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Occupational Disease Big Field for WC Awards, Stone Tells Self Insurers

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The broad application of the substantial evidence rule during the past year in workmen's compensation cases in New York has led to a slight, but evident, tightening of the requirements for proof of a claim, Solon J. Stone of Kenefick, Bass, Letchworth, Baldy & Phillips, Buffalo law firm, told Self-Insurers' Assn. at its annual meeting in New York City. He said he does not think it is quite so easy today as it formerly was for a claimant to establish his case, though the courts are as liberal as they possibly can be in their interpretation of the law.

He also thinks that New York Workmen's Compensation Board has decided that the big field for the making of awards is in occupational disease, rather than in accidents, and that the courts have given the board the go sign in this regard. The definition of "accident" may be tightened up, but

at the same time it may be easier to obtain an award in a case in which there was no accident than it was a few years ago.

The case of Lesnik vs National Car-loading Corp. presents the opportunity for a new start on the definition of "accident," he feels. In this case the claimant was vice-president of the firm. He suffered a heart attack while attending a horse race in California. He was awarded compensation by the WC board, but the appellate court reversed the board's finding. The theory of accident upon which the board based the award was that the claimant, before going to the race track, had been following an unusually active schedule of work in an effort to build up revenues with which he was especially concerned and which had been falling off. The claimant was worn down by this continued effort and suffered the

heart attack as a result.

The decision of the appellate division of the New York court was divided three for reversal and two against. The case has been presented to the appeals court. If the majority opinion is affirmed, Mr. Stone believes it will represent a plateau from which defense representatives can work with some certainty on the subject of what constitutes an accident.

The majority opinion specifically states that the injuries rose out of, and in the course of, employment, he said. However, the majority was unable to find that an accident had occurred and reversed the decision and dismissed the claim.

In reversing, the majority stated that no eventful happening had been demonstrated to have caused the injury; that the injury's only connection with the work was a gradual physical deterioration over a period of time. It is settled, the majority said, that this kind of physical deterioration is not accidental in the sense of the WC law.

It was admitted that in the development of the theory of industrial accidents in heart cases, a policy of marked liberality has been followed but the majority held that such cases require an external event in connection with the work.

The dissenting opinion, which may become the controlling opinion in the event of a reversal by the court of appeals, was that since there was proof that the claimant was under unusual mental and physical strain and had been for a period of months, and since there was proof that this effort and strain brought on the heart attack, it was merely fortuitous that the actual blow fell when he was at a race track.

In another decision on the subject of "accident," Meyer vs Hollander & Son, the WC board had ruled that the claimant, who had sustained a previous injury, had another accident caused by aggravation of a pre-existing physical condition in the course of his unusual work of shovelling coal. The appellate court held that, on such proof, the aggravation of the previous condition can be treated either as a natural result of the first injury or as an occupational disease, but that it cannot be treated as a new accident because no unusual physical event attributable to the work caused the condition.

The decision, if it is affirmed by the appeals court, will have more far reaching effects than any in recent years, in Mr. Stone's opinion. It opens the door for a large new field of liability and places upon the employer the burden of weeding out his physically defective employees.

In this case, Detenbeck vs General Motors, the claimant was found disabled by the occupational disease of back strain with nerve root irritation of the back with pain and numbness of the left leg and foot, due to his occupation as salvage inspector at an automobile plant. The plant physician testified that backaches never occur to normal men on the job of salvage inspector without an accident. Four other physicians testified similarly. However, they said, the disability occurred to this claimant because of a pre-existing congenital defect in his back.

The appellate division affirmed the award and stated that all employees who had the same weakness would in all probability be similarly affected, which is sufficient to bring the condition within the classification of an occupational disease.

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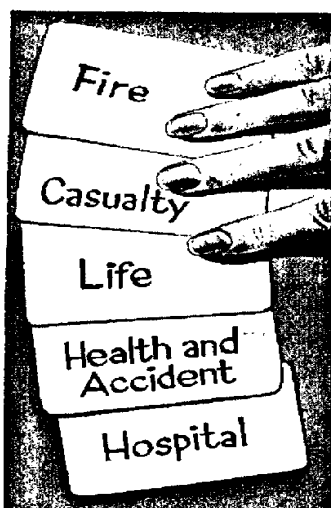
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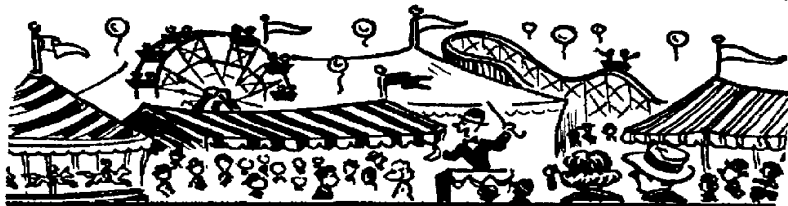
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appellate division believes that it is no longer necessary for a claimant with a pre-existing condition to establish that the condition from which he suffers is one commonly inherent in and concomitant to the work from which the condition derives. Thus, he said, the appellate division shifts the emphasis in determining occupational disease from the nature of the job to the nature of the employee.

The idea that the employer may be subjected to the payment of compensation to an employee who suffers a disease because of a pre-existing condition so long as the job in some manner contributes to the end result brings hidden liability which reaches as far as the imagination extends, Mr. Stone said. It could be that this liability would extend even to heart cases.

In the past year there have been indications of further broadening of the basis of award that an injury may not only arise out of the employment but occur in the course of employment. The furthest advance was made by the court of appeals in *Doca vs Federal Stevedoring Co.* The decision was that a man who had completed his day's work and left his employer's premises and thereafter was injured by a machine owned and operated by his employer had sustained accidental injuries in the course of his employment.

The *Doca* case seems to represent broadening of the base of what constitutes "in the course of employment." However, within a month after the *Doca* case had been decided, the appeals court reversed the decision of the appellate division in a case in which the claimant had been injured in a fall on the street during her lunch period while she was away from her employer's premises. The court held that there was no proof that the sidewalk on which the claimant fell was part of the premises of her employer.

The courts also continue to make awards to employees on business trips who are injured while engaged in pursuits for pleasure, Mr. Stone said. The appellate division reversed and remitted a decision of the WC board which refused compensation to the widow of a New York City tax consultant, who was drowned on a pleasure boat trip he had taken out of Miami after completion of his business there but before it was time for him to return to New York.

Suicide and intoxication are seldom available as defenses, but when they are it seems that the cases are always of extreme importance to the litigants, Mr. Stone said. It is practically impossible to establish either, he believes. However, in one case, during the past year, intoxication was accepted as a defense.

The appeals court reversed a decision of the appellate division to the effect that a decedent had committed suicide. It held, four to three, that the presumption against suicide had not been overcome by the coroner's certificate listing suicide as a cause of death and by the expert opinion of an engineer that a person of the decedent's height could not accidentally fall in the manner in which he had fallen and that the proof of motives, because of matrimonial difficulties and a moody and uncommunicative attitude, was insufficient.

The substantial evidence rule appears to be firmly established as a part of the WC law, Mr. Stone said. Of the many cases in which the question arose, a comparatively small percentage resulted in reversal of the findings of the board.

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