two days a week, and not give him as much compensation as the man who worked a full week, the ambulance-chasing lawyers who are here in the capitol during every session are going to try to destroy our compensation law. We have always been able to meet with the employers and, with one exception, to come out with an agreement. We can never be assured who in the legislature might take a stand to destroy this law. I sincerely hope this will never be a part of the law in Ohio.

Mr. Prior (New York). Answering the Connecticut speaker, I wonder if your meeting might not be interested in taking up the discussion, not only from the standpoint of one day or one week, but from the standpoint of keeping the rates of the insurance company, the self-insured, or what not, in balance, along the lines of whether or not better organization and planning of medical and legal cases, with red tape and waste time avoided, would not help the insurance companies to avoid increasing the rates.

Mr. Kearns (Ohio). As a safety man I can not refrain from seizing this opportunity to suggest that perhaps more intensive work along accident-prevention lines might be done, which would help to find a solution for the problem we are discussing as well as many of the other problems that compensation boards are contending with to-day.

Miss Perkins of New York, I think, asked whether or not the records show any reduction in accidents beyond the decrease in employment. I am pleased to say that our records in Ohio show that in 1930 the reduction in accidents was 18.70, while the reduction in pay roll was only 12.97. In 1931 the reduction in accidents was 19.2 and the reduction in pay roll was 17.9, a very close margin, yet in favor of accident prevention or the reduction of accidents.

So I am sure that you will agree with me that the proper and most beneficial solution of this problem for both the insurance carrier, the employer, and certainly for the employee, would be to prevent the accidents, because we all believe that safety is better than compensation.

[Meeting adjourned.]
Chairman PARKS. The subject for discussion this afternoon is Adequate Reserves, by R. E. Wenzel, chairman of the Workmen’s Compensation Bureau of North Dakota.

Mr. WENZEL. I was very much interested in a remark I overheard during the day and a half that we have been here. If I heard correctly, it was to the effect that an administrator was not interested in the problem of the employer or the carrier. If that remark was made, it seems to me it was an unfortunate one and we are treading on rather dangerous ground. The administrator who is not interested in the problem of the employer or of the carrier, particularly in these times, is liable to find himself with the finest and best workmen’s compensation law, the highest schedule of benefits imaginable, the wisest and most humane administration of the law, but an insufficient number of employers operating in the State to give the men employment so they can get a chance to get hurt. I think it is very dangerous ground.

In the consideration of what I may have to say here to-day, I want you to keep in mind my personal views. An adequate schedule of benefits certainly does not include any schedule that limits the amount for death or permanent total disability to $3,000, and I do not concede any schedule of benefits to be adequate that does not include absolute and unlimited medical and hospital care.

I think, however, we get away from the idea of what this thing is all about when we start to talk about social legislation or compensation. It is neither social legislation nor compensation. The word “compensation” to my mind is an absolute misnomer. You cannot compensate the most illiterate ditch digger in money for the loss of two eyes or for the loss of two arms or two hands. We might as well admit that. What we are dealing with is industrial insurance. We are attempting in some measure to fix the point of payment where we can stand it. That I think is the idea we will have to come to eventually.

Adequate Reserves

By R. E. WENZEL, Chairman Workmen’s Compensation Bureau of North Dakota

On this subject no speech is to be inflicted upon you, no formula is to be presented; no superintelligence is to be claimed. The subject of Adequate Reserves is to be approached from the standpoint of one who has not much ground, is not sure of the ground he has, and is, therefore, seeking rather than giving light.

Of course, no one’s modesty ever prevents him from having ideas or trying to express them. In that respect I am not out of step. I acknowledge having some ideas. Painstaking study before and during my incumbency as a workmen’s compensation administrator
has developed much information and some understanding. But the information, the understanding, and the fact, even, that the early stages of this “modified prosperity” presented the opportunity for making some rather accurate estimates of what was to happen to us in North Dakota, have given me no such confidence as to justify my coming here with any desire or intention to “put across” a message.

Such confidence as may still be found in evidence has been repeatedly shaken, frequently shocked, and occasionally severely tested. My mind continually reverts to the fact, for example, that real experts, even the best analytical and technical minds, have been compelled to acknowledge uncertainty and even error as we have progressed in this matter of administering workmen’s compensation. Private insurance carriers who have, admittedly, the finest actuarial and other technical experts at their command, have publicly declared that enormous losses have been topped with still greater losses before some of them even discovered what the now vanishing depression was doing to this compensation business; and from our sister State of Minnesota we have gleaned the information that some of these carriers actually became insolvent, and some of the men who paid insurance premiums to them are now being called upon to make good on the awards to injured workmen because of their principal liability.

We know much of the trend of increasing accident frequency under normal conditions; we know something of the extraordinary experience of the depression period, but is there anyone who is in position to say that we have gained sufficient knowledge to enable us, singly or collectively, to gauge the future requirements that may be made upon the various funds? If so, he should be sought out, and his knowledge made available to this association and its contributing members.

Most of us, I am sure, are extremely anxious to know how reliable is the basis for our calculations. Perhaps the most reliable basis we have, the mortality tables, is subject to variations that may upset all past general calculations. Another time-tried pedestal, the American accident table, found itself involved in a dispute with the experience facts of the Department of Labor of New York (Special Bulletin No. 164, February, 1930) when that department’s ratio of deaths to total accidents ran 51.7 per cent over the figures of the accident table.

Yet, we think, and rightly so, perhaps, that we have a rather reliable basis for estimating the ultimate cost of accidents resulting in death or permanent total disability. That reliability undoubtedly reaches the point of probable accuracy wherever specific limitations as to maximum amount exist. Even those cases which are not definitely concluded have been dealt with on the basis of formulas, compiled as the summarization of experience data over the years, and we have gone ahead with considerable assurance that the estimates of final liability would prove reasonably correct. But when the exception which is supposed to prove the rule becomes the differential between solvency and insolvency, the matter becomes sufficiently serious to justify some back-trekking consideration.

It will be admitted, I think, that the period of this depression has brought all of us, private carriers as well as so-called State funds, into contact with new and almost unsounded problems. Some, we understood; others, we just knew existed. It was not difficult to understand and to provide for those results which came from reductions in the rate of hourly or weekly wages, while the liability remained the same.
through the same man-hour exposure. It was not difficult to determine that with 1,000 men, insured at $1 per $100 of pay roll it would require a certain definite increase in the premium rate if the same number of men continued at a wage scale decreased by 10 per cent. We knew that if we did not make the corresponding increase it would be necessary to dip into the reserves. We knew, perhaps, that our problems would not end there. We may have anticipated, even, that this catastrophe in the industrial world, which threw millions out of employment, could and would have immediate effects upon the mass of workmen still employed, that could and would be reflected in new and unheard of records of accident frequency, accident severity, and accident cost.

Making the pardonable personal reference again, we in North Dakota guessed that we were to be confronted with something rather definite; that the mental attitude of those employed was not to be the same; that men were going to work with something else on their minds; that those minds would be occupied with outside worries, worries as to whether Mary could have a new pair of shoes when school started, whether Johnnie could have his teeth fixed, whether the rent could be paid, or whether the job would even continue to pay wages another month; and that, as a result of these outside worries, men were going to be inefficient workmen, and being inefficient workmen, they were going to prove accident-prone employees. But these were intangible, psychological factors that were involved. They could not be measured through the medium of any tables that experts had ever conceived or compiled, nor through the medium of any lie detectors that were available on the commercial markets. Hence, we floundered.

We floundered considerably, "muddled through," as it were; and the mere fact that some of us may have been more fortunate than others gives us no particular pride of opinion or position. We just guessed, because that was all we could do. The fact that some of us got away with a whole skin does not mean that we had any providential insight, guidance, or collaboration.

In North Dakota, for example, we did not wait for others to hand us statistical data, because we knew there were no such data. We faced the situation, or attempted to do so, and we "got by," to use another street-corner expression. But the fact that we "got by," if we actually did "get by," was not because we saw that something definite and known was hitting us between the eyes, while others merely wondered if anything was hitting them, and if so, what. It was not because we discovered the root of the matter within two months after the depression placed its grimy fingers upon the throat of North Dakota industry. It was not because we have a rather up-to-the-minute statistical record, by reason of which we were able to watch the developing situation from its very beginning. It was not because we were large, or small, or in between, had elaborate data, or prophetic vision. No, not at all! I repeat, in all frankness, again, we got through, if we did get through, because we were just a little less unlucky than some of the rest of you.

From the very first cumulative roll-up of accidents, we, of course, began to estimate our probable losses, and because we had had the opportunity of watching the thing in the East, we may have started a little sooner. We estimated those losses, not on the basis of the old
pay-roll exposure, but on the basis of such reduced ones as we could imagine. And we decided to tax our reserves to the very limit before we would place upon an overburdened industry the penalizations of the catastrophe. The catastrophe was just as plain as if it had struck at an individual concern or a particular classification.

Who, however, in this country of ours had any definite idea of the length of this modified prosperity period, or of its devastating severity? We may be admitting what we ought not to admit; we are certainly face to face with the incontrovertible fact that we do not seem to have found anything for ourselves or for anyone else—anything, at least, that would justify planting it on a pinnacle, there to remain as a guiding beacon for our contemporaries or our successors. We have no beacon; we have not even a pinnacle. So we come here to join the chorus of those who shout: Where, oh, where, is the Moses that can breach this sea of uncertainty, and lead us through it into the promised land of security?

Glance, for a moment, at the list of new premium rates (and I yield to no one in the desire to view this matter from a broad stand­point). You will note, for example, the State of Massachusetts, with an increase of 8.5 per cent in June, 1931, a further increase of 12.4 per cent in December, 1931, and a request for an increase of 38 per cent in June, 1932, with a probable grant of 19.8 per cent, according to our latest information. You will find that rather reliable barometer of compensation insurance, the Ohio fund, making effective an increase of 10 per cent in 1931, and an increase of 17.6 per cent in 1932, together with some rather straight-laced rules and regulations. You will also discover, if you permit your gaze to drift westward, our own rather limited 7 per cent increase, which was promulgated in the face of recommendations for a 15 per cent increase last year and a 20 per cent increase this year.

These increases, we must assume, are for the sole purpose of maintaining reserves at the solvent point. Now, if business were booming, if everyone were prosperous, we might well concern ourselves only with the establishment and maintenance of reserves that would absolutely insure the solvency of the carrier. An additional million here or there would not make much difference. But at this particular time, when a return to normalcy, to say nothing of a return to prosperity, calls for the best, the finest, the most complete oiling system for this much-harrassed business and industrial machine, reserves must be limited to the lowest possible minimum of safety, and the increases should, therefore, be confined to the minimum that will tide us over. We would only be adding to the perplexities of industry, and thus to our own, by taking even 1 per cent more than our own needs require. But what is that minimum?

As was said in the beginning, I have no formula; I have no message. I have some ideas; I have some theories. In times gone by I have given expression, at least in part, to some of those ideas and theories. Thus far they have met with very little favorable response outside of my own jurisdiction. It is possible, however, in the light of recent experiences, that they may now prove to be more in line with the ideas and theories of others concerning a general policy toward this type of legislation. I venture, at any rate, to refer to them again.

1. Permit me to ask: What right have we to assume that the extraordinary drains so recently placed upon our reserves are merely
temporary? Sympathy and economic need have, to a large extent, replaced compensation theories; and where court decisions, establishing precedents, have entered into the picture, the possibility of removing them as factors in the future is very slight.

2. Have we any right to assume that new and unforeseen difficulties will not again point to uncertainties in the most expert analyses and prognostications? The past may not come back to haunt us, but with what assurance of security may we approach the future?

3. Shall we continue to work for a sky-limit schedule of benefits, or shall we recede from our general-policy position and admit that benefit schedules can not be maintained at anywhere near the point now established in many States? It is my humble opinion that failure to reduce those schedules to reasonable proportions may bring this whole beneficial, humanitarian legislative structure down upon our heads in one grand final catastrophe.

4. Should not the most conscientious, earnest endeavor of administrators, courts, and legislators be directed toward a more expert, scientific, systematic adjustment of claims, in which it is frankly recognized that society finds itself unable to pay compensation costs on any other basis than this: An arbitrary fixing of values for all types of injury, making those values uniform in all States at a point that will give consideration to what the traffic can bear, coupling with that, perhaps, an arbitrary fixing of the weekly compensation, collection of premiums to be based on pay rolls that represent fifty-two times the weekly compensation?

It is reasonably certain that if the maintenance of adequate reserves requires the permanent increase of premium rates to the extent already made effective over the country, it is fair to ask if we are not endeavoring to parcel out 8-cylinder limousines on the basis of a 4-cylinder runabout income.

And so, I close as I started, bringing and leaving no statements of fact or evidences of discovery, but merely a few, probably foolish, questions—questions, however, that have been bothersome, are bothersome to-day, and may become rather serious later, unless approximately correct answers be found.

DISCUSSION

Mr. Leonard (Ohio). I said this morning that the future would be taken care of if industry went ahead. It is not so much a matter of taking care of the future as it is, what have you done in the past? The matter of reserves is a big thing. The water is over the dam as far as the reserves that have been set up by the insurance company or a State fund or by a section 22 "employer," one who carries his own compensation, are concerned.

I am afraid that at high tide a great many agencies put their money into million dollar buildings and other things, and did not consider investing the money in a safe reserve. I know if we had to go out and sell securities at the market value to-day, we would lose a lot of money. The whole thing is whether or not we have invested in the right kind of reserves in the past, whether or not the actuary has been right. He has been a most important man in this whole proposition.

We can not expect to pay the claims of yesterday from the money we are getting in to-day and to-morrow. We must look forward in
rate increases to getting enough money to pay the claims of to-day and to-morrow instead of paying the claims of the past. The money is supposed to be there to pay the claims of past years.

That is why I say that it is very important, in the matter of rate increases, to see that these rate increases are made in a common-sense way. We can make all the regulations in the world about average weekly wage and all those things, but if we can not get the money, how are we going to pay the claim? That is the big thing, after all.

They used to blame the workman for wearing silk shirts. The employers who avoided paying money into the Government built big factory buildings, buildings they will not need to use for 20 years, yet at the same time they are paying taxes on those buildings. Many of them made the same mistake for which we blame the common laborer who wore a silk shirt during the war period. It is a matter of very grave concern.

Someone has said that an army travels on its stomach. The compensation proposition travels on its reserve. If we have been wise in the past, we have had money to meet the crisis. If we have made an unwise investment, we are going to be in trouble. It is just a business and a financial proposition, and a very important one.

I have often feared that some employers who carry their own insurance in Ohio have set up no reserve against those claims. Those men will be in serious trouble if they have not. You can not expect to-day, with conditions as they are, to pay as you go. We must depend on calling upon the reserve. The situation is one which demands the utmost care and thought on the part of the workmen’s compensation administrators. They find themselves in the position of bankers. The fund without the necessary financial background or an insurance company without the necessary background is in a very poor position in the United States of America to-day.

Doctor Donohue (Connecticut). I would like to ask a question. I presume your State fund, Mr. Wenzel, invests the money, the same as other insurance companies, in various securities?

Mr. Leonard. The fund in Ohio is invested in municipal bonds only.

Mr. Wenzel. We have authority to invest our permanent funds in bonds of the State and its political subdivisions only.

Doctor Donohue. That is, municipalities, towns, boroughs, and counties. We will say, for the purpose of discussion, that your surplus three years ago was worth probably four or five million dollars. To-day it would probably be worth a fifth or a third of that.

Mr. Wenzel. We consider our reserves at face value at this time.

Doctor Donohue. You consider them so. But as a matter of fact, they are not, are they?

Mr. Wenzel. As a matter of fact, I should say they are. I am not willing to concede that the State of North Dakota is bankrupt.

Doctor Donohue. No, we concede that no State is; but as a matter of fact every one who owns securities of any description realizes they are not worth what they were five years ago. The fellow who was a millionaire five years ago is considered pretty well off if he has $5,000 to-day. I do not presume that any of the securities in which you have invested your State funds are any different from the rest of the securities, are they?
Chairman Parks. They are in this respect—as the investments are in cities and towns and counties, they are pretty well secured.

Doctor Donohue. The cities and towns are pretty close to bankruptcy, are they not? If you should try to sell the securities, what would you find? Mr. Leonard has practically admitted that there would be a tremendous loss if you had to sell the securities.

Mr. Leonard. There is a loss in every line of business, Doctor—railroads, bonds, and any other.

Doctor Donohue. The answer is simply "yes." I believe every type of security in the land has diminished in value tremendously. It does not make any difference whether it is a State fund or an old-line insurance company; they are all the same, and many of them are pretty close to the ragged edge.

I am still of the opinion, which was expressed by the gentleman right here, that you can not conserve and hang on to your reserve too strenuously.

Mr. Evans (Ohio). The reason I differ is that investments made by a State fund are made for an investment purpose rather than for any speculative purpose. That means that we buy these bonds and depend on holding them until they mature, so that we do not have the problem of the market value of the investment or what we would have to sell them for to-day. We do not see why we will have to sell any of our bonds. We do not have to bother with the quoted market value to-day.

Doctor Donohue. That is true, and it is true with any other institution which has to invest money, but there are times when you are bound to have to sell your securities. Your State fund has probably not reached that point yet. I am not a pessimist, but I am looking to the future. What is the future going to give us? Is the time coming when you will have to sell some of those securities to take care of these payments? If it is, you are going to take a loss on them, the same as every other concern is.

Mr. Evans. That would depend upon whether or not you have distributed your investments well and given consideration in the past year to the length of maturity. We have our investments distributed so that each year we have some $8,000,000 of maturity. If, at the time those mature, we do not need them, they are then reinvested in bonds of other maturity from the margin.

Secretary Stewart. It seems to me we lose sight of one essential difference, in that the State fund securities are State obligations, county obligations, based upon the taxing power. If the fund can hold them until maturity, no State in the United States will go bankrupt in the long run.

Mr. Hunter (Arizona). We as commissioners are concerned with the condition of our own funds. Inasmuch as the insurance companies have to come to us for rates, the condition of their reserves has been made a question in asking for those rates.

We will say that one morning four or five years ago the president of one of these insurance companies said, "We had better have an actuarial report on the condition of our fund," and the actuary, in the course of a little time, made a report, which showed that the railroad bonds, the American Telephone & Telegraph and other classes of
securities, which it had purchased over a period of time, were then worth about 45 to 90 per cent more than at the time they bought them. We will say the American Telephone & Telegraph had gone up to 200 and the Southern Pacific was selling at 130. The board of directors would then say, “Why, our reserve is much more than adequate. We have, in fact, $10,000,000 that might be well invested in something.”

In considering these insurance companies, we should consider the fact that they have the greatest pool of investment wealth in the United States. Probably, as Mr. Leonard said, most of these insurance companies are managed by men with a financial background (bankers mostly) and they would immediately declare a dividend, distribute their money, or buy another company. Many of them purchased compensation insurance companies or fire companies, using the extra money that their securities had earned for them.

That went along for a period of several years. Each year they found that the securities they had purchased had increased in value. It would be necessary that they set up in their reserve $5,000,000 and they would purchase $5,000,000 worth of securities; and the next year they would find those securities were worth seven or eight million. Their reserves were milked for a period of years.

We commissioners of State funds are regulated—I presume all of us are—by law as to the investments we shall make in certain types of securities which the legislators think are secure for a long-time pull. We are restricted to the purchase of Federal bonds or bonds of our own political subdivisions—State, county, or city. We have sufficient money invested in Federal securities so that if our annual income is not enough to afford us sufficient cash, we can dispose of such Liberty bonds as we have and in that way provide ourselves with the necessary small amount of cash, our annual collections taking care of any other money we may need. As Mr. Leonard and Mr. Evans said, we do not buy our securities from a speculative standpoint. We buy them for an investment.

Mr. Kingston (Ontario). I have been a bit alarmed at the note of anxiety that has run through what Mr. Wenzel and Mr. Leonard have said as to the position of securities. I do not know, of course, what your investments are, or whether your problem is the same as ours.

We always say that we have no reserves under our system in Ontario. We have a pension fund, of course. Perhaps that is what you mean by your reserves. Every time we make a pension award, either for a death case or for a permanent partial or permanent total disability case, we immediately calculate what the reserve value of that pension is, the present value in cash. That money is immediately transferred to the pension fund. It is taken out of the current moneys of the year.

Our pension fund is always invested in securities, but not with the idea that we are going to realize on them before maturity. They are invested in securities which at maturity will have carried this pension until the time when, according to the American Experience Table of Mortality the pensioner and his children will all have passed away. That, of course, is a theory. It is based on an actuarial principle, however, about which I do not think there is a great deal of room for doubt.
It is an unthinkable thing that, given a certain set of statistics, the actuary is going to be anything like 50 per cent out in the calculation of the number of deaths. Given a million dollars of pay roll in the pension fund, we have it pretty nearly down to an exact science as to how many widows are going to die prior to the expiration of their life expectancy, how many are going to be married, and how many of the permanent total disability cases are going to outlive their expectancy.

We have one advantage in using the American Experience Table of Mortality and basing the money set aside in the pension fund on that. Bear in mind that the American Experience Table of Mortality is based upon healthy lives. I do not suppose there is a very large percentage of our injured workmen who go on the pension fund who are insurable risks, within the ordinary experience table of mortality, in the same sense that these men are in respect to whom this table is built up. So all that is to the good for what it is worth. It will tend to make our pension fund stronger than it might appear to be.

But we are not figuring that we have to sell these bonds to make up the payments; the ordinary maturities as they come along with interest earnings will take care of the current pension payment. So far as the present is concerned—the actual current compensation of the year—that is taken care of by the payments that are coming in on each year's assessment. If industry is not active, if business is not employing workmen, there is no exposure to hazard, and there is nothing to worry about from that point of view.

I hope the situation is not so serious as Mr. Leonard's metaphor "over the dam" might lead us to feel it is. Of course, if your pension funds are invested in some wildcat securities, which I hope they are not, you will sooner or later be in trouble, but if they are invested in government and high-class industrial municipal bonds (I do not mean township bonds or those lesser types of bonds) I think there is no cause for worry. We have not felt there is any occasion to worry about it, and our $28,000,000 of pension fund is invested in that type of bond.

Mr. Hunter. We had a failure of an insurance company in our State last year. The Home Insurance Co. failed. I believe we were the only State in the Union that got out a claim. We have been rather hard "nuts" in Arizona, in some ways, in dealing with some of the insurance companies. They say so anyway. Our State law required that they set up certain reserves, of almost any kind, with the commission to pay their claims in case of failure.

Mr. Kingston. Who takes the loss?

Mr. Hunter. The workingman would have taken the loss.

Mr. Kingston. Is there a provision in your law that if an employer insures in a company that has the sanction of the insurance commissioner, the employer is relieved from liability by that act of insurance, so that if there is a failure on the part of the insurance company the unfortunate workman must whistle for his compensation?

Mr. Hunter. That is a matter that has never been adjudicated in our State. There is some conflict in the law in regard to that. We have felt, in permitting these companies to come in and write insur-
ance, that we were in a way responsible and probably, if we could not take care of the loss or they bankrupted us, the employer would be relieved. We have felt that way, but the thing has never been taken to the courts.

As I started to say, we felt that the provisions of the law were not adequate, so we asked these companies to put an additional $200,000 on deposit with us. Being a small State, none of the companies write a great deal of insurance, and $200,000 should be adequate. Fortunately we had $200,000 in securities on our hands. Their losses were probably equal to all the securities we had. Probably if we had not made them put up this $200,000, we would have been holding the sack or the employer or the workmen would have been.

Doctor Donohue. Have you an insurance commissioner in your State?

Mr. Hunter. The corporation commissioner has taken care of those matters.

Doctor Donohue. Does the corporation commissioner pass upon the question of the propriety of the insurance company to do business in your State?

Mr. Hunter. He is supposed to. That is one of his duties, required by law.

Doctor Patton (New York). I do not expect to throw any light on the discussion as to what is an adequate reserve. We do not know what an adequate reserve for widows is, for example. This association went on record last year for the construction of a new table on remarried widows; we know the table we are using is absurd.

It seems to me that the question is essentially that old one we have debated all our lives, the distinction between what is and what ought to be. The present insurance compensation schedules of the various States set up certain standards of what ought to be, at least, proper compensation. Mr. Wenzel, I take it, is questioning not what ought to be at all, but whether or not we can do it. He is questioning whether or not industry, in its present financial position, is able to pay what we have set up in the law.

No one of us, I take it, thinks that any State pays what we would like to have it pay. Nevertheless there is a present statute. Does that statute set up our best workable idea of what ought to be paid? Mr. Wenzel is questioning whether or not that ideal, as expressed in the statute, of what ought to be paid can be paid. That is where the question of reserve comes in. It is a big question, unless you split it up. There are various sorts of reserves.

Of course, the question Doctor Donohue has been raising is extremely simple. Mr. Evans pointed out that it is merely a matter of a prudent, wise investment policy. As has been pointed out several times, when he buys a Federal or a State or a municipal bond, he does not do it with the idea of losing or making on it, but with the idea that it will be redeemed in full at maturity. So it is adequate.

I do know, as I said, that this body has in the past year recognized the fact that we do not have an adequate table for remarried widows. With reference to the American Experience Mortality table, all of us know that is out of date, and every insurance company can safely predicate a large saving perhaps, so that we are on relatively safe grounds there.
To get back to Mr. Wenzel's point, whether or not, rather than further burden a harassed industry by the present rate being increased, we should reconsider this question of what ought to be versus what can be. I know there was a very spirited hearing on this matter in the New York State Senate within the last few weeks. I do not doubt but that every administrative body at the present time is seriously considering whether or not it would be wiser, temporarily at least, in the hope that things will get better, to do everything possible to avoid further rate increases.

Doctor Donohue. I assume that no man connected with any State fund or other trust fund would be expected to invest any money in securities which are speculative. That is axiomatic; but what I have said is still true, that the very best of securities, such as high-grade bonds, have been fluctuating, some of them extremely so. Mr. Kingston mentioned high-grade industrial securities. Some of them have gone down two-thirds.

Mr. Kingston. You misunderstood me there. I do not mean industrial bonds; I mean industrialized city bonds. We do not invest in an industrial bond under any consideration. I meant a highly industrialized city, like Toronto or Hamilton, among our home cities.

Doctor Donohue. That makes it a little safer, but when the United States Government bonds fluctuate as they did, what is the answer to that? Nothing is worth a hundred cents on the dollar now.

Mr. Kingston. Not if you sell it.

Chairman Parks. Doctor, doesn’t it boil itself down to which is the best to buy—city bonds, State bonds, railroad bonds, or others?

Doctor Donohue. Municipal and Government bonds, of course, are the best to buy.

Mr. Wilcox (Wisconsin). I can not understand what Doctor Donohue has in his mind. If he is meaning to criticize State funds—

Doctor Donohue. No; I am not.

Mr. Wilcox. As not knowing how to carry on their business, that is one thing, and if he is urging that insurance companies are a good deal better calculated to carry this burden of protection, that is another thing.

Doctor Donohue. No; it is not that, either.

Mr. Wilcox. It is true that Government bonds will not always be at par. As a matter of fact, you and I remember that Liberty bonds were sold at prices below par when they were issued. The United States Government sold them at prices below par, and that was not because they were not good bonds. That was because the rate of interest was set at a figure so low that you would rather invest in something else. You could take $96 for your Government bond and invest it in something else and make a better rate of interest. That did not mean the Government bond was not worth every single dollar you paid for it. I do not think it is a fact that Government bonds fluctuate materially, so far as their value is concerned. It is not that at all.

As for municipal bonds, most municipalities are now in a situation where they would find it very difficult to refund their bonds. If you.
hold a municipal bond, you would find it difficult to sell it and get
what money you put into it. I question if any insurance company in
the United States, if it had immediately to cash in on every obligation,
could come right back and say, "Here is the cash now." The insur-
ance companies would go in the ditch and the banks would go with
them. Our dependence on these institutions lies in the facts that
that is not the kind of demand we are going to make on them, and
that at maturity their investments will bring face value.

Really, as I see it, Doctor Donohue, with these companies that is
not a matter to be particularly worried about. I think it is refreshing
to find that State funds are following out as conservative a course as
they are, and buying for the purpose of investing in something that
is perfectly good and not for speculation, as we were doing in the stock
and bond markets.

Insurance companies had to have their securities valued as of a time
back, so as to avoid the results of the temporary depression of the
market. Otherwise their reserves were not sufficient, and many of
them would be found to be defunct at this time. But the bulk of them
will swing out of it. Some of them will fail. Some of them had
failed before this period of depression.

We have had some insurance company failures in Wisconsin. We
had two insurance failures in the strict sense. One of them was a
mutual company—one of our large domestic mutuals. As soon as
we saw it was in distress we got its representatives in, and it arranged
for the levying of an assessment. It collected this assessment, and
it has kept on paying. Meantime, we were careful about the awards
that were going through to see that we did not make any lump-sum
requirements or things of that kind that would unduly burden it
until it had time to levy its assessment and get into shape to take care
of its liabilities. Since that it has been paying regularly. We have
been cooperating with this particular company to make sure that the
employers who are now being called upon to pay assessments actually
pay them. For example, we said to Employer A, "If you do not pay
your assessment liability, then go ahead and pay the compensation
liability to your injured employee. You can not expect the insurance
company to use the money it has collected on its assessment from
Employer B to pay off the individual liabilities against your particular
industry, your particular company, because of an injury to one of
your employees. You either come through with the payment of your
assessment or you take care of this liability direct to this injured
employee."

Mr. Kingston. In your State does insurance relieve the employer
from liability?

Mr. Wilcox. Absolutely not.

Mr. Kingston. Is that a general principle throughout the juris-
diction?

Doctor Patton. It does not in New York.

Mr. Wilcox. I question whether or not there are many States
where it does relieve him.

Doctor Stack (Delaware). It does not in Delaware.

Mr. Kingston. It does relieve him with us; when he pays his
assessment, under our system, that absolutely relieves the employer,
but of course we have the taxing power of the State behind us.
Mr. Wilcox. Can you levy an extra assessment against him?
Mr. Kingston. Yes.

Mr. Wilcox. That is one thing about State funds; there is greater similarity between a State fund and a mutual than there is between a State fund and a stock company, because you still have the assessing power.

This mutual company of which I was speaking has come to the point where its liabilities are pretty well discharged, and it has collected assessments to the point where it knows it is able to pay all claims.

Within the last week one of the very strong mutual companies in our State entered into an agreement with this particular mutual to take over the final liability. It will take over the assets and pay the claims. The injured men are not going to lose anything by the financial collapse of that company. The employers insured with this company got a dividend when they had no license to get it, and they have been required to pay that back. Aside from the disturbance, the matter is working out very satisfactorily.

We had a stock company—the Southern Surety Co., a New York Company—fail in our State. It was the Southern Surety Co. of Des Moines originally, I believe; then it chartered in New York.

Chairman Parks. Did any employee lose his compensation when that company failed?

Mr. Wilcox. Yes, the employees are going to lose, as the property is not sufficient to pay out. When I say they are going to lose, I mean they are going to lose if they happen to have been working at the time of the accident for an employer who can not take care of the liability.

Chairman Parks. Have you no provision to make the insurance company put up adequate reserves to cover its future losses? I will tell you, for your information, the Southern Surety Co. also did business in Massachusetts, but we have enough of its money to pay all the outstanding claims. That is also true of three or four other insurance companies.

Major Allen (North Carolina). The Home Insurance Co. assumed all the liability of the Southern Surety Co. in my State and attached the liability to each policy.

Mr. Wilcox. We had no company that elected to take on the obligations of the Southern Surety Co. in Wisconsin. I am disposed to think that if we had said, “All the assets of this company in the State of Wisconsin will now be impounded to take care of the liabilities to policyholders in our State,” we could have protected our people, but we did not do that. We said, “So far as Wisconsin is concerned, we won’t jump out here and grab off everything in sight in order to protect our people, and let the people elsewhere take the dirty end of the stick.” That is exactly what we said, and that is exactly what we are going through with. If the assets of this company do not pay all the liabilities in Wisconsin, they will not be paid. The employers will have to take care of the balance.

Chairman Parks. Don’t you think your first duty is to the injured workmen? We thought so in Massachusetts and protected them.

Mr. Wilcox. Where will we be if every State does that?
Chairman PARKS. We will be protecting our injured workmen.

Mr. WILCOX. I appreciate that; but just who is our own in this country now? When I can drive across four States in one day, who is our own? At any rate, we began thinking about this thing too late; we should have been thinking earlier. Doctor Donohue raised the question of whether or not the insurance commissioner could not protest against these things and as to why these things should be. You can prevent it by setting up a lot of reserves.

Major ALLEN. We have had an insurance war in North Carolina, and the industrial commissioner, uninvited, appeared before the insurance commissioner a few weeks ago. I asked him, in the presence of a large number of manufacturers, if his reports indicated to him that these large companies you were speaking of had assumed any liability for guaranty of mortgages throughout the United States. He searched his records and said, "No."

I knew, and I stated to him in that meeting, that five of the largest guaranteed from $50,000,000 to $100,000,000 apiece in first-mortgage loans scattered throughout the United States, and in North Carolina, in one bank there was $10,000,000 of mortgage guaranteed by one company, and one of the counsels of that company had told me that he would be glad to take a 25 per cent cash loss on those mortgages. In a town within 20 miles there was $4,000,000 in addition.

Five of the biggest companies—the ones you speak of—had assumed these mortgage obligations throughout the United States, stretching from the Atlantic to the Pacific, and in their reports to the insurance commissioners of North Carolina they do not show one dollar of liability. In conditions of that kind I think the little company is just as good as the big one.

Mr. LEONARD. In Ohio we have no quarrel with the insurance companies.

Mr. EVANS. Mr. Kingston spoke about not having any difficulty in establishing an adequate reserve for their obligations. I noticed that he referred to the type of claims that are very definite; that is, a death claim, where the amount of cost is very specific, or a dismemberment case, where it is very specific. What do you do, Mr. Kingston, if on any given date you have a large number of cases where it is indeterminate what the ultimate physical outcome of the injured man will be? How do you take care of the considerable amount of liability for claims that so far are unreported, as you no doubt have a period of time in which a claim can be filed? You also have a considerable amount of what you would call concealed disability; that is, where the extent of the disability has not been brought to light with the insurance carrier or the fund, due in many instances to the man himself not appreciating the effect the disability will have upon him because of the high industrial period he is passing through, but when he comes to a period of industrial depression that condition is an actual fact. That is the sort of thing we, and practically all carriers, are up against where the commission has continuing jurisdiction of the clients.

Mr. KINGSTON. If that is one question, it is quite a large order. I did not wish to convey the impression, when I was speaking a moment ago, that we have no problem in connection with this matter. I was
concerning myself at the moment with this question of the value of our securities. On the point you mention, Mr. Evans, every year, in January or February, we come to the point of setting our rates for the year. When we do that, we have on the table before us the experience of every class and group, subdivided; so many pensions have been set aside; there is so much for outstanding claims. That, of course, is the uncertain quantity. All I can say is that we make an estimate against that, being as sure as we can be that we are making that estimate sufficiently high to be on the safe side.

Of course, we have one difficulty, which you all have to contend with now, and perhaps the greater part of the time of the board is devoted to that type of case. I refer to appeals for rehearing or reconsideration. Possibly the case was finally disposed of one, two, three, or four years ago. We thought it was finally disposed of, but a man comes back, when he finds himself out of employment, and says, "If it wasn't for the accident I had three or four years ago, I would be able to get employment," and he asks us to reconsider his case.

It is not hard to see through most of those cases. That is not a problem of disability so much as it is a problem of unemployment. If he could get employment, he would not have any disability. Nevertheless his case has to be sympathetically handled, and sometimes a small addition may be given to him on his appeal for reconsideration.

On the point that you raise we simply make as fair an estimate as we can against these outstanding cases when we come to make our revision of rates. We base our rates for the current year on the sum total of these estimates. Of course, the following year we are able to see what the whole result of the second year back has been. Then we are able, without very much uncertainty, to speak with definiteness as to the outstanding costs.

Chairman PARKS. Mr. Wenzel, in his opening remarks, said some of the commissioners had said that they were not interested in rates; that they knew very little about them. I am one of those commissioners, although he did not hear me say that.

Our commission in Massachusetts has nothing to do with the rates. That is entirely within the province of the insurance commission. I come from what is called an insurance-ridden State. We have no State fund nor anything like it. We have no self-insurance. It is entirely an insurance State.

While I have been listening to this discussion and hearing the alarm of the men who are talking about an inadequate reserve and investments, and so forth, I have been wondering whether Massachusetts is in the United States. We are not worrying in Massachusetts at all about the failure of the insurance companies. Some of them have failed and some have gone out of business, as far as the writing of compensation insurance is concerned, but we have an insurance commissioner who is always on the job. He watches them and somehow or other he always gets them before the crash comes, and compels them to put up a certain amount of reserve in good securities, which are placed in the hands of our State treasurer.

We have some of the securities of one of the companies referred to, and we felt that we were justified in compelling it to take care of its
liabilities in our State. We have nothing to do with Connecticut or Rhode Island or Ohio or any other State; we are administering the law in the State of Massachusetts. I do not know how many insurance companies, whose securities we have, are presumably on the rocks and have gone out of business of writing workmen’s compensation insurance, but the payments for compensation go merrily along to the employee just the same.

I have been in this business for almost 21 years, and I do not know of a single workman who has lost a single week’s compensation since we have been doing business—since July 1, 1912. I think that is a record for an insurance-ridden State. I do not know whether or not the rest of the States can equal that.

To answer one of your questions, the employer is not responsible. It is the insurance company that carries the sole responsibility. If it did not pay, the employer would not have to pay.

Mr. Kingston. Then the workman would lose out if the horse was stolen before the stable was locked.

Chairman Parks. Yes, he would lose out if—that is what I am talking about. In 21 years that “if” has never happened yet.

Mr. Wenzel. What do you do in Massachusetts if the employer decides to withdraw from the option of the law?

Chairman Parks. It makes no difference about the employer withdrawing. He really can not withdraw; it is an optional act.

Mr. Wilcox. It is not compulsory that an employer be insured?

Chairman Parks. No; there are some employers who are not insured. We have no jurisdiction over them.

Mr. Wilcox. You do not treat as a loss to the injured man his right to compensation if his employer has failed to insure when he ought to insure? You just dump the man back on common-law rights and then say he does not lose anything.

Chairman Parks. We administer the law as it is. Is your law in Wisconsin a compulsory law?

Mr. Wilcox. Ours is a compulsory law for all employers who usually employ three or more persons; it is elective as to those employers who do not usually employ three or more persons.

Chairman Parks. I thought your law in Wisconsin was just like ours in that respect.

Mr. Wilcox. It was until the last session of the legislature. But I am thinking about this employer who, to all intents and purposes, ought to be insured, this employer who is not financially strong and who has an accident in his plant. How is his employee going to be protected? In your State he is not protected under compensation because the employer is not insured.

Chairman Parks. The employer is amenable to a suit at law with his defenses removed. They say some fat verdicts are rendered against such employers, and some employees have collected far more than under the compensation laws, but that part of it is not under our jurisdiction.

Mr. Wilcox. In our State we call them losses if injured men who have the right to the benefits of compensation find that they must collect against an irresponsible employer who ought to be insured for their protection but is not.
Chairman Parks. Of course, Mr. Wilcox, with his usual versatility, is switching to something else. I thought we were talking about adequate reserves which insurance companies who insure employees have to put up. That is the class of risk that I thought we were talking about, and not the class which does not insure and which has its rights in the common law. Of course, I can not debate that because I do not know how many employees there were who had to go into the common-law courts nor how many obtained money in a suit of law.

As I said, I thought Wisconsin's law was something like ours, I thought most of the laws were like that, except New York and a few more who have a compulsory act. I understand most of them are optional like ours. I thought we were talking about those who were insured, not those who were not.

Mr. Wilcox. I did not want to dodge the question, Mr. Parks. I was just wondering whether or not you meant to say that these people who were working for employers who, under the terms of the law, ought to be insuring their risks but were not doing so, were going to be protected in Massachusetts, and whether any of those fellows had lost out. They have lost out in our State.

Chairman Parks. Some of them have lost out in our State no doubt, but none of those who were insured have lost out.

Doctor Donohue. Does your State insurance commissioner pass upon the right of the insurance companies to do business in the State?

Chairman Parks. Absolutely. He exercises very close supervision over them.

Doctor Donohue. Probably he refuses all those smaller companies which have not had much experience in doing business.

Chairman Parks. He has revoked two or three charters.

Doctor Donohue. In other words, he does not allow what I call "fly-by-nighters" to do business in the State. Those are the companies that I referred to which Mr. Allen, I presume, thinks are all right to do business. Possibly some of the smaller ones are. When I say "large companies" I mean those companies that have sufficient surplus on hand to liquidate every obligation they have, dollar for dollar, at market value. That is the kind of company I refer to as a proper company to do business with if you want safety for your employees.

[The auditing committee reported that examination of the records, including bank books, vouchers, and receipts, substantiated the report of the secretary-treasurer. The committee also recommended that no membership dues, including associate members, be collected for the fiscal year 1932-33. After a short discussion the report of the auditing committee, with the recommendation, was adopted.]

[Meeting adjourned.]
Chairman KJAER. Our first subject is Relation of Safety Codes to Industrial Accident Prevention, a very important subject, as is shown, for instance, in an article published not long ago. The average number of accident claims in a plant employing a thousand men was 425 per year and the compensation paid was over $15,000 a year. The electrical lighting code provisions were used in the plant and better lighting was put in force. By that means accident claims were reduced to 170 per year instead of 425, and the compensation was reduced from $15,000 a year to $6,200.

We are fortunate to-day in having a man with us whose long experience makes him well qualified to speak on this subject. Most of you know him as a member or former member of the International Association of Industrial Accident Boards and Commissions. The people of Ohio know him as the first chairman of the liability board of awards, later changed to the Industrial Commission of Ohio—Mr. T. J. Duffy.

Relation of Safety Codes to Industrial Accident Prevention

By T. J. DUFFY, of Columbus, Ohio

A safety code is to the average person what a chart is to the mariner or what a highway marker is to the traveling automobilist. It is a guide which points out the best pathway to reach a destination, if its directions are intelligently understood and prudently observed. It does not supply the motive power that carries one to his destination; neither does it save one from the consequences of rash carelessness, inexcusable ignorance, or sluggish indifference. Alert mentality, watchful care, and scrupulous observance of directions are necessary in order to reach the goal of accident prevention even when a safety code is accepted as the guide.

A safety code may show how properly to guard a dangerous machine and how correctly to protect against a dangerous condition, but it can not put heart and conscience into cruel, unfeeling foremen nor put brains and caution into reckless, indifferent workers. Human behavior will still be a safety problem when safety codes have reached perfection.

If each and every industrial plant had a thoroughly competent safety engineer, imbued with the noblest sense of responsibility and actuated by the most earnest desire to avoid accidents, perhaps safety codes could be dispensed with, because such an engineer would have the necessary knowledge and the voluntary determination to prevent accidents. But in the world of industry, as we find it to-day, safety codes are absolutely essential. Without them no progress could be accomplished in the work of accident prevention. They are just as indispensable as the tracks are to the running of the locomotive; without them "we couldn't get anywhere" in either case.
When safety codes are carelessly adopted by legislative or administrative bodies without first having ascertained the soundness and the practicability of the provisions prescribed in such codes, it retards rather than helps the progress of accident prevention, because the earnest cooperation of employers and workers cannot be obtained in the enforcement of such codes.

Safety codes should be carefully and scientifically prepared. They should embody requirements whose soundness and practicability have been tested by the knowledge and experience of competent safety engineers. Such codes will not only prescribe the best safeguards and protective measures but also will be most likely to win the earnest cooperation of employers and workers. It is certain that the enforcement of such codes will and does accomplish very much in the way of accident prevention.

Safety codes invariably provide a penalty for nonobservance. This is another reason why they are essential in the work of accident prevention, for while it is true that great progress has been made in arousing the voluntary cooperation of employers and workers, yet, as the members of this organization well know, many of those who give their approval to the general program of safety are slow and careless themselves in carrying out some of the specific requirements of safety codes. The fear of fine or imprisonment for failure to observe safety codes, with the humiliation and embarrassment that results therefrom, prevents many sins of commission and omission against safety codes. It is regrettable that such compulsion is necessary in such a noble work.

When one thinks of the agony of those workers who have been killed and the sufferings of those who have been injured; of those deprived of eyes who can never again look upon the beauties of nature or the features of loved ones; of those whose severed arms, hands, legs, or feet render them unable ever again to participate in many of the functions and pleasures of life; of the sorrow and disappointment these accidents have brought to mothers, wives, and children—crushing hearts, shattering hopes, and destroying dreams of future happiness that can never now be realized—when one thinks of these things he wonders why any other compulsion should be necessary to win cooperation in such a noble cause.

On this penalty feature I might digress long enough to give you our experience in Ohio, speaking only of my own observation. We have a rather unique provision, from a legal standpoint, in what we call the additional award. Besides the penalization in the general statute, whereby one may be fined or imprisoned for failing to comply with the requirements of law, we have a constitutional provision whereby one who is injured or the dependents of one who is killed because of the failure of the employer to observe any lawful requirement—that is, any safety requirement—may be granted by the industrial commission an additional award over and above the regular compensation, such additional award not to exceed 50 per cent nor be less than 15 per cent of the maximum regular award to which the claimant in that case is entitled.

That feature has been the means of bringing about a more watchful attitude on the part of employers and a more intense interest in trying to comply with the requirements of law. That provision did retard the work in Ohio in perfecting safety codes, for this reason,
that every one of the provisions of the safety codes became lawful requirements within the meaning of this constitutional provision. Therefore, there was a fear on the part of employers that every time they helped to perfect safety codes and put in provisions that would conduce to better safety, they were increasing the grounds on which workers and dependents of killed workers could go to the commission for an additional award, and of course the additional award is paid by the individual employer. That is something he must pay in addition to his premium; it is paid out of the funds only as a matter of accommodation or convenience.

I think that viewpoint is disappearing, that employers are beginning to see that after all it is their duty as citizens, their duty as human beings, to do all that lies within their power to make places of employment as safe as they can possibly be made and to protect the workers against any hazard incident to their employment. So I feel that in the very near future, notwithstanding this provision of the constitution which naturally forces employers carefully to guard against any omission to comply with those constitutional provisions, we are going to make rapid progress in perfecting the safety codes. In fact, many of them have been amended and perfected nearly as much as it can be done now, and have been published within the past six months.

Mr. Kingston (Ontario). Can the employer pay an extra premium and insure against that?

Mr. Duffy (Ohio). No. There probably would be a sound reason for that; but the reason it was not made insurable was that that would be the legal club used to compel the employer to take this proper interest in safety. It was felt that if this was merely an additional allowance from the fund and not a penalization upon the individual employer, two things would result: (1) The employer who had observed the law and had done his duty would be penalized because of the failure of the delinquent employer to do so; (2) that it would take from the employer the club that you could hold over him for his failure to do that duty.

Viewed from any standpoint man can find no worthier purpose upon which to expend his thought and energy than that which has for its object the conservation of the health, life, and limb of human beings and the rehabilitation of those who have been disabled by injury or disease. No matter what progress we make in the conservation and the efficiency of the things that administer to the needs of man, individuals who have lost health or the capability to perform labor can not enjoy the fruits of such progress. To the man who loses his life in an industrial accident it means nothing.

If we reduce the hazards of industry and rehabilitate disabled workers we not only save life and limb, but we save labor power which is not only a natural resource in itself but is also a vital element in all other agencies of conservation. We also conserve the happiness of the home, because nothing can be more detrimental to domestic peace and happiness than an injured worker whose helpless condition requires the constant care and attention of the family for a period of years, or whose death fills their hearts with grief. Payment of compensation is a blessing and a great help to the victims of industrial accidents, but it does not replace amputated limbs, restore human lives, or give back to widows and children their loved ones.
By reducing accidents and rehabilitating disabled workers we also contribute to the peace and stability of society by lessening the causes of discontent. In these days of big business it is impossible for the average man to engage in a business of his own, and he must depend for his means of livelihood upon those who control the avenues of employment. If, in pursuing the only opportunity he has to acquire subsistence for himself and family, man is needlessly exposed to loss of health, life, and limb, or if he is denied opportunity to earn money because of a handicapped physical condition resulting from injury or occupational disease, he is going to feel that he is the unfortunate victim of conditions that are beyond his control. This is likely to make him bitter, fill him with hatred of those who control industry, and make him a fit subject for revolutionary propaganda. Hence we can see that the work of preventing industrial accidents and diseases, and of rehabilitating disabled workers, involves not only the welfare of those engaged in hazardous occupations, but also the comfort and happiness of the Nation's homes, the security of industry, and the peace and stability of society.

I might refer to the subject of "accident prevention as an investment," but in doing so I do not want to appear to be making an appeal to mercenary motives only, because I know that you possess those qualities that make you responsive to nobler appeals than the mere saving of dollars. But if it can be shown that the saving of human life, limb, and health means also a saving of dollars it adds force to the nobler reasons that are urged in behalf of accident prevention.

At the present rate of compensation provided in the Ohio workmen's compensation law the dependents of a workman who is killed in the course of employment may be awarded $6,500. If the death has been caused by failure of the employer to live up to specific lawful requirements for the safety of employees a 50 per cent additional award may be allowed. This, together with the $200 allowed for funeral expenses brings the total up to $9,950, and this does not take into consideration anything for medical service.

If a worker who is permanently and totally disabled lives 10 years after the injury he will be paid $9,750. If the injury is caused by failure of the employer to live up to specific lawful requirements and a 50 per cent additional award is allowed, he will be paid in 10 years $14,625; if he lived 20 years after the injury it would cost the State fund or the employer $29,250.

Thus we see that by preventing one death the individual employer may save as much as $9,950 and by preventing one case of permanent total disability he may save as much as $29,250 for himself or for the State insurance fund. This is certainly a real investment from the standpoint of the individual employer.

Now let us see how this matter affects society as a whole. The awards of compensation made under the Ohio workmen's compensation law in a normal industrial year amount to about $16,000. The rate of compensation provided by law is two-thirds of the wages, with a maximum weekly payment of $18.75. If none of the workers of Ohio earned a wage higher than that which is necessary to entitle them to the maximum weekly compensation these figures would show that the annual loss in wages by the workers who are injured in Ohio amounts to $24,000,000. But besides making allowance for those
who made higher wages, we must bear in mind that no compensation is paid for the first week of disability, and we would have to add a million and a half for that factor alone. In addition to this we would have to add the wages that would have been earned during the periods of life expectancy of those who were killed and those who were permanently disabled.

Taking into consideration all these factors it is safe to say that the loss in wages as a result of the industrial accidents in a normal industrial year amounts to not less than $35,000,000. In other words, as a result of these accidents in Ohio alone society has lost the wealth that would have been produced by $35,000,000 worth of productive labor. Think what this must amount to in the Nation as a whole.

You understand I am taking a normal year. These figures would probably be changed somewhat if we took into consideration the conditions under the depression, because there would be a much larger number who would come under the maximum weekly allowance than would be the case in normal times.

The purchasing power of the people is reduced through this unemployment or loss of wages. This reduction in purchasing power makes it impossible for these people to purchase all the things they need. Their failure to purchase these things affects the industries that produce them and causes people to be thrown out of employment in those industries, which in turn decreases their purchasing power and compels them to refrain from purchasing some of the things they need. And so it goes around the circle until it affects all commerce and industry in the Nation. Thus we can see that society has an interest in preventing these industrial accidents which cause a loss of $35,000,000 a year in wages and thereby lessen the purchasing power of the people to that extent. Certainly it would be a good investment, from the standpoint of society, to save this $35,000,000 purchasing power each year.

Each and every employer should consider it his sacred duty to install every safeguard known to science in order to furnish protection against all the hazards connected with industry. Not only is he legally bound to do this, but he is morally bound to do it. In order to have industrial safety, we must have something more than mere mechanical safeguards. We must have workers with sound bodies, clear brains, and good and wholesome habits of life; and we must have employers who thoroughly understand and fully appreciate the humanitarian and economic aspects of industrial safety. It is important that machinery be safeguarded and that all unnecessary hazards be removed from the workshop, mill, or mine, but it is also important that the workers themselves shall acquire the habit of taking no unnecessary chances.

The human element is the most important factor in the work of accident prevention. Employees perform dangerous operations and subject themselves to unnecessary hazards and escape without injury perhaps nine thousand nine hundred and ninety-nine times, but they forget that it takes only one accident to put out an eye, amputate a limb, or crush out a human life; and the object of all safety measures is to protect the worker in that ten-thousandth time when indifference, fatigue, or recklessness may cause the worker to make a move that will result in serious injury and perhaps death.
I know that foremen, superintendents, managers, and those who have charge of safety work, sometimes become disgusted with the carelessness and indifference of workers who do not seem to show any concern about their own safety, just as careful and conscientious workers sometimes become disgusted with employers who show no interest in safeguarding the employees against the hazards of industry. But they are not all like that. Most employers and most workers are sincerely trying to avoid accidents.

What I would like to emphasize is this: That this indifference or thoughtlessness toward safety is one of the constant factors we shall always have to cope with. One of the chief duties of the safety man and of accident boards and commissions is to devise ways of maintaining interest and arousing enthusiasm that will tend to overcome this indifference. That is why I believe that those who have charge of safety work should gather together frequently in conferences such as this so that they can get such enlightenment, inspiration, and encouragement as will send them back to face the problems of safety with refreshed energy and renewed enthusiasm.

DISCUSSION

Chairman Kjaer. The subject is now open for discussion.

Secretary Stewart. When Mr. Duffy referred to safety as being the track upon which the work of these commissions must run, my mind ran back to the beginning of railroading in this country. Great men with great minds, whose pictures you still see hanging on the wall, invented a locomotive, and the world went wild over this new thing. They started to run it on a dirt road, and it juggled from side to side almost as many feet as it went ahead. In other words, it traveled too much, mostly in this way [going from side to side]. That would not work, so they improved the engine and put down boards for it to run on. They did not attach the boards, and the boards slipped from one side to the other, and the thing ran off the track or the track ran from under the engine all the time.

Then they devised the crosstie. Finally there was a strip-iron track, which had a thin piece of iron put on with screws. That piece of iron kept coming up through the car and sometimes through the passengers. They called it a snake rod.

Though it is not generally known, it is true that even after the third improvement made in locomotives there was a conference in Baltimore which seriously considered abandoning the whole project as impractical. There was nothing wrong with the engines. The engines were beautiful things for their day and time, but they had nothing to run on. The fellows at that conference who were thinking about the rails called attention to the fact that the trouble had not been with the engine; that the engine had worked all right; that the cause of all the trouble was that it had nothing to run on. The trouble was with the rails, the road. The fellows whose pictures you see on the wall are not the fellows who really saved the railroad; the fellows who really saved the railroads are the fellows who insisted upon building roadbeds and rails and bridges.

Even in my time the first rail was only 38 pounds. Then along came a 42-pound rail, and people thought, "That is too extravagant." Then came a 60-pound rail, an 80-pound rail, a 90-pound rail, a 100
and a 110 pound rail, and now I think there is a 180-pound rail. The railroad people have learned that the first thing to do in constructing a railroad is to get the roadbed and the rails and the bridges right.

In Baltimore, I think, I made the statement that I felt that the job of the workmen’s compensation commissions was to work themselves out of jobs just as fast as they can; that is, to prevent accidents, to stop the disasters for which we were spending so much money in compensation. At that time I was foolish enough to believe that some time or other we would work ourselves out of our jobs; that we would have the matter of accident prevention down so fine that there would not be much compensation work to do. I am afraid that, even with all we are doing along the lines Mr. Duffy has suggested, we are not very close to that goal as yet.

Mr. Hunter (Arizona). It would seem as if the illustration should have been carried one step farther. I happen to be a railroad man myself. Your code, as you have happily illustrated, is similar to the tracks on which the trains operate. It operates as a guide. But to keep the train upon the narrow part with the railroad rails and between the right-of-way fence, it is necessary to go one step farther and flange those wheels on which it runs. The flanges, you might say, would be proper supervision or education or restrictions. The code itself means nothing, because without proper supervision, education, and enforcement we will not gain the end we have started out for. This is just one more step, using the railroad as an illustration.

Mr. Donnelly (Ohio). With compensation legislation there was an awakening to the necessity of greater safety in industry, and various plans, legislative and otherwise, have been set on foot to bring about a greater degree of safety in industry, with some measure of success. But perhaps the man in the street and others who have not studied the compensation legislation of this country, and the men and women who work for wages, may have the general impression that the workers of America desired workmen’s compensation for itself alone. I know that in Ohio that is not true. I think there was a very large social sense in the minds of the more prominent men in the Ohio labor movement in relation to the obligation of society and industry to the injured worker, and that that perhaps could not be better represented and brought into force than by the payment of certain sums to injured workers and to the dependents of killed workers.

But back in the heads of all the leaders of labor, during all the time that we discussed compensation legislation, was a very great desire for safety in industry, and when the compensation law of Ohio was being framed and discussed labor had one great fear. That fear was that in this supposed meeting of the obligation to the injured worker and to the dependents of the killed worker, industry would lose sight of its obligation to provide a safe place of employment, and that if we could and did take these personal injury cases out of the courts and by some insurance scheme have a set price to be paid to the worker, accidents would increase because of a loss of interest on the part of the employer in providing a safe place of employment.

So when the question was before the constitutional convention of submitting to the people of Ohio a constitutional amendment whereby the General Assembly of Ohio would be able to enact a compulsory workmen’s compensation law, the labor group of the constitutional convention devoted itself very assiduously to the drafting of an
amendment to the constitution upon the subject of workmen's com-
pen-sation which that group thought would stimulate safety in industry.
So it incorporated in that amendment a provision that where the
employer violated any lawful requirement in respect to the safety of
the employees, and accidents resulted therefrom, the employee had the
option of accepting the compensation or suing at common law.
That provision was put in for the reason that our Ohio statutes were
very favorable to the securing of large judgments against employers
when a workman was injured in his place of employment, and in the
minds of labor that was thought to be the keystone of the constitu­tional
amendment providing for legislation along workmen's com-
pen-sation lines.

It is something like the general safety movement; things do not
always work out the way we thought they would. We labor people in
Ohio discovered, after a few years, that while of course the provision
had some good points and some good effects, evils arose because of it
which were greater than the good accomplished, because the men of
the legal profession who take cases upon contingent fees were con­stantly
ambulance chasing to secure the right from injured workers
and the dependents of killed workers to enter suits at law charging
violation of lawful requirements, upon the promise that a great deal
more in money could be secured through a suit than would be paid
under the provisions of the law.

It worked detrimentally to the worker, because these violations of
law were rather hard to establish in court. The amounts paid, while
more than the law provided for, frequently resulted, after the con­tingent
fee was taken out, in less to the workers. In addition to that,
the delays because of court proceedings frequently found the family
on the rocks for some considerable time before any money whatever
was available.

We attempted, under that section of the constitution and the law
then existing, to have safety codes drawn, and agreed to by employers.
A number of safety codes were drafted and were agreed to by the
representatives of organized labor and the representatives of organized
industry, but as soon as we attempted to make those codes lawful
requirements by general orders of the Industrial Commission of Ohio
we found that the employers balked, on the ground that with this
constitutional provision the more safety codes they agreed to and the
more safety codes that became general orders the more causes there
would be for getting into court.

Labor and industry got together in 1923 and decided it was time to
change the constitution of Ohio upon that subject, and we did change
it by an amendment which not only wiped out the right of an employee
to refuse compensation and sue for the violation of a lawful requirement,
but also placed in the constitution the provision that industry itself
should make a contribution of 1 per cent of the premiums paid through
the industrial commission under the compensation law, for the pur­pose
of setting up in this State, free from political influence, a depart­ment
known as the department of safety and hygiene. Among the
various duties of that department, aside from the promotion of safety,
is that of doing the necessary work to bring about meetings between
labor and employers to draft codes for the various industries of Ohio.

When the constitution was amended and that section went into
effect on the 1st day of January, 1924, 11 specific codes were made,
with the consent of the organized employers of this State, general orders of the Industrial Commission of Ohio, and became law by those orders. Since then the work has progressed. Labor and employers sit down together in these code committees—men who understand the industries, who work in the industries for which the codes are being made. We have a large number of codes, in addition to the original 11 safety industrial codes, now in effect in this State, giving to the employee, of course, for violation thereof the additional award.

In drafting the constitutional amendment that was adopted in 1923 we still had that fear that perhaps if the employers were relieved of these lawsuits there would come into the picture a disregard for safety, so labor insisted that in that constitutional amendment there should be provision for an additional award, and that this award should not be paid from the funds; it should be made against the individual employer and paid by him, in an additional payment each time he paid his premium, and the workman or his family would get that money in addition to their weekly compensation.

That is a much better situation, I think. I do not think the members of organized labor in Ohio are satisfied with the results of what is being done to prevent accidents, and believe much more could be done. We have no fault to find with the department of safety; we have no fault to find with many employers; but in discussing these safety codes we have a realization, when it comes to this mounting cost of industrial accidents in Ohio, that it is largely a matter of organization.

We find in the organized industries—I mean organized from the labor standpoint—that there is an opportunity to have the representatives of those employees sit down and discuss the safety codes. When we get to the unorganized industries we find we have to draft labor men—sometimes labor men who have not been directly engaged in the industry, sometimes men who have formerly been in the industry and have been out for some years, so they have not been able to keep up with the progress in industry. However, in the trades and the industries of Ohio in which there is a semblance of organization of labor, I think I can safely say to-day that every one of those industrial codes which have been agreed upon, which have been approved by the Industrial Commission of Ohio, and which have been made general orders, is the peer of any other industrial code for that same industry in the United States.

I do not think there is any question but that in Ohio we have, through the voluntary acts of employers and employees working upon these safety codes brought about a better understanding and a better feeling between the employers' groups and the organized labor groups. I do not think there is any question but there has been a very great reduction in accidents because of the adoption of these codes, which, as I said before, does not always show clearly, making some of our labor people rather discouraged and dissatisfied. But I believe we are on the right track; I believe we are doing a good job and that we are going to do a better one as the years go by.

Chairman Kjaer. I have been advised that the committee on forms is ready to report, and I believe this is the most opportune time to bring in the report for general discussion. Will you please give the report, Mr. Wilcox?
SUPPLEMENTARY REPORT OF COMMITTEE ON FORMS

By Sidney W. Wilcox, Chairman

Since Monday, when the first report was submitted, there have been three joint sessions of the enlarged forms committee of the International Association of Industrial Accident Boards and Commissions and the corresponding committee of the National Council on Compensation Insurance. The committee has agreed on certain questions that may in all probability be deleted from the forms as presented with the report on Monday, thus carrying out the evident intent of the association in the floor discussion to eliminate every possible question. These secondary questions are stricken from the printed forms now submitted to the members of the association.

The committee recommends the adoption of the following motion:

The International Association of Industrial Accident Boards and Commissions registers its judgment that the matter of standardized forms is of major importance well deserving the attention and cordial cooperation of the members of this association.

The five basic forms presented by the committee are not intended to be a complete set to which any commission should limit itself, nor, of course, is there any intention that a commission should increase the number of its forms if it has not made use of all five of the recommended forms. It is furthermore recognized that a certain amount of experimentation and adaptation to local need is desirable rather than otherwise. In the words of the American Standards Association: "Standardization is dynamic, not static. It means not to stand still but to move forward together." A study of the present situation, especially from the standpoint of national statistics, makes it clear that the movement away from the original standardized forms as contained in Bulletin 276 has resulted in increasing complexity, confusion, and expense, which could be avoided while still meeting the needs of the several jurisdictions. There is need to retrace our steps in the direction of greater uniformity. It appears that to a rather surprising and encouraging degree this could be secured without sacrifice of local advantage.

Therefore, the forms submitted by the forms committee in either their complete or their abbreviated forms are hereby approved by the association with the recommendation to each board or commission that such forms be officially adopted for the respective States.

Note.—Forms embodying the result of subsequent developments can be secured from the Chairman of the Forms Committee, c/o Department of Labor, State Office Building, Albany, N. Y.—[Editor.]

DISCUSSION

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

Chairman Kjaer. The matter is open for discussion.

Mr. Wilcox (New York). If I may be permitted to add a word of oral explanation, the point of view of the committee is that there is an exceedingly heavy and unnecessary expense imposed on the insurance industry in having so great a variety of forms and also that from the standpoint of statistics we have difficulty in understanding exactly what the different States are reporting. From the standpoint of national statistics it would be a great boon if the questions were worded alike and the interpretations could, therefore, be made more simple.
**STANDARD FORM FOR
EMPLOYER'S FIRST REPORT OF INJURY**

1. **Name of Employer**
2. **Office address: No. and St.**
3. **City or Town**
4. **State**
5. **Insured by**
   - **Name and address of Principal Contractor, if any**
   - **Name and address of Sub-contractor, if any**
6. **On whose payroll was injured carried**
7. **Give average number of employees in State**
8. **Male**
   - **Female**
   - **Total**
9. **Give nature of business (or article manufactured)**

**Employer**

**Time and Place**

<table>
<thead>
<tr>
<th>8. (a) Location of plant or place where accident occurred</th>
<th>Departure</th>
<th>State if employer's premises</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) If injured in a mine, did accident occur on surface, underground, shaft, drift or mill</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>9. Date of Injury</th>
<th>19</th>
<th>Day of week</th>
<th>19</th>
<th>Hour of day</th>
<th>A. M.</th>
<th>P. M.</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Date disability began</td>
<td>19</td>
<td>A. M.</td>
<td>P. M.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

11. **Was injured paid in full for this day?**
12. **When did you or foreman first know of injury?**

**Injured Person**

<table>
<thead>
<tr>
<th>14. <strong>Name of Injured</strong></th>
<th>(First Name)</th>
<th>(Middle Initial)</th>
<th>(Last Name)</th>
</tr>
</thead>
<tbody>
<tr>
<td>15. <strong>Address: No. and St.</strong></td>
<td>City or Town</td>
<td>State</td>
<td></td>
</tr>
<tr>
<td>16. <strong>Check (v) Married, Single, Widowed, Widower, Divorced:</strong></td>
<td>Male, Female</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17. <strong>Nationality:</strong></td>
<td>Speak English</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18. <strong>Age:</strong></td>
<td>Did you have on file employment certificate or permit</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

19. **Number of dependents under 18 years of age**
   - **Under 18 years**

20. (a) **Occupation when injured**
    - (b) **Was this his or her regular occupation?**

21. (a) **How long employed by you**
    - (b) **Piece or time worker**
    - (c) **Wages per hour $**

22. (a) **No. hours worked per day**
    - (b) **Wages per day $**
    - (c) **No. days worked per week**
    - (d) **How long received these wages?**
    - (e) **Average weekly earnings**

23. **Machine, tool or thing causing injury**

24. **Kind of power, (hand, foot, electrical, steam, etc.)**

25. **Part of machine on which accident occurred**

26. (a) **Was safety appliance or regulation provided**
    - (b) **Was it in use at time?**

27. **Was accident caused by injured's failure to use or observe safety appliance or regulation?**

28. (a) **Describe fully how accident occurred, and state what employee was doing when injured**

29. **Names and addresses of witnesses**

30. **Nature and location of injury (describe fully exact location of amputations or fractures, right or left)**

31. **Probable length of disability**

32. **Has injured returned to work?**
   - **If so, date and hour**
   - **At what wage $**

33. **At what occupation**

34. (a) **Name and address of physician**
    - (b) **Name and address of hospital**

35. **Has injured died?**
   - (If so, give date of death)

**Date of this report**

**Signed by**

**Official Title**

---

Digital copy from February 19, 2023

Federal Reserve Bank of St. Louis

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Federal Reserve Bank of St. Louis
If Employer's First Report of Injury did not show that the injured had returned to work, an Employer's Supplemental Report of Injury should be completed and filed immediately after return to work of the employee; or at the end of days. In the event of the death of the employee, this report should be filed immediately.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Name of Employer</td>
<td></td>
</tr>
<tr>
<td>2. Office address: No. and St</td>
<td>City or Town</td>
</tr>
<tr>
<td>3. Insured by</td>
<td></td>
</tr>
<tr>
<td>4. Name of Injured (in full)</td>
<td>(First Name)</td>
</tr>
<tr>
<td>5. Present address: No. and St</td>
<td>City or Town</td>
</tr>
<tr>
<td>6. Date of injury</td>
<td></td>
</tr>
<tr>
<td>7. Date disability began</td>
<td></td>
</tr>
<tr>
<td>8. Has injured returned to work?</td>
<td>If so, date and hour</td>
</tr>
<tr>
<td>9. Is injured person earning same wages as before injury?</td>
<td>If not, explain</td>
</tr>
<tr>
<td>10. If disability has not terminated, state probable date of termination of disability</td>
<td></td>
</tr>
<tr>
<td>11. Has injured died?</td>
<td>If so, date of death</td>
</tr>
</tbody>
</table>

Signed by |  

Date of this report:   
Firm name:   

Official Title:   

15285°—03. (Face p. 112.) No. 2
Standard Form for Agreement
as to Compensation

We, __________________________________________ residing at __________________________________________,
City or town __________________________________________ State __________________________________________

have reached an agreement in regard to compensation for the injury sustained by said employee and submit the
following statement of facts relative thereto:

Date of injury __________________________________________ Date disability began __________________________________________
Nature of injury __________________________________________

Place of accident __________________________________________
Cause of accident __________________________________________
Probable length of disability __________________________________________

The terms of this agreement under the above facts are as follows:

That the said __________________________________________ shall receive compensation at the rate of $________ per
week based upon an average weekly wage of $________ and that said compensation shall be payable
weekly, semi-monthly, monthly,
from and including the ______________________ day of ______________________ month 19________ until
terminated in accordance with the provisions of the Workmen's Compensation Law of the State of

Witness __________________________________________ Employee or Dependent
Number and Street __________________________________________
Address __________________________________________

Witness __________________________________________ Employer
Number and Street __________________________________________
Address __________________________________________

Witness __________________________________________ Carrier
Number and Street __________________________________________
Address __________________________________________

Approved by __________________________________________ Commissioner or Board Member
Title __________________________________________
Date of Approval __________________________________________
Date of Agreement __________________________________________
STANDARD FORM FOR
FINAL COMPENSATION
SETTLEMENT RECEIPT

READ CAREFULLY BEFORE SIGNING. THIS IS A FINAL SETTLEMENT RECEIPT. SIGNING IT MEANS THAT
COMPENSATION PAYMENTS CEASE.

Received of ____________________________________________________________
dollars and __________________________ cents ($______),
making in all, with weekly payments already received by me,
the total sum of ___________________________________________________________
dollars and __________________________ cents ($______),
in final settlement and satisfaction of all claims for compensation subject to review as provided by law, on account of injuries suffered by
__________________________________________________________ on or about the ______ day of _______19____,
while in the employ of ____________________________________________________________

I returned to work on the ________________________ day of _______19____ at a wage of $____________ per week.

Witness:

__________________________________________
Name

__________________________________________
Name

__________________________________________
Number and Street

__________________________________________
Number and Street

__________________________________________
City or Town

__________________________________________
City or Town

__________________________________________
State

__________________________________________
State

(Date)

192385—SL. (Face p. 112.) No. 4
STANDARD FORM FOR
SURGEON'S REPORT

<table>
<thead>
<tr>
<th>The Patient</th>
<th>1. Name of Injured Person: ........................................... Age: .................................. Sex: ..................................</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2. Address: No.-St. ........................................................................................................ City or Town: .................. State: ..................</td>
</tr>
<tr>
<td></td>
<td>3. Name and Address of Employer: ..........................................................................................</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The Accident</th>
<th>4. Date of accident: ................................................... Hour: .................................. M. Date disability began: ..................................</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>5. State in patient's own words where and how accident occurred: ........................................</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The Injury</th>
<th>6. Give accurate description of nature and extent of injury and state your objective findings: ........................................................................................................</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>7. Will the injury result in (a) Permanent defect? ..................................................................</td>
</tr>
<tr>
<td></td>
<td>(b) Facial or head disfigurement? .........................................................................................</td>
</tr>
<tr>
<td></td>
<td>(Permanent disability such as loss of whole or parts of fingers, facial or head disfigurement, etc., must be accurately marked on chart on reverse side of this report.)</td>
</tr>
<tr>
<td></td>
<td>8. Is accident above referred to the only cause of patient's condition? .............................</td>
</tr>
<tr>
<td></td>
<td>(If not, state contributing causes: ......................................................................................</td>
</tr>
<tr>
<td></td>
<td>9. Is patient suffering from any disease of the heart, lungs, brain, kidneys, blood, vascular system or any other disabling condition not due to this accident? Give particulars: ..................................................................................................</td>
</tr>
<tr>
<td></td>
<td>10. Has patient any physical impairment due to previous accident or disease? Give particulars:</td>
</tr>
<tr>
<td></td>
<td>11. Has normal recovery been delayed for any reason? Give particulars: ..............................</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Treatment</th>
<th>12. Date of your first treatment: .............................................................................................</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>13. Describe treatment given by you: ..................................................................................</td>
</tr>
<tr>
<td></td>
<td>14. Were X-Rays taken? By whom? (Name and Address) ..........................................................</td>
</tr>
<tr>
<td></td>
<td>15. X-Ray diagnosis: .............................................................................................................</td>
</tr>
<tr>
<td></td>
<td>16. Was patient treated by anyone else? By whom? (Name and Address) ................................</td>
</tr>
<tr>
<td></td>
<td>17. Was patient hospitalized? Name and address of hospital: ..............................................</td>
</tr>
<tr>
<td></td>
<td>18. Date of Admission to hospital: Date of discharge: .......................................................</td>
</tr>
<tr>
<td></td>
<td>19. Is further treatment needed? For how long? .....................................................................</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disability</th>
<th>20. Patient will be able to resume regular work on: ............................................................</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>21. Patient will be able to resume light work on: ................................................................</td>
</tr>
<tr>
<td></td>
<td>22. If death ensued give date: ...............................................................................................</td>
</tr>
</tbody>
</table>

REMARKS: (Give any information of value not included above)

I am a duly licensed physician in the State of .......................................................... Medical School in ........................................ Year.

Date of this report: ................................ (Signed) .........................................................

This report must be signed personally by physician. Address: .................................. Telephone: ........................................
We are therefore very much in earnest about this matter of standardized forms. We realize that the next step, if this meets with your approval, will be to secure cooperation and understanding from the various commissions and boards, and it is proposed, on the basis of these forms which we propose for adoption, to achieve as large a measure of standardization as possible.

Hope springs eternal in the human breast. We are really setting out to have these forms adopted in practice, not merely on the minutes of this association. Nevertheless, we want to be practical, and we realize that we will have to attune them to the needs and the points of view of the various commissions; so this is really a program more than a final decision. We hope there will be little confusion, and that it will travel more successfully than the early trains Ethelbert Stewart described to us.

Chairman Kjaer. I may say on this point that this committee has communicated with the different States and received their opinions, and have formulated the standards on that principle.

[The motion to accept the report was carried unanimously.]

Chairman Kjaer. Mr. Morley will now address us on Safety is Better than Compensation. Mr. Morley is known wherever safety is mentioned.

Safety is Better than Compensation

By R. B. Morley, General Manager Industrial Accident Prevention Associations, Toronto, Canada

First, I add my greetings to those that have already been extended and say to you that it is a very real pleasure to attend your annual gatherings and meet again men from all over North America who are interested in accident prevention and workmen's compensation.

Second, I thank the program committee for giving me such comprehensive a title for my remarks—Safety is Better than Compensation. The statement is positive in character and, on the other hand, may possibly develop a certain amount of controversy, without in any way attacking the fundamental principle and value of workmen's compensation legislation.

Both Hands

A few years ago the off-bearer on a plate shear reached under the knife to straighten the sheet and the operator, not knowing that his off-bearer's hands were in a hazardous position, tripped the shear, and the result was two hands off above the wrist. The accident was largely due to lack of teamwork on an operation of that type. The injured man was given all possible attention, was granted a total permanent disability pension for life, was subsequently set up in business in a small way by his employer, and, in spite of it all, was eventually a suicide because of his awful handicap. “Safety is better than compensation.”

A Generous Law

The workmen's compensation act of Ontario is, I take it, well known to most of you. It is a generous law, administered by a board appointed for life. Our act provides for absolutely unlimited medical
aid and hospital services, allows the injured worker 66% per cent of his wages in all cases where the disability lasts over seven days, with pension for life in partial or total disabilities, and makes generous provision for dependents.

Our act came into force on the 1st of January, 1915, and at the end of 1931 we had 17 years' experience of the law, with awards totaling $91,924,617.25 made in those 17 years. That sum has relieved an enormous amount of distress and has assisted injured workers whose earning power has been reduced; but ninety millions odd has not been the whole cost, and still it seems that "prevention is better than cure."

**Accident Prevention**

Industry asked for and was granted power to set up some form of safety work when our compensation act was being framed. Section 114 of the Ontario act covers that phase and passes over to industry all accident-prevention activities under compensation in Ontario. That section (1) authorizes the industries in any class to form an accident-prevention association and to make safety rules; (2) authorizes the compensation board to approve those rules and make them binding on all employers in the class; (3) authorizes the board to pay the salaries and expenses of inspectors and experts out of the accident fund of the class; and (4) authorizes the board to make grants, out of the accident fund, toward the expenses of the safety association.

The Industrial Accident Prevention Associations include in the membership over 9,300 firms under compensation in 17 classes of industry. The directors are elected at the annual convention and represent the various classes, as well as representing the Province geographically. The operations of the organization include (a) inspection services; (b) distribution of various forms of safety literature; (c) recommendations for safety devices; (d) reports on serious accidents and methods necessary for prevention of repetition of such; (e) investigation of plant experience where compensation costs are in excess of assessments levied by the workmen's compensation board; and (f) generally acting as advisers to industry in accident-prevention work.

The staff of the associations consists of 35 persons, with divisional offices in Windsor, Hamilton, and Ottawa.

**Industry's Job**

An accident is a mistake on the part of someone, and such mistakes are costly in time and money. Accident prevention must include: (1) Selection of suitable type of employee for the work, and then subsequent job training; (2) provision of all reasonable mechanical guards; (3) adequate first aid during all employment hours and careful selection of doctor; (4) adequate record keeping covering all injuries, including minor, with subsequent analysis of such records to determine accident trend and corrective measures necessary; and last in line but first in importance, (5) properly directed managerial interest, directed through the usual supervisory channels, to insist on safe methods of production as economically sound.
High-Cost Cases

A brief discussion of a few high-cost cases may assist in proving the title of this address, and these are submitted to you:

1. Laborer on construction job stepped on overhanging end of plank on scaffold and fell 10 feet when plank tipped. Fracture of the skull and death resulted. The awards included $7,674 for capitalized value of pension to widow and two children, $100 lump sum to the widow, and $125 for burial.

2. Steel worker fell while connecting steel, and death resulted. Awards totaling $9,881 were made, as there was a widow, as well as four children.

3. Laundress feeding sheet into flat-work ironer was caught by rollers and received severe hand injuries. The capitalized value of the pension here was $3,621.

4. Rock blaster placed three shots, and after two had exploded went to the third and was killed by delayed firing. The capitalized value of the pension to the widow and child was $5,776.

5. Janitor in plate-glass plant was pinned between two boxes of glass and so seriously crushed that he died three weeks later. Awards in this case totaled $4,126.


There was over $34,000 involved in those six cases. There were four deaths, with all the attendant sorrow and subsequent loss of earning power of the breadwinner. There were two serious injuries to workers, who must always suffer from the handicap of those injuries, and there does not appear to have been much, if any, on the other side. Safety would have prevented those losses.

Safety is Better

Safety is better than compensation. Safety is positive. Safety is exemption from injury and loss. Compensation, as we all know it, is a part payment for an injury or a loss. The part is not equal to the whole; therefore, safety is better than compensation—quod erat demonstrandum.

DISCUSSION

Mr. Kearns (Ohio). After hearing the very clear presentation of the subject by Mr. Duffy, I feel there is not much to add to what he has already said, but there are one or two points I want to stress a little; that is, the necessity for specific safety codes to bring about systematic enforcement of our safety laws—the need for a guide, as it were, not only for the employer himself but also for the inspectors who are exercising the police power of the State in the enforcement of safety regulations. In other words, I want to stress the need of specific regulations to take the place of many of the obsolete laws that remain on the statute books of the States, to give the employer something specific, something definite, on which to work.

These codes are more useful because of the fact that they can be made specific; they can be made definite. It is a great deal easier, of course, to make changes in or to revise or amplify these codes from
time to time when they are adopted by the various commissions or enforcing authorities of the States than to change laws. I think that is one important factor in connection with the matter of codes.

We have a happy situation here in Ohio. Mr. Donnelly has explained in part how the adoption of codes is brought about in this State. The industrial commission is given, under the law creating that body, the authority to adopt any safety regulations that in its judgment are necessary for the proper protection of the life, limb, health, and welfare of employees in all classes of employment. It could, therefore, by virtue of the authority vested in it by that law, write these laws and issue them as general orders, giving them the force of protective law, without the cooperation of employer or employee; but it decided that in order to get a more complete, a more comprehensive, a more practical code in all cases, it would ask the employers and the employees of the State to assist in the compilation of these codes, and a general advisory committee was appointed, which has general supervision over the work of compiling these codes.

This general advisory committee recommends the personnel of the subcommittees who do the actual work of drafting or compiling the code, and in each case the men selected for this job are men who are thoroughly practical in the subject they are to handle; they are men who have had years of experience along the lines that are to be covered by the particular code assigned to them. When the code is reported back to the general advisory committee, it is reviewed by the committee, and reported back to the industrial commission, which then adopts the code and issues it as a general order, giving the code the force and effect of law.

There is one other thing in connection with these codes, which Mr. Duffy has mentioned. They are essential in connection with our educational safety work. We all realize that the mere arbitrary enforcement of the statutory regulation is not the answer to the accident-prevention problem, that something more is necessary. As Mr. Duffy mentioned, the human element, the human equation, enters into it, and it is necessary, therefore, to carry on systematic educational safety work in the plants throughout the State. That is the work that has been assigned to the division of safety and hygiene, which I have the honor to represent as its superintendent. Our work is exclusively educational safety work, and these codes have been invaluable in bringing about the assistance and cooperation of the employee in safety work.

I am not at all in sympathy with the people who say that 95 or 98 per cent of the accidents occurring in the industry to-day is due to the human element. I can not agree with such a statement. I think the man who makes such a statement should give a great deal of consideration to the conditions that bring about these accidents and to the causes of accidents generally. Certainly he has not made a very extensive analysis of the accidents reported, at least in the State of Ohio.

I think we are more nearly correct when we say that perhaps about 25 per cent of these accidents are due to lack of mechanical safeguards and perhaps 75 per cent of them are due to the failure of the human element, necessitating, of course, safety education along that line. These accidents are due to the so-called psychological causes, such as were mentioned this morning by Mr. Duffy—indifference, thoughtless-
ness, carelessness, on the part of the worker himself. Education is necessary, and that is the work we are carrying on in Ohio.

After all, I think that is the answer to many of the problems of the compensation boards throughout the States—the prevention of accidents. We believe that if we can prevent accidents or reduce their number, many of the problems discussed at these meetings will be solved. As Mr. Morley has said, we have adopted the slogan, "Safety is better than compensation."

We have been carrying on this safety work for a period of seven years. While I feel we have met with some degree of success, we have not, of course, accomplished all we had hoped to accomplish. We did have, however, both in 1930 and in 1931, a reduction in accidents that was greater than the reduction in pay roll, so far as we have been able to secure the pay roll.

At the present time, as a result not only of the educational work carried on by our department, but of the work of the inspection department in visiting these plants daily and issuing orders for the installation of safety devices and appliances to safeguard the life and limb of the worker, we have built up a real safety sentiment. To-day safety contests and safety campaigns are being carried on all over the State. In Cleveland we have more than 600 concerns participating in a safety campaign. We put on a safety week in Zanesville last week; we will have another in Sandusky next week. In Cincinnati we have a standing committee—a safety committee—advisory to the industrial commission, which is supervising the safety work there, and a number of campaigns and contests are under way there. At the present time there are three State contests—the dyers and cleaners, the hotel associations, and the refiners of the State. The bakers are now clamoring for a State-wide campaign.

I believe we have really worked up a safety sentiment not only among the employers but also among the employees of the State. The employers have begun to realize the value and the necessity for this safety work in the prevention of accidents. While, as I said, we have not accomplished all that we might hope to accomplish, I am sure this safety sentiment prevalent throughout the State to-day is going to be productive of good results in a very short time.

Mr. Kingston (Ontario). There is a question I would like to ask Mr. Kearns in reference to that payment—the penalty, if you want to call it that—imposed on employers, which is an uninsurable risk, for failure to comply with certain requirements. Mr. Duffy, I think, said that money was paid by the commission out of the general accident fund of the commission, but that it was collected from the employer, who had to pay it personally. May I ask, is that money paid by the commission, regardless of whether or not it is collected from the employer?

Mr. Kearns. Yes.

Mr. Kingston. Does the injured worker, or his widow, as the case may be, get that money whether or not the employer pays it?

Mr. Kearns. He does. The commission pays it, and then collects it from the employer.

Mr. Kingston. You cannot get blood out of a stone. Does it not happen in a number of cases that the commission fails to collect by reason of the employer's being judgment proof?
Mr. Kearns. That happens occasionally, yes.

Mr. Kingston. What is the general reaction of the employers in the State to that provision in your law? Is it regarded rather in the nature of a penalty? Is there a reaction that it is a bit severe as a penalty for not complying with the safety code?

Mr. Kearns. On the part of most of our employers, I should say not. Of course, there are some employers who may feel that way about it. I think the best indication of the fact that they do not feel it any hardship is the splendid cooperation we are receiving from the employers as well as from the employees of the State in the matter of compiling these codes of specific requirement. In the past year and a half we have revised five of our present codes, and have adopted two completely new codes. In each instance, the employer representative cooperated wonderfully with the department in the compilation of these codes.

Chairman Kjaer. Safety is a matter which is very important to the compensation commissioners, at least in the States where they deal also with safety matters. In other States, of course, it might put them out of a job, put them in the ranks of the unemployed, and consequently would not be quite so satisfactory. At the same time, it ties in very closely with compensation. I believe considerable time and attention should be devoted to it.

[Meeting adjourned.]
Chairman Nowak. I am going to proceed immediately to the first topic of discussion, because I know that the delegates here will want to discuss the paper after it is read, and will now introduce to you the gentleman who is going to discuss this matter, Mr. Horovitz, of Massachusetts.


By Samuel B. Horovitz, of the Boston Bar

Workmen's compensation legislation in slightly over two decades has spread from Wisconsin in 1911, to the forty-fourth State, North Carolina, in 1929. Compensation acts, formerly regarded as social experiments, are now permanently entrenched as part of our American law. For the most part the decisions of the highest tribunal in the State determine how liberal or how conservative these acts will be interpreted or construed.

But in three important branches of the compensation law, the decisions of the Supreme Court of the United States act as a controlling authority. In the field of maritime law and in the field of interstate commerce the decisions of this highest Federal court constitute the law of the land. An appeal from the highest State court to the Supreme Court of the United States is proper when the State court errs on these two subjects. And it has recently been decided in Bradford Electric Light Co. (Inc.) v. Clapper, 284 U. S. 221, 76 L. ed. 757 (May 16, 1932), that in the field of conflict of laws, when dealing with the so-called doctrine of extraterritoriality, the Supreme Court of the United States may delimit the jurisdiction of a State under the full faith and credit clause.

As the last few years, and especially the last few months, have witnessed some of the most important decisions of the highest court in the land on these phases of the compensation law, the writer hopes to clarify the situation by a discussion and analysis of these decisions.

Maritime Law

The State courts, and consequently the State boards and commissions, have long recognized that in cases of admiralty and maritime

---

jurisdiction the "decisions by the Supreme Court of the United States constitute the law of the land." 2

One of the purposes of most compensation acts is to give certain weekly financial benefits to workmen or employees injured out of and in the course of their employment. It was at first thought by many legislators that the situs of the employee at the moment of injury would have no bearing on his rights to compensation under a State act. 8 But in the field of the maritime law this theory received such a shock in Southern Pacific Co. v. Jensen, 244 U. S. 205, 216, 61 L. ed. 1086, 1098 (decided May 21, 1917), that the last 15 years of persistent endeavor on the part of the dissenting justices to correct what they regarded as judicial error has seen an important modification of the rule stated therein, but no retraction thereof.

The rule still stands in the following language:

Equally well established is the rule that State statutes may not * * * affect the general maritime law beyond certain limits * * * and plainly, we think, no such legislation is valid if it contravenes the essential purpose expressed by an act of Congress, or works material prejudice to the characteristic features of the general maritime law, or interferes with the proper harmony and uniformity of that law in its international and interstate relations. This limitation, at the least, is essential to the effective operation of the fundamental purposes for which such law was incorporated into our national laws by the Constitution itself.

But while the vigorous dissents of Mr. Justice Holmes and Mr. Justice Pitney, concurred in by Mr. Justice Brandeis and Mr. Justice Clark, did not lead to the overruling of this decision, subsequent decisions have permitted a modification which allows State compensation acts to give an exclusive remedy for certain maritime torts.

In four important and outstanding cases, 4 this highest court in the land, while professing to follow the rule in Jensen's case, as reaffirmed in Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 64 L. ed. 834 (1920), has intentionally and deliberately decided that even if the facts disclosed a maritime tort, it would nevertheless come under the State compensation act when—

the matter is of mere local concern and its regulation by the State will work no material prejudice to any characteristic feature of the general maritime law. The [compensation] act prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist. (Millers' Indemnity Underwriters v. Braud, 270 U. S. 59, 64, 65.)

* State courts have uniformly recognized that the decisions of the Supreme Court of the United States bind them on questions of maritime law and interstate commerce. "The single question to be decided is whether these injuries are 'cases of admiralty and maritime jurisdiction.' This is a subject on which decisions of the Supreme Court of the United States constitute the law of the land. Therefore, our only concern is to endeavor to ascertain and apply the governing principles declared by that court." (Rugg, C. J., in O'Hara's Case, 248 Mass. 31, 34; see Toland's Case, 258 Mass. 470.) In Southern Pacific Co. v. Jensen, 244 U. S. 205, 216, 217, 61 L. ed. 1086, 1098, 1099, the court places its power over the admiralty law as similar to that in respect to interstate commerce.

* In Southern Pacific Co. v. Jensen, 244 U. S. 205, the New York workmen's compensation commission awarded compensation to the dependents of a longshoreman killed on an ocean-going steamship. This award was reversed. Mr. Justice Holmes in dissenting said: "I recognize without hesitation that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions * * * the natural inference is that, in the silence of Congress, this court has believed the very limited law of the sea to be supplemented here as in England by the common law, and that here that means, by the common law of the States * * * * * * So far as I know, the State courts have made this assumption without criticism or attempt at revision for some years, and yet without any objection from this day.

At no time, however, has the court undertaken to define what it meant by a matter of "mere local concern." As a result the litigation during the last few years on this subject concerned, not so much the rule itself, but whether, applying the facts to the rule, the matter was one where rights and liabilities were so definitely fixed by maritime rules whose uniformity was essential that the matter could not possibly come under a State compensation act, or on the other hand, whether the matter was so essentially local that the State compensation act entirely supplanted the admiralty law.

Matters of Mere Local Concern

In Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469, 66 L. ed. 321 (1922), the court made its first limitation or modification of the Jensen rule. For the first time in the history of compensation law, on January 3, 1922, this paramount court, without a dissent, allowed a maritime tort to come exclusively under a State compensation act. There a shipbuilding company was constructing a steamer for the United States Government under contract with the United States Shipping Board Emergency Fleet Corporation. After launching it in a navigable river at Portland, Oreg., the employee (a carpenter) was injured while constructing a bulkhead aboard the ship. The "vessel had been substantially completed, but was not ready for delivery." (257 U. S. 469, 474.) While professing to follow the principle set forth in Western Fuel Co. v. Garcia, 257 U. S. 233 (1921), which did not deal with compensation acts, and still further protesting that the court was following the rule set forth in the Jensen case, the court stated what the writer submits is a definite and justifiable modification as to matters of mere local concern, in the following language:

In each of them the employment or contract was maritime in nature and the rights and liabilities of the parties were prescribed by general rules of maritime law essential to its proper harmony and uniformity. Here the parties contracted with reference to the State statute; their rights and liabilities had no direct relation to navigation, and the application of the local law can not materially affect any rules of the sea whose uniformity is essential. (Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469, 477.)

The modification was somewhat broadened and elaborated upon in Millers' Indemnity Underwriters v. Braud, 270 U. S. 59, 70 L. ed. 470 (1926). There a diver "submerged himself from a floating barge anchored in a navigable [Sabine, Tex.] river 35 feet from the bank, for the purpose of sawing off the timbers of an abandoned set of ways, once used for launching ships, which had become an obstruction to navigation. While thus submerged the air supply failed and he died of suffocation."

Again without a dissent, the court allowed a State compensation act to give the exclusive remedy and abrogate the right to resort to the admiralty court. On the strength of the Rohde case, the court held that the matter was "of mere local concern and its regulation by the State will work no material prejudice to any characteristic feature of the general maritime law." No mention was made of the second test laid down in the Jensen case, to wit, whether the application of the compensation law would interfere "with the proper harmony and uniformity of the maritime law in its international and interstate
relations." In the later case of London Guarantee & Accident Co. v. Industrial Accident Commission of California, 279 U. S. 109, 125, 73 L. ed. 632, Chief Justice Taft, speaking for the majority, was careful to point out that both tests must be applied, and that a State compensation act could not give the exclusive remedy and right where its application would either (1) work material prejudice to the characteristic features of the general maritime law, or (2) interfere with the proper harmony and uniformity of the general maritime law in its international or interstate relationship.

It would have been simple for the court to have stated that as the diver was clearing an obstruction to navigation in a river which was a part of the navigable waters of the United States, the matter was one which had special relation to navigation and commerce, and to have held the matter to be beyond the regulatory power of the State of Texas; but it is submitted that by February 1, 1926, when this decision was handed down, the court had definitely decided to lay emphasis on the exception to the rule of Jensen's case rather than on the rule itself, and that as a result the rule suffered an important and permanent modification. Rohde's case, which was made the basis of Braud's case, was stated by the court to be one in which the employee was injured—

while at work upon an uncompleted vessel lying in navigable waters within the State of Oregon. The words of the local statute applied to the employment and prescribed an exclusive remedy. We said the cause was controlled by the principle that, as to certain local matters regulation of which would work no material prejudice to the general maritime law, the rules of the latter may be modified or supplemented by State statute. (Millers' Indemnity Underwriters v. Braud, 270 U. S. 59, 64.)

In 1928 the rule that maritime torts which were matters of mere local concern came exclusively under State compensation acts was reaffirmed. In Alaska Packers Assn. v. Industrial Accident Commission of California, 276 U. S. 467, 72 L. ed. 656 (1928), the employee was hired in California "to go to Alaska as a seaman on its bark Star of Iceland and after arriving at the cannery to go ashore and act there as directed—'anything I was told to do.' Among other things, he made nets, fixed up the small boats always kept there, took them out, and served as a fisherman on one of them." While standing on the land in Alaska, he endeavored to push into navigable water a stranded boat 26 feet long, theretofore used by him for taking fish, and while so engaged received his injuries. On the basis of the Rohde case and the Braud case, the court allowed the California act to supply the exclusive remedy, saying:

When injured certainly he was not engaged in any work so directly connected with navigation and commerce that to permit the rights of the parties to be controlled by the local law would interfere with the essential uniformity of the general maritime law. The work was really local in character.

And in the fourth and thus far the last case justifying the application of a State compensation act in preference to the maritime law—Sultan Railway & Timber Co. v. Department of Labor and Industries of Washington, 277 U. S. 135, 72 L. ed. 820 (1928)—the compensation act of the State of Washington was allowed to give the exclusive remedy even though the tort was not only a maritime one, but at the moment of injury the injured employees were at least indirectly engaged in commerce. There the workmen were injured
on navigable waters of the United States while handling logs in connection with placing them in booms and conducting them to sawmills before transportation was begun and after it was ended. The court no longer went into detail to show that the Jensen case was in accord, in language at least, with its conclusion, but stated definitely that—

It is settled by our decisions that where the employment, although maritime in character, pertains to local matters, having only an incidental relation to navigation and commerce, the rights, obligations, and liabilities of the parties may be regulated by local rules which do not work material prejudice to the characteristic features of the general maritime law or interfere with its uniformity.

Undoubtedly, in the Sultan case Mr. Justice Van Devanter in using the words "local matters, having only an incidental relation to navigation and commerce," was referring to exactly the same rule as Mr. Justice McReynolds in the Braud case, when he spoke of the matter being "of mere local concern and its regulation by the State will work no material prejudice to any characteristic feature of the general maritime law."

The writer therefore draws the following conclusions from the foregoing four cases: 1. The mere fact that the injury occurred on navigable waters of the United States does not prevent an award of compensation under an applicable State compensation act; 2. A maritime tort or personal injury pertaining to local matters, having only an incidental relation to navigation and commerce, comes exclusively under the local State compensation act, and not under the jurisdiction of the Federal courts or the common-law courts administering the rules of the general admiralty law; or, stated in the language of the earlier cases, where the matter is of mere local concern, and its regulation by the State will work no material prejudice to any characteristic feature of the general maritime law, the industrial accident board or commission or the court administering the workmen's compensation law is the only proper tribunal before whom the action should be brought; 3. No comprehensive definition of the words "matters of mere local concern" being possible, the question whether the matter is of mere local concern and only incidentally relates to navigation and commerce (and therefore comes exclusively under the compensation law), or in fact has direct relation to navigation or commerce and therefore works material prejudice to the characteristic features of the general maritime law or interferes with its uniformity in interstate and foreign commerce (and therefore comes exclusively under the substantive admiralty law), must be determined in view of the surrounding circumstances as cases arise; 4. In the succeeding paragraphs, the writer will discuss the adjudicated cases in which the matter was held not to be of mere local concern, and solely under the admiralty law; but except for such cases he suggests that where the employment is essentially nonmaritime, and the work being done at the time of the injury has no necessarily direct relation to interstate commerce or to foreign commerce, or has no necessarily immediate contact with navigation with respect to

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*Balsley Iron Works v. Span, 281 U. S. 222, 230, 74 L. ed. 819 (1930), where Mr. Justice McReynolds, in reversing an award of workmen's compensation by the Pennsylvania board to an employee making repairs on a completed vessel lying in navigable waters, said: "What work has direct relation to navigation or commerce must, of course, be determined in view of surrounding circumstances as cases arise."
which uniform maritime rules are essential, the matter should be of exclusive State compensation cognizance. So, for example, there should come under the local act cases of injury to workmen extending sewer lines from cities abutting on navigable rivers or the ocean, even though injured upon these navigable waters; injuries to employees driving piles or doing similar work in connection with docks, wharves, and local harbors, by way of local improvements or extensions; and injuries to workmen in connection with the disposal of garbage or other waste material—unless in each group of these examples at the moment of injury the workman was aboard a completed vessel capable of navigation under its own power in interstate and foreign commerce and in fact so being used during the general employment.

In short, if the work is of an amphibious character, and the only admiralty feature about the case is that the employee happened to be on or over local navigable waters of the United States at the time of the injury, with the definite exception of the loading and unloading, repair, or rescue of a completed vessel, there appears to be no substantial reason why a local compensation act should not supply the right and remedy, and completely abrogate the right to resort to the admiralty court, which right would otherwise exist.

Injuries Aboard and in Connection with Ships

In spite of dissenting opinions, it must now be treated as settled, in view of a long line of majority decisions, that injuries received by seamen, longshoremen, or any other type of employee, aboard a completed vessel, loading or unloading at a dock or wharf, regardless of

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*Compare Northern Coal & Dock Co. v. Strand, 278 U.S. 142, 73 L. ed. 232 (1928).*

*See Toland's Case, 258 Mass. 470 (1927) (dredging without motive power—mere local concern).*

*Compare State Industrial Commission of New York v. Nordenholt Corp., 259 U.S. 268, 42 L. ed. 958 (1922), where an injury while unloading a vessel actually took place on the dock, and the New York workmen's compensation law was held to prescribe the exclusive remedy for the injured longshoreman.*

*Chief Justice Taft used the words "amphibious character" in explaining the cases involving matters of mere local concern. (London Guarantee & Accident Co. v. Industrial Accident Commission of California, 279 U.S. 109, 121.)*

*Employers' Liability Assur. Corp. v. Cook, 281 U.S. 233, 74 L. ed. 823 (1930) (unloading parts from vessel held exclusively maritime).*

*Baizley Iron Works v. Span, 281 U.S. 222, 74 L. ed. 819 (1930) (repairing of completed vessel held exclusively maritime).*

*London Guarantee & Accident Co. v. Industrial Accident Commission of California, 279 U.S. 109, 73 L. ed. 632 (1929) (rescue of fishing vessel capable of navigation for 500 miles held exclusively maritime).*

*Certain longshoremen and harbor workers are now under the Federal longshoremen and harbor workers' compensation act (Pub. Act. No. 803, 69th Cong., liability provisions effective July 1, 1927, supplemented by Pub. Act. No. 349, 70th Cong., effective May 4, 1928). "The application of the act in such cases was explicitly made to depend upon the question whether the injury occurred upon navigable waters and recovery therefor could not validly be provided by a State compensation statute." (Nogueira v. New York, N. H. & H. R. Co., 281 U.S. 125, 74 L. ed. 754 (1930).)*

*For the master and crew of the vessel a remedy is given under section 33 of the merchant marine act (Jones Act) of June 5, 1920 (41 Stat. L. 988, 1007; U. S. C., tit. 46, sec. 33). This extends to seamen the rights and remedies under all statutes of the United States which were applicable to railway employees. (International Stevedoring Co. v. Havens, 280 U.S. 360, 71 L. ed. 157 (1929).) This is an alternative to the right to compensatory damages or indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship or a failure to supply and keep in order the proper appliances appurtenant to the ship. (Pacific S. S. Co. v. Peterson, 278 U.S. 130, 73 L. ed. 220 (1928); see, also, The Delaware, 189 U.S. 158; Carlisle Packing Co. v. Bandanger, 258 U.S. 255, 66 L. ed. 927 (1922).)*

*In addition the vessel and her owners are liable, under a contractual theory, in case a seaman falls sick or is wounded in the service of the ship, to the extent of his maintenance and cure, and to his wages so long as the voyage is continued (Chelentis v. Luckenbach S. S. Co., 274 U.S. 572, 66 L. ed. 1171 (1919)); and in case of death, a State death statute may apply (Northern Coal & Dock Co. v. Strand, 278 U.S. 142, 73 L. ed. 232 (1928)), or the Federal death statute of March 30, 1920 (41 Stat. L. 537). (Western Fuel Co. v. Garcia, 267 U.S. 293, 65 L. ed. 210 (1921).)
the fact that the injured party may never before have been aboard a ship, are a matter of exclusive maritime jurisdiction. An award of workmen's compensation in such a case is erroneous.

In Northern Coal & Dock Co. v. Strand, 278 U. S. 142, 73 L. ed. 282 (1928), a longshoreman working the major portion of his time on the dock for a coal company was killed by machinery aboard the vessel. Mr. Justice McReynolds, speaking for the majority of the court, said:

The unloading of a ship is not a matter of purely local concern. It has direct relation to commerce and navigation and uniform rules in respect thereto are essential. The fact that Strand worked for the major portion of the time upon land is unimportant. He was upon the water in pursuit of his maritime duties when the accident occurred.

This doctrine was reaffirmed in Employers' Liability Assur. Corp. v. Cook, 281 U. S. 233, 74 L. ed. 232 (1928), with Justices Stone, Holmes, and Brandeis dissenting. There, an employee of the Ford Motor Co. at rare intervals assisted in unloading seagoing ships tied to the wharf. While helping unload automobile parts he sprained his back and ultimately died therefrom. Compensation was awarded under the Texas compensation law, and in reversing the award Mr. Justice McReynolds, speaking for the majority, said:

Whether Cook's employment contemplated that he should work regularly in unloading vessels or only when specially directed so to do is not important. The unloading of a ship is not a matter of purely local concern, as we have often pointed out. Under the circumstances disclosed, the State lacks power to prescribe the rights and liabilities of the parties growing out of the accident.

The repair of a completed vessel, whether it takes place when the vessel is afloat on navigable waters, or whether it takes place in a floating dock or dry dock, places the case beyond the matter of mere local concern. Under no circumstances is an injury aboard such a vessel during the period of repairs or alterations within a local State compensation act.

Recently it has been held that a sailor employed by a pleasure deep-sea fishing transportation company could not come under the California workmen's compensation act, because at the moment of injury and death by drowning he was engaged in attempting to moor and draw into a safe place a vessel capable of navigation of 500 miles, with relation to which he was employed. The fact that he was not aboard the vessel, but was merely using an 18-foot boat, when a heavy wave capsized it, did not prevent the case from being one exclusively under the maritime law, because of the immediate connection of his injury with his attempt to rescue the completed vessel, Mr. Chief Justice Taft saying:

It is clearly established that the jurisdiction of the admiralty court over a maritime tort does not depend upon the wrong having been committed on board a vessel but rather upon its having been committed upon the high seas or other navigable waters.

16 Baizley Iron Works v. Span, 281 U. S. 222, 232, 74 L. ed. 310 (1930); "Repairing a completed ship lying in navigable waters has direct and intimate connections with navigation and commerce, as has been often pointed out by this court," Justices Stone, Holmes, and Brandeis dissenting.
In short, injuries during the rescue of a completed vessel are definitely placed in the same category as injuries aboard such a vessel. It is therefore safe to conclude that injuries aboard completed vessels in connection with their repair, or in navigable waters in connection with their rescue or salvage, or in connection with the work of loading or unloading their cargoes, still remain under the general prohibition against a State compensation remedy laid down in the Jensen case; but in all other cases where there is no pertinent Federal statute and the application of the local law will work no material prejudice to any characteristic feature of the general maritime law, the compensation law displaces the substantive maritime law. And it has definitely been settled that if the actual situs of the injury is over or on a dock, or an extension thereof, the mere fact that the work had a maritime flavor in its connection with the loading or unloading of a seagoing vessel does not prevent an exclusive workmen's compensation award.

**Interstate Commerce**

The year 1932 is a most important one in the field of the relation of workmen's compensation acts to interstate commerce. During this year a number of important decisions have been handed down.

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18 State Industrial Commission of New York v. Nordenholt Corp., 259 U. S. 263, 66 L. ed. 933 (1922), where Mr. Justice McReynolds, in upholding a New York compensation award to a longshoreman injured on the dock, said: "There is no pertinent Federal statute, and the application of the local law will not work material prejudice to any characteristic feature of the general maritime law.

19 Compare Red Cross Line v. Atlantic Fruit Co., 264 U. S. 109, 68 L. ed. 552 (1924), where Mr. Justice Brandeis, in upholding the validity of an agreement for arbitration under the New York law, even for a pure admiralty contract, said: "The arbitration law deals merely with the remedy in the State courts in respect of obligations voluntarily and lawfully incurred. It does not attempt either to modify the substantive maritime law or to deal with the remedy in courts of admiralty. The workmen's compensation laws involved in Southern Pacific Co. v. Jensen, * * * were declared invalid because their provisions were held to modify or displace essential features of the substantive maritime law.


21 Smith & Son v. Taylor, 276 U. S. 179, 72 L. ed. 520 (1928). A longshoreman standing on the stage projecting from a wharf a few feet over the water was knocked off the stage when the sling of the near-by vessel struck him. The Louisiana compensation act was held to supply the exclusive remedy to the widow and children, following the drowning, as "the blow by the sling was what gave rise to the cause of action. It was given and the effect while deceased was upon the land. It was the sole, immediate, and proximate cause of his death."

Injuries on gangplanks are different from injuries on fixed stages projecting from the wharf to the gangway. An injury is thereby an injury movable. Clearly an injury which is over navigable waters of the United States is under the maritime law. (Southern Pacific Co. v. Jensen, 244 U. S. 205, 61 L. ed. 1086 (1917).) A rule promulgated by the Federal Government, and sent to each of the deputy commissioners appointed under the longshoremen's and harbor workers' compensation act, provides that, if the injury occurs on the way up to the ship, the local State compensation act applies; if, however, it occurs on the way down the gangplank, the longshoreman or worker is still considered as if on the ship, and the Federal act applies. The writer submits that such a rule is arbitrary and violates the well-settled rule that in tort matters admiralty jurisdiction depends upon locality (State Industrial Commission of New York v. Nordenholt Corp., 260 U. S. 263, 278), and that the true test to be applied is this: If the injury takes place on that part of the gangplank which is over the dock, wharf, or land, then it is exclusively under the State compensation act. If it takes place on that part of the gangplank which is over navigable waters of the United States or over the ship itself, then it is exclusively under the admiralty jurisdiction, as amended by the longshoremen's and harbor workers' compensation act. The rule-of-thumb test which makes the direction in which the worker is headed the sole test is subject to the difficulty that the worker may have started in one direction and changed his mind and was headed in the other direction when hurt. This actually happened in the Jensen case. He had started out of the vessel, when his truck became jammed against the guide pieces of the gangway. He then reversed his direction and started back to the ship and struck his head against the ship, breaking his neck and causing death thereby. (244 U. S. 205, 208.) The simpler and better test is that the actual situs at the moment of injury.

About 15 years ago, a leading text writer, Honnold on Workmen's Compensation, 1918 ed., covered the subject matter of this entire article in section 8, "Territorial operation of the workmen's compensation laws," and section 16 thereof in "Comparative reading to-day indicates that in few fields of the law have there been such far-reaching changes in less than a score of years."
by the Supreme Court of the United States, declaring the extent to which such acts may indirectly and incidentally affect interstate commerce and persons engaged in it.22

It was early recognized that the mere fact that the employer was engaged in interstate commerce or transportation did not, without more, preclude an award of workmen’s compensation. In Raymond v. Chicago, M. & St. P. R. Co., 243 U. S. 43, 61 L. ed. 583 (1917), the State of Washington had passed a workmen’s compensation act, with which the railroad had complied. Thereafter one of its employees, a laborer, was injured during the cutting of a tunnel through a mountain. The tunnel was admittedly intended to shorten the main interstate railway line and make more efficient and expeditious its freight and passenger service, and to that extent was connected with interstate transportation. The employee, however, refused to take compensation, and brought a common-law suit; he was denied a recovery on the ground that his right of action was under the State compensation act. In upholding the trial court, Mr. Chief Justice White said:

* * * Under the facts as alleged, Raymond and the railway company were not engaged in interstate commerce at the time the injuries were suffered * * * the court below was without authority to afford relief, as that result could only be obtained under the local law, in accordance with the provisions of the Washington compensation act, which has this day been decided to be not repugnant to the Constitution of the United States23 * * * And this result is controlling even though it be conceded that the railroad company was, in a general sense, engaged in interstate commerce, since it has been also this day decided that that fact does not prevent the operation of a State workmen’s compensation act. (New York C. R. Co. v. White, 243 U. S. 188.)

As early as 1916 Shanks v. Delaware, L. & W. R. Co., 239 U. S. 556, 60 L. ed. 436, had laid down the test which is still used as the basis of determining whether the injury is one coming under a State compensation act or is so closely related to interstate transportation as to come solely under the Federal employers’ liability act. The test was there stated by Mr. Justice Van Devanter, in the following language:

* * * The true test of employment in such commerce in the sense intended is, Was the employee, at the time of the injury, engaged in interstate transportation or in work so closely related to it to be practically a part of it?

Applying that test to the facts of the case before them, the court held that an employee in a machine shop operated by the railway company for repairing parts of locomotives used by it both in interstate and intrastate transportation was not employed in interstate commerce within the meaning of the Federal employers’ liability act of April 22, 1908 (35 Stat. L. 65; Comp. Stat. 1913, sec. 8657). At the time of injury, the employee was engaged in taking down and putting into a new location in such shop an overhead countershaft through which power was communicated to some of the machinery used in repair work.

From 1916 to early 1932 there followed a long series of cases in which the Supreme Court of the United States applied the test of the Shanks case to the various situations before them.

In Industrial Accident Commission of California v. Davis, 259 U. S. 182, 66 L. ed. 888 (1922), the commission made an award of compensation to a railway employee who was injured while working in the general repair shops upon an engine which had been employed in interstate commerce and which was destined so to be employed again; but at the moment of injury the engine had been nearly stripped and dismantled, had been in the shop more than a month, and was not placed in service for another month. This award was reversed by a California court, but on appeal by the employee to the Supreme Court of the United States, the compensation award was upheld, the court saying:

Shanks v. Delaware, L. & W. R. Co. is particularly applicable to the present case. * * * We refrain from a review of our cases. They pronounce a test and illustrate it. We are called upon to apply it to the present controversy. * * * And there is a difference in the instrumentalities. In some, the tracks, bridges, and roadbed and equipment in actual use, may be said to have definite character, and give it to those employed upon them. But equipment out of use, withdrawn for repairs, may or may not partake of that character, according to the circumstances; and among the circumstances, is the time taken for repairs, the duration of the withdrawal from use. * * * And it is this separation that gives character to the employment, as we have said, as being in or not in commerce. Such, we think, was the situation of the engine in the present case.

The court was furthermore asked to clarify the situation by setting forth an invariable standard by which the test in the Shanks case could be applied to any set of facts with accuracy, but refrained from so doing in the following language:

* * * We are besought to declare a standard invariable by circumstances or free from confusion by them in application. If that were ever possible, it is not so now. Besides, things do not have to be in broad contrast to have different practical and legal consequences. Actions take estimation from degrees, and of this, life and law are replete with examples.

It was left for the year 1931–32, in four important cases24 to further the workmen’s compensation cause, and to indicate a clear tendency on the part of our highest court to place cases under the local State compensation acts in preference to the Federal act.

In Chicago & North Western Ry. Co. v. Bolle, 284 U. S. 74, 76 L. ed. 90 (decided November 23, 1931), a railroad employee was injured while engaged in firing a stationary engine (or a locomotive engine used as a substitute) for the purpose of producing steam used in heating a depot and other structures of a railroad mainly engaged in interstate transportation. The court held the injury did not come under the Federal employers’ liability act, and made the following important observations:

[1] There was evidence that respondent, at other times, had been engaged in supplying other engines with coal and water, firing live engines, and turning a turntable; but his employment at the time of the injury was confined to firing the stationary or locomotive engine for the sole purpose of producing steam. The character of the work which he did at other times, therefore, becomes immaterial.

[2] It will be observed that the word used in defining the test is “transportation,” not the word “commerce.” The two words are not regarded as interchangeable, but as conveying different meanings. Commerce covers the

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whole field of which transportation is only a part; and the words of narrower
signification were chosen understandably and deliberately as the appropriate
term. The business of a railroad is not to carry on commerce generally. It
is engaged in transportation of persons and things in commerce; and hence the
test of whether an employee at the time of his injuries is engaged in interstate
commerce, within the meaning of the act, naturally must be whether he was
engaged in interstate transportation or in work so closely related to such trans­
portation as to be practically a part of it.

Since the decision in the Shanks case, the test there laid down has been
steadily adhered to, and never intentionally departed from or otherwise stated.

Plainly, the respondent in the present case does not bring himself within
the rule. At the time of receiving his injury he was engaged in work not inci­
dental to transportation in interstate commerce, but purely incidental to the
furnishing of means for heating the station and other structures of the com­
pany. His duty ended when he had produced a supply of steam for that pur­
pose. He had nothing to do with its distribution or specific use. Indeed, what
he produced was not used or intended to be used, directly or indirectly, in the
transportation of anything.

In the case of Chicago & Eastern Illinois R. Co. v. Industrial Com­
mission of Illinois, 284 U. S. 296, 76 L. ed. 204 (decided January 4,
1932), the Illinois Industrial Commission had awarded compensation
under the local act to Thomas, a railway employee, in spite of the
fact that at the moment of the injury he was oiling an electric motor
which was furnishing power for hoisting coal into a chute, to be
taken therefrom by locomotives engaged principally in the movement
of interstate freight. The railroad appealed on the basis of the prior case of Erie R. Co. v. Collins, 253 U. S. 77, 64 L. ed. 790 (1920),
overruled in 284 U. S. 296, 76 L. ed. 204, 205; Erie R. Co. v. Szary,
204, 205. In one case the employee was putting water in a con­
venient place from which it could be taken by interstate locomotives;
in the other, sand was so placed. In Chicago B. & Q. R. Co. v. Harr­
ington, 241 U. S. 177, 60 L. ed. 941 (1916), therein also cited, the
employee was injured in taking coal from storage tracks to bins for
the use of locomotives in both interstate and intrastate traffic, and the
court had held that this was not so closely related to interstate trans­
portation as to be practically a part of it. The Supreme Court of
the United States, in the Chicago & Eastern Illinois R. Co. case was
compelled to choose between the Collins and Szary cases on the one
hand, and the Harrington case on the other; or between the line of
cases which placed the injuries under the Federal act and the line
which placed the injuries under the State laws, especially workmen’s
compensation acts. It deliberately chose the latter, in the following
language:

We are unable to reconcile this decision [Harrington case] with the rule
deductible from the Collins and Szary cases, and it becomes our duty to deter­
mine which is authoritative. From a reading of the opinion in the Collins
case, it is apparent that the test of the Shanks case was not followed, the
words “interstate commerce” being inadvertently substituted for the words
“interstate transportation.” The Szary case is subject to the same criticism,
since it simply followed the Collins case. Both cases are out of harmony
with the general current of decisions of this court since the Shanks case *
* * and they are now definitely overruled. The Harrington case
furnished the correct rule, and, applying it, the judgment below must be
affirmed [awarding compensation].

258 (decided January 25, 1932), a laborer in a railroad repair shop
was injured while assisting in handling the driving wheels of a
The locomotive, however, had been put in the shop for a 12-day repair job, performed monthly, and the injury took place on the ninth day. In holding that the work was not so closely related to interstate transportation as to be a part thereof, Mr. Justice Roberts said:

The length of the period during which the locomotive was withdrawn from service and the extent of the repairs bring the case within the principle announced in Industrial Accident Commission v. Davis, 259 U. S. 182, and Minneapolis & St. L. R. Co. v. Winters, 242 U. S. 353, 61 L. ed. 358 (1917), stamp the engine as no longer an instrumentality of or intimately connected with interstate activity.

In the fourth and last case, Boston & Maine R. Co. v. Armburg, 285 U. S. 234, 76 L. ed. 431 (decided March 14, 1932), the injury took place in intrastate commerce, and under the Massachusetts compensation act the railroad had lost certain defenses for failing to insure such employees as were engaged in the intrastate portion of its transportation. In supporting the Massachusetts court, in spite of the fact that the railroad did a large interstate business, Mr. Justice Stone stated:

The interstate commerce clause did not withdraw from the State the power to legislate with respect to their local concerns, even though such legislation may indirectly and incidentally affect interstate commerce and persons engaged in it. * * * Although by the Federal employers' liability act, the regulatory power of the National Government over interstate commerce has been extended to the employees of interstate rail carriers, it has not excluded the exertion of State power over their employees while engaged in a service not involving interstate commerce. * * * The liability of the carrier to its employees when so engaged is controlled by State law * * *, and thus remains within the scope of State legislative power to regulate the relations of master and servant.

The writer therefore draws the following conclusions from the foregoing cases: 1. The test of the Shanks case is still the law of the land, "Was the employee, at the time of the injury, engaged in interstate transportation, or in work so closely related to it as to be practically a part of it?" 2. No standard can or has been named by which the Shanks test can be applied to the facts of any particular case, and an exact and invariable result obtained. 3. But in view of the recent cases, it is submitted that a local compensation act supplies the exclusive remedy where the railway employee, at the moment of injury, is engaged in an act which is at least one stage or step removed from the actual transportation; that the words "or in work so closely related to it as to be practically a part of it" will and should continue to be restricted to direct work upon tracks, bridges, roadbeds, and equipment in actual use at the time in interstate transportation; and that the moment equipment, tracks, etc., go out of use for any appreciable length of time, or there is an additional act to be performed between the act causing injury and

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80 In this case the court said that repairs upon an engine in the roundhouse were not part of interstate transportation, Mr. Justice Holmes saying: "This is not like the matter of repairs upon a road permanently devoted to any kind of traffic, and it does not appear that this engine was destined especially to anything more definite than such business as it might be needed for. It was not interrupted in an interstate haul to be repaired and to go on. It simply had finished some interstate business and had not yet begun upon any other. Its next work, so far as appears, might be interstate or confined to town, as it should happen. At the moment it was not engaged in either. Its character as an instrument of commerce depended upon its employment at the time, not upon remote probabilities or upon accidental later events" (only three days, at most, in roundhouse).

82 See 259 U. S. 182, 187.
the actual transportation, then the injury comes under the local compensation act rather than the Federal employers’ liability act. In short, the recent tendency of the cases is clearly away from the Federal act, and in favor of regulation by the local compensation acts. 4. The Shanks test applies only to the actual work being performed at the moment of injury, and the fact that the bulk of the employee’s remaining work is in interstate transportation becomes immaterial. 5. If the work at the moment of injury is in intrastate commerce, it is exclusively under any applicable State workmen’s compensation act, if the situs of the injury is upon land. 6. In cases of interstate or intrastate transportation on navigable waters of the United States, the admiralty remedy may become the exclusive one. 

The Doctrine of Extraterritoriality

In the field of admiralty law and interstate commerce the decisions of the Supreme Court of the United States are necessarily the final and controlling authority. In the field of the conflict of laws, so far as it deals with the so-called doctrine of extraterritoriality, these Federal decisions are not necessarily binding in every case.

In fact, until the decision in Bradford Electric Light Co. v. Clapper, 284 U. S. 221, 76 L. ed. 757, was handed down on May 16, 1932, it was thought by many that each State was the final sovereign on this subject, and that in the final analysis the law of the forum would govern.

In the Clapper case, however, both the employee and employer were at all times residents of Vermont; the employer’s principal place of business was located there, the contract of employment was made there, and the employee’s duties required him to go into New Hampshire only for temporary and specific purposes, in response to orders given him at the Vermont office. While temporarily in New Hampshire, he was killed, leaving no dependents residing in New Hampshire. His administratrix, instead of seeking compensation in the State of hiring, brought a common-law action in the State of injury and obtained a $4,000 verdict, the New Hampshire law permitting an election by the administratrix after the injury between New Hampshire common law and New Hampshire compensation. In a powerful opinion Mr. Justice Brandeis denied the right of New Hampshire to give a remedy, and held that the exclusive remedy was to be sought under the Vermont compensation law, as that act

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"In the unusual circumstances in which at the moment of the injury the workman is engaged in interstate commerce as well as in maritime work, the admiralty law provides the exclusive remedy. The supremacy of the admiralty law over the law governing interstate commerce is clearly set forth in Nogueira v. New York, N. H. & H. R. Co., 281 U. S. 128, 74 L. ed. 754 (1930). The same is true if at the moment of injury the employee was engaged in both interstate commerce and in maritime work. "In the present instance, had the petitioner engaged in intrastate commerce, his case still would have been within the maritime jurisdiction of the Federal courts, and he would have been denied the benefit of the State compensation law." (Nogueira case, supra (281 U. S. 138).) See, also, Kellogg & Sons v. Hicks, 76 L. ed. 539 (decided April 11, 1932), where Mr. Justice Roberts said: "Kellogg & Sons undertook the interstate carriage of passengers by water on a launch operated by its servants. This was a maritime matter. It was a maritime tort. The rights and obligations depended on and arose out of the maritime law.”

"In Roussaville v. Railroad Co., 87 N. J. L. 371, 94 Atl. 332, it was said: "We are now dealing with the simpler question, whether a New Jersey court will enforce a New Jersey contract according to the terms of a New Jersey statute. The question hardly calls for an answer. The place where the accident occurs is of no more relevance than is the place of the accident to the assured in an action on a contract of accident insurance, or the place of death of the assured in an action on a contract of life insurance.”
expressly contained a provision precluding any recovery by proceed­ings brought elsewhere, saying:

* * * The conflict here is between the laws of two States; and the com­pany in setting up as a defense a right arising under the Vermont statute, invokes article 4, section 1, of the Federal Constitution, which declares that "full faith and credit shall be given in each State to the public acts * * * of every other State." That a statute is a "public act" within the meaning of that clause is settled.

It follows, therefore, that where the full faith and credit clause is properly invoked, the Supreme Court of the United States is the final arbiter of the law of extraterritoriality relating to workmen's compensation acts, in the same sense that it is a final authority on questions of admiralty law and interstate commerce, as related to State compensation acts.

The Clapper case, however, must be restricted to the particular facts therein stated, as the court expressly concluded its opinion with the following words:

We have no occasion to consider whether if the injured employee had been a resident of New Hampshire, or had been continuously employed there, or had left dependents there, recovery might validly have been permitted under New Hampshire law.

It seems fair, however, to conclude from the Clapper case that where both the employer and employee are residents of the State of hiring, wherein an exclusive jurisdictional clause exists, under the full faith and credit clause the State of injury is without power to grant any remedy, either under its own compensation act or under its own common law; and in the event of the death of the employee, this inability to recover in the State of injury is transmitted to the dependent, at least where the dependent is not a resident of the State of injury.

It follows that if in such a case the State of injury has attempted to take jurisdiction by giving an award, or permitting the employee to accept payments under a voluntary agreement, the fact of payment can in no sense be a bar to subsequent proceedings in the State of hiring. At best, if the same insurer is involved in both States, a deduction should be allowed in the State of hiring for prior payments made in the State of injury. The doctrine of election is not applicable to such a situation. The employee can not elect to take that to which he is not legally entitled under the full faith and credit clause. At most he has obtained money under a mutual mistake of law, and there is some authority in such a situation for allowing him to keep the earlier payment, in addition to the payment in the State of hiring. But the writer suggests that if the payment is made by the same insurer or self-insuring employer who is asked to pay over again in the State of hiring, an equitable deduction is proper.

29 McLaughlin's Case, 274 Mass. 217, 222 (1931), where Carroll, J., said: "The employee can not have double compensation and the money received in New Hampshire must be accounted for. The decree is to be modified by adding that execution shall issue for the sum awarded after deducting therefrom the amount received in New Hampshire." It is to be noted that the employer, however, had the same insurance carrier on his policies in both States, and counsel for the employee (Prof. Joseph H. Beale and the writer) therefore conceded an equitable deduction of the small amount, $42.50 paid in New Hampshire. See, also, note 56, post.

30 Texas Employers Insurance Ass'n v. Price, 300 S. W. 667. See, also, note 58, post.

31 See McLaughlin's Case, 274 Mass. 217; also note 29.
No rule can be laid down which will govern every case in which
the hiring is in one State and the injury in another. It may be said
in general that workmen's compensation legislation rests upon the
idea of status, not that of implied contract; it is neither ex con-
tractu nor ex delicto; that the compensation act is not the sub-
stitution of a statutory tort for what used to be a common-law tort, for
many injuries form the basis of compensation which are not in
fact or in law torts at all.

While many of the early cases tried to support a superior right in
the State of hiring on the theory that compensation acts were con-
tractual, whereas cases in the State of injury claimed greater right on
the ex delicto or tort theory, it is clear that to-day the status theory
is the only proper one.

A careful study of the doctrine of extraterritoriality was made by
the American Law Institute in 1928, and the writer, feeling that
the conclusions there reached properly express the law, not only
as it exists to-day, but also as it should be, sets forth some of its
leading statements, with a short discussion thereof:

Ordinarily, a workman employed in a State which has passed a workmen's
compensation act may sue in the State of employment for an injury growing out
of the employment, although the injury was suffered in another State.

The right of the State of hiring to give an award, in spite of the
injury elsewhere, while denied in England, and at one time in
Massachusetts, is properly admitted by most of the States, and is

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82 Cudahy Packing Co. v. Parramore, 263 U. S. 418, 423, 68 L. ed. 366, 369, where Mr.
Justice Sutherland said: "Workmen's compensation legislation rests upon the idea of
status, not upon that of implied contract." This case was cited with approval in
Bountiful Brick Co. v. Giles, 276 U. S. 154, 172 L. ed. 507 (in which the writer was
counsel for the widow).

83 The ex contractu theory was followed in Deeny v. Wright & Cobb Lighterage Co.,
36 N. J. L. 121, and Grimnell v. Wilkinson, 39 B. I. 447. For the theory that the law
of the place of performance governs, see Johns-Manville v. Thorne, 80 Ind. App. 432, 141
N. E. 229 (1923), and that the place of injury governs, ex delicto, see Farr v. Bebeck
58, 190 Pac. 321, 195 Pac. 163 (1920).

84 Bradford Electric Light Co. v. Clapper, 264 U. S. 211, 79 L. ed. 757, 762, where Mr.
Justice Brandeis said: "Workmen's compensation acts are treated almost universally as
creating a statutory relation between the parties—not, like employers' liability acts, as
substituting a statutory tort or for a common-law tort."

85 The compensation acts form the basis of compensation in the majority of States, yet
they can hardly be said to be the result of torts in the usual sense of the word. (See
Hurle's Case, 217 Mass. 223 (1914).)

86 See notes 32, 33, and 34, supra.

87 See Commentaries on Conflict of Laws, Restatement No. 4, Philadelphia, American Law
Institute, 1928, pp. 78-85: "V. Workmen's compensation"; see, also, pp. 71-75 in the
Tentative Restatement No. 4.

88 Idem, sec. 434, p. 79, citing in its support the following cases among others: Kenner-
son v. Thomas T. Co., 89 Conn. 367, 94 Atl. 872, L. R. A. 1916 A, 436 (1918);
Friedman Mfg. Co. v. Industrial Commission (Ill.), 120 N. E. 490 (1918); Crane v.
Leonard, 214 Mich. 213, 183 N. W. 204 (1921); Rowensville v. Central R. Co., 57 N.
J. L. 371, 94 Atl. 892; Matter of Post, 216 N. Y. 544, 111 N. E. 351 (1919); Anderson v.
Miller S. I. Co., 169 Wis. 906, 170 N. W. 275, 171 N. W. 935 (1919). See, also, Feder-
zoli's Case, 269 Mass. 550; McLaughlin's Case, 274 Mass. 217; Schneider on Workmen's
Compensation Law, 2d ed., vol. 1, sec. 47: "Extraterritorial application of acts":
1927, p. 829).

89 In Hicks v. Marton, 1 B. W. C. C. 150 (1907), a charwoman hired in England was
injured while cleaning windows in her mistress' home in France. An award was denied
under the English act. (See, also, Tomalin v. Pearson & Sons (1909), 2 B. W. C. C. 1.)
In Schwartz v. Indiana etc. Co., 5 B. W. C. C. 360 (1912), an electrical engineer was
hired in England by British employers to do work in a foreign jurisdiction. He was
sent on board a British steamship and was lost, with all hands, in the Bay of Biscay in
a gale. It was held that while seamen could collect under section 7 of the English
compensation act, section 7 did not help mere passengers, and that a "British ship for
the purposes of this act is not within the territorial limits of the United Kingdom to
which this act applies." Contra (German and Quebec acts), see Schweitzer v. Hamburg-
Co., 45 N. J. L. 121, and Grinnell
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forcibly supported by the recent case of Bradford Electric Light Co. v. Clapper, 284 U. S. 221, 76 L. ed. 757. The State of hiring may give an award, although the injury is on Federal property, but not while aboard completed vessels or on the high seas.

In a few States the statute expressly provides that it shall apply to accidents abroad where the contract of employment was made within the State, either in all or in some specified cases. Such a statute is within the jurisdiction of the State.

If the compensation act of the State of hiring can, by interpretation, be construed to cover injuries elsewhere, an express provision to that effect is certainly proper. An interesting question arises when the hiring is in one of the States of the Union, and the injury is in a foreign country. It is submitted that there is no constitutional or other legal reason why the act of the State of hiring can not apply to the foreign injury. There is here no conflict between the laws of two States in the Union, and hence no difficulty under the full faith and credit clause. There appears no reason, therefore, why a person hired in Massachusetts and sent, for example, to Persia by his employer to assist in constructing a building abroad, can not recover under the Massachusetts compensation act.

A workmen's compensation act may be so expressed or interpreted as to apply to injuries happening within a State and to none happening outside.

48 There is no substantial reason why a person hired by a private contractor within the confines of a State should be denied compensation simply because at the moment of the injury his situs was on Federal territory. There is no Federal statute awarding compensation to nonfederal employees of a private contractor doing governmental work. In Ohio River Contract Co. v. Gordon, 244 U. S. 68, 72, 61 L. ed. 397, 1901 (1917), the employee was hired in Kentucky to work on the Federal Canal Reservation, and was injured on the reservation. In allowing a common-law State recovery, Mr. Chief Justice White said: "Conceding, for the sake of argument only, that the canal reservation was within the exclusive legislative jurisdiction of Congress, it is clear from the facts we have stated that the business carried on by the corporation was not confined to the land owned by the United States, since it is admitted that, in order to dispose of the material excavated in the construction of the canal, a line of railway was built which extended beyond the reservation and connected with the tracks of the Kentucky & Indiana Terminal Railway, upon whose property all of the earth and rocks were dumped. This clearly contemplated the use of the State and sub­jects within the jurisdiction of the Kentucky courts." (See State v. Department of Labor and Industries (Washington), 10 Fac. 2d, 213, decided April 6, 1932 (injury in Rainier National Park under State compensation law); and State ex rel. Loney v. State Industrial Accident Board (Montana), 236 Fac. 405. See, also, Grant Smith-Porter Ship Co. v. Rohde, 275 U. S. 409, 60 L. ed. 521 (1922), where an injury aboard a steamer being built for the United States Government was allowed to come under a State compensation act.

44 An interesting question arises when the hiring is in one of the States of the Union, and the injury is in a foreign country. It is submitted that there is no constitu­tional or other legal reason why the act of the State of hiring can not apply to the foreign injury. There is here no conflict between the laws of two States in the Union, and hence no difficulty under the full faith and credit clause. There appears no reason, therefore, why a person hired in Massachusetts and sent, for example, to Persia by his employer to assist in constructing a building abroad, can not recover under the Massachusetts compensation act.

A workmen's compensation act may be so expressed or interpreted as to apply to injuries happening within a State and to none happening outside.
There is no legal reason why a State may not expressly provide that it will compensate employees only for injuries occurring within its territorial bounds. Such a narrow act may result in the failure of the employee to obtain any compensation should he happen to be hurt while temporarily outside of the State, if the latter State has no compensation act, or having one, if it is less liberal than the act of the State of hiring, and excludes, for example, occupational injuries or injuries short of accidental ones.

If there is no contrary provision in the act, a workman may recover in a State in which he is injured under the workmen's compensation act of that State, although the employment was in another State.

This statement of the American Law Institute, in view of the Clapper case, must be somewhat restricted. If the act of the State of hiring provides that it shall be exclusive, and none of the parties involved are residents of the State of injury, no recovery is now possible in the State of injury. Short of such a situation, the writer submits that the above statement is still the law. The occurrence of an injury arising out of and in the course of the employment gives rise to two separate and distinct statute-created rights. There is a right in the State of injury by virtue of the existence of its separate compensation act and the existence of a policy of insurance taken out and paid for by the employer; there is a separate right in the State of hiring by virtue of a distinct and different policy there purchased by the employer under a compensation act promulgated by its own legislature. There is no legal reason why the happening of a single event can not give rise to two separate causes of action.

Furthermore, the Clapper case expressly admits that if a contract of hire is made in a foreign country, there is nothing in the full faith and credit clause to prevent a recovery in the State of injury.

No recovery can be had under the workmen's compensation act of a State if neither the injury nor the employment was in the State.

No compensation act provides that mere citizenship, without more, confers the right to compensation where both the injury and hiring were abroad. It therefore serving no useful purpose to discuss the theoretical question of the right so to provide.

No State will enforce the provisions of the workmen's compensation act of another State.
Most of the compensation acts provide for a special administrative tribunal to fix the amount of the award and to pass upon questions both of fact and of law in the first instance. Until the amount, in such a situation, is so fixed, there is no right in the injured workman which is capable of being the subject of a suit in the ordinary court. Where the act provides that after the award is fixed by the administrative tribunal, a decree or judgment may be entered upon it by one of its ordinary courts, that decree or judgment under the full faith and credit clause may be enforced in another State. There is no reason for treating a decree or judgment based on a compensation award in any manner different from any other money decree or judgment. Certainly, past accumulated arrears are as collectible in a foreign State as are arrears, expressed in a judgment form, in an alimony case.

It is probable that a workmen's compensation act in which the regular courts are to deal with the cause of action created by the act on the basis of an ordinary claim for damages will be enforced in another State. In a few of the States, as in England, the regular courts handle compensation cases as they would ordinary tort claims. There appears no adequate reason why, under the doctrine of comity, such State courts should not ascertain and make an award, even though the injury occurred without the State.

An award already had under the workmen's compensation act of another State will not bar a proceeding under an applicable act, but the amount of the prior award in the other State will be credited on the award.

As the two claims, one under the State-of-hiring act and the other under the State-of-injury act, and in each case under separately purchased policies, are distinct and separate, it is submitted that the employee may have a separate recovery under each; but where the same insurer is involved, the total amount of the award should not exceed the greater amount allowed by the more liberal State. In short, if the employee starts his action in the State allowing the smaller amount, the additional action in the other State will simply produce the excess amount. If, however, he starts in the State allowing the greater award, the equitable deduction of the prior award will actually leave him no financial return for his efforts. The writer further submits that where two separate insurers are involved, and two separate premiums are paid by the employer, there appears no equitable reason why the second insurer should profit by a deduction of the amount paid by the first insurer. The case more nearly approximates one in which the employer, in behalf of his employee, has purchased two separate accident insurance policies in two separate companies and paid two separate premiums. In

84 Commentaries on Conflict of Laws. Tentative Restatement No. 4. Philadelphia, American Law Institute, 1928, p. 74 (b).
85 See notes 53 and 54, supra. Compare Haddock v. Haddock, 201 U. S. 562, 50 L. ed. 867 (1906). However, a maritime court has no power "to enforce the workmen's compensation law of New Jersey." (Kellogg & Sons v. Hicks, 76 L. ed. 539 (decided April 11, 1932).)
86 Commentaries on Conflict of Laws. Tentative Restatement No. 4. Philadelphia, American Law Institute, 1928, sec. 441, p. 75. See Anderson v. Jarrett Chambers Co., 210 App. Div. 543, 206 N. Y. S. 458 (1924), where the court said: "The claimant was paid New Jersey compensation from August until the following January, but it has long since been the settled law of this State that this does not prevent his obtaining compensation in the State of New York." (See, also, McLaughlin's Case, 274 Mass. 217 (1931); Jenkins v. Hogan & Sons, 165 N. Y. S. 707 (1917); Gilbert v. Des Lauriers Column Mould Co., 167 N. Y. S. 274 (1917).)
such a situation there is no hardship upon the second insurer if it pays the full amount which the premium intended should be paid. It is true that to some extent industry is penalized, and the employee in collecting twice may actually obtain in weekly compensation an amount exceeding his old wages, and to that degree may be tempted to malinger; but, after carefully weighing both sides, the writer is of the opinion that simplicity of operation and analogy to the law of insurance\(^{87}\) favor the doctrine that there should be no equitable deduction except where the party actually to be charged with payment is the same in both the State of hiring and the State of injury.\(^{88}\)

The enforcement of this theory would lead employers to have the same insurance carrier in both States, and hence obviate the possibility of double compensation.

DISCUSSION

Secretary Stewart. Has not the action of New York, for instance, on the question of divorce, practically set aside the theory of due credit for laws as between the States? New York has refused to recognize the divorce that is granted in Nevada. Does not that practically annul the theory of due credit?

Mr. Horovitz. I do not think so. In view of the recent Clapper case, I feel absolutely confident, if the State of hiring has an exclusive-remedy clause, the State of injury must under the due faith and credit clause relegate the man back to the State of hiring.

Secretary Stewart. My question goes a point farther, as to whether the due-credit theory itself has not been shattered by the action of New York in cases of divorce in Nevada.

Mr. Horovitz. You mean, if the case arose in New York, New York would pay no attention to the man's case?

Secretary Stewart. The due-credit process has been ignored and defied in New York. Does not that practically annul the whole doctrine of due credit?

Mr. Horovitz. No; because the Clapper case was decided May 16, 1932. Those divorces are old ones. If New York ignores the Clapper case and appeals to the Supreme Court of the United States, we will give you the Clapper case over again in uniformity. We have a different case in compensation than in divorce.

The extraterritoriality question is a real one. A case involving $5,000 is pending before the Supreme Court of the United States. The man was hired in Tennessee and injured here. Tennessee has no exclusive jurisdictional clause. The employer did not bother to

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\(^{87}\) See Roundsaville v. Central R. Co., 87 N. J. L. 371, 374, where the court said:

\[^{88}\] In Texas Employers' Insurance Assn. v. Price, 500 S. W. 667, a double recovery was allowed, the court saying: "We think that insurance taken by an employer for the benefit of his employees against injuries from accidents under the compensation law of New Mexico, in addition to insurance under the Texas compensation law of this State, and to collect on each, is not contrary, to any public policy of this State or interstate comity as suggested by the applicant." (See, also, Norwich Union Ind. Co. v. Wilson (Tex. Civ. App.), 17 S. W. 2d, 98; Gilbert v. Mould Co. (Inc.), 180 N. Y. App. Div. 59, 167 N. Y. S. 276; Anderson v. Jarrett Chambers Co, 206 N. Y. S. 468; also note 56, supra.)

For a substantially complete list of the decisions in each of the 44 compensation States on "extraterritorial effect," see Jones' Digest of Workmen's Compensation Laws, 12th ed., New York, Association of Casualty and Surety Executives, 1931, topical number 7 under each jurisdiction.
take out a policy or come under the State fund here, and the State fund has paid out nearly $5,000 to the widow of the man who was killed here. Now it is bringing suit, under the Ohio act, to get back the $5,000. The man says, “You never could have given a remedy in Ohio; Ohio has no jurisdiction.” It is a real question.

Next Monday I have two cases coming up. In one case $4,000 and in the other case $5,000 depends on whether I am right in my theories.

Mr. Davison (Ohio). In a case, Mr. Horovitz, where an employee of a railroad engaged in interstate commerce is engaged by that railway to inspect timber to be used by it—it is not sold to commerce but is to be used by that railway and transported into another State and used there, I understand, on a track carrying interstate commerce—do you think that man is far enough removed from interstate commerce to give the State industrial commission jurisdiction?

Mr. Horovitz. I have given that question some thought. I would say this: If the train was there ready, and the man was doing his work prior to or within a few minutes of loading on the train, the Supreme Court might say the work was closely enough bound up to interstate commerce to be a part of it. But if the train was going to show up two days later, the case comes under the jurisdiction of the State industrial commission, in my opinion.

Mr. Wenzel (North Dakota). Do you recall any decision of the United States Supreme Court in which it has passed upon a statute which specifically provides for the method of payment and the conditions under which an injury occurring outside of the State may be paid for?

I will cite this as an example: The statute of North Dakota provides that the fund shall pay for no injuries occurring outside of the State, except under the condition that a special contract is made between the employer and the bureau in advance, and further that the principal plant or place of business is in the State and that at least two-thirds of the pay roll is expended in North Dakota. Has any decision ever been rendered concerning any statute of that nature?

Mr. Horovitz. There have been a number of State court decisions, but no decisions of the Supreme Court of the United States. There is no question on that. If a State wants to limit its jurisdiction and say, “We will not help certain people,” it can do it. It can not broaden its act, but it can narrow it.

A State can say, for example, “We will not give compensation to any man unless he is actually hired and injured in this State.” There are a number of States which have limited the act. Even this State—I think I am right—when it passed the act was afraid it had no jurisdiction over interstate commerce and expressly provided that cases coming under interstate commerce do not come under the act. In Ohio you can not, in my opinion, bring cases that come under interstate commerce, because Ohio expressly excludes that. I am talking about the States which have no provision on the question. Then you can extend the law as far as the Supreme Court of the United States will let you.

Mr. Wilcox (Wisconsin). In this matter of extraterritoriality, I am wondering if, in this recent Clapper case, the fact that New Hampshire gave the election of remedies and allowed the administratrix in
New Hampshire to sue in court was not the thing that took away the right of jurisdiction in New Hampshire rather than the application for benefits under the New Hampshire compensation act. The thing I would like to have you express yourself on is whether or not, if this administratrix had made her application for compensation in the State of New Hampshire, or Vermont where this accident occurred, she might have recovered under the laws of Vermont.

Mr. Horovitz. I am glad you asked that question, because that is the thing that came to my mind. I did not like that Clapper case when I first read it. I wanted to distinguish on the ground that she brought a common-law suit instead of taking compensation.

I have here the American Law Institute bulletins, two bulletins on conflicts of law, written by Prof. Joseph H. Beale, of Harvard, a copy of which was in the hands of the Supreme Court when it decided this case. It is a very important publication to have, being compiled from the leading professors throughout the United States and the chief justices of a great many States. In it they had the general doctrine that I put down—that you can collect in any State. When I first read over the case I thought as you did, "Well, if they had only asked for compensation in New Hampshire they would have won the case; the case would have gone differently." I read the case over three times, and I read the footnotes and noticed cases in the footnotes that the professor cited in this article. That answers the question. Even if the administratrix had wanted compensation, the same results would have occurred.

It was not the peculiar New Hampshire provision that guided the result; it was the fact that the full faith and credit clause made New Hampshire take full cognizance of the Vermont act. Regardless of whether common law or compensation is asked for the case will be relegated back to Vermont. If you read the footnotes, it leaves no doubt whatever in your mind. The peculiar New Hampshire provision had nothing to do with it.

Secretary Stewart. I still come back to the full faith and credit provision. If that is the ground upon which the Clapper decision stands, then what will happen to New York because of its attitude toward divorces in Nevada? I am not interested in divorces in Nevada, but I do say that the action of New York on that question of Nevada divorces wipes out the whole doctrine and theory of due credit, unless New York can be called down by the Supreme Court or some one else.

You can not have due force and credit on workmen's compensation and not due force and credit on divorce and a half dozen other things. We either have due force and credit, or we haven't it. We can not have it on workmen's compensation if we can not have it on divorce.

Mr. Horovitz. You sound as if you had read the so-called concurring dissenting opinion. There is a concurring opinion, but on different grounds, which——

Mr. Brown (Ohio). I want to say to this gentleman that the full faith and credit clause is provided for in the Constitution.

Secretary Stewart. New York does not care anything about that.

Mr. Brown. But the Supreme Court says that each State may honor the public acts of another State if they are not against the public policy of that particular State. That is where New York gets away
with it. I am mentioning this because of a case I filed in the United States Supreme Court on behalf of Ohio, in which a worker who was killed in Ohio had been hired in Tennessee by an employer from Tennessee, but had worked in Ohio temporarily with Ohio and Tennessee workmen.

The question I would like to ask you is whether the real reason for permitting compensation in two States—that is, the real way of getting around public policy—is not based upon the police powers of a State. In other words, a worker gets certain rights by a contractual agreement in the State of hiring, but the employer has certain duties under the police powers of another State. When he comes into Ohio, doesn't he have some obligations to his workers who are for the time being under the jurisdiction of the police powers of the State of Ohio? Is not that the distinguishing ground rather than the purely equity one that he ought to get compensation in two States?

Mr. Horovitz. The concurring opinion given in the Clapper case says this: It is true that he was fired in Vermont, but when he came into New Hampshire he brought his relationship with him into New Hampshire. New Hampshire had the right to govern that relationship all the time he was working there.

That judge thought he was concurring. His opinion really is a dissent. New Hampshire ought to give a remedy, but as he construes the New Hampshire decision, New Hampshire would voluntarily relinquish its rights in favor of Vermont. Inasmuch as this case arose in the district court of the United States in New Hampshire rather than in the New Hampshire court, the district court did not quite sense what New Hampshire would have done, and that judge concurs because he thinks New Hampshire would have thrown it back into Vermont anyway. While he concurs in the result, he dissents in his reasoning. My feeling is that each State has a separate right, but the majority have decided that where the State of hiring has an exclusive remedy you have to go back to the State of hiring, but in all other cases you can get two separate remedies.

Mr. Wilcox. I think Mr. Stewart and all of you must bear in mind that the full faith and credit clause of the Constitution might work with regard to compensation and still not have any effect upon this question of divorces. The recognition of divorces is granted in other States, as Mr. Brown suggested; that is to say, no State is required to recognize the laws of another State if they are violative of the public policy of the State that is called upon to administer them. So if the divorce laws of Nevada offend the nostrils of the State of Wisconsin, we refuse to recognize them. That is not a violation of the Constitution of the United States, nor is the Supreme Court of the United States likely to interfere with Wisconsin's attitude in that regard.

Mr. Horovitz. Judge Brandeis did mention that the full faith and credit clause does not apply where it offends the public policy, but in compensation there is no offending of the public policy. He said it does not apply where one State has not a particular court to help out in that situation. The full faith and credit clause would not apply if the man was in California and wanted the California board to grant compensation there the same as the Massachusetts board would do
here. The answer is that California does not have the court, and it does not have to set one up to help the man on the full faith and credit clause. But the judge comes to the conclusion that, so far as extra-territoriality is concerned, it can not offend the nostrils of New Hampshire to send a man back to Vermont.

Mr. Wenzel. I should like to have you clarify as to whether or not your position with respect to the payment in the two States is dependent upon a state of fact which definitely includes the payment of premium in both States.

Mr. Hoberitz. Yes, I make that a condition precedent, that there are two separate policies, separately paid for, in two separate companies. If it is the same insurance carrier, you give him a reduction. A man in Massachusetts has most of his employees working in Massachusetts. He has a few working in New Hampshire. He simply gets a rider and pays a little additional premium, not a separate large premium. I think that is a real reason for equitable reduction. That was the way it was in the McLaughlin case.

The man went to New Hampshire, and after he was injured he was told, "You are entitled to $42.50 in New Hampshire." In New Hampshire you can sign off forever. Then the man came to Massachusetts and had a recurrence of the same knee injury. He landed in our hospitals and rolled up quite a bill. When I asked the insurer to reopen the case, he said, "He signed off forever. Furthermore he elected to come under the New Hampshire act. That is his hard luck. If he owes $273 to your hospital, that is just its hard luck."

I got Professor Beale to come in with me, and we established a doctrine that if it is the same insurance carrier you get equitable reduction. Mr. Parks is one of those who set forward the theory of equitable reduction. Where the same carrier is concerned, we have the equitable reduction. The Clapper case will not affect our case, because in New Hampshire, where the man was injured, there was no exclusive remedy clause.

Mr. Leonard (Ohio). I think workmen's compensation administrators are concerned with some system whereby maritime jurisdiction, longshoremen's act, interstate commerce, and other things like that can be clarified, in order that we may act in an intelligent manner.

We have had a number of cases in Ohio. Judge Killits rendered a decision that anything on navigable waters comes within maritime jurisdiction. We have a case before us now, down in Cincinnati, concerning a floating barge or raft. The claim was that it was tied up in the Ohio River and could not be used, and the lawyer said it could be. The deputy commissioner in Louisville did not make a decision; he said the case was not under the maritime act and that we would have to go ahead and take care of it.

We do not want to throw out any case where further rights of the claimant are concerned, but we must have some authority on which to proceed. We must depend, of course, on court decisions. I remember a few years ago, a former associate of mine on the commission said, "I went up to Cleveland and saw the Federal people, and we thought we had worked out an understanding. We worked it out this way, that if anything happens to a man while he is on a boat that is being loaded it comes under maritime jurisdiction. If he is injured on the dock, it comes under State jurisdiction."
He said he felt mighty good about that, but when he was coming home he picked up a paper and read where two fellows were going down a gangplank and the gangplank collapsed, and they fell into the water and were drowned. He was all up in the air again and did not know where the commission stood. That is a very important thing, I think, from the standpoint of the claimant and of the employer. The employers have to take all kinds of coverage because they do not know what position they will be placed in. They must be covered.

We have had some decisions in regard to steel companies that have barges. The workmen go out to these barges and are transported up and down the Ohio River. They have to be covered under the longshoremen's act. In Ohio, two years ago, we tried to clarify that situation and get through a bill to protect the worker and the employer. It did not come before the legislature because it was held that it might be in conflict with the Federal statutes. That is the hard proposition.

I understand some common understanding was reached in New York, between the New York fund and the carriers, and the fund and the Federal Government, relative to clarifying that proposition. We do not want to allow a case and then have the person come before a deputy commissioner and say, "Well, the Ohio commission is all wrong." I do not think a man should be paid twice; I think that is against public policy, but he is entitled to be paid some place. That is the big problem to-day.

Mr. Klaw (Delaware). Are you familiar with the Spencer-Kellogg Co. case? That was down New York Harbor. Do you cite that case?

Mr. Horovitz. That is cited. In that case the boat was going from New York to New Jersey. It was a vessel capable of holding 100 people. Not only maritime law but interstate commerce, going from one State to another, was involved. If you have a completed vessel going to sea, that can not come under the compensation act.

It was decided, first, that where you have interstate commerce and maritime law, it is maritime law that governs, not interstate commerce, and that the man can not get compensation for such an injury. There is also a dictum there that the New Jersey board can not award New York compensation, and the New York board can not award New Jersey compensation, because it is awarded by a separate tribunal.

Mr. Klaw. How about the question of the rights of employees who were being transported across the river, and who were drowned going across? What does the Supreme Court say about their rights under the New Jersey law?

Mr. Horovitz. It is not a matter of mere local concern, because local concern deals with one State. The men were going from New York to New Jersey; that deals with a matter of foreign concern. Local concern deals with a matter having to do with one State only, like our barge cases in Boston Harbor. There was no question about their going from one State to another. The case had to do with interstate commerce as well as maritime law; it was not a local concern.

Mr. Klaw. But did not the Supreme Court say in that case that the remedy was under the general maritime law for the reason that that tort occurred on navigable waters?

Mr. Horovitz. It went further; it said that it was not only maritime tort but of more than local concern. There is another case that
perhaps I ought to cite. A fellow worked for one of these transporta-
tion companies, taking people 3 or 4 miles out to fish. It was
deepea fishing. The court said, "That has to do with more than a
matter of local concern. That has to come solely under the maritime
law"—although there was powerful dissent on the part of three
judges. The reason the majority held that it was of more than local
concern was because the man went on the high seas and that took him
into foreign commerce. It was more than a mere State matter.

Mr. Parks (Massachusetts). Mr. Horovitz has mentioned some
things that are very important. The boards and commissions of the
United States, while they may be strict on the facts in any given case,
should I believe give a liberal interpretation to the law. I have always
done that, because when you narrow the act by your decision and a
decision against an employee goes up to the supreme court, although
it may be controversial and close, the supreme court is not going to
be any more liberal than the board. I know our supreme court is a
conservative supreme court. After all, this is a workmen's compen-
sation act for the benefit of the workmen of this country who are in-
jured in industry. Let us put our liberal hat on when we are render-
ing our decisions.

Mr. Horovitz has mentioned a few cases. Most of the decisions in
Massachusetts he has mentioned I have had some hand in writing.
I wrote the McLaughlin decision and the Toland case and a few others
he cited. I had that single thing in mind, giving the employee a break
before the supreme court. Do not make the employee carry the load
there in the way of briefs and attorneys, and so forth. Give him a
decision with the backing of the Commonwealth. Let the supreme
court look into it. If the court wants to overturn it, all right, but at
least give him that advantage.

By doing that, we have had such decisions in Massachusetts as the
Dan Toland decision. That fellow, as I saw him, was a fine, healthy,
robust Irishman with his arm off; he was inclined to be a little bitter
against society and the laws of the United States in general, as he had
been turned down by the insurance company. He wanted to know
where was the law for the poor workman, and we gave him the law.

Such a conservative paper as the Boston Transcript printed a spe-
cial editorial on Dan Toland's case and complimented the supreme
court upon its humanity and liberalism. The supreme court would
not have gotten that bouquet if the industrial accident board had not
rendered that decision, because the court merely affirmed a decision
of the board. It was a liberal decision.

Mr. Orr (West Virginia). I have had a little experience with the
maritime act. We operate from Ashland, Ky., over to Hancock
County in West Virginia. I was of a liberal mind. We thought we
could compensate sand diggers who went out into the Ohio River and
dug sand, and went down the river a little distance and dumped the
sand off in West Virginia, screened it, and prepared it, and sent it
off to market.

On one occasion we had a sand company in Huntington. The
boat went down the river about 5 miles to a place called Racoon
Island and dumped the sand off and prepared it. I thought these
men came within our jurisdiction. Along came the United States
Government to tell me to stay off. Yet it claims we own the Ohio River on the other side; that is, of course, excepting the United States Government’s rights there.

What are we going to do? The men who are doing the work are West Virginia employees. They just go down and get the material and bring it up. We have the same situation for miles and miles. We do not know just where we are.

A man is up on the Kanawha River, 50 miles from the Ohio River. The river, however, is improved; it comes under the jurisdiction of the United States. There is a barge at the side of the river. If the man gets hurt there, I compensate him. The employer is covered under our act. But the United States Government says, “You can not compensate him; he comes under our”——

Mr. Horovitz (interrupting). Who is the man you call the United States Government?

Mr. Ott. The gentleman who has charge of it from Missouri; I do not remember his name. He is the deputy commissioner. We have that situation all the way up. I say, “All right. I am not like you. I will let you come into my territory, but you will not let me go into yours.”

We have two docks in Huntington, where coal is loaded and shipped up the Ohio River to Cincinnati and other points. We can not put our man on the barge; that comes under the Federal act. Our boat is sent down there, and we are dumping coal into it, but we can not put our man into it. A man going from Cincinnati to Pittsburgh would have to elect to come under the compensation laws the whole way up the river in order to tie his boat up. He would not dare to send a man out on the shore to tie the boat up, because if he did the man would come under the Federal act and not under the West Virginia act.

We have the extraterritoriality condition that Mr. Leonard was talking about. We had a contractor from Cincinnati who came to Charleston to build a Scottish Rite temple four or five years ago. He came to my office and said he wanted to be covered under the workmen’s compensation law. I said, “Where are you from?” He said, “Cincinnati.”

I said, “You understand the Ohio act is extraterritorial. Aren’t you covered from there?” He said, “I want to be covered here.” I am liberal, and I asked, “Where are you going to hire these men?” He said, “I am going to hire them from West Virginia.” I said, “All right.”

Unfortunately, he did not hire one man from West Virginia. He hired all the men from Cincinnati, bringing them down there. Then the contractor fell off this building and was killed. We promptly ordered compensation. His wife did not want compensation from West Virginia, so she went back to Ohio and asked for compensation there. The Ohio board was under the impression she should get her compensation from West Virginia and said so, but it went into the courts in Ohio, which said, “No; Ohio has to pay it.” I do not know how that extraterritoriality is going to work out.

Mr. Horovitz. Let me tell you how Massachusetts worked out a problem. The Supreme Court will pass on it next week. A man, who was captain of a garbage scow, was taking garbage from Boston 2 miles out and dumping it. He fell overboard while sweeping off
the scow, which was tied securely to the island. The insurance com-
pany said he had to come under the maritime law—the scow was in
Boston Harbor; there was water there under him; he fell off into the
water; he was drowned; he was not hurt aboard the scow but was
drowned in the water. Our board said it was of mere local concern.
The daughter, who was depending on the father who died, will get
$4,000 if the court sustains the board. The board has given her
every chance in the world. If the Supreme Court turns the case
down, the board has done what it can. I think the Supreme Court
will say it is a matter of mere local concern. We are not afraid of the
maritime law. We take exclusive jurisdiction in a matter of mere
local concern.

Mr. Kingston (Ontario). Take this case, for example. The States
of Washington and Oregon are adjoining States. There is no question
of insurance premium there. There is automatic coverage under
exclusive State funds. A contractor from Oregon is doing work in
Washington. He employs labor in both States and is required to pay
assessments in both States. An employee hired in Oregon is hurt in
Washington. Do I understand that in such a case the Supreme
Court would affirm that there is a cumulative remedy in both States
and the right to hang on to the award that either State might give
under such circumstances?

Mr. Horovitz. The Supreme Court of the United States has never
passed on it, but Texas, New York, and New Jersey have passed on it.
I cite cases which have held that it is immaterial that you get an
award in a prior State. Wherever you can justly give equitable
deduction, you ought to do it, with the result that the man will have
the higher award of the two States; but where there is no reason for
deduction you have to give double award, because he has two separate
rights. You have to follow legal principles. It is exactly like insur-
ance. Why does an employer take out a policy?

Mr. Kingston. I am speaking of where there is no policy involved.

Mr. Horovitz. Then you ought to give equitable deduction, so the
man will get the higher compensation of the two States. Where there
is no reason for equitable deduction, you have to give him two awards.
My feeling is, if you follow legal principles, you have to give him a
double award.

Mr. Leonard. Mr. Horovitz said he hoped the administrators of
workmen's compensation would not throw out a case as soon as they
know water is concerned. I think it is the policy of the administrators
of workmen's compensation in the United States to give every benefit
in a case of maritime employment, or longshoremen's act, or extra-
territoriality jurisdiction. We want to broaden our laws just as much
as possible to protect the claimant and the employer, but we must
know something about what we are to do.

Mr. Ott has told some of the problems of these interior States on
river transportation. Mr. Horovitz said seagoing operations; I pre-
sume that applies to lake transportation.

I have often thought that if a committee of this organization would
go to Washington to take the matter up with the proper officials, we
could get a clarification of what is a local proposition. I think that
is very important. Some of these deputy commissioners hear the cases and make the rulings. I think we could have an agreement made which would clarify the whole proposition in the interest of the claimant and the employer.

Mr. Orr. I doubt that very much. I tried as hard as I could to get those gentlemen to let me go on with this work. They positively refused; that was in their jurisdiction and I should stay out of it. My object is to get the men covered in some way so they will be taken care of, but those gentlemen are not so liberal as I am.

[President Leonard assumed the chair. The report of the nominating committee was presented. The list of officers will be found on p. 229. Chicago, Ill., and September 11–15, 1933, were recommended as the place and time of the next annual meeting. The committee further recommended an honorarium of $800 for the secretary-treasurer, out of which his clerical services shall be provided, and an honorarium of $600 for the secretary-treasurer emeritus. It was also recommended that the association provide the badges for conventions in the future. After remarks by several members eulogizing the retiring secretary-treasurer, Mr. Ethelbert Stewart, and a reply by Mr. Stewart, the report of the committee was adopted.]

[Chairman Nowak resumed the chair.]

Chairman Nowak. The next subject is The Legal Situation as to Second-Injury Cases, and the Necessity for Separate Funds for Such Cases, by Charles F. Sharkey, of the United States Bureau of Labor Statistics.

Mr. Sharkey. I have listened with interest to the paper delivered by Mr. Horovitz, dealing with a difficult subject. It might be of interest, for the records of this association, to know that one of the matters referred to in Mr. Horovitz's paper was presented to the Congress of the United States at the last session. Senator Wagner introduced a bill providing for a workmen's compensation law for railroad employees engaged in interstate commerce. That bill was introduced late in the session and no action was taken on it. It will probably come up at the coming session of Congress in December.

The Legal Situation as to Second-Injury Cases and the Necessity for Separate Funds for Such Cases

By Charles F. Sharkey, of the United States Bureau of Labor Statistics

At the time of the advent of workmen's compensation laws one consequence perhaps unforeseen was the part such laws would play in the employment of physically handicapped persons.

It may be said that very few of the early workmen's compensation laws covered the contingency of the insurance carrier or the self-insured employer being compelled to pay total disability insurance to an employee who, having already incurred a permanent partial disability, subsequently received another injury.

Of the 44 States having workmen's compensation laws at the present time, all but five (Louisiana, New Hampshire, Pennsylvania, Vermont, and West Virginia) have specific provisions regarding the payment of compensation in second-injury cases. The Federal laws extending workmen's compensation benefits to longshoremen and
harbor workers, and applicable also to private employees in the District of Columbia, provide specially for second injuries. It is probable, however, that the administrative commissions or courts have ruled upon the question in most of those jurisdictions which have not specifically provided for second injuries by statute law. In Pennsylvania, for instance, the State supreme court held in the case of Lente v. Lucci (275 Pa. 217, 119 Atl. 132) that a claimant who had lost one of his eyes before entering upon a later employment was not entitled to compensation for total disability upon the loss of the second eye. In Louisiana, on the other hand, the State supreme court in Hargis v. McWilliams Co. (Inc.), 119 So. 88, ruled that an employee who had lost the sight of the right eye, and who eight years later lost the sight of the other eye, was a permanent total disability case and accordingly awarded compensation.

What is the problem presented in second-injury cases? It is conceded that a workman who has lost an eye, a leg, an arm, or any other member of the body is industrially handicapped and is placed at a disadvantage in obtaining other employment. Among the factors which contribute to this discrimination is the fact that loss of a second member will totally disable him for life, and the employer's fear that the hiring or the retention of an industrial cripple will greatly increase the cost of his accident insurance. If an employer is required under a State law to pay compensation for permanent total disability in second-injury cases, he will hesitate and perhaps refuse to employ a handicapped person. On the other hand, from the standpoint of the employee, if compensation is paid only for the loss of the second member, notwithstanding the permanent total disability and the resultant loss of earning capacity, the employee will be inadequately compensated. The industrial discrimination against the physically handicapped employee therefore presents a serious and complex problem.

Treatment of Second-Injury Cases in Various States

The subject of second injuries is treated differently in the several States.

In some States compensation is granted only for the disability caused by the particular injury without reference to any previous injuries, while in other jurisdictions compensation is granted for the entire disability caused by the combined injuries. The procedure in such cases is open to the objections stated above.

In other States the payment of compensation for second injuries is determined by subtracting the amount payable for the disability caused by the prior injury from that payable for total disability. In a few jurisdictions compensation for a second injury is based upon the earnings of an employee at the time of the second injury. Some jurisdictions even differentiate between second major injuries received in the same and in another employment.

Decisions of Courts

A review of several decisions of courts would seem to be opportune, in order that we may appreciate more fully the position which some of the courts have taken in second-injury cases.
The Illinois Supreme Court, in the case of Wabash R. R. Co. v. Industrial Commission (286 Ill. 194), held that an employee who previous to his employment had lost an arm, and then lost a leg as a result of an injury arising out of and in the course of his employment, was entitled to compensation for total permanent disability under the Illinois act. The railroad company contended that the lower court was in error in holding it liable for compensation for a total and permanent disability, since the loss of one leg did not constitute total permanent disability. The employee contended that the loss of his leg combined with the previous loss of his arm constituted total permanent disability. The court followed the reasoning in the Massachusetts court (In re Braconnier, 223 Mass. 273, 111 N. E. 792) and the New York court (Schwab v. Emporium Forestry Co., 216 N. Y. S. 712) and found in favor of the employee. (See also Superior Coal Co. v. Industrial Commission, 152 N. E. 535; Menk Mfg. Co. v. Industrial Commission, 286 Ill. 620, 122 N. E. 84; Heaps v. Industrial Commission, 303 Ill. 443, 135 N. E. 742.)

However, in a later case the Illinois court refused to follow the decision in the Wabash Railroad case. Thus the case of Chicago Journal Co. v. Industrial Commission (305 Ill. 46) involved an employee who had lost the sight of one eye several years before and later lost the use of his left hand. The court refused an award for total disability, and held that the statute "does not authorize compensation for total incapacity for the loss of a member in connection with the former loss of another member prior to employment unless the loss actually does occasion total disability or incapacity to work."

In a Michigan case (Weaver v. Maxwell Motor Co., 186 Mich. 588) an employee had already lost one eye at the time of the injury which later caused the entire loss of the other eye. The court held that he was entitled only to compensation for partial disability, and not the amount which would have been paid had he lost both of his eyes in the second accident.

In Kansas, a coal miner suffered a permanent partial disability to his right eye. Seven years later, while in the employ of another coal-mining company, he suffered an injury to his left eye which rendered him totally and permanently disabled. (Moore v. Western Coal Mining Co., 124 Kans. 214.) It was held that the second employer, from whom the employee sought compensation, was not entitled to a credit for an amount paid seven years previous by the first employer in settlement for permanent partial disability on account of the injury to the right eye.

In Knoxville Knitting Mills Co. v. Galyon (148 Tenn. 288, 255 S. W. 41) it was held that an employee who had lost three fingers from his left hand 19 years before was entitled to compensation for the loss of the entire hand, without deduction for the value of the fingers previously lost.

In California the supreme court declared that the finding that the loss of a remaining eye through an industrial accident results in permanent total disability "would seem to be suggested by the declaration of appellate courts in other jurisdictions." (Liptak v. Industrial Accident Commission of California, 215 Pac. 635.)

In Minnesota (as well as several other States) the workmen's compensation act provides that "if an employee receives an injury which
of itself would only cause permanent partial disability, but which combined with a previous disability does in fact cause permanent total disability the employer shall only be liable for the permanent partial disability caused by the subsequent injury.” This provision of the Minnesota law was before the courts of that State in the case of State v. District Court of Cass County (129 Minn. 156, 151 N. W. 910) wherein the court said that: “The language of the statute is clear and unambiguous and clearly was intended to limit the liability of the employer to compensation commensurate with the injury suffered by the employee while in his service, and to relieve him from the consequence of injuries previously sustained even though both resulted in permanent total disability. * * *

In Braconnier’s case (223 Mass. 273, 111 N. E. 792) the Massachusetts Supreme Court held, in a case involving an employee who had already lost one eye and later lost his remaining eye, that the latter loss should be regarded as a total disability. The court declared: “The total capacity of this employee was not so great as it would have been if he had had two sound eyes. His total capacity was thus only a part of that of the normal man. But that capacity, which was all he had, has been transferred into a total incapacity by reason of the injury.” However, in the case of Combs et al. v. Hazard Blue Grass Corporation (268 S. W. 1070) the Court of Appeals of Kentucky held that an employee losing the only good eye was entitled to compensation for total disability less a deduction for the previous injury.

While under the Texas workmen’s compensation law it was held that an employee who had lost the sight of one eye in an accident during childhood might recover, for an injury occasioning the loss of the other eye, only the compensation allowed for temporary and permanent loss of sight of one eye, and was not entitled to permanent total disability. (Gilmore v. Lumbermen’s Reciprocal Association, 262 S. W. 204.)

Partial Elimination of Discrimination

It may be said, in passing, that some States have attempted to eliminate the element of discrimination in part by the waiver method. Under the provisions of the workmen’s compensation law in such States an injured employee is permitted, in the contract of employment, to waive any rights to compensation for additional injuries on account of physical disabilities. This system, however, has several weaknesses which need not be mentioned now. Let it be said, however, that while many employees are thus given employment who otherwise would be denied a chance to work, yet they are unprotected in the industrial workaday world and to such employees a workmen’s compensation law is merely a name. Such employees, if injured again, are thrown upon society as charity cases and become a burden on the community in which they live, instead of properly being a charge against the industry in which the injury occurred.

In most of the conditions mentioned, the employee or the employer or both suffer hardship. It is necessary, therefore, that the compensation law provide some method which would relieve the employer of

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added financial responsibility due to the employment of an industrially handicapped employee, and at the same time preclude undue discrimination against the injured employee as regards his employability status.

Special Funds for Second Injuries

The situation has been met in some States by the creation of a special fund. In New York an amendment was early made to the compensation law which provided that, in case of a second major disability, the employer shall be liable only for the second injury; the injured employee, however, is compensated for the disability resulting from the combined injuries. The additional compensation is paid out of a special fund created by a levy of $500 on the insurance carrier in fatal cases in which there are no persons entitled to compensation under the act; the insurance carrier is also required to pay a similar sum into another fund for the rehabilitation of injured employees. The New York scheme was sustained by the United States Supreme Court in the case of Staten Island Rapid Transit Railway Co. v. Phoenix Indemnity Co. (281 U. S. 98). The same method of establishing a second-injury fund is provided for in the workmen's compensation law applicable to longshoremen and harbor workers and to private employees in the District of Columbia. Wisconsin was also a pioneer in devising a means for the protection of employers against liability for the cumulative effect of several injuries, and at the same time relieving the employee of unfair discrimination. In that State a special fund was created by law into which every employer is now obliged to pay the sum of $75 for each major disability case occurring in his plants.

Somewhat similar provisions have been enacted in California, Idaho, Illinois, Massachusetts, Minnesota, New Jersey, North Carolina, North Dakota, Ohio, Oregon, and Utah. In California and Illinois, $300 is paid into a special fund in all nondependent cases; in Massachusetts the amount is fixed at $100, and in Minnesota at $200.

The California provision was presented recently to the courts of that State for adjudication. The subsequent-injuries fund established in 1929 provided that in each case in which an employee without dependents was killed the employer was required to pay $300 into a fund to be used for the care of other employees losing a second member. The California Industrial Commission contended that this tax was legal, basing its contention upon a decision of the United States Supreme Court (Sheehan Co. v. Shuler, 265 U. S. 371) and upon the

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The case of Sheehan Co. v. Shuler went to the United States Supreme Court about 1924 from the State of New York. It involved the question of the constitutionality of two amendments passed in 1922 (ch. 615) to the State workmen's compensation law relating to cases of permanent total disability after permanent partial disability. The statute was attacked as unconstitutional as depriving employers of their property without due process of law, since it required the employer to contribute to the compensation of employees never in their employ and for whose injuries they were in no way responsible. In an opinion by Mr. Justice Sanford, the United States Supreme Court upheld the constitutionality of the New York law. The court in the course of the opinion observed: "The use of such special funds for such purposes is an additional compensation to the employees thus injured, over and above that prescribed as the payments to be made by their immediate employers. Such additional compensation is neither unjust nor unreasonable. Thus, an employee who, having lost one hand in a previous accident, thereafter loses the second hand, is, obviously, not adequately compensated by the provision requiring his employer to make payment for the loss of the second hand, independently considered; the total incapacity finally resulting from the loss of both hands would much more than double the injury resulting from the loss of each separate hand considered by itself. In such a case, however, as in the case of an injury requiring vocational rehabilitation, it is the theory of the law that such additional compensation to the injured employee should not be required of the particular employer in whose service the injury occurred, but should be provided out of general funds created by payments required of all employers when injuries resulting in the death of their own employees leaving no beneficiaries do not otherwise create any liability under the compensation law."
decision of an Arizona court (Home Accident Insurance Co. v. Industrial Commission, 269 Pac. 501). The California court granted a nonsuit in the case but did not decide the question of the constitutionality of the law, and the industrial commission has indicated that the matter will be taken to the Supreme Court. Upon the basis of former decisions of the court involving the same principle, it is logical to assume that the constitutionality of the California provision eventually will be upheld.

The Supreme Court of Minnesota in the case of Lehman v. Schmahl (229 N. W. 553) held that a partially disabled employee who had suffered an injury which of itself caused only a partial disability but combined with a previous disability caused total disability, was entitled to receive additional compensation out of a special fund, even though the previous disability did not result from an industrial accident. The award was opposed on the ground that the previous partial disability resulted from natural causes (cataract on eye) not connected with an industrial accident. The court, however, said that the legislature—

apparently recognized that a partially disabled workman would be handicapped in obtaining employment if the employer were to be held liable not only for subsequent disabilities but for total disability, if a subsequent disability combined with the prior disability should result in total disability; and also that it would be inequitable to require the last employer to bear the entire burden in such cases. But the legislature also recognized that, where a partially disabled workman suffered an injury which, of itself, would cause only partial disability but which added to the prior disability caused total disability, the consequences to him would be much more serious than would have resulted from the subsequent partial disability standing alone. He would lose entirely the power to earn which he previously possessed and which he would still possess but for the subsequent injury.

In Idaho a special fund is raised by requiring the employer to pay a lump sum equal to 2 per cent of the weekly compensation provided in the special indemnity schedule. In New Jersey, the special fund is maintained by taxing all insurance companies and self-insurers 1 per cent of the total compensation paid out during the preceding year. In regard to the case in New Jersey, this is not per se (in itself) a second-injury fund, but may be considered in the nature of one. I am glad that Doctor Kessler is here to-day; I hope he will enter into the discussion and explain the working of the New Jersey law. In 1923 the New Jersey Legislature passed an act providing for the collection from insurance companies of funds from which to complete compensation payments to persons totally disabled as a result of two separate accidents and, in addition to that, to assist in carrying out the purposes of rehabilitation. This primarily, then, may be considered a rehabilitation measure. There seems, however, to be some doubt in the minds of people as to whether it is also a provision for a second-injury fund.

The plan adopted in Utah requires the employer or insurance carrier in nondependent cases to pay into the State treasury a sum equal to 20 per cent of the amount provided in total dependent cases. In North Dakota and Ohio a surplus fund is created, and a "segregated accident fund" is maintained in Oregon. All of these methods provide a ready means for taking care of second-injury cases.

In North Dakota 10 per cent of the money paid into the workmen's compensation fund is set aside until a surplus of $50,000 is created;
thereafter 5 per cent is credited to the fund until the surplus becomes a sufficient guaranty of the workmen’s compensation fund from year to year. The Ohio plan is somewhat similar to that in effect in North Dakota, except that the surplus must be maintained at $100,000. In Oregon the present worth of an award for a major injury is turned over to the State treasurer for investment; the fund so created is called the “segregated accident fund” and is used for the payment of compensation in second-injury cases. In 1929 the fund was reported to have grown to nearly $5,000,000.

North Carolina, the latest of the States to enact a workmen’s compensation law, has also established a second-injury fund. The fund is composed of the commuted amount of the awards made in no-beneficiary cases.

The second-injury fund plans in operation in the 14 jurisdictions specified serve a dual purpose—the relief of the employer of extra risk involved in the employment of physically handicapped workmen, and the compensation of such employees in a measure somewhat commensurate with the loss of earning capacity.

It might be of interest to point out here one method which is provided for the prevention of discrimination against employers of industrial cripples. In some States insurance companies are prohibited from charging a higher premium rate to employers who extend employment to the industrially handicapped. It may be objected that a weakness exists in this plan since it does not cover self-insured employers, and it is true, perhaps, that such employers would be more likely than the insured employer to discriminate against the crippled because of the direct connection between accidents and the costs of workmen’s compensation.

While it is not my purpose to advocate any particular second-injury fund plan, I am firmly convinced that those States which have not at the present time a method for relieving the employer and the employee from evident hardships and discriminations incident to second injuries should at an early date amend their compensation laws to provide some method whereby separate funds might be established for cases of this sort. The success of the plan in those States in which it has been adopted is evident proof of its wisdom.

In discussing the Utah plan, Mr. Knerr, of the Utah Industrial Commission, at the sixteenth annual meeting of this association held in Buffalo, N. Y., in 1929, stated: “We believe that this is a good provision in the law for the reason that it gives the employer absolutely no excuse not to provide suitable employment in cases where employees have previously sustained the loss of a limb or an eye.” Mr. Fred M. Wilcox, of the Industrial Commission of Wisconsin, expressed his views as follows: “With the simplest sort of a provision the employer’s obligation was equalized and the employee’s rights protected.”

I would call to your attention again a resolution which was adopted by this association in 1931. The rehabilitation committee last year in Richmond, in terms clear and unequivocal, strongly recommended the adoption of a second-injury fund in the following language: “That in order to allay any prejudice on the part of carriers and employers against the reemployment of disabled workers in jobs in which they are capable of satisfactory service a second-injury fund be more generally advocated.”
It is earnestly hoped that, in the discussion which will follow the reading of this paper, the delegates will give to the convention their experience in the handling of second-injury cases, including the operation of any second-injury funds. The subject has only been briefly touched heretofore in the proceedings of this association, and a comprehensive discussion would be valuable, as part of the permanent records of this association for the benefit of the cause of workmen's compensation.

In conclusion it is my opinion that only through some plan of providing extra compensation for second injuries, by means of a special fund, will substantial justice be done to both the employer and the employee. The plan to be adopted in those States which have no provisions for handling cases of second injuries should be that which is best suited to local conditions, with the thought in mind, however, of enacting those provisions which have been tried in other States and proven successful.

Upon such adoption in every State it can be said that at least one important factor of discrimination and hardship has been banished. The employer will not be penalized for his good deeds, and the handicapped workman, instead of finding all avenues of employment closed to him, with the concomitant evils of helplessness and uselessness, will look upon society in general with a more kindly attitude and regard himself as of some value in the present-day industrial world.

DISCUSSION

Chairman Nowak. Does anyone care to be heard on this paper?

Mr. Kingston. I would like to explain what Ontario does with regard to the various points so ably presented in this paper. A number of years ago we established, not for this purpose particularly, an emergency fund, sometimes called a disaster fund, in order that we might take care of accidents involving a large number of deaths which, if charged to the particular group or class to which it belonged, would unduly shock that class fund. The disaster fund was created as a sort of shock absorber.

The clause in our act which provides for a disaster fund has an expression something like this, that it should be used for the purpose of major disasters or any other cause which, in the opinion of the board, formed an undue burden on the group. In the administration of the law in the course of years, we determined in the board that a second-injury case should be handled in this way: When the second accident created total disability, we held that that should not all be charged to the class or group in which that second accident occurred. We simply said, “We will charge to the class or group the amount of money that would have been paid had that been the single and only injury. The difference between that particular charge and the total disability award should be charged to this emergency fund.” That is the way the matter has been treated ever since, and we have found it a very simple and easy method of making provision against the things mentioned in this paper.

Chairman Nowak. Doctor Kessler is here. Could we hear from you, Doctor Kessler?

Doctor Kessler (New Jersey). This prejudice that the employer has toward the hiring of a disabled man is based on two things, one a
psychological and the other an economic motive. The psychological motive is a throwback to the attitude of primitive society toward the cripple; primitive society felt that the presence of a cripple was an act of divine displeasure and therefore the individual had to be eliminated. There is still some of that attitude prevailing, although through education it is gradually being eradicated.

The stronger and more important motive is the economic one. One can readily understand why some employers will not employ a lame man, because they realize they will have to pay a double indemnity or at least a larger indemnity than an accident which occurs on their premises calls for. This second-injury clause is an excellent remedy for this second defect. I am sorry to see that only 12 or 14 States have utilized it.

I have been wondering whether or not the second-injury clause could not in some way be applied to the question of aggravation of preexisting disease. A 1-arm man is a definite entity; he has a very definite visible defect. A man with a badly ankylosed spine due to chronic arthritis, who is working every day and is in apparent good health, may also fall a victim to an accident, and even a trivial blow may be the factory whistle for him to quit work forever. I would like to get an expression of opinion from the members of the various commissions as to what attitude they would take if a second-injury clause would include within its scope application to the aggravation of preexisting disease.

Doctor Patton (New York). In answer to Doctor Kessler's question, I may say that proposition has been discussed in New York. Our law provides that employers in fatal cases where there are no dependents pay $1,000, and at the present time $500 of that goes into the second-injury fund and $500 into the rehabilitation fund.

The average award in death cases, while varying somewhat in different years, is on the whole something like $6,000. In other words, if the employers in our fatal cases where there are no dependents were required to pay into this fund $6,000 in every case instead of $1,000, there would be enough money to cover more than the five types of second-injuries which we now compensate. It has never reached the stage of legislation, but it has been discussed.

There is one other point. In Mr. Sharkey's paper there was no reference as to whether or not the loss of the first eye, for example, must have been occasioned in an industrial accident. In New York State the commission holds that if the man loses his second eye in an industrial accident it is immaterial how he lost the first eye. The loss of eyesight in one eye may have been congenital; it may have occurred when the child was two years old, or it may have occurred after he was grown, but not in an industrial accident. Nevertheless, at the time he loses his second eye, he has suffered total disability.

Mr. Sharkey. In examining the cases in several States, I find the courts hold differently. There is no uniformity. I mentioned a case in Texas of an employee who had lost an eye in childhood. There compensation for permanent total disability was denied.

Doctor Patton. I do not know whether any other State so holds, whether they give compensation irrespective of the reason of the loss of the first member.
Mr. Sharkey. Mr. Horovitz says Massachusetts pays compensation irrespective of the manner of losing the first eye.

Mr. Horovitz. In Massachusetts the law provides that this second-injury fund shall be used only for what we call specific injuries—the loss of fingers, foot, hand, and so forth. We do not allow its use for preexisting diseases mentioned by Doctor Kessler, and we have had one adjudication on that problem.

I think it would be a mistake to extend it to cover preexisting diseases, for this reason: In the 17 years we have operated under this particular section, things have gone very smoothly, because the injuries named are very apparent. Anybody can see them. You can not argue about them.

If you provide that when a man, for example, who is suffering from arthritis which has practically disabled him, takes a job and has an accident which permanently disables him, the State shall reimburse the insured, out of the fund, one-half, you are going to have a tremendous number of quarrels. Instead of having it easy, so a secondary report can take care of it and hardly anyone will hear about it, you are going to have numerous cases and constant litigation. I think you would run into such difficulty that you would be sorry you ever extended it to that type of injury. I speak from the point of view of the claimant's attorney. It would not affect the claimant, but it would start a lot of litigation between the fund and the insurance company, which wants a share of that fund.

Doctor Patton. Mr. Sharkey said he would like to have comments on the operation of this fund. We have had this difficulty in New York, which I imagine you have had in other States. The second employer, who pays the compensation for the loss of the second member, of course has no burden placed upon him for the total disability; he simply pays his share. That being the case, he has no interest whatever in the claimant thereafter.

We had a case in New York in which a man was adjudged to have incurred permanent total disability. He was thought to be totally blind and was put on this fund. Some years after that a letter from another State was received by the employer in whose service he lost the second eye, saying that this individual to whom compensation was being paid was working in a textile mill and getting $30 a week. I do not know whether the man who wrote the letter had a personal grudge against the other man or not.

It did not mean a thing to the employer because he was no longer paying compensation, having discharged his liability. He sent the letter to our department. Our department, not wishing to arouse suspicion by sending our own investigator, asked the labor commissioner in this other State to inquire, in this way: "When one of your inspectors happens to be in that particular locality, will you inquire if a certain individual [giving his name and so on] is employed?" In that way we identified the man and his compensation was stopped. Otherwise payments from the second-injury fund would have gone on as long as that man lived.

It is up to the jurisdiction which has such a law in effect to exercise watchfulness to see that the workers are not receiving compensation when they do not deserve it. It may not occur very often, but I do know of that one instance.
Mr. Wilcox. I would like to express, as has Doctor Kessler, my disappointment that all the States have not made some provision of this kind. I say again what Mr. Sharkey has quoted me as saying, that by the simplest, easiest sort of legislation, without any material burden upon industry or anyone, this protection may be provided.

Some of you may be rather surprised to think that even $75 is sufficient to take care of this liability. You will wonder, perhaps, at once as to why it is that in one State they charge $200 or $300 or $500 or some such figure, and $75 is sufficient in the State of Wisconsin. We are imposing this obligation to pay money into the State treasury on those employers whose employees suffer an injury such as the loss of a hand, a foot, a leg, an eye, or deafness of an ear. In each of such cases they put $75 into the treasury. There are considerably more of those cases than there are fatal cases; consequently, the amount of money you need to raise in each injury case will be much less than if you are collecting it on death claims.

With all deference to those States that collect these funds on the death claims, I still think that fairness to industry requires that you should collect the money from the particular type of industry that is to get the benefit of the fund, because some kinds of occupations produce fatal injuries and others produce the kind of injuries that are involved in this sort of benefit. For example, the window-washing industry ought not to be charged with the obligation to take care of very many of these second injuries. When a window washer falls, that is the end of it all, so far as he is concerned, and that industry is paying into these funds in these States very much more than its just proportion, because it is a rare case when a window washer loses an arm or a hand or an eye or the hearing of an ear. I think good judgment and fair dealing require that we shall put this burden upon the type of industry that is producing the kind of injury which is to be compensated under the system. It is, of course, for you to choose the method.

I do urge the obligation of all States to make a choice. I do not do so because of the money benefit, although it is an intolerable system which permits a man to go without compensation benefits for the cumulative effect of two serious injuries. The real seriousness of the whole thing lies in the fact that this man who has lost his hand or his arm or his foot or his leg—more particularly the man who has suffered loss of vision of one eye—is denied one thing over and above all, and that is the opportunity to work. Many employers are afraid to employ him. They do not want to take on this added responsibility, particularly so in the case of eye injuries. So he is denied the opportunity to get a job. This sort of legislation will lift that burden off an employer, and do it so easily. Then at least that thing will not stand in his way any longer.

In Wisconsin we not only compensate in a case where a man has suffered the complete loss of another member—another hand, another foot, another eye, as the case may be—but we compensate out of this fund for the cumulative effect of those injuries that produce 25 per cent or more impairment, and we pay these benefits likewise where the original injury had only occasioned 25 per cent of disability or more. So we are taking care of the cumulative effect of a 25 per cent impairment of any of these members. Our fund is solvent. As Mr.
Sharkey said, we first collected $150. We did not have much experience at that time, and thought we had better set that figure. After some years, this fund was found to be building up to unnecessary proportions, so the amount was reduced to $75, and that is producing enough to take care of all these cases as they occur. You see what an easy plan it is to apply; just the slightest bit of legislation, and you have it. This $75 is paid into this fund without any question or quibbling whatever.

There is just one thing that you will find in the path of legislation of this sort, and that will be the group who are always fearful that what you are doing is trying to set up a State fund plan. That will be the thing that will be in the backs of their heads, and they will worry themselves to death for fear this is just the beginning. “Now you see the thing start, and it will keep on going until what we have is what they have in Ohio, a compulsory State fund.” Do not let a thing like that battle you out. Try to do justice to these people who are suffering from the type of injury we have been talking about.

Answering the question of Doctor Patton, Wisconsin takes no account of where the injured man may have gotten his first injury. It makes no difference where he got it. It is just as serious to him, when he has the second injury, as if he had gotten the first one in industry. It makes no difference whether he had compensation for that first injury or not; that is unimportant. Fundamentally, there is no moral reason why the employer of a man, when he gets his second injury, should not pay the full cumulative effect of that injury. If I have one arm off, and I am working for you and lose the other arm, the fact that I am made totally disabled is not compelling you to bear a burden that is more than your share. Not at all, because I was working as a 1-armed man and earning half the wage that I earned before, so when you compensate me for permanent total disability you pay me permanent total disability indemnity based on what I was able to earn with my one arm. So there is no moral reason why the employer at the time of the second injury should not take on all the burden, but that is not the way things work out. The employer escapes the burden and lets the injured man bear it, and he sits at home without a job.

You can avoid two things. You can avoid discrimination against the injured man. You can make perfectly certain that when he does sustain this second injury you will not put upon the employer at the time of the second injury any heavy burden—a burden heavier than he would have had to bear for the loss of the first member. You have protected the injured man, and after all it is so just and humane and fair a proposal that I am disappointed that there should now be only these few States that are taking care of it.

These men are going to find it difficult enough to get jobs if they do not have two perfectly normal arms and hands and legs and eyes, and all the rest that go with it to make them good, efficient manual laborers, without being handicapped by the further fact that the employer is going to be afraid to take them on because of some added responsibility.

I think, before this association adjourns its meeting instructions ought to be given to the committee on uniform legislation to prepare for us, before the legislatures meet this next January, a report to
each of the various jurisdictions setting out the committee’s idea as to what would be a desirable plan to be followed by those States that do not now have something of this character.

Doctor Patton. Mr. Sharkey’s paper points out that 39 States now have some sort of second-injury law.

Mr. Wilcox. I am talking about funds. You see, taking care of the second injuries does not help us out. We had a plan in Wisconsin by which we took care of second injuries. Let me refer to the eye injuries. We allowed the employee who lost his second eye to have twice as much compensation for the loss of the second eye as for the loss of the first eye. But what about it? Did anyone ever get any compensation for the loss of a second eye? No; he never got a job. He never got a chance to lose his second eye in an industry—to be blunt in stating the facts. Employers would not hire him, because they would take on twice as much liability as they had before.

We are just heaping insult on injury by that sort of scheme. You do not pay him anything, because he is not going to have a job, and you do not let him get a job. So it calls for something besides second-injury clauses in our laws.

Doctor Patton. The paper states that 14 States or jurisdictions have such funds.

Doctor Kessler. Mr. Sharkey requested that I say something about the New Jersey law. In essence it is a second-injury law, since we have compensation cases with amputation, both leg and arm, who later become total disabilities. However, the bulk of the fund is used for rehabilitation purposes for all kinds of seriously disabled industrial cripples. This service consists in furnishing appliances for those who require them, vocational training, a certain amount of physical restoration and reconstruction where possible, and the service which finally places these men in jobs. Unfortunately, it is very difficult in times like these to place injured workers; of course, it is difficult to place normal workers.

There are various ways of handling the question of cripples. In Germany and other countries a certain proportion of these handicaps are allocated to industry. I doubt if American industry will be willing to take up that form of management. At any rate, it is the responsibility of both industry and the State to take care of its disabled men. A second-injury clause and the funds would be a very helpful measure toward that end.

[Meeting adjourned.]
Chairman Dorr. The first paper this morning is entitled "Medical Problems in Compensation Administration; Conclusions from an Experience of Eleven Years' Service," and the physician who has prepared this paper is well and favorably known to many of you who attended the Atlanta meeting five years ago. He is the medical adviser for the Department of Industrial Relations of Georgia, and has the entire confidence of his commission. Dr. Charles W. Roberts.

Medical Problems in Compensation Administration
(Conclusions from an Experience of Eleven Years' Service)

By C. W. Roberts, M. D., Medical Adviser Department of Industrial Relations of Georgia

Compensation legislation after some 20 years of American application would appear to be securely anchored in our industrial system. Its services in adjudicating equitably and with expedition the economic loss to workingmen growing out of the injuries of employment have received an increasing measure of approval by society at large as well as by those special interests whose prerogatives appeared in the outset to have been most affected. While it can no longer be claimed, therefore, that the system is on trial in this country, it is interesting to examine those policies of administration that have broken down opposition and gradually brought opposing factions to a sympathetic support of the fundamental principles upon which such legislation is founded. Of these I am here primarily concerned with that which deals with the medical profession whose interest and assistance by the very nature of the legislation is so vital to its success. To administer successfully its medical features there must be close cooperation between the commissions and the physicians involved, understanding that that may be facilitated by the employment of a properly qualified physician whose duties, among other things, are advisory to the commissions on medical problems.

My experience leads me to express the very firm conviction that aside from the splendid interpretation of the legal phases of compensation law and its judicious application on the part of the commissions of America, one of the most potent forces in building the present respect for the law has come out of the services rendered by their medical advisers. In thus associating medical men in quasi-administrative function many commissions have exercised a keen foresight and have set an example in administration that deserves more general application.

Convinced from the outset that the provisions of the act anticipated the free use of sound medical opinion in its administration, the
Georgia commission has constantly availed itself of the services of our profession in rendering awards concerned with medicolegal ques-
tions. Whatever criticism, if any, bearing upon their medical phases might be justly lodged against the lay administrators of these acts in other States can not, with equity, be maintained in Georgia. It should be and I feel is a matter of general felicitation of our commission that it employed in the outset a medical adviser and otherwise set up medical policies which were then in advance of, and are still entirely in keeping with, those recently announced as being acceptable to the research group appointed by the American College of Surgeons to report on the status of traumatic surgery in the United States.

On March 1, 1921, the Industrial Commission of Georgia, now the Department of Industrial Relations, began administering the Georgia workmen's compensation act which the States assembly had approved the previous August. I trust I may be pardoned for committing to record a fact that I apprehend may become of increasing importance, namely, that the original commission, of which the Hon. Hal M. Stanley, its present valued chairman, was then as commissioner of commerce and labor likewise a stalwart member, set up in the outset the office of medical adviser, which has functioned with an increasing measure of whole-hearted support. It was my good fortune to be selected to fill that office, and although occupied with an active general surgical practice, to which I have subsequently given a large share of my time, I am still undertaking to discharge the duties that fall to my department. In thus recording my early association with the commission of Georgia, I have two purposes to serve, foremost of which is to offer in the name of Georgia medicine the high measure of gratitude which it feels toward those then intrusted with the administration of an act so closely connected with the medical activities in that they afforded through such an office an avenue for mutual understanding, but particularly to call your attention to an experience which is running now in its twelfth year, out of which I cull the arguments herein presented and upon which I am able to predicate certain conclusions now considered to represent fixed opinions.

The Department's Medical Adviser

Organized medicine, as represented by such national societies as the American College of Surgeons and the American Medical Association, has looked askance at the methods employed in the administration of workmen's compensation laws. This attitude has resulted from two outstanding facts; to wit, (a) that compensation legislation supported by a compromise opinion of industry and labor has not consulted, nor enjoyed, the advisory opinions of organized medicine in the writing of the fundamental medical features of the law; and (b) that its administration, involving as it does adjudication of so many questions inherently medical in nature, has not utilized, except in scattered instances, the services of qualified physicians in the capacity of medical advisers to the administrative boards.

However, the aloofness of the profession with respect to its obligation to the successful operation of compensation legislation, so manifest a decade ago, has been somewhat tempered as time has served
to acquaint its members with the soundness in equity of the law as well as with the social factors responsible for its meteoric growth, notwithstanding the presence in a majority of the acts of objectionable features such as the denial of the right of the workman to choose his own physician and the limit of liability for medical costs. Consequently, organized medicine has lately shown a disposition squarely to face the responsibility which these laws have laid upon it and has actively sought opportunity to meet for the purpose of better understanding those agencies set up under the law for their administration. To this end the American College of Surgeons in 1926 organized the Board of Industrial Medicine and Traumatic Surgery, with the purpose in mind of elevating and making more efficient practice in this field as well as to harmonize divergent points of view as between employees, employers, physicians, insurance companies, and administrative agencies through unbiased approaches to the problems that had provoked severest criticism. For the purposes of this discussion suffice it to say that one of the earliest findings of this board was that its studied opinion approved the employment in every State of a physician to serve in an advisory capacity to the commission. As the board has found time fully to familiarize itself more with the problems that lie in the sphere of its activities, its seasoned judgment now urges not only that medical advisers be widely employed, but that the utmost care be exercised in their selection, since their duties necessarily make them liaison officers as between the medical profession and the administrative body of the law. These brief considerations lead me to assert that trends in recent years, supported by 11 years' experience in the capacity under discussion, leave further argument unnecessary. Every commission should employ a medical adviser.

Granted that such an office should be created as a part of the scheme of administration, what is its sphere and what qualifications are necessary to the task? At the outset it seems pertinent to assert that in those commissions where volume and budget will justify, a medical staff should be created, to consist of experts in the special field into which injury cases and their sequelae fall, to be supervised by the commission's director, whose duty it would be to correlate the findings of the members of the staff in those cases referred for opinions and to translate such findings into disability ratings. But such organizations may well wait on the more general employment of single advisers, whose office in the meantime will be like that of the old family physician in whom was merged those fundamentals upon which the elaborate specialism of our day has been built.

In speaking to a group whose long acquaintance with physicians in their relation to the problems arising out of the medical phases of compensation has emphasized the apparent lack of anything approaching unanimity of opinion, one proceeds with trepidation to assert that a properly qualified adviser may frequently bring order out of what often appears to be a hopeless morass. Aside from his function as a rating officer, the commission's physician may frequently offer helpful suggestions with reference to policies dealing with the profession at large, as well as interpret the delicate professional viewpoint for the commission and in turn the administra-
tive problems to the profession. Whether sitting with the commission on formal hearings, reviewing disputed physicians' bills, checking estimates of disability, or seeking for a specific and simplified opinion in lieu of embellished medical reports, the commission's adviser must necessarily be qualified by unimpeachable honesty, by tact, common sense, long suffering, patience, and medical erudition. In other words, the commission's physician, by the very nature of his duties, occupies a vulnerable spot in which he may serve with distinction to his employers, or, if unhappily his choosing has been made without due regard to the qualities necessary to such a position, may not only discredit himself but seriously strain that confidence in which the adjudicating agency must be held by all those whose interests bring them under its jurisdiction. Fundamental to his training must be a thorough grounding in the technics of the profession. Several years in general practice followed by specialization in surgery is required. An active private practice serves to keep him acquainted with the changing viewpoints of his profession, affords opportunity for mixing with his fellows on a basis of a common interest, brings contact at national and State meetings and otherwise qualifies him to handle his problems, not from the impractical standpoint of the dogmas of books, but out of actual experience with living patients. To these are added withdrawal from competitive practice with his fellows in all compensation cases, a broad humanitarianism, an abundance of enthusiasm, and an unaffected interest in and appreciation of the possibilities resident in such service to his State and its people.

If the various commissions throughout the territory embraced by this fine organization which has done so much to standardize administrative procedure and unify thinking with respect to the equities of the law could have the services of medical advisers meeting some such standard as above suggested, there would be created thereby in every commission not only what in effect would be a nucleus for industrial medical education, but as well a swift antidote to the depressing and unfair assertion so frequently made that the physician's opinion in a medicolegal case represents nothing more than a "guess," in the absence of that knowledge which in other medical fields dignifies his opinions with a degree of scientific accuracy. Here again my experience has taught me that much is to be desired—more in the way of special fitness must be required if the commission's medical adviser is to acquit himself with credit to the profession and with profit to his employers. Out of the many medical problems that present themselves for judicial determination, I have chosen, in the interest of time, to limit my discussion to a few about which there still lingers a controversial atmosphere, notwithstanding practices which indicate, by implication at least, that unity of thought regarding them has been reached.

Advisability of Fixed or Standard Scales for Disability Estimates

Although the construction of a set scale by which one might estimate the percentage of disability in a given case is a consummation devoutly to be sought, I would express the opinion in the outset that the preparation and standardization of such a scale will continue
to baffle the efforts of those concerned with the adjudication of industrial injury cases. On superficial examination, one receives such an opinion with disappointment and alarm, since it becomes evident that the impracticability of such a scale, if such it is finally proven to be, makes necessary the reduction of each case under consideration to an individual problem. Thus, the already clogged machinery of the offices of the industrial commission are further burdened by the lack of a working plan by which injury cases might be handled en masse.

Were it possible to segregate injuries into groups, to classify them, and to apply to them cold, calculated, scientific treatment, uninfluenced by individual characteristics, the question of percentage estimation might be reduced to some working basis as is frequently presented in the literature. The physician finds it comparatively easy to place the injuries of workmen in certain clinical groups, but when called upon to reduce their disabilities to percentage factors he finds little by way of reliable precedent to guide him.

There is as yet no crystallized medical opinion bearing upon this question. What may logically be expected after a given injury and the time required for maximum healing have, from common experience, been written into the literature of traumatic surgery. But not so with percentage estimates.

Notwithstanding, in an effort to comply with the provisions of the compensation law with respect to the question of percentage ratings, I am in the habit of using the following considerations, which are admittedly arbitrary in nature, but furnish at least a working basis.

A member is composed of a supporting bony framework, broken by joints; of surrounding muscular tissue, by the exercise of which power is applied; of a system of nerves, both motor and sensory, through which the energizing force flows; of a vascular system to supply nourishment and remove waste; and of a protective covering, the skin. The brunt of injury may occasionally fall heaviest upon one of the aforementioned systems, but is rarely confined to it alone. For this reason we must learn early to think in terms of the member as a whole. Granting, however, for the purposes of debate that a single component of the member is directly affected, as for instance the nervous mechanism, and that the others have escaped, since function is based upon the unit action of the group we find it lacking in equity to arrive at the percentage of loss by subtracting only that fraction set up to represent the particular system’s share in the member’s cosmos. If then we proceed by attaching to each of these systems some such fraction as: For bone and joints, 25 per cent; muscles, 25 per cent; nerves, 25 per cent; vascular tissues, 10 per cent; and skin, 15 per cent—to compose perfect function, we must not attempt to arrive at the percentage of handicap by deducting only the calculated loss suffered in the single system.

An example might serve to clarify the application of these suggestions. Let us suppose we have an arm with ankylosis at the elbow and loss of function in the musculospiral nerve. Analysis immediately reveals that three of the arm’s systems, under our five components of perfect function, are involved. Ankylosis in the elbow destroys 50 per cent of function assigned to bone and joint; musculospiral paralysis robs the arm of one-half its nerve supply. Elbow ankylosis and musculospiral paralysis vitiate the function of
the upper arm muscles, as well as some 50 per cent of those of the forearm and hand, thus adding further loss of muscle power estimated at say 20 per cent. To this 45 per cent palpable loss in the arm's function must yet be added a supplementary factor. There is now absence of that coordinated function which prior to injury existed between the affected and unimpaired systems. In other words, the unaffected tissues, without the support of the disabled, to which they have been accustomed and with which they have previously been coordinated, are now also handicapped. The directly unaffected 55 per cent remaining function is now indirectly reduced, for competitive labor, to some 25 per cent. Such an arm would thus work out to possess 25 per cent of its original function, although only 45 per cent of its component system is directly impaired.

This scheme, with such variations and adaptations as may appear obvious, when considered in the light of the extent of component-system loss, may be applied to any member and the specific handicap approached with reasonable accuracy.

Similar reasoning will apply to general disabilities. One has but to assign to each of the body's main functions—such as the nervous, the vascular, and the muscular systems, the supporting framework, the mental and emotional nature—certain percentage fractions, say to each 20 per cent, and then strike a balance.

But may we not attempt a more searching inquiry into the factors responsible for the dearth of precise information bearing upon the problem of standard scales for percentage determinations, and in order that its difficulties may appear in their proper perspective, lay down as a principle from which I can see no escape, that every case is and of a right ought to be an individual calculation, like unto but different from all others, as one personality simulates but possesses distinguishing attributes from another? If then, and in the light of this principle, one should presume to advise with respect to a given case how the industrial handicap might be determined, the plan would, as I have conceived it, call for a searching personal study not alone of the degree of obvious handicap presented in the form of malalignment of fractures, ankylosis of joints, changes in mobility of parts, or actual loss of members, but likewise of the play of such influences as constitutional stability, or lack of it; the possession or absence of ability to adjust oneself into the ordered life of a working community; the reaction of the mind and subconscious nervous mechanism to real or fancied wrongs; and the degree of aggravation suffered by the activation of latent diseased states by injury in the apparently healthy workingman, whose handicap from preexisting disease had, prior to the accident, been buried in the subconscious mind.

The American workman can never be reduced to the status of a robot. In man may be seen the mechanical function of joints, muscles, and supporting framework, which the daring devotee of the mechanical age has sought to approach in the iron man, but to these marvelous attributes, setting within themselves an all-time mark for the mechanician to attain, there are in man the more potent factors of mind and emotion, gradients, lacking a fixed status of function, sensitive as a weather vane to the cross currents of life, and
never to be measured by any standard scale set up to represent an assumed normal or average individual.

Like the robot, the purely mechanical functions of man may be fairly accurately measured and practical working standards reached and universally adopted, subject always to partisan interpretation and local variations.

I should digress here long enough to say that these thoughts are based upon the assumption that competent medical opinion will be freely consulted. But returning for the moment to methods and scales often desired in the measuring of industrial handicap, and sharply limiting the application of such tables to the determination of the variations from normal observed in the purely mechanical functions of man, I have found in my experience of some 11 years that the response in reduced efficiency in a given case, even in this group which on its face would appear most susceptible to universal percentage treatment, varies widely from another injury with apparently similar end results. I need not suggest to this assembly of earnest and thinking men that this variation lies in the unmeasurable human element which in its ebb and flow, and colored always by the pattern of its inheritance, presents in every case constitutional characteristics, forcing individual appraisal, and in its essence unlike that of all others. If, then, the attributes of the workman which most nearly approach those of the robot can not be measured by any universal rule or by any percentage scale, what shall we say of those that set him apart as a human being made in the image and patterned after the nature of God? Bold indeed would we be to construct a yardstick by whose magic use we would attempt to fathom and measure the crippling influence of hurt minds and destabilized emotional states. In these attributes man is either at his best, or when toppled from this high estate, found at his worst—an abject and pitiable shell, whose work ability has flown with the loss of the energizing will to do. Herein then lies the Herculean problem of compensation administration; in it is wrapped up the major portion of industrial disability. Toward its solution must be directed the best thought of social reformers, humanitarians, statisticians, champions of eugenics, and those devoted economists who sense the physical and mental handicap that evolves from widespread poverty. These latter considerations are admittedly only indirectly related to the problems under discussion, and are perhaps matters for the general concern of our Federal and State governments. Notwithstanding, I have relied upon them to support the principle so frequently presented in this paper that the estimation of disability in a given case requires individualization and must take into account the influence of such human attributes as are above suggested or else we prostitute the American workman to the status of a robot, whose extremity of iron and heart of metal we would attempt to weigh, measure, and calculate.

The Question of Hernia

There are few problems which have gathered more conflicting opinions than has characterized the question of hernia and its relation to injury. Naturally, the physician’s opinion with regard to the relation between a given injury and its effect will be largely
influenced by certain preformed opinions—conclusions that naturally reflect the atmosphere in which they have been formed. If one's medical education has been of the strictly scientific type, there will likely exist a spirit of intolerance toward any view that supports the traumatic theory of hernia. If, on the other hand, one qualifies to serve in an advisory capacity to those agencies before whom this question is so frequently presented as having followed injury, by first acquiring the conventional or orthodox viewpoint and then exercises in practice a measure of common sense, notwithstanding its lack of scientific accuracy, the intriguing tendency to close one's ears to the simple language of the injured will soon disappear, and one comes to face the issue that there are hernias of the type scientific men discuss, rarely concerned in compensation discussions, but of vital interest to a large group of sufferers in whom symptoms have developed only after the effect of a sudden strain and to whom hernia has meaning only after it has begun to interfere with work ability. To put the question cryptically, When is a hernia a hernia from the workingman's standpoint? It does not assume undue assault upon the logic of the question to answer that a physical ailment readily diagnosed on routine physical examination as a hernia, but which has produced no disturbing symptoms, is to the man under consideration no more handicap than is, for instance, a pigmented mole or other developmental defect. If, however, the mole takes on malignant tendencies it ceases to be the quiescent thing of little past concern. In like manner a patient may carry for years in the deep concealment of his abdomen a chronic appendix or gall bladder, giving no direct symptoms or perhaps only those usually falling under the hapless label of indigestion; these symptoms, being commonplace, fail to disturb the even tenor of their possessor's way. Suddenly, however, that which has been present for years as indigestion is displaced by the appearance of agonizing colic and, with much less obvious injury than frequently accompanies a strain so commonly alleged as the forerunner of disabling hernia, the silent appendix or gall bladder now becomes not only incapacitating but an object of serious concern to the very life of the patient. In like manner I have come to reason with respect to hernia. It matters not whether it existed before the alleged strain. Certainly the fundamental defect was present. It can not be denied that injury alone is an extremely rare etiologic cause of hernia, but it does matter whether the hernia which antedated the injury has by strain been changed from a quiescent developmental defect into one of greater degree, or, if you please, into one that has taken on new symptoms—symptoms which the patient is not accustomed to tolerate. Like the mole, the appendix, or the gall bladder, the hernia after strain may, and I believe does, frequently change its nature. It is this change in the nature of hernia which brings it before the industrial commissions and around which controversy gathers. It is this change in the nature of hernia that makes the condition which the workman tolerated yesterday become a disturbing or disabling thing to-day. I am ready to agree with the dominant medical thought of the day that traumatic hernia per se only rarely exists and by the same token is seldom brought for adjudication to the courts. On the other hand we have ever with us the hernia of
mellow vintage which injury has brought to the attention of the workman, and in which new factors are now at work.

Finally, it seems logical to assert that from the layman’s standpoint hernia becomes hernia, and indigestion appendicitis, and gaseous colic gallstone disease only after there has been acceleration in symptoms, by which token they likewise become disabling, and to insist that common sense supports the view that although traumatic hernia in the strict sense is most infrequent, compensable hernia because of aggravation by strain is exceedingly common.

It seems well here to refer briefly to another condition frequently encountered in connection with a study of patients referred for examination because of symptoms about the groin. Since pain presumed to result from hernia is the symptom that brings the majority of these patients before commissions, it follows that a proper diagnosis of the cause of the complaint is of paramount importance. Aside from teaching to the contrary, it is not always easy positively to demonstrate the presence of hernia when the condition exists—a situation that has frequently led examining physicians to assume the presence of such a defect when, as a matter of fact, further observation and more painstaking examination have shown that pain was due to other factors. Groin pain, in the absence of demonstrable hernia, should never be treated by operation. I have seen several cases that fell in this group and invariably operation intensified the pain and prolonged the disability. It is sufficient here to suggest that irritation of nerves by deposit about the intravertebral spaces of the vertebra or from infections in the lower genital tract is not infrequently the cause of groin pain, and that treatment to be effective must attack the provoking pathology rather than add further insult to aching nerves by the infliction of additional operative trauma.

The Question of Arthritis

Among a group of 3,000 cases examined for the Department of Industrial Relations of Georgia over the past 11 years, I have had occasion to study the incidence of preexisting disease in relation to the symptoms complained of, as constituting the disability alleged. I have been startled to find that two out of three workmen showed defects of one kind or another capable of aggravating the injury sustained. At the head of the list stands the rheumatic syndrome characterized by the familiar chain of symptoms readily recognized by the medical man as constituting the arthritic state. These patients recover slowly from fracture, dislocations, sprains, and back injuries. The clinical course and early recovery which one is accustomed to see in normal individuals is complicated in arthritic sufferers by variations frequently leading to high degrees of permanent injury residue even after ample recovery time has been allowed and efficient treatment has been applied. If one assumes in the outset, as we are forced to do, that such a course may be said to be normal to this defective class, a plausible explanation must be sought. An illuminating noninjury group has been reported from the Mayo clinic. Out of some 1,100 patients over 50 years of age X rayed for incidental causes such as for suspected kidney disease, 58 per cent were shown to be suffering from
silent hypertrophic arthritis of the spine. It is significant to find that in this large group there were comparatively few who complained of the familiar rheumatic symptoms, or of the neuro-muscular pains so commonly exhibited by such patients following injury. On the other hand, H. A. Nissen, in the Medical Clinics of North America, 1925, called attention to the prevalence of arthritis without symptoms until precipitated by injury. When one accepts, as we must, the high incidence of this potential disability factor in a high percentage of our working population, it is only necessary to discover how injury operates as a provoking factor to understand the symptoms so regularly observed in these victims after simple industrial accidents. Such a theory begins with the assumption that body tissues, the seat of latent disease, are able to bear ordinary work trauma without the manifestation of symptoms, but in the same manner that a pathologic heart will bear restricted activity without evidence of circulatory failure, only to break down under greater strain, human tissues, the seat of pathologic change characteristic of arthritis, will bear ordinary work trauma, but when strained beyond that to which they are accustomed there is precipitated that chain of symptoms so commonly associated with this group of disabled workmen. It would appear thus that, contrary to the line of superficial reasoning so often applied to this group, it is not a matter of manufacturing out of thin air and for the purpose of bolstering a questionable premise an untenable theory to support a clinical observation so familiar to all of us, but rather the application here of one that is accepted as founded upon secure tenets when applied to other well-recognized diseases that are known to cause disability when work trauma beyond that compatible with the organ's reserve has been suffered. If one pursues this line of reasoning to its logical conclusion, it is not surprising to find that the major symptoms of the arthritic patient are found in those areas of the body regularly called upon to bear the most constant physiologic work load. Thus the large joints of the extremities and the lumbar spine are found to be the seat of most frequent arthritic deposits, and injury therefore to these areas is found most frequently incapacitating, due to the precipitation by strain of the chain of symptoms regularly associated with the arthritic state.

The Nervous Factor in Injury

This problem so commonly seen in compensation cases, manifesting itself in such bizarre form, and appearing so frequently in injuries even of the trivial class, calls for serious consideration. Physicians and laymen alike are in the habit of extending to these unhappy victims a minimum of attention, justifying their position on the ground that the symptoms are the result of willful exaggeration, and are, therefore, not subject to the same principle that obtains in adjudication for malalignment in fractures, ankyloses, organic nerve injuries, and similar conditions. That this view is wholly unjust becomes evident to any fair examiner when the mechanism which produces the symptoms is analyzed. None will deny that a workman whose nerve stability has been shattered, and whose emotional
nature has slipped from control, furnishes not only a picture of humanity deserving of the utmost kindly consideration, but likewise one whose working ability has been, for the time at least, entirely lost. These nervous states appear in medical literature under the formidable name of "psychoneuroses." They have their proximate cause in a fundamentally abnormal or unstable nervous make-up. Such individuals are the victims of a constitutionally inferior family strain, with the causative factor rooted in poor mental, physical, and moral environment. They have a high threshold of nerve, psychic, and emotional impulse reception. Thus they are boosted up by pleasurable influences, bear fair weather well, respond readily to solicitous attention, but have acutely unfavorable reactions to adverse winds. The strain of life, augmented by cultural and economic demands, subjects the most stable and sanguine group amongst us to a severe test. Even these, favored by inheritance and economic status, must, under the strain of modern life, frequently resort to vacations, repair to golf courses or to other diversions, to fortify against threatened nervous breakdowns. But the so-called psycho-neurotic group, whose situation is less favorable, presents a much more vulnerable class. These stagger and fall under the burdens of modern life. Work, with its reward of home, food, clothes, and family, and the chance for recreation and pleasure, is the one essential factor necessary to preserve this growing group of our population. Employment must be provided to fortify them against a further weakening of their constitutional defects. Idleness, sickness, and injury furnish the fertile soil in which their abnormal traits further decay.

Reason under these conditions easily becomes dethroned and emotion takes the helm. Passion rears its ugly head. Intolerance runs riot. The orderly processes of the law are trodden under foot. Hence their disabilities under compensation are greatly exaggerated. But they are not willful malingerers. The cause of their disability is deeper rooted than the bruise or fracture which too often receives our major consideration. What answer have our modern educators, our departments of health, our social agencies to this growing menace? It must be reckoned with. Its symptoms take the form of Russian Bolshevism, of Italian or American Blackshirtism, but is after all but the protective instinct on parade. Its cure calls for sober thought and goes much deeper than idle abuse.

The Greater Responsibility of the State to the Problems of Compensation

The scope of this paper will not permit, in conclusion, the presentation of certain comments which I should like to make bearing upon the larger responsibility of the State as it relates to the problems of compensation and to industry in which compensation's wards labor. Suffice it to say that the growth of industry in our country calling for a higher level of work efficiency, the greatly augmented standard of living now so universal, the deferred payment plan of selling which has placed within the reach of all the products of science and invention, have placed a premium on physical and mental fitness and attached to the question of earning power a new importance. It has
become apparent, even to the casual observer, that good health underlies good workmanship. Employers of labor insist upon sound bodies and stable minds in this age of mass production as a necessary link in their program of controlled overhead expenses.

The enactment of workmen's compensation laws is a long step in the right direction. Such legislation can not be considered paternalistic. The basic principle upon which it rests recognizes that the wear and tear of the human element in industry represents a legitimate charge, to be taken into account along with other production costs in fixing the selling price to the consumer. To be sure, the ultimate aim is to prevent rather than attempt to repair injuries and other unnecessary drains upon the earning power of the workingman. In the meantime, if wear and tear on machinery, interest on invested capital, rents, power charge, and the like, are factors to be set against the production cost of a pair of shoes, the exhaustion of brain and brawn on the part of a laborer deserves like consideration.

To the end, however, that such legislation may continue to function and have its benefits extended, workmen must not, through pre-existing ill health or easy susceptibility to injury, exact an unnecessary drain on the assets of the employer. The whole question of the citizen's physical status in its final analysis falls back as an obligation on the commonwealth. The best medical thought among us must be given to its solution. The rehabilitation of the potentially sick, aggravated by injury, is too much of a burden to be imposed single-handed upon industry. Eventually, the standard of work efficiency in the State must be raised by the wide application of public-health measures governing the attainment and preservation of good health.

As social legislation is expanded in America it must ever be borne in mind that the peculiar traditions of the new world and its democratic institutions will never permit the adoption in detail and practice of such legislation as exists in the old. Our country's government and meteoric growth owes its phenomenal success to the untrammeled initiative of the rank and file of its citizens. The principle which recognizes individual merit must be retained at any cost in order that its productive character may solve the large problems which loom on our horizon. To adapt social legislation to our country's needs will require the development of a new order of statesmanship in America, unwilling to follow blindly the Teutonic lead.

Conclusion

In its final analysis the crux of the problem of administration, so far as it concerns the matter of disability following injury, brings into judgment the personality of the applicant. Scientific medicine in its quest for remedial agents has long resorted to the experimental laboratory, out of which has come so much of procedure and practice that now forms a valuable share of the armamentarium used in the control of contagion and the amelioration of disease. Theories are first tried upon the experimental animal whose reaction to operations and potent drugs parallels those of the human with an accuracy sufficient to lead to the establishment of clinical precepts eventually
reduced to clinical courses of medical management for human disease. But medicine is still confronted with a governing factor not seen in the lower animal, a factor which frequently nullifies the accuracy of procedure when applied to human disease repeatedly observed to be exact in the laboratory. This human factor must always be reckoned with and constitutes a new approach to the problems of medicine which now challenge an ever-increasing interest in the profession. Approached from this angle, diseases which in the past presented impregnable barriers crumble, and ailments which resisted the application of science alone give place to health and happiness when the human factor is added. In like manner a new interest must be accorded this human factor in compensation administration; and albeit the mechanical man may lack the physical imperfections of his creator, industry still waits upon man's creative genius and lies prostrate only when directed by his designing will. But man is more than bones and joints, more than muscles and nerves. As medicine has found through the new science of applied psychology that an ever-increasing share of sickness is concerned with the so-called functional diseases not amenable to remedies directed at the body alone, industry must likewise recognize that a growing quota of disabilities results not from injuries to somatic tissues but rather from traumatized personalities. Work function issues from the totality of the organism, including body, instincts, emotions, mind, experiences, reactions, defenses, superiorities, inferiorities, memories, scars, triumphs, and failures. Altered function ensues and disability states follow when any of these factors have suffered trauma. It is the "en masse" of the individual that performs work. It is the totality of man that suffers trauma. Splints may mend fractured bones and the industrial handicap be small. But without the beneficent and wise administration of enlightened insurance adjusters, supported by an equally high-minded employer and physician, the broken personality will be found to resist all restorative measures and likewise the industrial handicap to be large and often total, often permanent.

Industry has long been too deeply infected by the virus of commercialism; its operations have been too mechanistic. The new industry must give supreme thought to its humanitarian aspects if it would stand up in the councils of public thought. Under the operation of compensation laws a healthy stimulus has developed in the direction of the prevention of body accidents; but too much stress has been laid on hands and feet, and too little upon the totality of man. The cost of compensation will continue high, but it must be remembered that the money cost is material, while the human cost is immoral and violates the conscience of humanity. While the money cost may be tolerated, the human cost must be outlawed.

Finally, then, industry of the future must learn, as the profession of medicine has discovered, as it has tried to progress in the control of human disease by the application of laboratory remedies alone, that man is man, and dog is dog, and never the twain shall meet.

The old order has applied to man little more than a mechanistic philosophy; the new order must emancipate his spirit and accord to him those human values to which, by inherent right, he is entitled.
Chairman Dorr. The paper is now open for discussion.

Mr. Parks (Massachusetts). There are just one or two things I want to add, if I may. It comes from my experience in listening to doctors. Medical men, insurance doctors, advisers, and so forth, often step out of their field. They testify, for instance, under such leading questions on the part of the insurance lawyer as: “Now, Doctor, isn’t this man able to go back to his work as a carpenter?” It is not a medical question at all; it is a common-sense layman’s question. That doctor knows no more whether that man can do his work as a carpenter than I do; in fact, I think I know more about it than he does. But he is permitted many times to say, “Yes, I think he can do everything that a carpenter is called upon to do.”

On the other hand, you have the lawyer for the employee-establishing the case of a man as totally disabled. The doctors will testify very glibly in order to establish the man’s case so that he may get compensation, forgetting entirely that they are doing everything they can to put the man on the shelf where he will not be able to work any more. In their endeavor to help the attorney put the case across so that the commissioner will award compensation, physicians often do the man an injustice.

Let me give an illustration of that. A man in one of the large cities of Massachusetts, who was a woodworker, had a serious injury to one of his hands, the hand that was needed in his work. Five doctors, one after the other, got up and testified that that man never could be a woodworker again. He was a man, not yet 45 years of age, who had never done anything but woodworking in this particular city where there were various woodworking establishments; and these doctors were advertising broadcast to that city that he was through as a woodworker—let everybody take notice that this man can not work as a woodworker any more.

Why were they doing this? To establish the fact that he should get $18 a week compensation, and he was a man accustomed to making about $45 a week.

When the doctors were through, I called the man over and said, “Here, I will tell you what I would do if I were you. Don’t take any notice of these doctors who are condemning you to oblivion.” The tears came in his eyes; he liked his work. I said, “You go back to work; do the best you can.” He burst into tears and said, “I will.” Within two weeks that man was back at work as a woodworker. For all I know, he is working to-day. That was some years ago, and yet five doctors said he could not work.

That is the human thing I wish the doctors in this work who are here would take back with them, to be considerate not only for the side they are testifying for, but for the man himself. Do not tell him he is through. Leave that for the commissioner to do something about. Tell him the physical defects—that the finger is gone, or that he has a stiff finger—but do not say, “He is able to do this,” or “He is able to do that.” That is not a medical question, in my opinion.

Mr. Wilcox (Wisconsin). I might make this observation: I think the differences of doctors as to what their interpretation of an injury ought to be, and as to whether or not it is compensable, rise not so much from fact as from law. The doctors are not in material
disagreement as to just what the man's condition is. They do differ as to whether it is a compensable injury and whether industry was the cause of his inability to work.

Yesterday, at luncheon, I discussed this very subject with Doctor Wills, of Columbus. He thought compensation boards were going awry oftentimes in holding liability. I said to him, "Doctor, I do not think you ought to take that viewpoint. Compensation boards have to determine these cases on the basis of what in law we term proximate cause and proximate result, as lawyers do, and administrative bodies have to make their findings and conclusions by the lawyer's reasoning process."

I can illustrate that best perhaps with the case of an epileptic. He is stationed by his employer on a staging and in an epileptic seizure falls off this staging and is seriously injured. It is most common to find doctors taking the position that that is not a compensable accident, and that industry ought not to be held liable for that. They say that the cause of that man's future disability, because of his cracked skull or broken arm, is the fact that he had an epileptic seizure. That is true enough. One ought not to disagree with men who think along those lines. To the doctor the proximate cause of the injury is the epileptic seizure.

After all, the thing that actually caused that man's disability was a more immediate thing. It was the fact that he fell 15 or 20 feet. If he had had his seizure in some ordinary place such as in his own house, he probably would not have suffered disability, but he had it in an exposed place which industry had provided for him, and because of his fall he was disabled. He may fall into machinery or into a vat. If his occupation takes him to a point where he is exposed unduly, then that exposure becomes the proximate cause of this disability which he sustains, and that, then, from the compensation standpoint, must be the conclusion rather than by tracing back to the earlier moving factor and attaching it to his epileptic condition, which he has had perhaps from childhood.

So we get into much of our disagreement. The doctors look at it from the medical standpoint, because they are thinking of the cure. They are thinking of how to guard against these ailments, and their effect. They are looking back to this original cause and fixing responsibility there. The commissioner's obligation is to determine what was the more immediate cause that brought on this disability.

Secretary Stewart. It seems to me that from the workmen's compensation point of view, there is something still back of all that. The purpose of the workmen's compensation law was to distribute the necessary aid following the loss of earning power of the breadwinner of the family.

Take the case that Mr. Wilcox speaks about. An epileptic falls from a scaffold. From the original workmen's compensation point of view, it does not matter a bit what is behind all that. Somebody has to take care of that man. Who is going to do it—private charity, the poorhouse, or industry under the theory proclaimed by the workmen's compensation act, that if it was done in industry, industry should be charged for it and it should be spread over the entire consuming public?

The theory of compensation is compensation; that is, maintaining the man and his dependents. Who is going to do it? The compen-
sation law provided a plan. We have been chiseling at details, trying to get out from under this thing, until we have very little left of our compensation and no mental concept left of what the workmen's compensation law was intended to do.

Doctor Donohue (Connecticut). I quite agree with Mr. Stewart on that particular feature. When somebody is made dependent as the result of an injury, of course the main thing we are up against is the question of taking care of such dependent; that is the idea of compensation. But if you are going to take care of everybody, rather than to limit the benefits of the workmen's compensation act to what it was actually intended for—taking care of injuries—then we should bring within the scope of compensation all those cases which will need to be taken care of, such as sick-benefit cases, old-age pensions, and all that type of cases, because they are just as much entitled to care, when you get right down to the facts, as the fellow who is hurt. They are all people who need help.

I do not think that, as Mr. Stewart says, we have chiseled anything out of the compensation act. I think we have broadened its scope tremendously, and we have gotten it so broad to-day that any kind of sickness, disease, or anything else is attributed to an injury. I will ask the doctor if that is not a fact. Haven't we increased the scope of trauma as a causative factor? [Doctor Roberts nodded.] That is what has occurred. We are glad that it is so, because it does what Mr. Stewart wants it to do—it helps the fellow who needs help. I think we are spreading it pretty well. If we are going to take everything in, I think we ought to so specify in our act, or we ought to take care of these needy people by old-age pensions, sick benefits, and other means.

I would say that, in my own experience, probably 98 per cent of all the cases that come before the compensation board automatically adjust themselves, but there is a very small percentage of cases which makes trouble in the administration of the law. No one wants to do an injustice to a man who is injured or to his dependents. Nevertheless it is not the commissioner's business to be liberal in handing out some one else's money.

I have to disagree with Mr. Parks about his ability to say whether or not a carpenter or a mechanic of any kind can do his work, as compared with the ability of the doctor to do so. I think there are some cases where he may be able to say pretty well from his experience, but, after all, in the last analysis, you have to depend upon your medical authority; I mean by that, good, sound medical authority.

Mr. Parks. I did not say you did not. I depend on medical authority every day.

Doctor Donohue. I think, after all, we can place more dependence on medical authority than we can on lay authority.

Mr. Leonard (Ohio). In Ohio we are very liberal in the matter of medical, surgical, and hospital care. We want our claimants to have the best care that money can buy. We give them the best attention that can be had in any place. Occasionally we send a man to the Mayo Clinic, although those are very exceptional cases, because we believe that, except in very unusual cases, the Ohio surgeons are as competent as surgeons are in any other place.
In the matter of medical attention, we have a great deal of trouble
to-day with unemployment conditions. I think as great care should
be exercised on the part of the doctor in seeing that a man is certified
as able to return to work as he would in a private case. The big
thing in compensation is to bridge the gap from the time a man is
injured until the time he is able to take up employment. We do not
want to hurry him; we want him to have every opportunity to have
the proper medical care. That has been a big problem.

The people from outside the State may not know that in Ohio
we have unlimited medical costs. Our bills of $200 and over must
be passed upon by the commission, but in very few cases have we
ever questioned a bill of over $200. We are interested in the kind
of treatment a man receives. Regardless of the amount of money
spent, we want him to have the best treatment he can get. Of
course, we have to depend on expert medical opinion in a great many
cases. We authorize our medical department to send a claimant to
an expert along certain lines. We expect that expert to give us an
opinion as an umpire does in a baseball game. We want his honest
opinion as to what are the facts in the case. In a number of cases
we have found that the specialist does not help us much; he does
not give a definite opinion as to whether or not the man's condition
is due to injury. Then we have to go to the doctors on the com­
mmission to give us the facts.

Chairman Dorr. Doctor Roberts, you have two minutes to close
the discussion.

Doctor Roberts. I will devote those two minutes to two sub­
jects—hernia and backache. I would like to say, however, that my
interest in compensation from the medical standpoint is not with the
idea of taking care of that infinitesimal four-tenths of 1 per cent, or
whatever it may be, of people who are getting something under com­
pensation to which they are not entitled. Frankly, in 11 years of
practicing, I have seen but one case of so-called malingering. That
man did not have the backache. He was a brilliant-minded man.
Maligners are people who put things over with the brain. These
miserable people with the backache and hernia are people who are
emotionally upset. They are using not their heads, but their nerves
from the neck down. They are accused of being malingerers; they
are not.

What I think we doctors want to do for people who are administer­
ing compensation is to furnish a rational medical principle upon which
you can base compensation, if the facts which you turn up justify it.
A man can get hernia or hernia symptoms from strain. If strain is
proved, it is up to you to give him compensation, if you are going to
depend upon the medical principle as to whether or not he can get it
from strain. That is the point I wish to make from the hernia stand­
point. We are not interested in the legal side, but in the medical
principle that a man can get hernia and hernia symptoms from a
simple strain, even a sneeze, and therefore from a lift.

Backache has grown rapidly; so has appendicitis; so has infected
sinus; so has peptic ulcer; so have a number of other things. So to
say you did not see people with sacroiliac strain or lumbago a few
years ago does not get away from the fact that they exist at the
present time.
Chairman Dorr. The next paper is The Traumatic Head Case or Cranio-Cerebral Injury, by Dr. F. B. Harrington, chief surgeon, Weirton Steel Co., Weirton, W. Va.

The Traumatic Head Case or Cranio-Cerebral Injury

By F. B. Harrington, M. D., Chief Surgeon, Weirton Steel Co., Weirton, W. Va.

Being thoroughly cognizant of excellent papers which have been presented to your body by most competent men in the past, we still do not hesitate to attempt to place this extremely interesting subject before you once more. It may be that we may repeat aspects previously presented, but we hope to accentuate certain facts and observations of these cases which may help to dispel some of the fogginess which has for many years surrounded them. Further, we would like to present some latter-day aspects of early treatment and the bases upon which we have placed our reasons for same and what we feel to be a better outlook for these injuries, both early and late.

More detailed study, improvements in this early care, follow-up, and thorough analysis of these cases by many men or groups in widely separated localities have provided us with a surprising agreement in improvement both early and late, based upon this more rational and definite outline of early care and treatment.

Although you, as compensation representatives, are supposed to have no control of the early care and treatment of these cases, surely a comprehensive idea of the rationale will help in your intelligent study and dealing with them, and such repetition may always serve to reach new auditors and serve some good in further education. Such education does not properly fall within your province but is the part of medicine’s task in its dissemination of knowledge and new facts, and depends upon the individual physician’s search for knowledge or his simple exposure to dissertations or articles upon such subjects.

During the past decade I think most men who have to deal with the crano-cerebral injury or head trauma have come to realize that the fractured skull, per se, whether present or not, is not a proper index to the outcome of these cases. Rather it is felt that the seriousness and the important phases of head injuries depend upon how extensive has been the damage to the intracranial contents or soft structures, viz, the meninges and the brain, and the resultant interference with the blood supply and the cerebro-spinal fluid and their usual interrelated physiologic balance.

With our former mental picture of a “fractured skull” we too frequently directed our efforts toward saving the life and ended with a resultant case of mental deterioration and very probable economic loss. With our present conception of “brain damage,” we feel that with care directed toward prompt and proper early treatment, we not only have done more toward preservation of life itself, but also will have determined a better mental condition as a result.

We have come now to recognize that there are certain cardinal facts upon which to base our early care and that there must and
does exist a close relationship between the acute stage and the late resultant mental changes or deterioration most marked when improper early treatment is given.

Among many of the men who have pioneered in our present-day appreciation and knowledge of these is Fay, who has so aptly expressed many of the important points upon which we base our present-day conception.

He divides the brain into two areas: (1) The vital area, situated at the base of the brain and upon the floor of the posterior fossa in the region of the third ventricle, pons and medulla, and composed of those nuclei upon which life depends and made up of the vasomotor, cardiac, and respiratory centers; and (2) the gnostic area, situated in the gray matter in the cortex of the cerebrum and cerebellum, and which controls and goes to make up the higher centers concerned not so much with actual life continuance as does the vital area, but dealing with "intelligence, appreciation, and expression of the individual in relation to his environment," and "of the highest importance in his intelligent reactions and conscious expression."

Naturally, we direct our efforts toward protection of the vital area, as it is definitely the dangerous zone; "injury or destruction of this area is followed by death within three to six hours, and all of the present clinical methods at our disposal fail to help the patient."

Injury to the gnostic area, however, is shown by loss of function characterized by transient or continued paralysis or anaesthesia or inhibition of reflex and psychic signs. Thus, the loss of consciousness is as important in the early phases as actual paralysis, and its duration is an index to the seriousness of the problem and its presence and continuance a real cause for serious treatment in an effort to reduce it or remove it entirely as soon as intelligently and safely possible. As the basic principles causing cortical compression are those responsible for this loss of consciousness, a continuance of these causes may spread to those basal nuclei composing the vital area in the form of medullary oedema and death may follow, not from primary basilar nuclei destruction, but from this complication.

To quote Fay at some length:

Unlike any other organ, the brain is contained within a space of fixed volume (the skull, after closure of the sutures), and the function of this organ must be maintained within these volume relationships. In the presence of adequate oxygen and circulation, brain tissue will survive and tend to function but with the advent of oedema or gross hematomas, the blood supply becomes insufficient to supply adequate oxygen and in this circumstance the "nostic" areas suffer primarily and most severely, not only because they are at the moment least important, but because they receive five times the blood supply of the basal cells and are exposed to surface compression, and are consequently, more sensitive to proportionate diminution in circulating blood volume (oxygen).

After the sutures and fontanelles in infancy are closed, the skull becomes a fixed unyielding cage inclosing within its confines three masses or components, each one of which is a volume bearing fixed relationships to the others in health. Head traumas produce a disturbance in these relationships and, as no increase can take place in any one of these in volume without a decrease in volume of one of the remaining ones, our aim must be to reduce by removal the volume of the one most easily attacked and at the same time the least
important, viz., the spinal fluid, in order to remove pressure from the brain mass and increase the blood circulation to its normal amount and the oxygen supply adequate to its normal demand.

We know these three components to be: (1) The brain and its meninges; (2) blood, both arterial and venous; and (3) fluid, cerebrospinal and that within the tissues themselves. As two of these are fluids and it is not possible to compress either of them, any variation in increase of either of these volumes must be compensated within a short time, or the third volume, the brain tissue, is compressed and generalized atrophy is known to ensue. As we must have adequate circulation for continued life of the brain tissues and must guard against lack of sufficient blood supply, we turn then to the adequate control of intracranial cerebrospinal fluid pressure composing the third and least important volume. We thus protect not only the vital area from secondary oedema features, but permit adequate circulation to reestablish itself to the gnostic areas within the shortest possible period.

Our method of attack then is the withdrawal of fluid from the intracranial volume and its control within as short a time as possible, and a return to as near a physiological basis as attainable and its maintenance there, which removes the blocking to the circulation and to the gnostic areas function, as well as the secondary involvement of the vital area from a spreading oedema should the increased intracranial pressure have been allowed to continue.

Our methods of control of the cerebrospinal fluid volume and the tissue fluids within the brain tissue itself have now become well established upon a medical basis which not only has proven to be more effectual than surgical decompression but also serves a second purpose in that it produces no further damage or insult to an already serious condition.

We do not mean to frown upon decompression when such a procedure is indicated, but even our indications for such have not only been narrowed very markedly by first controlling the intracranial pressure by dehydration and removal of cerebrospinal fluid but the surgical procedure is made safer when ultimately performed.

We list for surgical measures: (1) Early debridement of the scalp wounds and of all compound, comminuted fractures; (2) later removal or elevation of all depressed fractures; and (3) extra or intradural clots when such have clearly localized themselves by focal signs which should be removed by decompression at the site of localization.

Our unconscious patient presenting a head or cranio-cerebral trauma usually is in shock and is given the same early care as any shock case. His clothes are removed by the quickest method possible, without further disturbing the patient, usually cutting them away and lifting him from them into a clean, dry, warm bed. He is given atropine at once, hypodermically, with a small dose of morphine if restless. This atropine not only prevents fluid loss from the skin surface, but also provides an increased diastolic pressure by direct stimulation to the vasomotor bed. Blood pressure and pulse readings are taken and recorded every 15 minutes and he is then given 50 c. c. of a 50 per cent glucose solution intravenously.

This solution, being hypertonic, produces a temporary intracirculatory hypertonic blood with a consequent withdrawal of tissue fluids
into the circulation, thus increasing the blood volume and the blood pressure, primary indices of successful combat against the shock. In reaching this goal, hypertonic solution achieves the increased blood volume by extracting tissue fluids from the brain and cerebrospinal fluid, thus preventing, temporarily, an increased spinal fluid production as well as medullary oedema.

No attempt is made at this time to obtain any radiographic information of the skull as to presence or absence of fractures.

When the temperature approaches normal the body is warm, pulse pressure is increased, and the pulse has attained a stationary level, we feel we have controlled our shock and proceed to perform our lumbar puncture with readings of pressure with a spinal manometer preferably of a mercury type.

This we consider our most important index and guide to further treatment which is to be predicated upon our findings at this time, depending upon an increased cerebrospinal fluid pressure and whether it is bloody or clear. The bloody fluid will require more care in treatment than if we encounter only a clear fluid which indicates a simple increased intracranial pressure.

The observations made rather general upon admission and which should have been noted are now more closely checked, including: (1) Presence of stupor, unconsciousness, or delirium; (2) palsies or paralysis; (3) convulsions or convulsive movements; (4) pupils and reaction of same; (5) bleeding from nose, mouth, ears, or escape of spinal fluid; (6) location of scalp wounds; (7) condition of the reflexes; (8) nausea or vomiting. These points should never be trusted to the memory but should be placed in the notes at each examination.

If we obtain a clear fluid by lumbar puncture, with an increased intracranial pressure shown by our mercury manometer reading, we have a simpler problem of reduction and control of this increased pressure than if the fluid were bloody. The procedure consists of extraction of fluid from tissue spaces by intravenous hypertonic glucose solutions, extraction of fluid from blood into bowel by oral or rectal use of saturated magnesium sulphate solution and use of spinal drainage as symptoms indicate, shown by rising pulse or respirations and manometric readings. This spinal drainage can be repeated as necessary or as indicated.

The most necessary, and probably the one adjunct most frequently slighted, is the coincidental limitation of fluid intake. When the fluid is clear an adult is limited to 20 ounces in every form each 24 hours. Too frequently the intracranial pressure has been reduced by a combination use as above outlined, only to find the patient later again in an unconscious condition from the unguarded use or intake of pilfered fluid volume quickly transferred through the blood to spinal or interstitial tissue fluids.

Should the fluid be bloody it must have originated from the damage done to brain tissue itself or rupture of cortical or pia vessels accompanied by increased pressure. This pressure, whether with a clear or bloody spinal fluid, exerts the same effects upon volume masses and consequent embarrassment of circulation and possible cerebral oedema and death or atrophy of brain tissue in the prolonged case. The red blood cells present, however, have been shown
by Weed and Bagley to produce intense reaction in the subarachnoid spaces causing pachymeningitis and arachnoiditis. The ostia of the supracortical vessels and the Pacchionian bodies which should help in the excretion of the spinal fluid are blocked as well by these same red cells. The normal cerebrospinal fluid pathways are therefore interfered with and escape of the fluid to reduce pressure will not take place. We know further that 10 days elapse before these red cells in the spinal fluid are completely hemolyzed and that for at least 7 days they are interfering with these pathways of excretion, with consequent increase or continued presence of increased intracranial cerebrospinal fluid pressure.

Further, Paccoast and Fay have clearly demonstrated by encephalography that widespread cortical atrophy of the brain occurs within three weeks following trauma. This atrophy is widespread and bilateral, as was the splinting of the brain due to the increased spinal fluid pressure. Such brains show pathologic anaemic changes and degeneration similar to those described by Hassin as “pressure atrophy.”

Here, our problem must be then not only to reduce pressure but to remove as soon as possible the red blood cells from the fluid. Our dehydration will aid greatly in reduction and the control of the pressure but the red blood cells must be removed by actually taking them away in the cerebrospinal fluid and literally washing them out. In order to promote accumulation of sufficient fluid for drainage and with this drainage to remove red cells, we increase our daily fluid intake up to 30 ounces and maintain a strictly dry diet. Daily punctures are then carried out for an 8 to 10 day period when the usual pathways should again be established. The amount of fluid when bloody, which is removed, we usually limit to all we can obtain, varying in our cases from 20 to 80 c.c., being always ready to repeat same if pressure signs ensue with the 30-ounce intake.

As have many observers, we keep an exact record of intake and output for the first two weeks, thus knowing the fate of all the factors concerned in the process of dehydration, output, and storage.

Our results, unconsciousness, delirium, and stupor have become, as Fay says, “a matter of hours, rather than days.” Headache, dizziness, or vertigo—the triumverate of post-traumatic head injuries—have almost disappeared. The personality changes and fatigue of post-traumatic psychoses have decreased remarkably and these cases have returned to work earlier. Although the absolute dictum of hospitalization of all of our head traumas has increased the hospital cases in number, the days per case have decreased markedly, and the results have fully justified our serious and detailed attention.

Upon discharge of the case, a final puncture is made and recorded, and the total fluid intake for 3 to 4 months is never allowed to exceed 30 ounces. As many others have reported, many of our patients have early observed that when this level has been exceeded they have experienced a return of some of their symptoms.

We hope this presentation, limited in a medical sense but rather involved to develop a compensation application, may have been plain and logical enough in its steps to draw certain conclusions, which may prove profitable to you in reaching a better understanding of
this class of cases. A clearer conception of the events which take place in the severe cases can be had; the notes, observations, and findings made early, or the absence of such points as we will enumerate should soon place the maligner in his proper category; the questionable result in a case of undoubted early injury should be easier of evaluation and the recovered cases which you seldom are called upon to judge should become fewer in number and more of all head traumas should fall within this class. The conclusions you will draw over a period of time will soon convince you of the results obtained when such logical procedures have been followed and will place the burden of the end result upon the adequacy of the early care and treatment, where it rightfully belongs.

To summarize our points of observation and clinical knowledge, each case history should supply—

1. History of adequate trauma.
2. Presence or absence of—(a) stupor, (b) delirium, (c) unconsciousness, (d) nausea, (e) vomiting, (f) shock and some idea of its degree and duration of all these.
3. Primary cerebrospinal fluid pressure and its changes and character.
4. X-ray evidence of presence or absence of skull fracture.
5. Blood or spinal fluid escape from nose, ears, etc.
6. Presence or absence of paralysis, convulsions, or convulsive movements and their definite location.
7. Record of fluid intake and output.

These are as important in head trauma cases as history and progress notes on any case and although they may not be available in many cases, this does not obviate the fact that such information should be made readily available by the profession and accessible when necessary.

A proper evaluation of these facts, together with the usual careful physical examination, should clarify many of these cases.

One further point which should be considered as an aid in late cases is the presence or absence of ventricular distortion and cortical atrophy as demonstrated by ventriculography. This procedure, as it is increased in use and checked by time and post-mortem findings, we believe will prove to be a distinct criterion and index to intracranial damage post-traumatic.

As usual, the physician verging upon idealism should be permitted some degree of tolerance but we crave no such forbearance in submitting what we feel to be a procedure promising both early and late maximum benefit to these cranio-cerebral injuries or head traumas.

Chairman Doxx. Our time is so limited it will be necessary to postpone the discussion of Doctor Harrington’s paper until after the next one has been read. The next paper is on the subject, Functional Neuroses—Their Nature and Relation to Injury. The gentleman who is to read this paper is a well-known neurologist. He is a former president of the Columbus Academy of Medicine, and has ideas and experience in unraveling knotty mental problems. I am sure Doctor Harding will show you that neurology and psychiatry have a definite place in the administration of workmen’s compensation—Dr. G. T. Harding.
Functional Neuroses—Their Nature and Relation to Injury

By G. T. Harding, M. D., of Worthington, Ohio

I am asked to introduce, for your consideration and discussion, the subject of psychoneurosis after injury, because I believe that a psychoneurosis is a mental disorder, a disease entity, neither started nor kept up by the voluntary exercise of one’s imagination, but which often keeps its victim out of industry, and frequently arises from injury or accidental shock or from subsequent circumstances, thereby properly giving rise to the question of its compensability.

As one authority states, “All psychoneuroses are psychoses,” but medical men reserve the latter term for the more severe mental disorders, the insanities, which permit less preservation of the patient’s personality. What I shall say of the reality of the psychoneuroses is based upon my observations in a wide practical experience and upon authoritative medical teaching.

Anticipating that many of you may not agree with most medical men that a psychoneurosis does not partake of the nature of malingery, my thesis will be that of an apologist.

What Does Psychoneurosis Include?

The term “psychoneurosis” includes all those varying degrees of disturbed mental function ranging from neurasthenia to the gray border lines of insanity. It presents the irritable weakness of neurasthenia, the physical insecurity and morbid fears of anxiety neurosis, the protean manifestations of hysteria, the morbid interest in and exaggeration of the bodily disturbances of hypochondria, and the lost joy in life and work, the indecision and diminished spontaneity, of simple depression.

A broader and more recent use of the term “hysteria” may be used in medical reports to include all these functional nervous disorders. Hysteria is then classified under such names as the neurasthenic, the anxiety, the hypochondriacal, the conversion, and the psychasthenic types.

Hysteria, as a diseased state of mind, shows itself in countless disturbances of the psychic, sensory, motor, and vasomotor functions, and may affect any part of the body. Medically it has been recognized for centuries. The cause and nature have not been understood; but hereditary instability of the nervous system and mental shock have been regarded as playing a prominent part. Repressed desires have been added as a source of symptoms. All ages and both sexes are subject to the disease, but it occurs most commonly among young women.

An unstable neuronic system, the handicap of heredity, gives an increased irritability which favors such mental symptoms as a tendency to exaggeration, heightened imagination, hallucinations, somnambulistic and hypnotic states. Neuralgias and headaches, painful spines, and sensitive spots appear. Anesthetic areas, diminution of the fields of vision, double vision, deafness, and loss of taste occur. Paralyses, contractures, tremors, and convulsions are seen.
Suggestion or autosuggestion, rather than an organic change, is frequently shown to be the actual cause of the symptom. Vasomotor disturbances, a loss of appetite, vomiting, salivation, and bladder urgency often appear among hysterical manifestations.

Sensibility, Fatigability, Emotional Instability, Suggestibility

A constitutional predisposition accounts for that increased sensibility of the neurotic who shows intensified reactions to every stimulant or experience. Excessive fatigability which allows one to be tired after resting; an irritable weakness that follows interesting games or visits, worry, or thwarted ambition, express the same burden of heredity. Emotional instability, due to quick response of feeling to suggestions and experiences of the present or past, and giving a variable and intensified tone of feeling, powerfully disturbs thought or modifies self-control. Suggestibility, greatly increased in hysteria, permits the suggestions of others' speech or action or the autosuggestions of his own ideas, feelings, and other mental processes, to determine the victim's mental reactions. This inherent weakness, a tendency to accept suggestions without reasonable consideration, is the greatest source of the psychoneurotic's disordered thinking.

The Predisposition

There is a class of medical men called psychopathologists—in fact pessimistic materialists—who disregard the psychogenic forces which create disordered mental states. They would place the blame upon smaller brains, fewer neurons, and deficient cell quality. Their explanation of a psychopathic personality is that, "From sows' ears you can't make silk purses."

The psychoanalysts have nearly ignored the variations of the instrument of the mind and the heredity as predisposing causes of the psychoneuroses. Conflicts of the instincts with environment, misunderstood experiences with disturbing emotions, and repressed desires have filled the unconscious with mental presentations which are aroused to activity in a condition of nervous debility, and produce the hysterical symptoms. Even a medical man who is favorable to their explanation of psychogenesis wonders if a normal heredity would not save the child from unsettled conflicts that remain to condition him for neurotic behavior after injury.

The defective heredity that predisposes to a psychoneurosis is usually revealed in previous characteristics of the personality, or by attacks of nervousness before the psychoneurosis after injury. Without signs of defective intelligence or insanity, there is a tendency to illogicalness, hasty conclusions, and lack of judgment, which are always a source of unhealthy autosuggestions. This leads to such habits of thought, reason, judgment, and self-control that the individual finds it hard to adapt himself to the situations of life.

Undisturbed or properly protected, the neurotic makes his adaptations in the family, the school, and to industry, and no one regards him as sick. But when an injury or accidental shock, or consequent disturbance of feeling, and misconceptions upset his mental equilibrium, cause a fright neurosis, or confusion, or delirium, or a prolonged morbid tone of feeling, his inherited weakness, the neurotic
constitution, the psychoneurotic predisposition, permits such a nervous and mental condition as unfit him for labor and industry and causes him to need time and aid to reintegrate his personality. The very obviously predisposed, and others not so considered, may succumb to the disturbing influences of a flood or fire or a mining accident. Is there anyone who can be sure that nothing would disintegrate his personality? More time and better mental care may be needed, according to the hereditary instability, the severity of the shock, or the influences which have followed.

The Nature of a Psychoneurosis

Whenever a psychoneurosis appears, no matter how much heredity predisposes thereto, or an injury excites the process, the disordered personality, the mental disorder, which causes the victim to seek treatment and compensation is “The result of a primary mental state, arising from ideas and other mental processes, and from auto-suggestions and consequent emotional reactions, by which the victim creates numerous functional disorders and nurses them along, or aggravates them.”

You have already noted that the medical conception is that a psychoneurosis is a mental disorder. Every man who has a practical acquaintance with its manifestations has a right to his own views as to the nature of that mental trouble. What society wants to know is whether the injured workman has a disabling mental disorder that is beyond his own power of will, and is the result of industry and its risks. Because society does not penalize an old man for the fragility of his bones, nor a man for the congenital and acquired weakness that predisposes to hernia, we can not expect it to ignore a workman whose injury disables him because of a constitutional and character weakness. Environmental suggestions from doctors, lawyers, and solicitous friends may have as bad an effect upon the neurotic after injury as poor surgery may have upon the man with the broken bone or hernia. To understand and deal clearly with this problem of the psychoneurotic, we want a clear conception of the reality of the psychic forces that excite and prolong a psychoneurosis.

A general discussion, the voicing of different views, the explanations and reasons for them, ought to bring us all into better agreement as to the reality of this disabling mental condition. Then we may later learn how to compensate the disability justly and helpfully. Fewer complaining men, changed by injury, will then cry about injustice from the quasi courts which the States have established, and fewer will be compensated under diagnoses now acceptable to compensation boards who disregard the psychoneuroses.

The Dynamic of a Psychic Process

In presenting my conception of these mental forces which I believe are real in psychoneuroses, I shall have occasion to refer to the term, “mental representation,” a phrase which Webster defines in the philosophical sense as “The calling out of unconsciousness one portion of our retained knowledge, in preference to another; and re-presenting in consciousness what has been evoked.”

Referring to your own experiences, I ask you to consider the reality or dynamism of your mental processes; the force of ideas, of
sentiments, of the will to do. Knowledge and reason influence your emotions and your self-control. Ignorance and illogicalness have a similar capacity to determine unfavorable mental representations. Great emotions may dominate the normal man's reason. Destructive feelings may set up morbid ideas. Suggestions and autosuggestions, from without or within, the latter often arising from below the level of consciousness, have much to do with your thinking, feeling, and acting. If mental presentations filed away in subconsciousness or in the unconscious can prejudice the normal man or account for the delusions and mental symptoms of the insane, and are of real influence, what shall we say of similar processes in the morbidly suggestible with psychoneurotic tendencies? Mental representations do influence the thought, the emotions, and the actions of all, but especially of the irritably weak.

Psychic processes of the deeper levels of consciousness influence the immediate conscious or voluntary activities of brain and body; but morbid psychic processes of the subconsciousness also appear to affect all the functions of the body through the cerebrospinal nervous system and the sympathetic. Our thoughts and feelings make us blush, and cause us to pale; they race the heart, or make cold hands and feet. Vasomotor, circulatory, and secretory disturbance, more severe and prolonged, are often caused and are maintained by representations which have been determined by the influence of an unfavorable mental content. Digestion, peristalsis, and nutrition may be altered by ideas and moods. The influence of thought and feeling upon internal secretions has been demonstrated. A distinct anatomical and physiological and psychological basis exists for the medical conception of the influence of the mind upon the body.

Let us consider from our own experiences examples of the dynamic influence of a mental representation which projects itself upon the physical. Itching that comes after seeing a lousy person gives one a fair conception of how anesthesias and hyperesthesias may occur in the hysterical patient. Painfully sensitive spots at the location of an injury, even without X-ray evidences or physical changes to support the claim, may not be pretense nor a voluntary exaggeration in an hysteric. The lost appetite or vomiting after hearing a nauseating story explains the possibility of hysterical vomiting, due to some hidden emotion with nauseating influence.

The pallor, dropping as if shot, and profuse sweating at the sight of blood, or at seeing the deep penetration of a needle, suggest to me how some symptoms of an anxiety crisis may occur, after one has been injured in a catastrophe, in one who will not admit that he is still scared. Expressions, "being scared stiff," "the thought makes me as limp as a cat," which some use when no compensation is considered, suggest to me that hysterical contractures or paralyses may arise from mental processes beyond the immediate control of the victim.

We understand the power of a civilized sentiment that gives a man the courage to face death and starve, rather than resort to eating his grandmother, but a well-trained cannibal would not understand how a mental representation could do that. Neither do we understand or appreciate the force of an hysterical idea or sentiment which furnishes the motive of self-mutilation in a psychoneurotic, or leads
him to sacrifice his social prospects, the respect of his employers and fellow workmen, or the welfare of his family, in order to defend the symptoms of his disabling mental condition.

**Mutual Benefits of Understanding**

It has always been a matter of satisfaction, in dealing with some of these psychoneurotics with hypochondriacal tendencies and paranoidal inclinations, who demand their rights and boast that "The State must put them back right" before they will work, and express other such faulty thoughts, to tell them that the State of Ohio has appointed men to consider the facts of their disability; that society expects the State to understand the facts and to deal justly and considerately with them; to do all it can to make them able to take their part again in industry. I like to tell them that I have found them mentally sick, not insane, and that they must cooperate to reestablish their personality and command their own self-respect and that of others. I like to emphasize that an understanding and sympathetic commission will show them more consideration than their fellow workmen and a jury of their fellow men.

I like to impress upon them the difficulty of collecting damages through a jury made up of men who can not forget how well the plaintiff looks, or how they have to plow their own corn with such a back, or suffer from constipation and piles, and yet must carry on. These poor hypochondriacal complainers are trying to explain their uncomfortable tone of feeling and to tell others why they are sick. They are usually dominated by subconscious motives. Society wants understanding sympathy for these sick men; it looks to you to solve the problems. I want to help you to grasp the idea that the mental disorder is real.

Society has expressed its opinion of the reality of mental representations in civil and criminal laws; it refers to mental states and influences by such terms as mental suffering, alienation of affections, undue influence, hypnotic control, conspiracy, and fraud and deceit. My auditors can add many others. Shall not we who observe the change of character and the altered tone of feeling, understand the forces that make them complain physically as a defense against their lack of interest in work, lack of initiative, lack of endurance, or a fear of taking up the burdens again of a bread-winner, of assuming the responsibilities of their former earning power, etc.? Can we not understand how an injured workman, always afraid of not being able to supply his family with the things their social faculties require, when depressed, may find his whipped personality surreptitiously surrendering to the mothering of a solicitous wife, and from subconscious motives, yield to his depression and manufacture symptoms to defend his sensitive ego?

Since these psychoneurotics have the same instincts and the same training and life that we have, we must not be surprised if their mental symptoms show processes similar to our own. If some show indications of the influence of the present economic situation in their complaints, it should not make us blind to the fact that psychopathic processes account for the mental disorder.

From the history, examination, and observation, the medical man can make the diagnosis; can point out evidences of predisposition in
many cases; can, like other men, consider how much organic injury and how much mental shock excited the attack; can often detect hidden motives and influencing mental representations; can make an estimate on how much time should be given for recovery under favorable circumstances; and can often detect the influences and suggestions that the environment offers toward prolonging the disease. One must remember that not all cases of any disease are curable. As in the insanities, the hysterias have their incurables.

**The Use of a Proper Term**

In closing, let me suggest that, if we remember how real these mental disorders are, we can begin to use certain terms that will have an educational effect upon the claimant and his attorney, and can not directly offend a victim of an injury which leaves no gross physical traces.

The terms “traumatic” or “post-traumatic psychoneurosis” are used to convey one’s impression of the relation of the condition to an injury. “Compensation psychoneurosis” is occasionally used by some medical examiner who is bold enough to offer gratuitously his judgment as to what is prolonging a mental disorder that he does not believe to be feigned. It is surely a prejudicial term, and ought not to be used. It can only promote opposition and resistance to a settlement or a cure.

The matter of the use of a term is of considerable importance in naming this mental disorder. Psychoneurosis indicates that this functional nervous disease expresses chiefly the morbid effect of a patient’s own mental representations. It is good for the patient and the doctor to know this in order to get a cure. If emphasizing the mental element makes the insurer and the judge think that the mental disorder is nothing, then the effect is bad. Society, however, expects its representatives, set apart by law to do justice to the injured workman, to keep themselves informed and to be able to understand.

Much has been written of “railway spine.” Surgical authorities could find no physical signs of cord concussion, and the functional nervous disorder was found to be a psychoneurosis. Doctors ceased, therefore, to search for obscure physical signs, and their former examinations and accompanying suggestions no longer prompted the typical hysterical symptoms of the patient who had been in a railroad accident. The symptom-complex of “railway spine” is no longer seen.

“Shell shock,” when found to be a soldier’s psychoneurosis, was a term that high English medical officers forbade to be used in medical reports during the war. The name was too pleasing and apologetic for a soldier’s hysteria, and did not arouse his psychic forces or moral efforts to integrate his personality and overcome his disability.

The use of the term “traumatic” neurosis overemphasizes the importance of the possible exciting cause and should be dropped. It is better to emphasize the mental element and the predisposing factors. It is necessary to consider the predisposition and former expressions of his weakness in order to determine how much the injury had to do with a claimant’s present disability.
I believe that were we to substitute for “traumatic neuroses” and the “psychoneuroses,” the names of the various types of hysteria in the more comprehensive meaning of the term, it would do much to secure the patient’s cooperation in effecting a cure. It would help the victim to see that he is mentally sick and exhibiting a weakness of the personality. As it is now, it requires a careful medical and mental approach to obtain the confidence of the patient so that you can tell him directly that he is mentally sick, though not insane. I mean to tell him in a way that causes him to listen to you and not to feel like cussing you or assassinating you; to make him consider your point of view, and to become awakened to the fearful possibility of destroying his own personality. To effect a cure, the patient’s own moral forces must be aroused, either by explanation, persuasion and reeducation, or by dire necessity.

DISCUSSION

[President Leonard assumed the chair.]

President Leonard. Doctor Harding has given a very interesting account of some of the problems inside the head. I want to make a statement here. Last year, in the city of Richmond, Va., I stated that it was very important that we give sympathetic consideration to the man with neurosis.

By a sympathetic consideration I meant consideration of foremen and employers in getting men back to work and keeping them at work. One of the greatest troubles we have had is to get sympathetic attention for the man when he gets back to his employment. The personnel men have been sold on the idea; they say, “We will do everything we can.” The man goes back to the plant to work, but the plant foreman wants production, and he says to the man who was injured, “You are not doing any work around here.” A lot of the foremen are harsh, and so are the other workmen. They discourage the man.

I think this whole matter is a personnel matter. It is not a matter of pills, as I said before. It is a matter of each individual case. We have sent a number of cases to Doctor Harding, who gives sympathetic and common-sense attention to those cases. Doctor Harding and his staff have lived with those men and observed them. That, after all, is a very important thing.

Mr. Parks. I have listened with a great deal of attention and interest to Doctor Harding. I think we need neurologists of his type. There are men who receive injuries who are really mentally sick, and when you have a real neurotic he is a pitiful sight. I have talked to some of them. I have put myself in the place of the doctor. I have coaxed the man and have taken him to my home in order to get his brain to functioning a little better. Finally we have had to send him to men like Doctor Harding. We have five or six neurologists in Massachusetts who work with us day after day and give us valuable help.

[A rising vote of thanks was given the three doctors for their papers.]

President Leonard. I want to say another thing about experts, and I am not talking about neurologists. We have repeatedly sent men to experts. We get their reports and many times they do not tell us what they think. We send men to Doctor Dorr and the mem-
bers of our staff, and we get the correct picture. We think sometimes our medical department can do just as good a job, with the experience it has had in handling thousands of cases, as most of the experts to whom we send men.

Doctor Millard (Ohio). I want to say a word or two with reference to the psychiatrists and neurologists. They have been very helpful to me in the Goodyear Tire & Rubber Co. We have had several injury and psychoneurotic cases on which we would still be paying compensation if it were not for the psychiatrists and neurologists.

Doctor Donohue. I want to add a word of commendation on Doctor Harding's paper. He gave us a lot of light on this subject. In the last analysis the doctor's treatment does not vary much from what we would expect. He believes in persuasion, and when that does not produce results, of course he has to take other methods. In regard to malingering, I must say that in all my experience I have yet to see a case of genuine malingering. I would like to ask Doctor Harding about how frequently he runs into cases of genuine malingering.

Doctor Harding. From the medical point of view, these medical commissioners are 10 or 25 years behind in grasping the psychological problems that pertain to psychoneurosis. The difference between insanity and psychoneurosis is that the personality is not so greatly destroyed in psychoneurosis, but some of the disciplinary measures that we use in these cases will change their reason. They have not lost their reason altogether. You can not argue an insane man out of his delusions, but you can persuade some psychoneurotics, who have not yet become insane, out of the dominating mental conceptions that hold them for a time just as delusions hold an insane man. If you can substitute something else, all right. I think it is nicer for a civilized community to use medical measures to persuade these fellows.

President Leonard. We could devote two or three hours to this important matter. I am sorry we did not have time to discuss Doctor Harrington's paper.

[Meeting adjourned.]
THURSDAY, SEPTEMBER 29—AFTERNOON SESSION

Chairman, G. H. Gehrmann, M. D., Medical Director E. I. du Pont de Nemours & Co. (Inc.), Wilmington, Del.

Chairman GEHRMANN. The first paper this afternoon is Some Common Industrial Health Hazards, by Dr. Emery R. Hayhurst, consultant in industrial hygiene to the Ohio State Department of Health, Columbus, Ohio. I take great pleasure in introducing Doctor Hayhurst.

Some Common Industrial Health Hazards

By EMERY R. HAYHURST, M. D., Ph. D., Consultant in Industrial Hygiene to the Ohio Department of Health

Definitions

About three years ago I had the opportunity of discussing occupational diseases before the New England Health Institute, where I offered the following definitions: An occupational disease is an affliction which is the result of exposure to an industrial health hazard, while an industrial health hazard is any condition or manner of work that is unnatural to the physiology of the human being so engaged. While that paper dealt with occupational diseases by definition, cause, prevalence, and prevention in the various States, insular possessions, and the Canadian Provinces, this occasion has provided an opportunity to discuss some of the backgrounds of occupational diseases, i.e., industrial health hazards.

Essential Steps Preliminary to Finding Industrial Health Hazards

Before any State or unit of government can obtain an intelligent grasp of the nature of occupational diseases or industrial health hazards within its jurisdiction, it should have a law requiring the reporting to an official department of any disease which a physician is called upon to visit or attend that in his opinion is occupational in nature, with a description of the hazard involved. Being a matter of disease even before it is a matter of possible compensation, such report should be made first to a medical or health department, where it may be studied with the object of approval or disapproval as an occupational disease, the attendant circumstances investigated if necessary, and the apparent causes referred to the proper department of labor or industry for correction, having in mind the hygiene of the situation. The reporting and approving of an occupational disease:

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disease is a matter entirely separate from its compensability, which rests upon a number of factors other than diagnosis.

We have been fortunate in Ohio in having such a law in operation since May, 1913, during which time nearly 14,000 approved cases of occupational diseases have been reported. These reports have been made upon a so-called standard form, originally devised by the American Association for Labor Legislation about 1912 to which we have made in recent years a few alterations. In particular we have found the addition of the question, “What in your opinion caused this affliction?” a most valuable one for the physician and ourselves since it develops the causal aspects of the case. The cases in question are summarized in Table 1.

Table 1.—Number of occupational diseases reported in Ohio, 1913 to 1922, classified in relation to the compensation law which became effective August 4, 1921

<table>
<thead>
<tr>
<th>Class of occupational diseases</th>
<th>June 1, 1913, to Aug. 4, 1921</th>
<th>Aug. 4, 1921, to Dec. 31, 1929</th>
<th>1930</th>
<th>1931</th>
<th>Jan. 1 to May 31, 1932</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensable diseases</td>
<td>1,954</td>
<td>7,813</td>
<td>1,220</td>
<td>1,217</td>
<td>470</td>
<td>12,083</td>
</tr>
<tr>
<td>Noncompensable diseases:</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agents</td>
<td>161</td>
<td>145</td>
<td>47</td>
<td>99</td>
<td>19</td>
<td>411</td>
</tr>
<tr>
<td>Afflictions</td>
<td>400</td>
<td>220</td>
<td>31</td>
<td>36</td>
<td>6</td>
<td>763</td>
</tr>
<tr>
<td>Acute mishaps (compensable)</td>
<td>50</td>
<td>18</td>
<td>15</td>
<td>470</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>2,575</td>
<td>8,242</td>
<td>1,335</td>
<td>1,309</td>
<td>511</td>
<td>13,982</td>
</tr>
</tbody>
</table>

1 Inquiry of the actuarial division of the Department of Industrial Relations has shown on several occasions that, of the compensable occupational diseases, about 10 per cent become controversial.

2 According to the items on the compensation schedule effective Aug. 4, 1921, this group of 1,954 cases would have been eligible for compensation consideration had the law been adopted in 1913.

3 Poisonings, as a rule, which are not on the compensation schedule.

4 Rheumatism, rhinitis, bronchitis, tuberculosis, neuritis, neurosis, etc., considered occupational in nature by the reporting physician.

A brief scrutiny of Table 1 will show that the reporting of occupational diseases more than tripled when the eight years following the enactment of the compensation law in 1921 are compared with the preceding eight years.

Again it will be noted that there has been no material falling off in the number of occupational diseases reported in the last two and one-half years despite the depression. One explanation is that both patients and physicians are paying more attention to health hazards in industry. Another is that perhaps 15 per cent are due to the recent addition of new items to the schedule, like tenosynovitis. Finally, lack of employment has caused any illness to be more closely scrutinized as to possible occupational relationships (with a resulting increase in controversial cases).

In the noncompensable group it will be noted that there are a considerable number of agents and afflictions which physicians be-
lieve to be true occupational diseases, and which, if true, should of
course be or have been added to the compensation schedule. This
serves to illustrate the unfairness of the schedule method, especially
where no further arbitrary powers are allowed compensating bodies.

It is interesting to note that physicians in general distinguish
pretty well between diseases and accidents, even though due to the
same cause—compare the small number reported as occupational
diseases which circumstances forced us to classify as “acute mishaps.”
For instance, we do not classify as occupational diseases (but as
accidents) all acute poisonings and also diseases following accidents.

The Commoner Health Hazards

An examination of occupational diseases reported does not, how­
ever, point out all of the chief health hazards which commonly occur
in industry, especially those associated with fatigue, dust, and air
conditions. We shall discuss here only the four following hazards:

(1) The poisons—particularly lead, the volatile solvents, and irri­
tants, including corrosives. Many other poisons used in industry
are even more poisonous than these, but experience shows that they
occur so infrequently that the associated hazards can not be common.
Among the more important of these latter I would mention carbon
bisulphide, hydrogen bisulphide, mercury, and radium.

(2) Fatigue—most of the features of fatigue do not show in occu­
pational disease reports since they are in the nature of chronic de­
generative diseases.

(3) Dust—most of the disastrous features of dust are necessarily
associated with the respiratory tract.

(4) Air conditions—particularly overheating of ordinary working
interiors, which is said to produce up to 25 per cent inefficiency in
workers.

The Poisons

Lead.—Our experience in Ohio leads me to conclude that the chief
industries associated with lead poisoning are, in descending order of
the number employed so far as I can estimate the latter figures:
(1) Storage-battery manufacture and repair; (2) white lead manu­
facture; (3) casket and vault manufacture; (4) metal working
(other than brass and bronze); (5) brass and bronze products; (6)
chemicals; (7) machinery manufacture; (8) glass and glassware;
(9) pottery; (10) paints and general painting; (11) automobile
manufacture (and repair); (12) rubber manufacture; (13) printing
and publishing; and (14) furniture manufacture. The actual num­
ber of cases of lead poisoning reported from these different industries
may be seen in Table 2, which is abbreviated from a report for the
5-year period ending June 30, 1930:

nual report of committee on lead poisoning of the Section on Industrial Hygiene, American
Public Health Association.
Table 2.—Analysis of 897 cases of lead poisoning, by industries and by sex, as reported to the Ohio Department of Health for the 5-year period ending June 30, 1930

<table>
<thead>
<tr>
<th>Industry or manufacture</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobiles</td>
<td>84</td>
<td>1</td>
<td>85</td>
</tr>
<tr>
<td>Brass and bronze</td>
<td>62</td>
<td>1</td>
<td>63</td>
</tr>
<tr>
<td>Caskets and vaults</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Chemicals</td>
<td>11</td>
<td></td>
<td>11</td>
</tr>
<tr>
<td>Furniture</td>
<td>14</td>
<td>2</td>
<td>16</td>
</tr>
<tr>
<td>Glass and glassware</td>
<td>20</td>
<td>2</td>
<td>22</td>
</tr>
<tr>
<td>Insecticides</td>
<td>3</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Laboratories</td>
<td>2</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>Lead oxides</td>
<td>55</td>
<td></td>
<td>55</td>
</tr>
<tr>
<td>Machinery and metal products</td>
<td>135</td>
<td>12</td>
<td>147</td>
</tr>
<tr>
<td>Metal works (not otherwise specified, except brass and bronze)</td>
<td>25</td>
<td>1</td>
<td>26</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>3</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Paints and painting (general painters: 122 males, 1 female)</td>
<td>155</td>
<td>6</td>
<td>161</td>
</tr>
<tr>
<td>Plumbing</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Pottery, porcelain, and chinaware</td>
<td>38</td>
<td>4</td>
<td>42</td>
</tr>
<tr>
<td>Printing and publishing</td>
<td>25</td>
<td>3</td>
<td>28</td>
</tr>
<tr>
<td>Rubber</td>
<td>17</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td>Soap and candles</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Storage batteries</td>
<td>226</td>
<td></td>
<td>226</td>
</tr>
<tr>
<td>Window shades</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>865</td>
<td>32</td>
<td>897</td>
</tr>
</tbody>
</table>

The hazard in all of these industries is essentially the breathing of dust containing lead. Occasionally, it is lead in the form of fumes from the molten state of the metal, as in soldering, galvanizing, brazing, welding, dross recovery, etc. It has now been established that an alloy containing as little as 5 per cent of lead may produce lead poisoning if it occurs in dust form, as in grinding and polishing. I would agree with Legge that no amount of sanitation will prevent lead poisoning if workers are allowed to breathe lead dust or fumes; also, that they are rarely poisoned by any other method than by inhalation.

So persistent are claims for lead poisoning that we have decided to go beyond the inquiry form of our occupational disease report blank in Ohio and ask further questions of the physician along the lines of diagnosis, for which we have a special questionnaire.

**Volatile solvents.**—Dr. Henry Field Smyth went so thoroughly into this subject of volatile solvents before your association two years ago, especially in reference to benzol and the lacquers and diluents used in spray painting, that I am going to confine myself to one phase of the subject only—petroleum distillates.

The use of petroleum distillates in which workers are directly exposed to fluid and gaseous forms is enormous in this country, yet the general impression prevails that they are only relatively toxic. This is probably true for brief exposures, but evidence is accumulating to the effect that prolonged exposures may be disastrous indeed, and that the hazard is more or less in direct ratio to the low boiling point,
i.e., the volatility, of the petroleum derivative in question. For our immediate information we have the following chief characteristics of the four most familiar distillates, which however are mixtures without rigid boundaries between them:

**Table 3.—Chief characteristics of four common petroleum distillates**

<table>
<thead>
<tr>
<th>Distillate</th>
<th>Specific gravity</th>
<th>Boiling point</th>
</tr>
</thead>
<tbody>
<tr>
<td>Petroleum ether</td>
<td>0.65–0.66</td>
<td>40–70°C</td>
</tr>
<tr>
<td>Gasoline</td>
<td>0.66–0.69</td>
<td>70–90°C</td>
</tr>
<tr>
<td>Naphtha (light)</td>
<td>0.70–0.72</td>
<td>80–110°C</td>
</tr>
<tr>
<td>Benzine</td>
<td>0.73–0.75</td>
<td>120–150°C</td>
</tr>
</tbody>
</table>

1 Also sometimes called raw benzine or petrol naphtha.

It will be noted that petroleum ether and gasoline, which are extensively used in carbureting gas and as solvents for resins, oils, rubber, etc., are more harmful than naphtha, which is used as motor fuel and in chemical cleaning, while naphtha is more harmful than benzine, which has a variety of uses as for illuminating purposes, cleaning machinery, a solvent for lubricating oil, and as a turpentine substitute in lacquers, varnishes, and oil colors. Yet so harmful is benzine considered by German authorities that both J. Rambousek and K. B. Lehmann recommend the substitution of other solvents, such as carbon tetrachloride, wherever possible, upon hygienic grounds as well as freedom from fire and explosion. Even carbon tetrachloride must be used with free ventilation to prevent acute poisoning.

It is my purpose to publish in due time an article upon poisoning by low-boiling petroleum distillates, based upon several cases which have been investigated in our Ohio experience in connection with men who have been continuously exposed either to breathing vapors alone or in addition to having their hands and arms soaked in the liquid. These have all been indoor workers. While the occurrence of isolated cases in the midst of numerous exposures carries little weight and at least assumes unusual susceptibility, yet there are in this series some four cases which have occurred in the same exposure of a bare half dozen men. Suffice it to say that these workers, after a year or more of exposure as a rule, have become gradually incapacitated through destructive processes in the nervous system, as well as in the respiratory, circulatory, and gastrointestinal tracts. A pronounced feature of these cases has been the great emaciation that occurs. My most recent case was a young woman who was employed for six weeks dipping steel trays in gasoline or naphtha for the purpose of cleaning them preliminary to enameling. She weighed 158 pounds at the beginning of her exposure, which was

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*Adapted from table under definition of "petroleum" in Webster's New International Dictionary, 1929 ed.
2 Idem, pp. 34, 40, 208, 275.
seven months ago; her weight is now 70 pounds. Needless to say, she is bedridden and will probably pass out, as some of these other cases have.

I think work requiring the immersion of the hands and arms in solutions of any of these petroleum distillates, as well as the constant breathing of whatever concentrations their respective vapor pressures produce in the breathing atmosphere, should be prohibited. The effects are cumulative, and they progress for years after the exposure has ceased, with a very doubtful prognosis and the likelihood that the victim will die or at least be incapacitated for the balance of his life. I think the explanation lies in the dissolving effect of the distillate upon the fat of the central nervous system, upon the fatty sheaths of peripheral nerves, the fat in the heart muscle and liver, and practically wherever fat is found in the body. The doctor recognizes the consequences first as chronic neurasthenia with hysterical attacks, nightmare, complaint of coughing, dyspnoea, pains and twitchings followed by anemia, emaciation, ataxia, and sooner or later mental lethargy of marked type, yet the retention of mental balance to the end.

The exposures noted have been in printing-press rooms (cleaning press rolls), automobile assembly works (cleaning small parts), coated fabric works (where inhalation has been practically the only exposure), shingle staining (using kerosene and naphtha as a vehicle for nonpoisonous pigments), and in a basement garage where many large trucks were filled with motor fuel daily.

These few marked cases repeat foreign and domestic experience and constitute a further warning in regard to the great numbers who are employed with petroleum distillates in confined spaces. As with all toxic vapors, their confinement or free ventilation should be insisted upon.

Irritants, including corrosives.—For statistics in this group we have to depend almost entirely upon reports of dermatitis and nasal mucitis. The exact figures for dermatitis and total compensable diseases for each year, 1926 to 1931, are shown in Table 4:

<table>
<thead>
<tr>
<th>Disease</th>
<th>1926</th>
<th>1927</th>
<th>1928</th>
<th>1929</th>
<th>1930</th>
<th>1931</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dermatitis</td>
<td>998</td>
<td>778</td>
<td>894</td>
<td>985</td>
<td>884</td>
<td>833</td>
</tr>
<tr>
<td>Total compensable diseases</td>
<td>1,202</td>
<td>987</td>
<td>1,116</td>
<td>1,305</td>
<td>1,259</td>
<td>1,217</td>
</tr>
</tbody>
</table>

Relatively speaking, from three-fourths to four-fifths of our occupational diseases are classified as dermatitis.

Table 5 gives an analysis of the different forms of dermatitis reported to the Ohio Department of Health for the 5-year period ending June 30, 1930. It indicates some 36 specified irritants and corrosives, or groups of such.
**TABLE 5.—Number of cases of dermatoses reported to the Ohio Department of Health for the 5-year period ending June 30, 1930, by cause and sex**

<table>
<thead>
<tr>
<th>Type of irritant or corrosive</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adds (including add-plating solutions)</td>
<td>147</td>
<td>11</td>
</tr>
<tr>
<td>Alkalies (soaps, cleaning solutions, soda ash, potash, etc.)</td>
<td>185</td>
<td>46</td>
</tr>
<tr>
<td>Arsenic (insecticides, etc.)</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>Bakelite</td>
<td>10</td>
<td>3</td>
</tr>
<tr>
<td>Benzine, gasoline, naphtha, etc.</td>
<td>173</td>
<td>10</td>
</tr>
<tr>
<td>Benzol, sodium, etc.</td>
<td>13</td>
<td>1</td>
</tr>
<tr>
<td>Chromium, not otherwise classified</td>
<td>90</td>
<td>18</td>
</tr>
<tr>
<td>Chromium compounds ^1^</td>
<td>19</td>
<td>3</td>
</tr>
<tr>
<td>Creosote (railroad section hands mostly)</td>
<td>90</td>
<td>2</td>
</tr>
<tr>
<td>Cyanide (plating solution chiefly)</td>
<td>38</td>
<td>4</td>
</tr>
<tr>
<td>Developing solutions, blue printing solutions (bleichromates)</td>
<td>55</td>
<td>5</td>
</tr>
<tr>
<td>Dust, not otherwise classified</td>
<td>147</td>
<td>32</td>
</tr>
<tr>
<td>Dyes (manufacturing and handling dyed furs, cloths, and yarns)</td>
<td>42</td>
<td>31</td>
</tr>
<tr>
<td>Flour (including yeast and dough), “baker’s itch”</td>
<td>25</td>
<td>1</td>
</tr>
<tr>
<td>Formica</td>
<td>46</td>
<td>17</td>
</tr>
<tr>
<td>Fumes, not otherwise classified</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>Glass, compounds used in manufacturing glass</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>Heat (welders, furnace tenders, cooks)</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>Inks (mixers, printers, pressmen, lithographers)</td>
<td>45</td>
<td>11</td>
</tr>
<tr>
<td>Leather (tanners, shoe manufacturers, etc.)</td>
<td>17</td>
<td>19</td>
</tr>
<tr>
<td>Lime and cement (glass workers, cement workers, plasterers)</td>
<td>192</td>
<td>1</td>
</tr>
<tr>
<td>Liquids, not otherwise classified</td>
<td>114</td>
<td>24</td>
</tr>
<tr>
<td>Matches (manufacture)</td>
<td>54</td>
<td>3</td>
</tr>
<tr>
<td>Metals (brass, bronze, copper, etc.)</td>
<td>95</td>
<td>20</td>
</tr>
<tr>
<td>Miscellaneous (less than 10 each)</td>
<td>131</td>
<td>53</td>
</tr>
<tr>
<td>Not clearly specified</td>
<td>36</td>
<td>4</td>
</tr>
<tr>
<td>Oils and cutting compounds (also lubricating and linseed oil)</td>
<td>789</td>
<td>40</td>
</tr>
<tr>
<td>Paints and paint solvents, diluents, and “removers”</td>
<td>217</td>
<td>22</td>
</tr>
<tr>
<td>Paper</td>
<td>14</td>
<td>3</td>
</tr>
<tr>
<td>Plants (pines, oak, and vegetables)</td>
<td>42</td>
<td>5</td>
</tr>
<tr>
<td>Plating solutions (see also Adds, Chromium Compounds; and Cyanide)</td>
<td>91</td>
<td>5</td>
</tr>
<tr>
<td>Rubber (principally hexamethyleneamini, but including a few benzol, benzine, chloro- \line{line}line, etc.)</td>
<td>908</td>
<td>182</td>
</tr>
<tr>
<td>Sand, silicates, and other abrasives</td>
<td>16</td>
<td>2</td>
</tr>
<tr>
<td>Textiles (cloths, woollens, burlap, window shades, furs, etc.)</td>
<td>29</td>
<td>29</td>
</tr>
<tr>
<td>Tobacco (including glue used)</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>Turpentine</td>
<td>41</td>
<td>5</td>
</tr>
<tr>
<td>Wood dust (cocobola, resin, rosewood, etc.)</td>
<td>37</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>3,948</td>
<td>649</td>
</tr>
</tbody>
</table>

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1 In the first 6 months of 1933 there were reported 4 cases of chrome “holes” in skin, 11+4 (?) cases of chromium dermatitis, 17 cases of nasal mucitis, 54 cases of nasal septal perforations, and 2 cases of chromium eye affections.

It will be noted that irritating dust associated with the rubber industry has led the list, but more recent data (not shown) indicate there has been a great falling off in “rubber dermatitis” in the last three years.

Oils and cutting compounds, including lubricants and a few cases of linseed oil, have been a close second to rubber and now undoubtedly lead the procession of skin irritants. Infection or oil folliculitis is the common affliction reported. We have seen this condition clear up quite entirely, in a large plant making rolling bearings, by the use of colloidal sulphur combined in a soap along with careful medical supervision.15 Recently the medical director of a large automobile company informed me that for several years it has been supplying towels to approximately 1,000 workers exposed to oils and greases, with instructions to keep the skin cleaned off and also to use the towels for wiping oil and grease off of machined parts for inspection purposes, the towels being subsequently dry-cleaned. By this means it claims to have kept down compensation cases to zero.

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The larger number of cases of dermatitis associated with petroleum distillates (benzine, gasoline, naphtha, etc.) is also worthy of comment. Usually these employees have been using the liquid with a cloth or brush or in a spray, while occasionally wetting the clothing has started the dermatitis.

The acids, alkalis, cement, lime, sand, silicates, abrasives, metallic and non-descript dusts are all prominent causes of dermatitis. Occasionally those of alkaline character produce mucitis, particularly of the eyes, nose, and throat. A considerable percentage of alkaline substances occur in connection with ordinary cleaning operations, as in dish washing, window washing, polishing of silverware and brassware, and laundring.

A considerable group of dermatitis cases occurs in connection with the use of paint, paint solvents, turpentine, and paint and varnish removers.

An interesting group which has increased materially in Ohio is dermatitis, nasal mucitis, and septal perforations associated with chromium compounds. As a rule chrome platers suffer from dermatitis or chrome “holes” on the hands, etc., rather than from mucitis, while those engaged in the manufacture of alkaline chromates suffer from nasal mucitis and septal perforations and only occasionally from dermatitis. I think it is not sufficiently appreciated that most of these chromium compounds are volatile, and that it is often the vapors rather than splashes or dusts in the air which produce irritation. This appears to be true of the alkaline chromates whether in liquid or crystalline form. We have had one and possibly two typical cases of so-called “chrome sensitization” in our experience. One man who worked only two weeks was laid up for nearly six months with a generalized rash of severe type which progressed in waves—subsiding and then reappearing. At one time during a practically complete subsidence his physician applied a small patch test, using a chromium salt, and the patient immediately broke out with an extensive dermatitis of the whole arm which again spread over his body. Several companies are now supplying workers exposed to chromium compounds with bars of colloidal sulphur soap, upon our suggestions for experimental observations, with resulting prevention or alleviation of the dermatitis. It is possible that the sulphur combines with the irritant chromium compound on or in the skin and renders it inert, but no doubt frequent cleansing of the skin in itself is an important feature in control. Without doubt chromium vapors, as well as splashes and dusts, should be kept at a minimum in both the working and breathing atmosphere by means of confining apparatus or powerful exhausts. Personal protection helps but is uncertain.

A few years ago wood turpentine, both steam distilled and destructively distilled, produced a good deal of dermatitis among workers, but this has greatly decreased due undoubtedly to modifications of the process of manufacture which have removed certain irritant fractions.

This subject of irritants is of so much importance that the American Public Health Association has a special committee upon it, equi-
alent to its committees on volatile solvents, lead poisoning, pneumo-
coniosis, industrial fatigue, and ventilation. These committees pub-
lish their reports usually annually, either in the American Journal of
Public Health or in the association's Year Book.

Fatigue

It seems paradoxical in these days of the great industrial depres-
sion to speak of industry and fatigue in the same breath, but this
subject of fatigue is a broad one and many things are included
within it. For example, many a plant, capturing a contract, now
works its meager force days, nights, and Sundays to get the job out
in a hurry.

Work periods.—When we come to look at the employment of
women before and after childbirth we find that there are no States
which have legislation meeting the criteria of the Geneva conven-
tion of the International Labor Office, viz, "A woman is not to be
employed in industrial or commercial work for six weeks after
confinement; she shall be free to leave such work six weeks before
confinement."

Only 16 States have laws or commission rulings forbidding the
employment of women at night in various occupations, and only 12
of these refer to industrial employment.

Regarding the age at which children may be employed in industry,
which is set at 14 years by the Geneva convention, we have 7 States
which exceed this provision, that is, require a minimum age of
15 or 16. These States are Maine, Rhode Island, Ohio, Michigan,
Texas, Vermont, and California. About half of the remaining
States have a minimum age of 14 years, while for the balance the
age requirement falls short.

The convention requires that no one under 18 shall be employed in
industry during the night except in undertakings in which only
members of the same family are employed and in certain industries
where processes must be continuous. This does not apply to com-
merce and agriculture. The word "night" names a period covering
11 consecutive hours and including the time between 10 p. m. and 5
a. m. The exception for continuous processes is the limitation to
young persons over the age of 16. We still have 3 States where there
is no regulation of the employment of children in industry during
the night—South Dakota, Utah, and Nevada. None of the rest of
the States fully meet the terms of the Geneva convention, while a
great many permit a night period longer than 11 hours.

A weekly rest for industrial workers amounting to 24 consecutive
hours, e. g., Sunday, but not including agriculture and commerce, is
likewise the demand of the convention. We have 27 States and the
District of Columbia which meet this standard, at least with respect
to the employment of young persons up to various ages. In 6 States
and the District of Columbia the age is 18. In 19 States the age
is 16. There are still 8 States which allow 7 days' industrial work
on a normal schedule for week days, viz, Maine, New Hampshire,
North Carolina, South Carolina, Georgia, Michigan, South Dakota,
and Idaho.

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14 Geneva Research Information Committee. International labor standards and Ameri-
can legislation (a comparison). Geneva special studies, vol. 2, No. 8. Geneva, 1931,
pp. 1-62.
In no State is there legislation which constitutes a general prohibition of night work in bakeries, but 3 States—New York, Delaware, and Kansas—forbid the employment of women in bakeries at night.

**Fatigue and sex.**—In a recent trial in the common pleas court of Ohio, involving the admissibility of women to polishing and buffing operations the following physiological differences between men and women were testified to by experts:

1. The basal metabolism averages 7 per cent less in woman than in man, while the pulse rate is about 10 per cent faster.
2. The number of red corpuscles is one-half million less per cubic millimeter in woman, or 10 per cent less than in man.
3. The respiratory exchange in man is 450–500 centimeters; that in woman is 60–80 centimeters less.
4. The muscles of women are more fatty than those of men and not of equal strength for equal mass.
5. The bones of women are of lighter texture, while corresponding joints are smaller and more delicate.
6. The index of strength of women as shown by the hand dynamometer is 57 per cent that of man, while the index of muscular resistance as shown by the ergograph is 68 per cent that of man.
7. During the menstrual period all vital functions are depressed, so that there is a lesser capacity for work, less skill, the visual field is contracted, and the focusing and accommodation powers of the eyes are less. There are many other physical phenomena peculiar to women at this period which decrease activity and increase accident and sick risks.
8. During pregnancy practically all the phenomena above mentioned as associated with the menstrual conditions are increased.
9. Fatigue in the pregnant woman is shown by statistics to be precarious to the intrauterine existence and early life of the offspring.10
10. The resisting power of women, depending upon certain antibodies, is less than that of men.
11. Statistics show women are more susceptible to respiratory infections than men.
12. Mortality statistics show that women in America from 15 to 30 years of age are more susceptible to tuberculosis than men of like age, the peak of the difference in the two being reached at 24 years of age. As a matter of fact, in manufacturing and mechanical industries, there were 490 deaths from tuberculosis among female employees in the year 1930 in Ohio in the age group 25 to 34 years, as compared to 487 deaths among male employees in the same age group, yet there were employed but 143,873 females or 13.7 per cent as compared to 904,296 males or 86.3 per cent of the total employed. Thus the tuberculosis death rate among young working women was approximately six times that among young men.13
13. Woman factory workers show much higher rates of morbidity and mortality in general than men, presumably due to anatomical and functional differences, effects of faulty postures, or poisons, dusts, etc.14

**Fatigue and bodily condition.**—In American statistics of occupational diseases the commonest fatigue affliction is tenosynovitis, particularly of the tendons and sheaths about the wrist joints. Among 1,217 cases of compensable occupational diseases reported to the Ohio State Department of Health during the calendar year 1931, 166, or 13.6 per cent, were due to tenosynovitis. In addition there were 29 cases of prepatellar bursitis.

All manner of tasks are reported by the attending physicians as causative of tenosynovitis, from wrapping bolts and nuts to scaling fish and cutting hog snouts. The point is that persons, particularly

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those newly at work, are so eager to work that they overstrain joints
and tendons and become incapacitated sometimes for days and weeks.
Highway employment to help those out of work readily induces
tenosynovitis from shoveling, picking, etc., in those unaccustomed to
hand labor.

Dust

No doubt Frederick Hoffman's estimation that 13 per cent of
workers are subject to dust, gases, and fumes in harmful amounts is
apty correct, and it is safe to state that 10 of the 13 per cent is due
to the inhalation of dust.

While industrial dusts are usually classified as (1) poisonous and
(2) nonpoisonous—latter including organic and inorganic
dusts—there are a number of features of dust relationships which
are of great importance.

Given the same amount and kind of dust exposure, the likelihood
of the production of disease in the given worker will vary greatly,
depending upon a number of personal factors, such as whether or not
he is possessed of a normal upper respiratory tract by which dust is
physiologically handled at the portals of entry, whether or not he
is a mouth breather, or is shortsighted and thus brings his nose and
mouth close to the point of origin of the dust; also, his habits of
work as they influence the production and intake of dust.

It is also very important to consider the number of hours of ex­
posure to dust per day, since a few days or weeks of long hours of
exposure may do more damage than a lesser number of daily hours
spread throughout the working days of years.

Silicosis.—Of course, the outstanding dust disease of concern is
silicosis and its little cousin, asbestosis. Nevertheless, catarrh, sinus­
itis, fibrosis, bronchiectasis, emphysema, phthisis, cavities, abscesses,
tuberculosis, pleurisy, and pneumonia may accompany and compli­
cate the effects of many types of dust in the respiratory tract. Many
investigations have shown that silica and the silicates act as poisons
with slowly accumulative effects, which are progressive years after
cessation of all exposure.

In a thesis for the master's degree at Ohio State University, Dr.
Byron E. Neiswander, until recently chief of the division of indus­
trial hygiene of the Ohio Department of Health, made a careful
study of 60 cases of silicosis reported by physicians, hospitals, or
clinics in the State. He found that these came from 26 localities.

Twenty-four were sand blasters, of whom 22 had an average age
of 45 years and 7.7 years of occupational exposure (in two cases
this data was not supplied). Seven of these had a complicating
 tuberculosis.

There were 7 granite and marble cutters, averaging 53 years of
age and 26 years of occupational exposure. Four of these had a
complicating tuberculosis.

There were 6 metal grinders and polishers, who had an average
age of 55 years and 20 years of occupational exposure. Two had
a complicating tuberculosis.

17 Industrial Health Digest, March, 1932, pp. 1, 4; April, 1932, pp. 1, 4: "Dust as an
industrial hazard," by C. O. Suppington. See also International Labor Office. Occupation
and Health—Brochure No. 204, pp. 1-26: "Dust, fumes, and smoke," by Philip Drinker.
Geneva, 1930.
There were 6 pottery and porcelain workers, with an average age of 51 years and 28 years of occupational exposure. Three had a complicating tuberculosis.

Fifteen industries were represented in this group of 60 cases: Iron and steel products, 23 cases (of these, 15 were sand blasters, 3 grinders, 2 polishers, 1 machinist, 1 assembler, and 1 in foundry supplies); pottery, porcelain, vitrolite and silica plants, 20 cases (of these, 6 were sand blasters in enameling or sanitary ware plants, 4 pottery workers, 3 porcelain workers, 5 porcelain tile workers, 2 vitrolite workers, and 2 in silica plants); marble, granite, and stone works, 7 cases; brass, aluminum, plumbing goods, 3 cases; cement, asbestos (stucco), 2 cases; coal mines (bituminous), 2 cases; glass, 1 case; miscellaneous, 1 sand blaster (not otherwise specified); not otherwise specified, 1.

In 1926 Hayhurst, Kindel, Neiswander, and Barrett found 28.5 per cent of 912 sandstone quarry workers to have silicosis in various stages and 55.1 per cent (including the 28.5 per cent) to have some lung pathology, much of which could have been produced by the inhalation of dust. Tuberculosis was present only to the extent of 18 cases, of which number 13 were associated with silicosis.

Up to the present time silicosis, asbestosis, and other forms of occupational diseases of the lungs have not been included in the compensation schedules of those States using the schedule method, but such may be compensable in the 10 States, insular possessions, and Federal employees' divisions having blanket coverage.

Silicosis is undoubtedly one of the relatively few occupational diseases in which a definite diagnosis can be made (and such can be made even preceding disability)—much more, for example, than in lead poisoning. Simulating diseases such as miliary tuberculosis, pulmonary carcinomatosis, and aspergillosis are readily differentiated by the attendant history and the taking of two or more chest radiograms a month or so apart. In order to establish the diagnosis more convincingly, we have adopted in the State department of health the following instructions for physicians who report cases of silicosis or pneumoconiosis in Ohio:

Please be advised that we can approve no diagnosis of silicosis without obtaining X-ray chest findings. We request that the X-ray film or films be sent to us for examination after which same will be returned by registered mail. We hope it will be possible for you to supply one or more chest films in this case, preferably two which have been taken in positions for stereoscopic examination.

Protection of workers from dust of dangerous character requires (1) engineering study to confine or remove the dusts; (2) physicochemical study to determine possible substitutes; (3) the provision of workers with adequate respiratory equipment to prevent the breathing of escaped, hazardous dusts; and (4) responsible supervision to maintain the precautions necessary.

Regarding the dust count, I fear that, while valuable, it is often a misleading refinement, and for many reasons, not only those con-
nected with sampling, counting, the personal factor of the observer, etc., but because it is undoubtedly the minute uncountable particles ("aerosols") which do the most damage, while the number of hours in a day's work, the amount of exertion which in itself influences the depth of respiration and the retention of foreign particles to as much as 50 per cent and as little as none, and, over all, the make-up of the individual as shown in the physical examination, are all of equal, if not greater, importance. It must be admitted also that siliceous dusts in dangerous amounts are easily visible to the naked eye, at least under proper illumination. We have a very piercing beam light that we pass through a dark or only partially illuminated room which perhaps we may be able to show here this afternoon and give you some idea of the dust as it may be estimated by this means.

I think a better engineering standard would be to protect all workers as much as possible from easily visible dust containing a siliceous content of 25 per cent or more; from all poisonous dusts which escape to the breathing atmosphere in amounts above the threshold of physiological endurance daily (which is known or can be found out for any of them); and to reduce as much as possible the exposure to all dusts which are industrially produced. From a physiological point of view it is a pretty safe rule not to expect the body to tolerate much more of anything than customarily occurs in nature, and especially beyond the production of warning symptoms. All the more so when definite disease is known to follow.

Air Conditions, Particularly Overheating of Ordinary Interiors

The criteria for judging the working atmosphere in relation to health, comfort, and efficiency have now become pretty well established, largely through the efforts of British and American investigators. We want to know not only (1) the temperature as recorded by the ordinary thermometer, but (2) the effective temperature, which takes into consideration the combined effect of dry-bulb thermometer, wet-bulb thermometer, and air motion; also (3) the cooling power of the air as determined by the kata-thermometer; and finally (4) the algebraic sum of temperature, air movement, and radiation effects as determined, for example, by the globe thermometer.

All but the latter of these precision instruments and methods are fairly well known wherever any attention is given to the scientific aspects of ventilation, but the globe thermometer has been described within the year and exhibits some pertinent revelations regarding the comfort and efficiency of the human body which normally dissipates some 45 per cent of its excess heat upon a radiation basis alone (the balance being removed by convection, evaporation, and conduction). I have made quite a number of comparative determinations using the four methods in various places of human occu-

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pacy, and I believe they are of ascending relative importance (as listed above), particularly where air temperatures and surrounding structure temperatures are apt to be varying and at variance. The globe thermometer will often demonstrate why an atmosphere at 68° F. and of average humidity and air movement, and therefore having a "normal" effective temperature and perhaps kata cooling power, may nevertheless be uncomfortable because radiation effects of surrounding walls, floors, and fixtures have not been taken into account. Sometimes these effects are those of negative radiation when cooler surroundings absorb heat from the body as in a recently heated room. More often they are effects of positive radiation when warmer surroundings (than that of the air present) are engulfing the body with radiant energy usually of low intensity but great volume. For instance, when in an overheated room you open the windows and still it is some time before you get any relief, during which period you are being bombarded with positive radiation effects from the heated surfaces about you until they become the same atmosphere as the room, the globe thermometer shows up those conditions at once.

The research laboratory of the American Society of Heating and Ventilating Engineers, in conjunction with the experimental station of the United States Bureau of Mines, has shown that human beings have one standard for optimum atmospheric comfort in the wintertime, which is 5° effective temperature lower than for optimum comfort in the summer time;²² optimum temperature conditions in the summertime being about 69 to 70°, and in the wintertime about 64 to 65° for the same person.

Thus there is no definite comfort standard which is fixed for the year round. For ages the race has accomtomed itself to seasonal changes quite automatically.

For wintertime conditions it is commonly accepted that an indoor dry-bulb temperature should not exceed 65° to 68° F. for ordinary light work, assuming average conditions of air movement and humidity. Nevertheless it has been my experience that, in by far the majority of work places I have visited, the temperatures have ranged from 70° to 90° F. with no necessity for the same so far as the process was concerned. One manufacturer told me that he had made a careful analysis of all production factors and yet was unable to account for a production loss of 13 per cent, involving about 800 workers who were doing their best. The temperatures on each of the six floors were from 78° to 80° F., due to excessive artificial heating. I considered that that was the answer, and it is pretty close to the findings of the New York Commission on Ventilation that 75° F. temperature in the wintertime decreases efficiency about 15 per cent.²³ Probably overheating is the commonest hazard decreasing efficiency in the closed-up season of the year.

Summary

1. It requires industrial health hazards to produce occupational diseases. Therefore, data on occupational diseases help to define such health hazards.

2. Standardization of reporting forms is advised as well as laws requiring the reporting of occupational diseases, irrespective of compensability.

3. It is considered that among the commonest industrial hazards are the following, which are discussed in some instances with statistics:
   (1) The poisons—particularly lead, volatile solvents, and irritants including corrosives.
   (2) Fatigue—which even in a period of depression is still a matter of unrestricted hours, night work, child labor, female labor, and a consideration of strain of bodily parts, particularly noticeable as tenosynovitis.
   (3) Dust—which at present involves chiefly silica and silicates used extensively in various industries and requires common-sense methods of control before refinements in certain particulars.
   (4) Air conditions—which hinge upon the subject of temperature, effective temperature, atmospheric cooling power, and effective radiation, the latter of which is stressed both because it is a rather new discovery in physiological relationships and because it is often of the greatest importance in comfort and efficiency.

[Doctor Hayhurst supplemented his paper by an explanation of the instruments for determining air conditions, as follows:]

The first instrument for determining air conditions is the well-known dry-bulb thermometer [showing a thermometer]. It records only spot temperature; that is, the temperature immediately around it.

The second instrument is the well-known Weather Bureau sling psychrometer, which is composed of two ordinary thermometers, one of which has a cotton stocking which is wet when you take both regions, and because it is slung in the air it receives the name “sling psychrometer.” From that you determine zone temperature and also zone humidity, and having the two, you can determine zone relative humidity. It is therefore a better instrument for determining air conditions than the common thermometer, which determines only spot temperature.

A third instrument is a kata-thermometer, which was devised by Sir Leonard Hill in England, winner of one of the Nobel prizes. This instrument determines the cooling power of the air, and therefore whether we are comfortable in relation to the air about us. It also records spot velocity; that is, the velocity of the air movement in its immediate vicinity. Hence it is an instrument of double importance.

The fourth of these instruments is the globe thermometer, devised by Vernon, and described in the March issue of the Journal of Industrial Hygiene of 1932. It consists of a copper flush ball painted with mat black, with a thermometer whose bulb is about the center of the ball and is held on a standard in the room. It not only records the temperature of the air which strikes this bulb and, as it is copper, very quickly passes through and affects the bulb of the thermometer, but
it collects all radiation temperatures in the vicinity, so that if the floors, walls, furniture, etc., are cooler than the air in the room, this will give what is called a negative radiation effect and show that while this thermometer, for instance, may be 4° or 8° lower than the plain room thermometer, that is the true temperature after all. On the other hand, if the walls and so on are too warm, and you are putting cool air through, your room thermometer will show perhaps 60° and this will show it is still 68°.

With those four instruments and their interpretations one may determine practically all atmospheric conditions.

A chart devised by the American Society of Heating and Ventilating Engineers enables one to determine the effect of the temperature and also the comfort zone in figures. The chart and the four instruments comprise the equipment ordinarily necessary for the determination of the physical condition of the atmosphere outside of the dust and chemical estimations.

By the way, this black bag, which looks like black magic, is necessary not only to protect this [globe thermometer] in transit, but I have discovered that the standard which carries this thermometer if carried in cold weather, may, when set up in the room, be half an hour to an hour in reaching the temperature of the room; therefore, it must be shielded from this thermometer, so we just throw this over the bottom of the standard, which is iron (an ordinary chemical laboratory support) to shut it off.

Chairman GEHRMANN. We will postpone the discussion of this most interesting paper of Doctor Hayhurst’s until after the reading of the second paper. The next paper is What Determines Compensability of Skin Diseases Among Industrial Workers, by Dr. Carey P. McCord, director of the Industrial Health Conservancy Laboratories, Cincinnati.

What Determines Compensability for Skin Diseases Among Industrial Workers?

By CAREY P. MCCORD, M.D., of The Industrial Health Conservancy Laboratories, Cincinnati, Ohio

In skin diseases occurring among employed persons, occupation should regularly suggest origin, but occupation alone should never make a diagnosis. No less than 700 substances, in their various physical states common to industry, have been associated with skin diseases as the direct or indirect cause. Forty or more diseases of the skin have been found to originate in industry. In certain districts almost entirely given over to industrial pursuits of divers sorts 25 per cent of all skin diseases brought to the attention of physicians in those communities have been linked up with trades and professions as to cause. Taking the country as a whole, it is believed that about 10 per cent of all skin diseases constitute occupational dermatoses. Some persons may take exception to the figure of 10 per cent as representing either too high or too low an estimate. Various dermatologists have made statements with respect to the incidence of occupational skin diseases, as ranging from 2 to 25 per cent of the
total for this country. Another figure indicating the high frequency of such affections may be found in the oft-quoted statement of dermatologists that 50,000 cases of occupational dermatitis yearly appear in the United States. This figure at best is an estimate, and probably errs in minimization rather than exaggeration.

Lately the problems attending the settlement of claims growing out of skin affections among workers have become accentuated because of the emphasis that is now being placed by physicians upon "sensitization" or "allergic conditions of the skin." A generation ago such terms as "sensitization," "anaphylaxis," etc., were exclusively limited to abnormal states following the introduction into the body of foreign proteins. At the present time "sensitization," "allergy," etc., are terms glibly applied in connection with the action of multitudes of nonprotein substances. This situation is introducing utter confusion into the settlement of claims growing out of the alleged action of industrially used substances. The tendency now is largely to overlook the influence of congenitally defective skins, the degenerative skin of old age, and many other internal factors that play enormous parts in the development of skin diseases among workers. The confused situation that exists to-day is such that in any industry making use of known skin irritants, any worker who develops an unobvious type of skin affection on exposed parts of his body feels justified in presenting a claim against the insurance carrier. If there have been other instances of skin disease in the same industry, and if these have been favorably acted upon by the compensation boards, it becomes highly probable that any unobvious skin lesion will lead to a diagnosis by physicians culpating occupation as the cause and to favorable action by compensation boards. Without any censure of compensation boards, it may be maintained that a greater number of errors as to decision in occupational disease are related to skin affections than to any other occupational condition. So far as known, these errors are about equally distributed in favoring the claimant and the insurance carrier.

It is the purpose of this paper to present the observations of an industrial physician (who is not a dermatologist) with respect to the many sources of error that may attend the physician in his diagnostic decisions as to trade dermatoes, and the judicial decisions of compensation bodies in making disposition of claims.

Differential Diagnosis of Occupational Dermatoses

Although the need for increased discrimination in making diagnoses of (and judicial decisions as to compensation for) skin lesions extends to all types of skin involvements that may be found as a result of occupational injury, this particular discussion is almost solely limited to occupational dermatitis, which, with the exception of callosities, is the most frequently encountered trade disease of the skin. Moreover, it is to be understood that the term "occupational dermatitis," as here used, includes all those conditions to which the term "occupational eczema" is applied.

From time to time dermatologists present sets of diagnostic characteristics calculated to set trade affections apart from idiopathic
affections. Such an arrangement by R. Prosser White\(^2\) is cited as one of the best:

**DISTINGUISHING FEATURES OF OCCUPATIONAL DERMATITIS OR TRAUMATIC ECZEMA, AND OF IDIOPATHIC ECZEMA**

<table>
<thead>
<tr>
<th>Occupational dermatitis or traumatic eczema</th>
<th>Idiopathic eczema</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Starts around follicles (2).</td>
<td>1. No particular preference.</td>
</tr>
<tr>
<td>2. Initial erythema is brilliant (3).</td>
<td>2. May pass unrecognized. Is usually evidence of early secondary infection. Often the first symptom is itching.</td>
</tr>
<tr>
<td>3. Vesicles are size of a pinhead (4).</td>
<td>3. Vesicles are size of a pin point (4).</td>
</tr>
<tr>
<td>4. Vesicles form separately and tend to remain discrete.</td>
<td>4. Vesicles coalesce rapidly.</td>
</tr>
<tr>
<td>5. Vesicles persist and increase in number only so long as irritant is present.</td>
<td>5. Vesicles erupt and continue to form without apparent cause even when irritant is withdrawn.</td>
</tr>
<tr>
<td>6. Exudation is not copious; it soon lessens if irritation is removed.</td>
<td>6. Exudation is copious; it often stands in drops on skin (puits epidermique de Devergie).</td>
</tr>
<tr>
<td>7. Does not recur when irritation is removed.</td>
<td>7. Stops and starts again at intervals without apparent provocation. Relapses may take place indefinitely.</td>
</tr>
</tbody>
</table>

Unfortunately these schedules for differentiation are most fallible. If day by day the physician might observe the development of a dermatitis, he might be in a position unfailingly to culpate or exculpate the occupation of the patient as a cause. Instead, the physician is likely to see the skin lesion only after it is well established, and at a time when the characteristics of the externally produced and the internally produced condition are essentially the same, in so far as inspection is concerned.

There are, indeed, a variety of trade dermatoses that incontrovertibly establish their occupational origin. The peculiar deep-burrowing ulcer found in blue-print workers, who submerge their hands in solutions containing chromium, rarely calls for debate as to whether or not it constitutes a "chrome hole.\(^3\) The so-called "arsenic pox" that accompanies systemic arsenic poisoning may not readily be mistaken for any other condition when associated with manifestations of systemic arsenic poisoning. The calloused right hand of the "presser" in a tailor shop is inescapably associated with his trade. However, no known variation in manifestations will permit of differentiation between a dermatitis produced by turpentine, benzol, or naphtha, one from the other, or any one of the lot from the dermatitis produced by scores of others. It is the intent of this section to maintain that there are few objective diagnostic criteria permitting of the separation of trade dermatitis from dermatitis venenata from other causes, and from idiopathic dermatitis. Moreover, no physician is warranted in making a diagnosis of a trade affection of the skin solely on the ground that the patient presents a skin affection on parts of the body known by history to have been exposed at work. The physician must accept a greater responsibility. In addition to the history of recent exposure, which is not pathonomic, the physician must carry the burden of diligent search into past history, susceptibility in general, history of work exposure, anaphylactic states, etc.,

\(^2\) Journal of Industrial Hygiene, Boston, September, 1926, p. 367: "Modern views on some aspects of the occupational dermatoses," by R. Prosser White, M. D.
and moreover should carry out on the patient patch tests or similar biologic reactions, to determine responsiveness to the suspected substance or substances.

**Patch Tests**

At the present time the most helpful diagnostic step in the determination of the origin of acute dermatitis is the "patch test."

If, for example, a worker maintains that his dermatitis has been produced by the action of leather dusts to which he is exposed in the course of his employment, it is quite easy to collect some of the suspected dust, place it in contact with the skin of the patient in an unaffected area near to the affected areas, and to hold it in place by gauze, adhesive, rubber damming, or otherwise. Similarly, if a worker claims that his skin affection is due to recent exposure to naphtha in a laundry, it becomes quite practical to procure a small amount of that particular laundry's naphtha and to apply a few drops of this substance to the skin of the patient, using a flat thimble or rubber sheeting to hold it in place and prevent evaporation. If no irritation is produced, it is reasonably conclusive proof that the person is not sensitive to the suspected agent, and that the condition attributed to such cause has been, in fact, brought about by some other agent.

Sulzberger and Wise in an article on the uses, advantages, and limitations of the patch test in dermatology state:

One thing is extremely important in carrying out these tests, namely, the certitude that a reaction has not been caused by a substance which is a primary irritant, but is actually due to the hypersensitiveness of the patient's skin. In order to be sure of this, all new substances (that is, substances for which previous investigations have not established the fact that they are innocuous to normal skins in the concentrations employed) must be tested in different dilutions on large series of normal persons in order to ascertain the concentrations that are not primary irritants; that is, not harmful to normal skins. Only these normally harmless concentrations may be used in tests for skin hypersensitiveness. In this manner serious mistakes can be avoided. This is illustrated, for instance, in testing with soaps by means of the patch test. Almost any soap, if applied under the patch test for 24 hours, will cause an erythematous reaction on the skin of normal persons. Therefore such a reaction does not prove that a person being tested is hypersensitive to a particular soap.

Ramirez and Eller state, with reference to this test: "The patch method of testing is superior to other methods in determining sensitization to contact excitants, and particularly those of nonprotein nature."

Kesten and Laszlo have discussed this subject at some length and contributed much helpful information. However, the most recent known publication on the use of the patch test is that of Schoch, who cites many uses of this test in dermatology.

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26 Archives of Dermatology and Syphilology, Chicago, March, 1931, p. 519: "The contact or patch test in dermatology, its uses, advantages, and limitations," by M. B. Sulzberger, M. D., and F. Wise, M. D.

27 Journal of Allergy, St. Louis, September, 1930, p. 489: "The 'patch' test in "contact dermatitis" (dermatitis contacta)," by M. A. Ramirez, M. D., and J. J. Eller, M. D.

28 Archives of Dermatology and Syphilology, Chicago, February, 1931, p. 221: "Dermatitis due to sensitization to contact substances," by B. Kesten, M. D., and E. Laszlo, M. D.

In the course of ordinary procedure a negative reaction is of
greater significance than a positive one in the diagnosis of a trade
dermatitis. In a patient presenting an acute dermatitis, attributed
to a specific cause, a patch test may reveal definite response to the
suspected irritant; but through that same procedure the same degree
of response may have been found to a large number of other sub­
stances regarded as nonirritating such as adhesive tape, linseed oil,
lanolin, vaseline, etc. On the other hand, a negative response after
proper testing almost conclusively rules out the suspected agent as
the cause.

In chronic dermatoses the patch test may be of lesser value. A
number of substances may act upon the skin solely by defatting the
surface and thus depriving the skin of one of its defensive mecha­
nisms, whereupon inogenous factors may induce a low-grade derma­
titis. Under such circumstances a patch test might be of question­
able value.

Many practical difficulties may present themselves in the utiliza­
tion of the patch test in connection with compensation-board work.
Hearings may not take place for months after exposure; by that time
the particular batch of agents regarded as responsible for the condi­
tion may have been consumed or replaced by some other trade sub­
stances. No less, this “contact” or “patch test,” is commended as
a useful tool in the quest for precise diagnoses in dermatoses.

History of Previous Skin Affections

The fact that, in any group of workers similarly exposed to a
possible skin irritant, one or two persons out of a much larger num­
ber develop an abnormal state of the exposed skin brings up a long
series of pertinent problems as to the part contributed by the worker
himself because of an unusual degree of susceptibility. This places
upon the examining physician, and later upon the compensation
board, the obligation of diligent inquiry as to individual factors
little related to the action of the external irritants. As noted by
Alderson to these questions become pertinent:

1. In what sense is the first attack caused by the exposure?
2. Why do some individuals fail and others resist?
3. Is susceptibility increased by repeated exposure and failure?
4. Is susceptibility increased by age?
5. Is susceptibility increased at a greater rate by repeated exposure than
by age in the absence of exposure?
6. Barring susceptibility increased by age, is there any increase of suscep­
tibility attributable to the attacks alone?

The replies which this author makes to his own queries are helpful
and interesting:

1. The dermatitis that —— developed for the first time after six years on
the same job was occupational. Subsequent exposures to irritating substances
produced the same kind of dermatitis, not necessarily occupational. The suc­
cceeding attacks were recurrences due to various irritants, and demonstrated
that the patient possibly had a skin that was sensitized to any particular
substance.

2. Some persons react more readily to irritants than others because of in­
creased vulnerability. This may be due to idiosyncrasy or to congenital or
developmental defects in the skin, to some underlying disturbance of bodily

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* Archives of Dermatology and Syphilology, Chicago, September, 1931, p. 401: “Com­
penable disability in occupational dermatoses,” by H. E. Alderson, M. D.
health, to bad habits or age, or all of them combined. Any injury to or disease of the skin may so weaken the resistance of the skin that it will be more susceptible to subsequent irritation from any cause, and consequently each case should be considered on its own merits.

3. Susceptibility is increased by repeated over-exposures; that is, exposures beyond the individual's resistance.

4. Increased vulnerability naturally occurs with age as a result of thinning of the skin and other atrophy of its elements. Underlying bodily diseases incidental to old age may also render the skin more susceptible to injury and lessen the natural ability that a younger skin would have to recuperate.

5. This would depend upon the case. Some individuals age early, others late, and this applies to the skin as well as to the general constitution.

6. There are certain substances that, having produced an eruption, have been found to increase the individual's susceptibility to succeeding exposures, but these are generally protein substances.

Apart from direful exposures from which all or the majority of those exposed developed skin damage, individual susceptibility is believed to play a greater part in the causation of trade dermatitis than the irritant itself. A number of brief quotations are made in support of this contention:

Knowles states that—

It is a commonplace experience in many industries to meet with people peculiarly prone, or who unexpectedly develop a proneness, to rashes from the chemicals they handle. One recognizes such an idiosyncrasy if a single person suffers or manifests frequent attacks where a number are employed.

O'Donovan, in his discussion on occupational diseases, states that the importance of carefully watching for any cases of personal susceptibility, when a new industry having a particular health hazard is being established, can not be too greatly stressed. He found that a largely immune body of workers can be secured by eliminating persistently, at the first onset of symptoms, every individual showing signs of intolerance.

Robinson notes—

In the industrial dermatitides it is claimed that not only is sensitization present, and an external irritant in the shape of the occupational factors, but that frequently there is a preexisting dermatitis or other pathologic condition. R. Prosser White has emphasized the fact that in most of his cases of occupational dermatitis a history was obtained of preexisting seborrheic dermatitis, hyperhidrosis, lichenification, or food allergic dermatitis.

Cole and Driver discuss susceptibility in the following terms:

There is no question that personal susceptibility has something to do with the dermatitides seen in persons carrying on certain types of occupations. Why one gardener is poisoned by the primrose and another is not or why one person has a dermatitis from working with rosewood while another person has no ill effects is difficult to explain. To a large extent we must explain it as a case of personal susceptibility or, perhaps, a type of anaphylaxis.

Lane, in a discussion of industrial skin diseases, makes the statement:

It has also been found that previous skin disturbances, intercurrent diseases, and focal infections may play an important part. In the recent statistics of

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82 The Clinic, Quarterly Journal of Industrial Surgery and Hygiene, Baltimore, April, 1929, p. 1: "Occupational dermatitis," by H. M. Robinson, M. D.
84 Journal of Industrial Hygiene, Boston, October, 1925, p. 444: "Skin diseases with particular reference to their industrial application," by C. G. Lane, M. D.
Gardiner, 63 per cent of 621 cases of industrial skin disease gave a history of a preceding skin condition, and 77 per cent gave a history of a preceding skin condition or of general illness.

R. Prosser White\textsuperscript{85} says:

The common mistake is emphasized of confusing eruptions due to physical skin defects, congenital or acquired, rashes from internal toxins, mycotic and other external organisms or skin troubles arising independently of the employee's particular work.

Lane,\textsuperscript{86} in an article discussing standards in industrial dermatology, urges the taking of a detailed history. Among other items calling for information are the following:

<table>
<thead>
<tr>
<th>Previous skin conditions</th>
<th>Relation to work</th>
<th>Present skin condition: Duration</th>
<th>Location</th>
<th>Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treatment—internal</td>
<td></td>
<td>Symptoms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>external</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stopped work</td>
<td>Previous disability</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Work:

<table>
<thead>
<tr>
<th>Previous occupations</th>
<th>Duration present job</th>
<th>Details of processes—home—factory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any changes in process</td>
<td></td>
<td>Any substances—substances—in cleansing</td>
</tr>
<tr>
<td>Details of substances handled</td>
<td></td>
<td>Any other individual affected</td>
</tr>
<tr>
<td>Any work outside regular employment</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

So important is the part played by individual susceptibility that it is believable that the occurrence of many occupational dermatitis entities such as "baker's itch," "butcher's dermatitis," "sugar dermatitis," etc., more often than not rests almost solely upon the state of the body of the worker, rather than upon irritant qualities of the work materials. Notwithstanding, these almost innocuous work materials play a minor, but necessary rôle in inaugurating the affection. The placing of full responsibility upon the insurance carrier for this type of affection is open to debate. If the theory prevails that any degree of contribution by any work agency paves the way for compensation, it often comes about that an injustice is done the employer or the insurance carrier because the essential factors leading to the skin affection reside in the person and not the work conditions. Under such circumstances the employer may be forced to carry out susceptibility tests prior to employment, and further to eliminate every employee exhibiting any degree of abnormal susceptibility.

Sensitization and Allergy

Until recently the phenomena associated with sensitization and allergy were accounted for on a biochemical basis. At the present time a shift to physicochemical basis is taking place. This is leading to a broadening out of the concepts of anaphylaxis and kindred manifestations, so that at the present time it is common, if not
correct, to place all hypersusceptibility, idiosyncrasy, and other forms of ready response to irritants in the category of "allergic reactions."

In a recent case of intractable dermatitis in a lithographer, whose condition flared up after every recurrent exposure to vapors from an ammonium bichromate bath, the consulting dermatologist made a diagnosis of sensitization to chromium. In another instance a foreman engaged in the manufacture of liquid insecticides became so responsive to the action of the solvents employed that the mere walking through the factory workroom inevitably resulted in so direful a skin reaction as to require hospitalization. Anaphylaxis was found in a woman furrier, who developed a dermatitis with oedema whenever certain types of furs were brought to her for alteration. Instances of this sort have led to the widespread classification of essentially all recurrent dermatoses as allergic phenomena. Under many circumstances this may be just and proper, but in many other instances it saddles the employer or insurance carrier with a prolonged and perhaps lifetime responsibility for conditions which at the most may be only trivially connected with employment as the cause.

Recently a frail, obviously sickly, young woman was employed in bottle capping. In the course of her work she utilized a formalin solution. This irritant led to an acute dermatitis. Cessation of work led to prompt and apparently complete recovery. A little later work in her garden and still later a new kind of soap produced a recurrence, while still later some household cleansing agent led to an identical dermatitis. It is probable, but of course unproven, that the skin disease preceded the employment at bottle capping. None the less, this employer was placed in an unfortunate position of responsibility, and will have to continue to carry the burden of payment of premiums for whatever benefits may be extended to this woman over a lengthy and indefinite period.

R. Prosser White,87 in one of his excellent discussions of occupational dermatitis, states with respect to allergic conditions:

Lastly, we must recognize whether the irritant has the tendency to produce sensitization. A dermatitis or eczema may be native, inborn, or it may be acquired from unrecognized causes, e.g., indiscretions in diet, an hereditary peculiarity of the blood or tissues, or other numberless unknown reasons. It is then idiopathic. It may be a reaction simply and solely due to the agent. It is then traumatic. On the other hand, a biologic or chemical correlation may be present, or may form between the skin and the agent. This shows itself by an excessive cutaneous reaction or by other unusual features. When this happens, sensitization is suggested or disclosed. Sensitization can change the type and features of an eruption. Apart from altering the prognosis and the incidence and severity of the disease, the presence of allergy decides the question: That it is not suitable for such a person to follow his old work or similar work entailing exposure to the sensitizing agent.

In a later paper88 this salutary statement is found: "The influence of allergy in hastening the onset of certain trade dermatoses is freely accepted, but its too ready labeling of many of the commoner trade eczemas is to be deprecated."

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87 Journal of Industrial Hygiene, Boston, September, 1926, p. 367: "Modern views on some aspects of the occupational dermatoses," by R. Prosser White, M. D.
88 Sixth International Medical Congress on Industrial Accidents and Diseases, Geneva, August 3–8, 1931: "The rationale of or the basic principles which rule the actions of the skin irritants in industry," by R. Prosser White, M. D.
The generality with which these trade diseases are classed as ana-
phylactic is reflected in a quotation from Bloch: "Occupational
dermatitis is then a specific allergic response of the skin to a sub-
stance to which it has become sensitized by contact." This un-
qualified statement is believed to be unsupported.

In brief, allergy and sensitization are not the simple phenomena
that some dermatologists would have you accept as the convenient
formula for the making of compensation decisions. If this concept
is deeply thrust into compensation matters, it is going to cost public
and private insurance carriers many hundreds of thousands of
dollars, much of which will be paid out for unwarranted claims. As
an ancillary result, it will develop that employers will be required
to carry out such testing for general and special susceptibilities that
enormous numbers of workers will be labeled as poor industrial
risks.

Complications of Industrial Dermatitis With Relation to
Industrial Compensation

Obviously any occupational dermatitis may become complicated by
a long list of bacterial invasions, ranging from ordinary pyrogenic
organisms to erysipelas and tetanus. In addition, direful accidents
associated with chemical burns may lead to pneumonia, shock, gas-
trointestinal ulceration, etc. It is not the intent of the writer to
project any of these complications into this discussion. Instead,
emphasis will be placed upon that complication brought about by the
secondary invasion of fungi. During the past 10 years many hun-
dreds of awards have been made for alleged occupational dermatoses,
when in fact the primary conditions were parasitic. At least 11
clinical types of mycotic skin diseases are known. In addition
mycotic disease may exist as a silent or asymptomatic affection, which
no less produces toxins capable of inducing symptoms and visible
lesions in other portions of the body.

Jamieson and McCrea state:

In a study of ringworm of the hands and feet and of similar fungous
infections, which are becoming relatively and actually more prevalent yearly,
one is struck by the number of cases of recurrence at intervals with new
active lesions in the same areas or in other areas than those primarily affected.
Many of these relapses occur at yearly intervals, while others occur at
irregular periods.

Williams long ago voiced the idea that lesions of the hands and
forearms might result from a dissemination of fungi or other
products from foci on the feet. Since that time the results of many
other investigations have added plausibility to this concept by the
discovery of new pertinent facts, including the following:

1. Systematic cultures from the feet and hands are commonly
positive only from the feet.

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39 Journal of State Medicine, London, July, 1930, p. 373 (abstract in Journal of In-
dustrial Hygiene, Boston, December, 1930, p. 226) : "Occupational skin diseases from the
biological point of view," by B. Bloch, M. D.

40 Archives of Dermatology and Syphilology, Chicago, February, 1932, p. 321: "Recur-
rence or reinfection in ringworm of the hands and of the feet," by R. C. Jamieson, M. D.,
and A. McCrea, M. D.

41 Archives of Dermatology and Syphilology, Chicago, February, 1922, p. 161: "Diagnosis
of some eruptions on hands and feet," by C. M. Williams, M. D.
2. The skins of patients with lesions of the feet and hands are practically always hypersensitive to intradermal injections of trichophytin; in other words, the allergy often alleged to be due to industrial irritants may find origin in mycotic affections of the feet.

3. Lesions on the hands may closely follow a flare-up of the condition of the feet.

4. It is well recognized that for all persons the hands are more exposed than other portions of the skin, and at least in all adults some degree of abnormality exists in the skin of the hands resulting from exposure. This result is more often than not consequent to the action of no one irritant, but of irritants in general.

In brief, the position here assumed is that the occurrence of one or more outbreaks or dermatophytosis in persons working with skin irritants, and who at earlier times may have suffered from occupational dermatitis, is not in itself proof that the mycotic lesions in any wise are related to work exposure as a cause. Thousands of such mycotic lesions appear in persons not known to be exposed to any specific irritants.

With even greater emphasis it may be asserted that there is scant reason to associate outbreaks of ringworm, in some region such as the back, with the occurrence at a much earlier time (such as one or two years previous) of an industrial chemical dermatitis in which there may have been an invasion by fungi. At the present time it is suiting the convenience of many claimants and some physicians to associate all recurrences of ringworm and other fungus lesions, wherever they may occur on the body, with earlier acute industrial dermatoses of chemical origin. Such association is more often than not unwarranted, and full investigation commonly leads to the feet as a dormant foci of infection, from which origin active lesions appear on divers portions of the body at regular or irregular intervals.

Suggestive Course of Action for Compensation Bodies

In full realization that every claim alleging abnormality of the skin as a result of exposure in employment must be considered on its individual merits, and further recognizing that no sharp standards may ever reduce decisions to simplicity, a few suggestions are guardedly made as a basis for the consideration of these matters. For this purpose all alleged industrial dermatitis is placed in four categories, as follows:

1. The greater number of acute industrial dermatitis cases result from exposure to irritants of such qualities as harmfully to affect all or the greater number of persons equally exposed. Such affections permit of no question of hypersusceptibility, idiosyncrasy, allergy, or sensitization. So quickly do these irritants lead to manifestations that the resulting condition often may with propriety be accepted as accidents, and become amenable to compensation as traumatic injuries, in those States, Provinces, countries, etc., providing no coverage for occupational diseases of this character. In a lesser number, manifestations are delayed and considerable time elapses between initial exposure and initial manifestations. This lapse of considerable time is the sine qua non demarking injuries and occupational diseases. Without further exposure, and without com-
plication by such diseases as erysipelas, these dermatoses speedily and completely disappear. This type of case provides no unusual concern on the part of compensation boards.

2. A second group of cases of dermatitis arises in persons who are represented to compensation boards as having become hypersensitive, or actually sensitized, to the specific agent or agents to which exposure has existed at work. Claims grow out of such cases frequently alleging semipermanent disability, and the period for which compensation is petitioned is often represented by months or years. Prior to any decision in such cases, it is deemed advisable that compensation boards require evidence developing after properly applied patch or contact tests. These results should clearly establish that the degree of sensitization to the specific agents is greater than that recognized for normal persons of comparable ages, and an absence of hypersensitivity to a galaxy of irritants. It is manifestly unreasonable to believe that exposure to one irritant, such as benzene, which led to an acute dermatitis, inaugurates such changes in the body as to produce a hypersensitivity of all portions of the skin to an almost unlimited number of irritants, extending through pollens, hydrocarbons, vegetable oils, etc. It is suggested to compensation boards that disfavor should be extended to all such claims unless the proof submitted clearly establishes, by appropriate testing, a definite sensitivity limited to the industrial substance to which exposure has been provided, and of a magnitude in excess of that for normal persons. More often than not, appropriate inquiry will establish long-existing susceptibility of the skin due to congenital defects or to internal causes, and that the industrial dermatitis upon which the major attention is focused is but one incident along the great highway of skin dysfunction.

3. A third group of cases of dermatitis may be made up of persons long exposed to one or several well-known industrial irritants. A good example may be found in painters, who have for years suffered contact with divers types of turpentines and turpentine substitutes, including various cuts of petroleum and coal-tar fractions, vegetable oils, resins, etc. As age advances atrophy takes place, and as a result of years of exposure certain damages to the skin have so accumulated that the defensive mechanisms of the skin are no longer effective, and various forms of occupational skin lesions arise.

In fairness to employers, it should be recognized that these states are not the result of one week's or one year's employment, but the accumulated damage of long periods, such as 10 to 30 years of exposure. An employer who may have utilized the services of such a worker for some short period, such as one month, should not be required to accept the full burden of compensation. Properly appraised, this condition is to be regarded as a degenerative disease, and in a measure to be considered in the same light as the old worker who develops a disabling arthritis or heart disease. If compensation bodies accept for compensation claims of this character, some procedure should be devised whereby the exclusive burden of payment does not fall upon the last employer, if the employment has been for a minor period. Such a provision might become practical in the event of a State monopoly, but is obviously attended by difficulties under circumstances of private insurance.
4. The last group of dermatitis cases contemplated in this discussion embraces those associated with mycotic affections. Many fungus affections exist as the sole abnormality of the skin, without any associated or preceding industrial dermatitis. In other instances a preceding mycotic state aggravates the concomitant industrial dermatitis. In still other instances, mycoses invade and aggravate genuine industrial dermatitis and unduly prolong the skin disease truly attributable to work as the cause. It is suggested to compensation bodies that in all cases of prolonged affection of the skin attributed to industrial agencies as the cause, patch or intradermal tests be made to determine sensitivity to the products of mycotic action, and further that clinical examinations always include the feet, and whenever practical the entire body areas. If any evidence be established of a coexisting mycotic infection, compensation bodies should be hesitant to place full responsibility for any prolonged dermatitis upon work as the cause.

As a practical procedure, it seems reasonable to suggest that under these circumstances compensation should not be extended over a longer period than that necessary for the eradication of the acute dermatitis. An example may make this suggestion clearer. A person working in a laundry, exposed to Stoddard's solvent, may develop what appears to be an acute chemical dermatitis of her hands. Careful examination may disclose an epidermophytosis with one or more patches in other areas over the body. An intradermal test may establish a sensitivity to trichophytin. Under treatment the affection of the hands and fingers may clear up in such a period as 10 to 20 days. At the end of this acute episode compensation should be terminated, in the absence of further exposure.

5. Inasmuch as compensation boards and private insurance carriers are often charged, as a part of their duties, with the guidance of employers of workers along sanitary and hygienic lines, the following suggestions are made as to types commonly unsuited for work wherein hazards to skin diseases prevail. The employer may profit by avoiding the physical types now mentioned:

1. Applicants who after patch testing show a susceptibility to the chemical in use in that plant in excess of normal.
2. Applicants who after patch testing or history taking are found generally sensitive to skin irritants.
3. Applicants who are pronounced blonds, and especially those who respond with pigment formation after skin irritation such as sunburn. This may be determined by history taking.
4. Applicants who at the time present any skin lesions other than calluses and similar nonacute involvements.
5. Applicants with any history of asthma, hay fever, or any food idiosyncrasies.
6. Applicants with obvious foci of infections.
7. Applicants with a low tolerance for carbohydrates.
8. Applicants with a low alkali reserve.
9. Applicants given to the extensive use of cosmetics.
10. Applicants who are undernourished, or who for any reason appear to lack dietary with sufficient vitamin A.
11. Applicants who for any other reason would be rejected for usual industrial work.
It is recognized that the services of a medical department are requisite for any such examinations. None the less it may prove valuable, in many organizations having outstanding skin hazards, to seek to build up a known immune group of employees.

Unless some such rules or procedure as above devised come into use by those responsible for decisions related to industrial compensation for alleged dermatitis, an increasing amount of injustice to employers and insurance carriers will inevitably arise. It is not maintained that the suggestions made above are adequate or unfailingly applicable, but if they may serve the function of a stepping-stone toward the formulation of a satisfactory basis for the settlement of these cases, a useful purpose will have been served.

[In connection with his paper Doctor McCord demonstrated, with the assistance of Mr. Wiley, some patch testing.]

DISCUSSION

Chairman GEHRMANN. We will now open the meeting for a general discussion of both papers, the one by Doctor Hayhurst and the one by Doctor McCord.

Mr. LEONARD (Ohio). The matter of occupational disease, of course, is a very important one. Very few doctors know anything about occupational diseases, and we must have expert advice in a great many cases.

A great number of dermatitis cases come before us; in fact, we have more cases of dermatitis than any other class of cases. I remember a young man who was a rug salesman, who had to leave the occupation because he contracted dermatitis through handling rugs. A young woman having sugar dermatitis came before us recently. She had to leave her occupation because she could not handle the sugar in a sugar factory. We gave her compensation over a considerable time; the condition on her hand was almost healed, but she could not go back to that occupation.

We had a large number of cases of dermatitis in the rubber industry. They tell me that in the old days the rubber companies used a preparation in the rubber that caused that condition. Doctors tell us that to-day if a man has dermatitis from handling rubber it is because of lack of proper care of his person—lack of cleanliness.

The matter of occupational diseases has given employers and labor men a great deal of concern. In Ohio we have been very careful about the inclusion of occupational diseases. A number of cases which come before us are purely occupational, but they are not covered under our law.

Industry felt that when there is a definite diagnosis, as in the case of chromic acid poisoning, you know what happens to the man. The great fear is that sickness insurance may come out of occupational disease coverage. That is the danger in the workmen’s compensation fund. It is my contention that wherever there is a definite diagnosis, that should be added.

We are making progress in this medical line. It was not so many years ago that tomatoes were considered poison, and that doctors considered water in typhoid fever a fatal proposition. That shows that medical theories change; things we think are so to-day, medically, may be considered differently in a very short time.
We have had cases before us which we know are due to occupation, yet they are not included in the occupational disease schedule. If the industrial commissions could be given the right or the power to determine what is the disease of an occupation—a clearly defined diagnosis of the case—I think it would be for the protection of the workers and of industry. Certainly the greatest care should be taken to see that the covering of occupational disease does not become sickness insurance. That is the important thing for an industry.

Mr. Wilcox. When I think about this problem of the coverage of occupational diseases, I feel the utmost shame because States still pander to the notion that they can not go ahead and plan in their laws to take care of conditions that actually result from industry. I have said on other occasions that there is less justification for the payment of compensation to the man who falls downstairs, or who, while lumbering along, breaks his leg or fractures his skull or something else, than there is for taking care of the liability in the occupational disease type of injury. Each of them is an injury that grows out of the industry.

I am more keenly disappointed to-day than I have been on other occasions to hear Mr. Leonard excuse industry from the payment of its obligation and urge that we ought to include in the laws the right of members of the commissions to determine whether or not the industry is responsible for the particular disease, and in that way let the man have his compensation benefits. Is there any law anywhere in a compensation district where it is not left to the commissioners finally to determine whether or not the injury comes out of the industry?

You might write a whole volume of statutes in which you pretend to give to compensation boards the right to determine whether or not the industry ought to pay for this particular kind of case. That would not help you out any. That has no advantage over just saying plainly that every disease that grows out of the industry shall be compensated. The commissioner is the one who will finally decide. If the disease does not grow out of the industry, it is not compensable; if it does, it is.

In Doctor Hayhurst's paper he points to studies that have been made on silicosis and traces this particular disease to various types of industries with a definiteness that can leave no misunderstanding as to where the men got it. Still every single one of these States that has the schedule system wrote the schedule for the express purpose of keeping silicosis from being covered. They might just as well admit the facts. That is why they adopt the schedule form; their intention is not to include occupational diseases instead of including them.

This talk about waiting until people get around to diagnose these diseases is just the bunk. If we mean what we say, if we have any desire to have our compensation laws what they ought to be and to take care of the hazards of industry, then let us not pick out for favors this fellow who fell downstairs and the other fellow who was monkeying around where he ought not to have been, and the fellow who had been told not to do this and did it, and still leave this silicosis group who walk into a hazard unknown to them, expose themselves
to it year in and year out, finally to become afflicted and then find
that the laws do not protect them because perchance the legislature
in that particular State did not schedule that as one of the occupational
diseases to be covered. I challenge the fundamental of what Mr.
Leonard said and the reasons he gives for not doing anything in
Ohio and in some other States that I could mention.

Mr. Leonard. The point I made is, we want to make this a sensi-
ble proposition; we do not want to make it a sickness proposition.
We want to add everything where there is a definite diagnosis. If
we make it a sickness proposition it will damage the very thing for
which this compensation was intended; we do not want to break the
law down. We want to add everything to the occupational disease
line that we can. The point I was trying to make is that it should
be left to the commission to determine what is an occupational
disease condition. We have added under dermatitis a great many
cases that could not be added under the law. We try to be as
liberal as possible, and we are making progress.

I am not afraid of silicosis with a definite diagnosis. You may
say we should add fibrosis; yet every man in a factory who has
tuberculosis says the industry ought to pay for it because he has a
tubercular condition. We ought to be careful about it. We recog-
nize in industry the aggravation and the preexisting conditions and
the risks of lead poisoning, and that the sequence is tuberculosis.
We compensate that. I think it is the policy of the commission, and
it is the thought of industry, to go ahead and sensibly include the
cases where there is a definite diagnosis of disease which is due to the
occupation.

Mr. Wilcox. Mr. Leonard, why do you say that we do not want
this to be a coverage of sickness? Are you talking about sickness
that grows out of industry or sickness that does not grow out of the
industry?

Mr. Leonard. They already add, in a good many cases, sickness
that would be considered as due to the industry. My point is we
have to be careful in the maintenance of compensation, because if
we are not careful we are going to have sickness insurance.

Mr. Wilcox. Are you worried about your competency to deter-
mine whether or not a man's sickness grew out of the industry?

Mr. Leonard. We are not covering sickness, we are covering
occupational conditions.

Mr. Wilcox. Let us talk about silicosis. What is the reason Ohio
does not include silicosis?

Mr. Leonard. I do not know. I have seen a few very well defined
cases of silicosis. In Canton a man who owned a stone quarry came
in with one of his employees, a man who had worked for him for 30
years. The man's lungs were filled up; there was no question about
it, and there was no question about its being due to the occupation.
I am not afraid of silicosis, but just because some one working
around dust develops tuberculosis does not necessarily mean that it
is compensable.

Canada, New York, I believe, and some other States have a pro-
vision that the man must have worked in the industry for five or six
years—for the same employer, I believe. I believe that is a Canadian
provision. There are not many real cases of silicosis, but the fear is that the inclusion of silicosis may result in a lot of other things being added. I am not afraid of any occupational disease.

Mr. Wilcox. What is the difference between silicosis and any other occupational disease—dermatitis, for example? Dermatitis is covered under your law, but you still have to determine whether that case of dermatitis was caused by the employee's occupation or was contracted elsewhere. You have to do it in any case, and would have to do it with silicosis, so again I ask the question: Why is it you are not covering it under the law, so that if your commission does trace the case of silicosis back to a particular industry you can make it bear the burden? Why does not Ohio do that?

Mr. Leonard. I say that Ohio should include silicosis under definite regulations. You must sell industry on the proposition of getting these things into law. It is not what the commission thinks; it is what industry thinks.

Mr. Wilcox. I submit that it is a matter for the legislature and not a matter for industry. If you wait for industry to determine it, you will keep on waiting.

Mr. Leonard. I am talking about the legislature. If it would give us the power of decision, I think it would be far better, but I think it is afraid to trust the judgment of men who administer funds in the different States.

Chairman Gehrmann. We will ask Doctor Hayhurst if he has anything further to say in closing the discussion.

Doctor Hayhurst. In regard to silicosis and tuberculosis, several of us who have been meeting every few weeks to pass on these X-ray films that doctors send to us alleging silicosis have been able to agree unanimously, before we were through with every film, whether or not the case was silicosis. That is because silicosis is more definitely diagnosable than almost any occupational disease. It is not a hard problem if you have properly taken negatives, a clinical history, a history of exposures. We pay no attention relatively speaking, to whether or not the man has tuberculosis. Of course, we observe it in reporting; we note there is tuberculosis present or there is fibrosis present.

I would say that the cases shown by four out of five of the stereoscopic pairs sent to us—and we like to get the films in pairs so we can stereoscope them—and alleged to be silicosis by the physicians are not silicosis, and we have no difficulty in coming to that conclusion among us.

Regarding compensation and tuberculosis, there is a thought among those who have been giving this subject considerable attention that, so far as compensation is concerned, any case complicated with active tuberculosis should take on the aspects of third-stage silicosis; that is, if the man has tuberculosis his case is as far advanced already as a third-stage silicosis would be.

In that Ohio study we made of sandstone quarrymen mentioned in my paper you will recall there were only 18 cases of tuberculosis found in 912 readable stereoscopic pairs, coordinated with the physical and clinical findings of those men, and only 13 of those had silicosis, so it does not necessarily follow that because silicosis is more
or less prevalent tuberculosis is also. Other things influence the tuberculosis question. It is probable that the explanation is that these men were quarrymen; they were out in the air and sunshine, most of them. A good many of them were in sheds, but the sheds were very loosely constructed. The men had more outdoor exposure than a sand blaster in a mill or plant would have.

I would not have you think that it is altogether simple to diagnose silicosis. We prefer not to render our opinions to the physician and the radiologist until we have had a symposium of persons who are skilled in that matter and who see the films in question. We have been surprised at the fact that we have a Quaker decision every time—all or none.

We have had cases of carcinomatosis that, to all intents and purposes, on the X-ray film look like silicosis, but we do not make a diagnosis until we know the clinical history and background. We have had cases of fungus infections in the lungs with bird-shot looking pathology scattered about, which have not proven difficult at all in differential diagnosis. We have a collection of hundreds of complicating chest and lung conditions for differential diagnosis, such as fractured ribs, humpback, emphysema, heart trouble, abscesses, and so forth; but to anyone who has taken a little time to skill himself in silicosis diagnosis those things count nothing. If they are there, they are complications. They do not disturb the picture, as a rule, so the question is different.

The difficulty comes not in the well-developed case of silicosis, as to whether or not the man has tuberculosis or heart trouble or emphysema or bronchiectasis or a number of other things, but in the mild case in determining whether or not he has the characteristic findings of silicosis. The statement of those findings is technical. They are multiple, diffuse (that is, widespread), miliary (that is, very fine), nodular, fibrotic spots of more or less uniform size in both lungs, associated with a limited amount of fibrosis in the lung areas and decreasing fibrosis as the stages increase from first, to second, to third.

Tuberculosis may enter one lung or one lobe and tend to upset the diagnosis of that particular side. I think silicosis is one of the most satisfactory diseases to come to an agreement upon.

Chairman Gehrmann. Doctor McCord, have you a few words to say in closing?

Doctor McCord. I wonder if I might be permitted to answer Mr. Wilcox's question as to why we do not have compensation for silicosis in this State. Mr. Leonard has stated he does not know the answer. I may not know the reason, but I have certain notions about it, and I would like to state them. At least one of the reasons why we do not have compensation for silicosis is that the courts of our State have held repeatedly that if an occupational disease is not on the schedule then the claimant has no recourse at law whatever.

Mr. Wilcox. I knew that Ohio was operating on a schedule plan, and I meant to contend, as I have contended in many of the meetings of this association, that the reason we adopt schedules is because we want to avoid liability for the diseases that are not scheduled. I understand that the reason the commission does not provide compen-
sation for silicosis is because it is not included in the schedule. Why is it not in the schedule? That is what I am asking.

Doctor McCord. The reason it does not get on the schedule is because the manufacturer knows it will cost money; that is fundamentally the reason. The manufacturers control the legislature. I believe silicosis will go on the schedule at the next session of the legislature.

Behind the manufacturers are a lot of physicians who are pouring into the ears of the manufacturers this story, as Doctor Hayhurst has brought out, that silicosis can not be diagnosed; that it is too difficult; that doctors are unable to diagnose it. They are not honest. Their real reason is they are afraid of State medicine. They translate that fear into those words. As Doctor Hayhurst has pointed out, neither silicosis nor any other occupational disease offers any more diagnostic difficulties than the ordinary run of diseases.

It is most unfair that when a worker in one corner of the factory gets lead poisoning he has all of his hospital bills and compensation paid, and when a man in the same factory in another corner gets silicosis and is equally disabled, perhaps more so because he is not going to get over it, he is told by the industrial commission, “We cannot do anything for you because it is not on the schedule,” and is told by his lawyer that the decision in Ohio has regularly been against such cases.

If your recent experience with silicosis (which you have just published) in which a certain number of cases occurred in the past three years at a certain cost, is applied to Ohio on the basis of total working population, silicosis and all other occupational diseases may be added in the State of Ohio at a cost of about 1 cent per $100 of pay roll, using the 1929 pay roll as a basis. However, if instead of using the entire population, we use a ratio between your workers in the industrial trades and Ohio workers in the industrial trades, it will be necessary to impose a cost of 7 cents per $100 of pay roll to take care of the 51 cases of silicosis that are likely to appear yearly in Ohio, if our experience is the same as yours. You may be sure that there will be compensation for silicosis in Ohio very soon.

Chairman GEHRMANN. We are to have the presentation of a motion picture from the Government of Ontario on physical therapy, and Doctor Hayhurst is also to give us a demonstration of this beam to determine the dust in the air. We will now have the picture.

Mr. KINGSTON (Ontario). The chief medical officer of our board, Doctor Bell, had for quite a long time been urging upon the board the establishment in connection with our work of what, for want of a better term, we have chosen to call a compensation clinic. Doctor Bell’s advice prevailed at last, and we were able to establish the clinic and it has been going ever since. After the doctors have done all they can for a man, we take him in hand at the clinic and try to cure him. We are giving from 30 to 40 treatments in the clinic every day. The pictures that we are showing are the partial results of the operation of the clinic since it was started.

Necessarily the pictures can not show the complete work, but in so far as they do show the work, I hope you will find it demonstrates a class of work that we feel every compensation board ought to consider. Probably a year from now we will be in a position to give
better advice on the subject, but as far as we have gone we are well satisfied that our clinic fills a place in the work of compensation legislation.

These are reeducational exercises. If, after all the doctor has done for him, the man can not use one joint or the other and is not able to work, we hope in this clinic to put the man in a position where he is able to work. I think the pictures will demonstrate to the members of the convention that we have accomplished something really worth while.

[The motion pictures were shown.]

I do not intend to say that this is a panacea for all joint stiffness. We are seeking to have it work in a certain number of cases. If a man has a long-standing ankylosis, there is not very much use in putting him in our clinic. A few of the cases that were shown were near ankylosis, but they were not long-standing cases. All we claim for the clinic is that in a large percentage of the less than complete ankylosis cases we are accomplishing worth-while results. So far we have been so gratified with the results we have obtained that we have had no hesitation in continuing to develop and enlarge the work.

Mr. PARKS (Massachusetts). You have, of course, a State fund.

Mr. KINGSTON. Yes, we have an exclusive State fund.

Mr. PARKS. What you are doing could not be done in a State where there is insurance. You can do it because you can take complete charge of it. What does the medical profession have to say about it? Naturally you took these patients away from them.

Mr. KINGSTON. Before we undertook this work, we consulted with the medical councils of the city and a large number of doctors, and they said to our chief medical officer, "We welcome such an effort as you propose to introduce in your work." As a matter of fact, I do not think that any one of these cases has been taken away from a doctor. They are cases on which the doctor has sent word to us, "This man seems to me hopeless. Take him to your clinic and see what you can do for him."

In this work there is the finest kind of cooperation between the doctors and our medical officer. This is essentially an after-treatment. In all of these cases the man has been through a long course of more or less intensive treatment by his own doctor. The man comes to the clinic as the doctor has left him. Naturally, very few doctors have facilities for doing the work that we are doing, and the clinic is just a means of cooperating in an effort to rehabilitate a man who otherwise would be a seriously disabled man and very much handicapped in any work involving the movement of these joints.

Doctor PARKER (Ohio). Do you contend the treatment along electrical and diathermic lines alone would be of any benefit?

Mr. KINGSTON. Personally, I should not be expected to express a professional opinion on that; I am not a doctor. But I think it stands to reason that neither the one thing nor the other will produce the result; it is a combination of both that produces the result you have seen here.

[A vote of thanks was given Mr. Kingston for bringing this picture from Canada.]
Chairman Gehrmann. Doctor Hayhurst has not yet finished his demonstrations. He has a light he wishes to demonstrate and tell us something about.

[The lights were turned out and the beam thrown across the room.]

Doctor Hayhurst. I think one can see plenty of dust particles dancing about. You might take that as a standard, as to what we see in a solid beam in a good many dusty operations.

Mr. Peters (Ohio). I might give an experience that would be of interest. I was in a furniture factory at Logan. The men put on a sand belt and were polishing or giving a burnishing effect to these pieces of furniture. They were under the impression that the accumulation of dirt above and surrounding the machine was thrown immediately from this operation upon the joist and the beam. I contended it was not. We placed the light above the table and kept raising it until we got up between 30 and 36 inches above the table, when all the particles of dust blown from that film were beginning to come back to the floor.

Then we stopped the machine and went away for about 10 minutes, and came back and focused the light across the floor, about 18 inches from the floor. Immediately upon sweeping it into the beam of light with a push broom the cloud of dirt rolled to the ceiling.

We waited again about 15 minutes and came back. It was a small room, and the air was comparatively clear within 3 or 4 feet of the floor, but by placing the light up against the ceiling we could still see the cloud of fine dust we had stirred from the floor with the push broom, indicating that these particles were too heavy to float on in the air but eventually came close to the ceiling and settled on the tops of the pipes and so forth.

Doctor Hayhurst. This spotlight may be used in a room not nearly so dark as this, but of course the darker the better.

Mr. Peters. It is supposed to throw a beam of light a mile. There is only a 50-candlepower lamp in here; it should have a 100-candlepower lamp.

[Meeting adjourned.]
President Leonard. The first thing on the program is a round-table discussion. If anyone has anything to say, we would be glad to hear from him.

Mr. Wilcox (Wisconsin). In Mr. Sharkey’s paper yesterday, he referred at great length to the desirability of some scheme for funds to take care of the so-called second-injury cases. It was impressed on us at that time that the great value of a system of that sort was not in the fact that you will have many of these cases in which benefits ought to be paid. It is not the matter of expense that is important. The important thing above all else is the fact that if something of that kind is not done, then injured men, men who have sustained the loss of a member, and particularly those who have lost the sight of an eye, will be burdened by that fear of employers to take them on because if they again sustain the loss of a member they may become totally disabled. That is a terrible load for an employee who has been injured to carry, and the laws of the jurisdictions ought to make provision for it.

I gave notice yesterday that I would move at this session for instructions to the committee on uniform legislation to prepare for distribution to the jurisdictions its recommendations on a plan for meeting this problem. I thought it ought to be done by this committee because most State legislatures will be meeting in January, and we have no way at this meeting of passing approval on a plan. The committee may be depended on, I am sure, to develop something worth while, and I feel morally certain that commissions from those States that do not have something of the kind would find good reason for recommending to their legislatures that it be taken care of by amendment.

I move that it is the sense of the association that the committee on workmen’s compensation legislation prepare a recommendation for the use of the various jurisdictions on the matter of an amendment to their law to procure some suitable second-injury legislation.

[The motion was seconded.]

President Leonard. I think that is a fine recommendation, to avoid the difficulty of the man in securing employment after he has lost one member and for the protection of the employer in putting on such a man.

Mr. Wilcox. The employer ought not to have to worry about giving employment to a man of that sort because of the possibility of exorbitant liability in case of an accident.
President Leonard. I presume the proposition would be about the same as it is in Ohio. When a man who has lost one leg is taken into employment and loses another leg, the employer is responsible for the one leg and the remainder is taken from the catastrophe fund. Are there any remarks on the motion?

Mr. Parks (Massachusetts). Mr. Sharkey says 14 States have such a provision.

[The motion was put to a vote and carried.]

Mr. Kingston (Ontario). Perhaps I am speaking before I should, but some one told me that I am to be named as chairman of the standing committee on rehabilitation. I am not worrying about that at the moment, although I would prefer that some one else be named. What I rise to ask is: In what way is it in your or anyone's mind that a standing committee on rehabilitation can function in the interests of this association? What can be done, unless it is in the form of such resolutions as Mr. Wilcox has suggested? Each of us has his rehabilitation provisions.

I do not want to be chairman of a committee which has no room for functioning. It seems foolish to have such a standing committee if there is nothing that it can do effectively in the interests of the work in which we are engaged, unless it is along the line of uniform legislation. If that is the case, then I submit that committee should not be from one of the Canadian Provinces, because uniformity of legislation necessarily is limited, so far as that feature of it is concerned, to the State jurisdiction. I merely make that observation because I find it difficult in my own mind to know whether I can be of any help.

President Leonard. I think there is a very important field for this committee on rehabilitation in putting forward the proposition, in the interest of the injured worker, of a system in each State to help in securing employment for the men, so that a man will not be kept out of employment because he is crippled. As far as rehabilitation is concerned, I think there is a very important field there, Mr. Kingston.

Mr. Kingston. I know that is an important field within your own jurisdiction, but I am speaking from the point of view of this association. We have no contact with anyone except the various boards represented here. Our committee can not have any personal contact with anyone except through these State commissions.

President Leonard. Is not that the important thing, to sell to the State commissions the importance of that work. In a great many States the rehabilitation bureau acts with the commission in an advisory capacity. It is not a member. It is thought best to have the rehabilitation service outside, cooperating with the commission but having no part in the State government. The commission makes the decisions.

That is the way it is in Ohio. We cooperate very closely with the rehabilitation bureau. We send to the bureau investigations to be made throughout the State. On its recommendations we will adjust the wages of a young man at the maximum or put a man on temporary total disability during the training period. I think it would be nice to have it a part of the commission.
[The report of the committee on officers' reports being called for, Mr. Wilcox stated that the commission had no report, as there were no specific recommendations in the president’s address and the recommendation in the secretary-treasurer’s report with regard to the suspension of dues for 1933 had been taken care of by the auditing committee, leaving no recommendation in any officer's report that required the attention of the committee.]

[After the presentation of the new officers to the meeting, the incoming president, R. E. Wenzel, of North Dakota, took the chair and expressed his appreciation of the honor.]

[Mr. Wilcox stated that many States that have compensation laws are not members of the association, and suggested that as the association had provided that there will be no dues next year and as the association is to meet in the central part of the United States the coming year and consequently transportation costs are likely to be at the minimum considering the distance, the association make an earnest drive to prevail upon all those States to have representation at the next meeting. President Wenzel then called on Vice President Nowak for a few words, who responded briefly expressing his appreciation of the honor conferred upon him.]

President WENZEL. Is the resolutions committee ready to report?

REPORT OF THE COMMITTEE ON RESOLUTIONS

Resolved, That the sincere appreciation of this International Association be extended to the citizens of this State and city for the opportunity of holding our nineteenth annual convention in the delightful city of Columbus, the great capital of the Buckeye State. Coming as we do from Canada as well as the United States, we welcome the opportunity of meeting at this gateway to the West with the good people of the State and city whose charming personality has touched the heart of each and every delegate at this convention. The appreciation of this convention is also expressed to Governor White, to his daughter, Miss Mary, and to the State and city officials, who so graciously welcomed us and who so convincingly expressed the friendliness and hospitality of their people. [Adopted.]

Resolved, That the association place on record its acknowledgment of the debt we owe to our secretary emeritus, Ethelbert Stewart, for his invaluable service to this association and the great cause of workmen's compensation in general, in which we are all so interested. His own personal guiding hand for so many years, as the association's secretary, was recognized as the balance weight and mainspring of the association's activities.

Mr. Stewart’s whole life has been devoted to the service of his fellow men, and the members of this association express the earnest hope and prayer that he may long be spared to continue in the work that he loves so well. [Adopted.]

Resolved, That this association express its thanks to the Columbus Chamber of Commerce for its hospitality; to our former president, Wellington T. Leonard, of Ohio, to Mr. T. A. Edmonson, director of the Ohio Department of Industrial Relations, and to their wives; and to the associates and staff of the Ohio Department of Industrial Relations and their wives; and to Mr. and Mrs. Emil E. Watson, whose untiring efforts have been manifested in the delightful hospitality enjoyed throughout our stay in this city, this association extends its very deep appreciation. [Adopted.]
Resolved, That the association express its thanks to Mr. George A. Kingston, of Ontario, for his kindness in presenting the interesting film showing the good work of the clinic of the Workmen's Compensation Board of Ontario. [Adopted.]

James J. Donohue, Chairman.

Abel Klaw.

Lee Ott.

R. E. Wenzel.

Charles F. Sharkey.

[The report of the proceedings at the Richmond convention, as embodied in Bulletin No. 564 of the United States Bureau of Labor Statistics, was accepted as the approved minutes of the Richmond convention.]

[Meeting adjourned.]
Appendix A.—Officers and Members of Committees for 1932–33

**President,** R. E. Wenzel, chairman North Dakota Workmen’s Compensation Bureau.

**Vice president,** Charles A. Nowak, chairman Illinois Industrial Commission.

**Secretary-treasurer,** Charles E. Baldwin, acting United States Commissioner of Labor Statistics.

**EXECUTIVE COMMITTEE**

R. E. Wenzel, North Dakota Workmen’s Compensation Bureau.

Charles A. Nowak, Illinois Industrial Commission.


Wellington T. Leonard, Ohio Department of Industrial Relations.

Fred W. Armstrong, Nova Scotia Workmen’s Compensation Board.

Parke P. Deans, Virginia Department of Workmen’s Compensation, Industrial Commission.

Joseph A. Parks, Massachusetts Department of Industrial Accidents.

Walter O. Stack, Delaware Industrial Accident Board.

Fred M. Wilcox, Wisconsin Industrial Commission.

**COMMITTEE ON STATISTICS AND COMPENSATION INSURANCE COSTS**

**Chairman,** L. W. Hatch, New York Department of Labor.

**Secretary,** S. Kjaer, United States Bureau of Labor Statistics.

Charles R. Blunt, New Jersey Department of Labor.

Marie Brindell, Kansas Commission of Labor and Industry.

Albert E. Brown, Maryland Industrial Accident Commission.

E. I. Evans, Ohio Department of Industrial Relations.

O. A. Fried, Wisconsin Industrial Commission.

Sharpe Jones, Georgia Department of Industrial Relations.

George A. Kingston, Ontario Workmen’s Compensation Board.

William J. Maguire, Pennsylvania Department of Labor and Industry.

Howard B. Myers, Illinois Department of Labor.

W. C. Preckel, North Dakota Workmen’s Compensation Bureau.

O. E. Sharpe, Quebec Workmen’s Compensation Commission.

**MEDICAL COMMITTEE**

**Chairman,** Samuel S. Graves, M. D., Illinois.

Maurice S. Avidan, M. D., New Jersey Department of Labor.

D. E. Bell, M. D., Ontario Workmen’s Compensation Board.

Frederic A. Besley, M. D., Illinois.

W. H. Bodenstab, M. D., North Dakota.

James J. Donohue, M. D., Connecticut Board of Compensation Commissioners.

H. H. Dorr, M. D., Ohio Department of Industrial Relations.

John D. Ellis, M. D., Illinois.

Oliver J. Fay, M. D., Iowa Workmen’s Compensation Service.

G. H. Gehrmann, M. D., Delaware.

LeRoy P. Kuhn, M. D., Illinois.

M. D. Morrison, M. D., Nova Scotia Workmen’s Compensation Board.

Vinton A. Muller, M. D., Nevada Industrial Commission.

C. W. Roberts, M. D., Georgia Department of Industrial Relations.

H. U. Stephenson, M. D., Virginia.

**COMMITTEE ON SAFETY AND SAFETY CODES**

**Chairman,** Thomas P. Kearns, Ohio Department of Industrial Relations.

**Vice chairman,** R. B. Morley, Ontario.


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APPENDIX B.—Constitution of the International Association of Industrial Accident Boards and Commissions

ARTICLE I

This organization shall be known as the International Association of Industrial Accident Boards and Commissions.

ARTICLE II—Objects

SECTION 1. This association shall hold meetings once a year, or oftener, for the purpose of bringing together the officials charged with the duty of administering the workmen’s compensation laws of the United States and Canada to consider, and, so far as possible, to agree on standardizing (a) ways of cutting down accidents; (b) medical, surgical, and hospital treatment for injured workers; (c) means for the reeducation of injured workmen and their restoration to industry; (d) methods of computing industrial accident and sickness insurance costs; (e) practices in administering compensation laws; (f) extensions and improvements in workmen’s compensation legislation; and (g) reports and tabulations of industrial accidents and illnesses.
Sec. 2. The members of this association shall promptly inform the United States Bureau of Labor Statistics and the Department of Labor of Canada of any amendments to their compensation laws, changes in membership of their administrative bodies, and all matters having to do with industrial safety, industrial disabilities and compensation, so that these changes and occurrences may be noted in the Monthly Labor Review of the United States Bureau of Labor Statistics and 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.

Sec. 3. **Associate membership.**—Any organization or individual actively interested in any phase of workmen's compensation or social insurance may be admitted to associate membership in this association by vote of the executive committee. Associate members shall be entitled to attend all meetings and participate in discussions, but shall have no vote either on resolutions or for the election of officers in the association.

Sec. 4. **Honorary life membership.**—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.

**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, during the term for which he was chosen, shall cease to be an official of any agency entitled to active membership, he may serve out his term of office in this association; but, if for any reason a vacancy occurs, the executive committee shall appoint a successor to serve for the remainder of the term.

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 Nineteenth Annual Meeting of the International Association of Industrial Accident Boards and Commissions, Held at Columbus, Ohio, September 26–29, 1932

Canada

Nova Scotia

F. W. Armstrong, workmen's compensation board, Halifax.

Ontario

George A. Kingston, workmen's compensation board, Toronto.
Mrs. George A. Kingston, Toronto.
R. B. Morley, Industrial Accident Prevention Associations, Toronto.

United States

Arizona

William E. Hunter, industrial commission, Phoenix.

Connecticut

James J. Donohue, M. D., board of compensation commissioners, Norwich.
Mrs. James J. Donohue, Norwich.
Frank M. Dunn, M. D., New London.
Mrs. Frank M. Dunn, New London.
APPENDIX C.—LIST OF PERSONS ATTENDING

Delaware
Walter O. Stack, industrial accident board, Wilmington.

District of Columbia
Clara M. Beyer, United States Children's Bureau.
R. M. Clark, United States Daily.
Marie Correll, United States Women's Bureau.
Ethelbert Stewart, 1210 Delafield Place, NW.

Georgia
C. W. Roberts, M. D., department of industrial relations, Atlanta.

Illinois
Charles A. Nowak, industrial commission, Chicago.
Mrs. Charles A. Nowak, Chicago.

Kansas
Marie Brindell, commission of labor and industry. Topeka.

Maine
Granville, C. Gray, industrial accident commission, Augusta.

Maryland
Thomas N. Bartlett, Maryland Casualty Co., Baltimore.

Massachusetts
Helen C. Barry, Boston.
Samuel B. Horovitz, Boston.
Mrs. Samuel B. Horovitz, Boston.
Joseph A. Parks, department of industrial accidents, Boston.
Mrs. Joseph A. Parks, Boston.

Michigan
J. G. Stevenson, General Motors Corporation, Detroit.

New Jersey
Henry H. Kessler, M. D., New Jersey Rehabilitation Commission, Newark.

New York
E. B. Patton, division of statistics and information, New York.
Frances Perkins, department of labor, New York.
Sidney W. Wilcox, division of statistics and information, New York.

North Carolina
Matt H. Allen, industrial commission, Raleigh.

North Dakota
W. C. Preckel, workmen's compensation bureau, Bismarck.
R. E. Wenzel, workmen's compensation bureau, Bismarck.
Ohio

Frank M. Baggs, Employers' Association, Portsmouth.
H. D. Bangert, of Emile E. Watson, Columbus.
W. J. Barnum, Youngstown Sheet Tube Co., Youngstown.
J. W. Beall, Ohio State Foundries, Lima.
Carl C. Beasor, division of safety and hygiene, Columbus.
Mrs. Carl C. Beasor, Columbus.
F. G. Bennett, Buckeye Steel Castings, Columbus.
Arnold Bill, Ohio State Council of Carpenters, North Olmstead.
W. C. Bird, American Steel & Wire Co., Cleveland.
John Bowen, Jr., division of safety and hygiene, Columbus.
Oscar Brown.
Clarence A. Carson, Libbey-Owens-Ford Glass Co., Toledo.
Charles J. Case, Ohio State Building Council, Cincinnati.
P. F. Casey, Cleveland.
Mrs. P. F. Casey, Cleveland.
G. L. Coffinberry, department of industrial relations, Columbus.
C. C. Core, department of industrial relations, Columbus.
Catherine Court, division of safety and hygiene, Columbus.
Dr. L. R. Courtright, Dayton.
Dorothy Davidson, division of safety and hygiene, Columbus.
H. S. Day, State treasurer, Columbus.
T. J. Donnelly, Ohio State Federation of Labor, Columbus.
Mrs. T. J. Donnelly, Columbus.
H. H. Dorr, M. D., division of workmen's compensation, Columbus.
Mrs. H. H. Dorr, Columbus.
T. J. Duffy, Columbus.
Mrs. T. J. Duffy, Columbus.
Mildred G. Durbin, department of industrial relations, Columbus.
T. A. Edmondson, department of industrial relations, Columbus.
Mrs. T. A. Edmondson, Columbus.
Lucile Edmondson, Columbus.
W. E. Elder, M. D., industrial commission, Columbus.
H. L. Ennis, Columbus Metal Trades Association, Columbus.
E. I. Evans, division of workmen's compensation, Columbus.
Mrs. E. I. Evans, Columbus.
G. B. Faber, M. D., industrial commission, Columbus.
Larry W. Fisher, of Jarvis & Fisher, Columbus.
Vera L. Fisher, department of industrial relations, Columbus.
Mrs. Furie E. Foreman, department of industrial relations, Columbus.
Orval Furniss, division of safety and hygiene, Columbus.
John B. Gilbert, division of labor statistics, Columbus.
E. A. Griffiths, Republic Steel Corporation, Massillon.
T. M. Gregory, industrial commission, Columbus.
G. T. Harding, M. D., Worthington.
W. A. Harman, of Emile E. Watson, Columbus.
Emery R. Hayhurst, M. D., consulting hygienist State department of health, Columbus.
Ross Hedges, department of industrial relations, Columbus.
W. J. Hightey, Toledo.
L. B. Holladay, M. D., industrial commission, Columbus.
J. G. Holmes, Columbus.
Mrs. J. G. Holmes, Columbus.
S. M. Horen, M. D., industrial commission, Columbus.
Mrs. S. M. Horen, Columbus.
George H. Jarvis, of Jarvis & Fisher, Columbus.
R. W. Jenkins, Columbus.
John W. Jockel, Ohio State Conference of Bricklayers, Masons, and Plasterers' International Union, Cleveland.
T. P. Kearns, division of safety and hygiene, Columbus.
Mrs. T. P. Kearns, Columbus.
Mrs. F. W. Knowlton, Akron.
Wellington T. Leonard, industrial commission, Columbus.
Mrs. Wellington T. Leonard, Columbus.
W. E. Lloyd, M. D., department of industrial relations, Columbus.
J. D. Lyle, Fisher Body Co., Cleveland.
APPENDIX C.—LIST OF PERSONS ATTENDING

William H. Mahoney, division of workmen's compensation, Columbus.
Walter H. Maushund, department of industrial relations, Columbus.
Mrs. W. H. Maushund, Columbus.
C. McClusky, Ohio State University, Columbus.
Carey P. McCard, M. D., Industrial Health Conservancy Laboratories, Cincinnati.
John M. McElroy, Columbus.
G. E. McKenna, Ohio Edison Co., Akron.
W. S. Mendenhall, division of safety and hygiene, Columbus.
W. K. Merriman, department of industrial relations, Columbus.
Mrs. W. K. Merriman, Columbus.
J. S. Millard, M. D., Goodyear Tire & Rubber Co., Akron.
C. E. Miller, Goodyear Tire & Rubber Co., Akron.
George F. Mooney, Associated Building Contractors of Ohio, Columbus.
John Moore, division of safety and hygiene, Columbus.
Inez Morrow, industrial commission, Columbus.
J. M. Morse, M. D., industrial commission, Columbus.
R. W. Morse, Firestone Tire & Rubber Co., Akron.
R. W. Nott, industrial commission, Columbus.
L. E. Nysewander, industrial commission, Columbus.
Mrs. L. E. Nysewander, Columbus.
Helen Oates, of Emile E. Watson, Columbus.
W. E. Obetz, M. D., division of safety and hygiene, Columbus.
J. W. Parker, M. D., industrial commission, Columbus.
C. B. Patrie, Frigidaire Corporation, Dayton.
H. M. Paul, division of safety and hygiene, Columbus.
Marlow B. Perrin, department of education, Columbus.
Warren F. Perry, Ohio Manufacturers' Association, Columbus.
H. W. Peters, Columbus.
Charles T. Philipp, of Emile E. Watson, Columbus.
Lee Pritchard, industrial commission, Columbus.
Mrs. Lee Pritchard, Columbus.
John L. Rice, Columbus.
A. L. Rose, division of safety and hygiene, Columbus.
Mrs. A. L. Rose, Columbus.
Ann Rosenthal, Columbus.
Harry L. Sain, division of safety and hygiene, Columbus.
Mrs. Harry L. Sain, Columbus.
Bradford C. Scudder, M. D., Grasselli Chemical Co., Cleveland.
Fred M. Secrest, Cleveland.
Helen C. Simons, industrial commission, Columbus.
Harold D. Sites, Ohio Manufacturers' Association.
S. S. Stewart, Columbus.
Mrs. S. S. Stewart, Columbus.
Lloyd D. Teeters, department of industrial relations, Columbus.
Mrs. L. D. Teeters, Columbus.
C. E. Toops, M. D., industrial commission, Ohio.
Emile E. Watson, Columbus.
Mrs. Emile E. Watson, Columbus.
Mrs. Gertrude S. Weaver, department of industrial relations, Columbus.
Willis Wissler, Ohio State University, Columbus.
R. C. Wohrley, M. D., industrial commission, Columbus.
C. E. Young, American Steel & Wire Co., Cleveland.

Pennsylvania

W. F. Amos, Bethlehem Steel Co., Bethlehem.
Mrs. H. E. Bricker, Philadelphia.
Thomas E. Lightfoot, Koppers Coal Co., Pittsburgh.

Virginia

W. F. Bursey, industrial commission, Richmond.
Mrs. W. F. Bursey, Richmond.
Parke P. Deans, industrial commission, Richmond.
Mrs. Parke P. Deans, Richmond.
West Virginia

E. S. Bippus, M. D., workmen's compensation department, Wheeling.
W. E. Brewer, M. D., Logan.
H. G. Camper, M. D., workmen's compensation department, Welch.
E. A. Ellis, Wheeling Steel Corporation, Wheeling.
F. B. Harrington, M. D., Weirton Steel Co., Weirton.
Russel Kessel, M. D., workmen's compensation department, Charleston.
R. G. Kirby, Koppers Coal Co., Keystone.
W. R. Mendenhall, workmen's compensation department, Charleston.
H. G. Morgan, workmen's compensation department, Charleston.
Lee Ott, workmen's compensation department, Charleston.
Cecil O. Post, M. D., workmen's compensation department, Clarksburg.
H. L. Rebrassier, Wheeling.
C. W. Waddell, M. D., workmen's compensation department, Fairmont.
Robert Wriston, workmen's compensation department, Beckley.

Wisconsin

A. J. Altmeyer, industrial commission, Madison.
Mrs. A. J. Altmeyer, Madison.
Fred B. Wilcox, Wisconsin University, Madison.
Mrs. Fred B. Wilcox, Madison.
Fred M. Wilcox, industrial commission, Madison.
Mrs. Fred M. Wilcox, Madison.
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LIST OF BULLETINS OF THE BUREAU OF LABOR STATISTICS

The following is a list of all bulletins of the Bureau of Labor Statistics published since July, 1912, except that in the case of bulletins giving the results of periodic surveys of the bureau only the latest bulletin on any one subject is here listed. A complete list of the reports and bulletins issued prior to July, 1912, as well as the bulletins published since that date, will be furnished on application. Bulletins marked thus (*) are out of print.

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 on its inquiry into industrial agreements. [1913.]
*No. 139. Michigan copper district strike. [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. [1918.]
*No. 198. Collective agreements in the men's clothing industry. [1919.]
No. 233. Operation of the industrial disputes investigation act of Canada. [1918.]
No. 255. Joint industrial councils in Great Britain. [1919.]
No. 283. History of the Shipbuilding Labor Adjustment Board, 1917 to 1919. [1920.]
No. 287. National War Labor Board: History of its formation and activities, etc. [1921.]
*No. 303. Use of Federal power in settlement of railway labor disputes. [1922.]
*No. 341. Trade agreements, 1923.
No. 355. Collective bargaining by actors. [1923.]
No. 402. Collective bargaining by actors. [1923.]
No. 408. Joint industrial control in the book and job printing industry. [1923.]

Cooperation.

No. 313. Consumers' cooperative societies in the United States in 1920. [1920.]
No. 314. Cooperative credit societies (credit unions) in America and in foreign countries. [1922.]
No. 357. Cooperative movement in the United States in 1926 (other than agricultural). [1926.]
No. 351. Consumers', credit, and productive cooperative societies, 1922. [1922.]

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. [1916.]
*No. 183. Regularity of employment in the women's ready-to-wear garment industries. [1915.]
*No. 195. Unemployment in the United States. [1916.]
*No. 341. Public employment offices in the United States. [1918.]
*No. 391. Statistical study of unemployment: A statistical study of its extent and causes. [1922.]
No. 409. Unemployment in Columbus, Ohio, 1921 to 1925. [1925.]
No. 444. Unemployment-benefit plans in the United States and unemployment insurance in foreign countries. [1931.]
*No. 533. Fluctuation in employment in Ohio, 1914 to 1929. [1929.]
No. 555. Social and economic character of unemployment in Philadelphia, April, 1930. [1930.]
No. 574. Technological changes and employment in the United States Postal Service. [1932.]

Foreign labor laws.

*No. 142. Administration of labor laws and factory inspection in certain European countries. [1914.]
No. 294. Labor legislation of Uruguay. [1920.]
No. 315. Labor legislation of Argentina. [1920.]
No. 320. Workmen's compensation legislation of the Latin American countries. [1930.]
No. 340. Labor legislation of Venezuela. [1931.]
No. 344. Labor legislation of Paraguay. [1931.]
No. 359. Labor legislation of Ecuador. [1931.]
No. 469. Labor legislation of Mexico. [1932.]

Housing.

*No. 139. Government aid to home owning and housing of working people in foreign countries. [1914.]
No. 393. Housing by employers in the United States. [1930.]
Industrial accidents and hygiene.

*No. 104. Lead poisoning in potteries, tile works, and porcelain-enamed sanitary ware factories. [1912.]
No. 120. Hygiene of the painter's trade. [1913.]
*No. 127. Dangers to workers from dusts and fumes, and methods of protection. [1913.]
*No. 141. Lead poisoning in the smelting and refining of lead. [1914.]
*No. 187. Industrial accident statistics. [1915.]
*No. 190. Lead poisoning in the manufacture of storage batteries. [1914.]
*No. 179. Industrial poisoning 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. [1918.]
*No. 201. Report of the committee on statistics and compensation insurance costs of the International Association of Industrial Accident Boards and Commissions. [1918.]

No. 206. Hygiene of the printing trades. [1917.]
*No. 219. Industrial accidents and hygiene. [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. The safety movement in the iron and steel industry, 1907 to 1917.
No. 236. Effects of the air hammer on the hands of stonecutters. [1918.]
*No. 240. Industrial health and efficiency. Final report of British Health of Munitions Workers' Committee. [1919.]

*No. 251. Preventable death in the cotton-manufacturing industry. [1919.]
No. 256. Accidents and accident prevention in machine building. [1919.]
No. 257. Anthrax as an occupational disease. [1920.]
No. 275. Standardization of industrial accident statistics. [1920.]
*No. 280. Industrial poisoning in making coal-tar dyes and dye intermediates. [1921.]
*No. 291. Carbon monoxide poisoning. [1921.]
No. 293. The problem of dust phthisis in the granite-stone industry. [1922.]
No. 298. Causes and prevention of accidents in the iron and steel industry, 1918-1919.
No. 306. Occupation hazards and diagnostic signs: A guide to impairments to be looked for in hazardous occupations. [1922.]

No. 302. Survey of hygienic conditions in the printing trades. [1925.]
No. 306. Phosphorus sores in the manufacture of fireworks and in the preparation of phosphorus. [1926.]
No. 427. Health survey of the printing trades, 1922 to 1925.

No. 430. A new test for industrial lead poisoning. [1928.]
No. 456. Settlement for accidents to American seamen. [1928.]
No. 458. Deaths from lead poisoning, 1925-1927.
No. 507. Causes of death, by occupation. [1930.]

Industrial relations and labor conditions.

No. 237. Industrial unrest in Great Britain. [1917.]
*No. 240. Chinese migrations, with special reference to labor conditions. [1923.]
*No. 249. Industrial relations in the West Coast lumber industry. [1923.]
No. 251. Labor relations in the Fairmont (W. Va.) bituminous-coal field. [1924.]
No. 260. Postwar labor conditions in Germany. [1925.]
No. 263. Works council movement in Germany. [1925.]
No. 264. Labor conditions in the shoe industry in Massachusetts, 1920-1924.
No. 299. Labor relations in the lace and lace-curtain industries in the United States. [1925.]

Labor laws of the United States (including decisions of courts relating to labor).

*No. 211. Labor laws and their administration in the Pacific States. [1917.]
No. 229. Wage payment legislation in the United States. [1917.]
No. 265. Minimum wage laws of the United States: Construction and operation. [1921.]
No. 267. Labor laws that have been declared unconstitutional. [1923.]
No. 270. Labor laws of the United States, with decisions of courts relating thereto. [1923.]
No. 401. Laws relating to payment of wages. [1926.]
No. 532. Labor legislation, 1930.

Proceedings of annual conventions of the Association of Govermental Officials in Industry of the United States and Canada. (Name changed in 1929 from Association of Govermental Labor Officials of the United States and Canada.)

No. 297. Eighth, New Orleans, La., May 2-6, 1921.
No. 332. Tenth, Richmond, Va., May 1-4, 1923.
*No. 411. Twelfth, Salt Lake City, Utah, August 13-15, 1925.
*No. 429. Thirteenth, Columbus, Ohio, June 7-10, 1926.
*No. 406. Sixteenth, Toronto, Canada, June 4-7, 1929.
Proceedings of annual meetings of the International Association of Industrial Accident Boards and Commissions.

No. 210. Third, Columbus, Ohio, April 23-26, 1916.
No. 264. Fifth, Madison, Wis., September 24-27, 1918.
No. 273. Sixth, Toronto, Canada, September 23-26, 1919.
No. 333. Ninth, Baltimore, Md., October 6-10, 1922.
No. 385. Eleventh, Dallas, Texas, August 26-28, 1924.
No. 395. Index to proceedings, 1914-1924.
No. 432. Thirteenth, Detroit, Mich., September 14-17, 1926.
No. 381. Sixteenth, Buffalo, N. Y., October 8-11, 1929.
No. 395. Seventeenth, Wilmington, Del., September 22-26, 1930.
No. 544. Eighteenth, Richmond, Va., October 5-8, 1931.

Proceedings of annual meetings of the International Association of Public Employment Services.

No. 120. First, Chicago, December 19 and 20, 1913; second, Indianapolis, September 24 and 25, 1914; third, Detroit, July 3 and 4, 1915.
No. 311. Ninth, Buffalo, N. Y., September 7-9, 1921.
No. 337. Tenth, Washington, D. C., September 11-13, 1922.
No. 351. Eleventh, Toronto, Canada, September 4-7, 1923.
No. 400. Twelfth, Chicago, Ill., May 19-23, 1924.
No. 414. Thirteenth, Rochester, N. Y., September 15-17, 1925.
No. 478. Fourteenth, Detroit, Mich., October 23-26, 1926.
No. 501. Fifteenth, Cleveland, Ohio, September 18-21, 1927.

Productivity of labor.

No. 356. Productivity costs in the common-brick industry. [1924.]
No. 269. Time and labor costs in manufacturing 100 pairs of shoes, 1923.
No. 407. Labor and production of wages and hours of labor in the paper box-board industry [1926.]
No. 412. Wages, hours, and productivity in the pottery industry, 1925.
No. 416. Productivity of labor in the paper industry. [1926.]
No. 474. Productivity of labor in merchant blast furnaces. [1928.]
No. 475. Productivity of labor in newspaper printing. [1929.]
No. 550. Cargo handling and longshore labor conditions. [1930.]

Retail prices and cost of living.

*No. 121. Sugar prices, from refiner to consumer. [1913.]
*No. 130. Wheat and flour prices, from farmer to consumer. [1913.]
*No. 184. Butter prices, from producer to consumer. [1914.]
*No. 167. Foreign food prices as affected by the war. [1915.]
No. 357. Cost of living in the United States. [1924.]
No. 369. The use of cost-of-living figures in wage adjustments. [1925.]
No. 446. Retail prices, 1890 to 1929.

Safety codes.

*No. 351. Safety code for the construction, care, and use of ladders.
No. 375. Safety code for laundry machinery and operations.
No. 400. Safety code for paper and pulp mills.
*No. 418. Safety code for power presses and foot and hand presses.
No. 447. Safety code for rubber mills and calenders.
No. 463. Safety code for mechanical power-transmission apparatus—first revision.
No. 509. Textile safety code.
No. 519. Safety code for woodworking plants, as revised 1930.
*No. 527. Safety code for use, care, and protection of abrasive wheels, as revised 1930.
No. 556. Code of lighting: Factories, mills, and other work places. (Revision of 1930.)
No. 562. Safety codes for the prevention of dust explosions.

Vocational and workers' education.

*No. 185. Short-unit courses for wage earners, and a factory school experiment. [1915.]
*No. 192. Vocational education survey of Richmond, Va. [1915.]
*No. 199. Vocational education survey of Minneapolis, Minn. [1917.]
No. 271. Adult working-class education in Great Britain and the United States. [1920.]
No. 459. Apprenticeship in building construction. [1928.]

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Wages and hours of labor.

- No. 146. Wages and regularity of employment and standardization of piece rates in the dress and waist industry of New York City. [1914.]
- No. 147. Wages and regularity of employment in the cloak, suit, and skirt industry. [1914.]
- No. 161. Wages and hours of labor in the clothing and cigar industries, 1911 to 1913.
- No. 165. Wages and hours of labor in the building and repairing of steam railroad cars, 1907 to 1913.
- No. 191. Wages and hours of labor in the cotton, woolen, and silk industries, 1907 to 1914.
- No. 204. Street-railway employment in the United States. [1917.]
- No. 218. Wages and hours of labor in the iron and steel industry, 1907 to 1915: With a glossary of occupations.
- No. 225. Wages and hours of labor in the lumber, millwork, and furniture industries, 1915.
- No. 250. Welfare work for employees in industrial establishments in the United States. [1919.]
- No. 253. Women in the lead industries. [1919.]
- No. 416. Hours and earnings in anthracite and bituminous coal mining, 1922 and 1924.
- No. 450. History of wages in the United States from colonial times to 1928.
- No. 502. Wages and hours of labor in the motor-vehicle industry, 1926.
- No. 504. Wages and hours of labor in the hosery and underwear industries, 1907 to 1926.
- No. 516. Hours and earnings in bituminous-coal mining, 1929.
- No. 523. Wages and hours of labor in the manufacture of airplanes and aircraft engines, 1929.
- No. 526. Wages and hours of labor in the Portland cement industry, 1929.
- No. 532. Wages and hours of labor in the cigar manufacturing industry, 1930.
- No. 533. Wages and hours of labor in woolen and worsted goods manufacturing, 1910 to 1930.
- No. 534. Wages and hours of labor in the dyeing and finishing of textiles, 1930.
- No. 535. Wages and hours of labor in cotton goods manufacturing, 1910 to 1930.
- No. 537. Wages and hours of labor in rayon and other synthetic manufacturing, 1930.
- No. 538. Wages and hours of labor in cane-sugar refining industry, 1930.
- No. 551. Wages and hours of labor in the boot and shoe industry, 1910 to 1930.
- No. 553. Wages and hours of labor in the men's clothing industry, 1911 to 1930.
- No. 555. Wages and hours of labor in the lumber industry in the United States, 1930.
- No. 566. Union scales of wages and hours of labor, May 15, 1931.
- No. 569. Wages and hours of labor in the iron and steel industry, 1931.
- No. 570. Wages and hours of labor in the manufacture of silk and rayon goods, 1931.
- No. 574. Wages and hours of labor in foundries and machine shops, 1931.
- No. 575. Wages and hours of labor in the furniture industry, 1916 to 1931.
- No. 576. Wages and hours of labor in air transportation, 1931.
- No. 578. Wages and hours of labor in the slaughtering and meat-packing industry, 1931.

Welfare work.

- No. 123. Employers' welfare work. [1913.]
- No. 222. Welfare work in British munition factories. [1917.]
- No. 259. Welfare work for employees in industrial establishments in the United States. [1919.]
- No. 456. Health and recreation activities in industrial establishments, 1926.

Wholesale prices.

- No. 294. Index numbers of wholesale prices in the United States and foreign countries. [1921.]
- No. 453. Revised index numbers of wholesale prices, 1923 to July, 1927.
- No. 572. Wholesale prices, 1931.

Women and children in industry.

- No. 116. Hours, earnings, and duration of employment of wage-earning women in selected industries in the District of Columbia. [1915.]
- No. 117. Prohibition of night work of young persons. [1913.]
- No. 118. Ten-hour maximum working-day for women and young persons. [1913.]
- No. 119. Working hours of women in the pea canneries of Wisconsin. [1913.]
- No. 123. Employment of women in power laundries in Milwaukee. [1913.]
- No. 160. Hours, earnings, and conditions of labor of women in Indiana mercantile establishments and garment factories. [1914.]
- No. 167. Minimum-wage legislation in the United States and foreign countries. [1915.]
- No. 172. Summary of the report on condition of women and child wage earners in the United States. [1915.]
- No. 176. Effect of minimum-wage determinations in Oregon. [1915.]
- No. 180. The boot and shoe industry in Massachusetts as a vocation for women. [1915.]
- No. 183. Unemployment among women in department and other retail stores of Boston, Mass. [1916.]
- No. 215. Industrial experience of trade-school girls in Massachusetts. [1917.]
- No. 217. Effect of workmen's compensation laws in diminishing the necessity of industrial employment of women and children. [1917.]
- No. 225. Employment of women and juveniles in Great Britain during the war. [1917.]
- No. 525. Wages and hours of labor in the Portland cement industry, 1929.
- No. 557. Wages and hours of labor in the men's clothing industry, 1911 to 1930.
- No. 560. Wages and hours of labor in the lumber industry in the United States, 1930.
- No. 567. Wages and hours of labor in the furniture industry, 1916 to 1931.
- No. 568. Wages and hours of labor in the manufacture of airplanes and aircraft engines, 1929.
- No. 569. Wages and hours of labor in the iron and steel industry, 1931.
- No. 570. Wages and hours of labor in the manufacture of silk and rayon goods, 1931.
Workmen's insurance and compensation (including laws relating thereto).

*No. 101. Care of tuberculous wage earners in Germany. [1912.]
*No. 102. British national insurance act, 1911.
*No. 103. Sickness and accident insurance law in Switzerland. [1912.]
*No. 155. Compensation for accidents to employees of the United States. [1914.]
*No. 212. Proceeding of the conference on social insurance called by the International Association of Industrial Accident Boards and Commissions, Washington, D. C., December 8-9, 1918.
*No. 301. Comparison of workmen's compensation insurance and administration. [1922.]
*No. 312. National health insurance in Great Britain, 1911 to 1921.
*No. 379. Comparison of workmen's compensation laws of the United States as of January 1, 1925.
No. 477. Public-service retirement systems, United States and Europe. [1929.]
No. 496. Workmen's compensation legislation of the United States and Canada as of January 1, 1929. (With text of legislation enacted in 1927 and 1928.)
*No. 529. Workmen's compensation legislation of the Latin American countries. [1930.]

Miscellaneous series.

No. 208. Profit sharing in the United States. [1916.]
No. 294. International labor legislation and the society of nations. [1919.]
No. 268. Historical survey of international action affecting labor. [1920.]
No. 342. International Seamen's Union of America: A study of its history and problems. [1923.]
No. 346. Humanity in government. [1923.]
No. 386. Cost of American almshouses. [1926.]
No. 401. Family allowances in foreign countries. [1926.]
No. 461. Labor organizations in Chile. [1928.]
No. 479. Activities and functions of a State department of labor. [1928.]
No. 483. Conditions in the shoe industry in Haverhill, Mass., 1928.
*No. 488. Care of aged persons in United States. [1928.]
No. 505. Director of homes for the aged in the United States. [1929.]
No. 561. Public old-age pensions and insurance in the United States and in foreign countries. [1933.]
No. 585. Park recreation areas in the United States, 1930.