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TAKEN FROM PAGE 694.

BY MR. MASON:

Thank you, Bill, that was beautifully done.

Our next participant is so well known to this audience that I will make but brief comment in his introduction. His friendship with the Sarnoff Laboratory, for industry,

for management and labor and for the successful administration of compensation laws is so well known to each and every one of us that it is now necessary for me to comment upon them. It has been my privilege to have known him - to have known many insurance executives during the course of my professional practice, but I know of no one, and I say this in all sincerity and honesty, I know of no one who has a better understanding of the rules and responsibility of insurance carriers in the field of workmen's compensation than Ben Keuchle.

He was schooled in the office of the Industrial Commission of Wisconsin. I happened to have lunch with him today and I said, "Ben, just how many years have you been wrestling with this problem?" He said, "Ted, I began in 1912," so he has had forty years at the task. He later became and now is Vice-President and Claims Manager of the Employers Mutual Liability Insurance Company of Wisconsin. This afternoon, he brings to us a healthy, helpful and progressive viewpoint with respect to the responsibility of insurance in the administration of compensation laws. Mr. Keuchle.

BY MR. KEUCHLE:

(Mr. Keuchle read a prepared paper, which is on file with the Lanac Laboratory).

BY MR. WATERS:

Rec'd 9/2/52

Address reply to:

Arthur J. Vorwald, M. D., Director
Edward L. Trudeau Foundation
Trudeau, New York

Home Office
Wausau, Wisconsin

August 29, 1952

Mr. T. C. Waters
Williams, Shoemaker and Waters
10 Light Street
Baltimore 2, Maryland

Dear Tom:

[illegible] you that will probably be the final draft of my remarks to be made at Kansas, unless [illegible] Art Vorwald have some additional suggestions. Am [illegible] a copy of this letter.

I have had the paper looked over by Mr. Kenneth Grubb of Philadelphia, who is probably the outstanding [illegible] in connection with [illegible] problems, [illegible] by Mr. Percy Nelson, Director of [illegible] representative of the Industrial Commission. In connection with the [illegible] Mr. Nelson made the comment on the last paragraph of the letter. While I read your talk, I again mentioned that Arthur Fleischer should make statistics and charges predictions for periods of validity which is really inconsistent."

Sincerely,

Ben

BMiddle:ss

ADMINISTRATION OF WISCONSIN'S COMPENSATION LAWS AS THEY RELATE TO THE PNEUMOCONIOSES*

by

B. E. Knoehle - Vice President - Employers Mutual Liability Insurance Company of Wisconsin

In Wisconsin we have lived with a so-called occupational disease law since July 5, 1919. On that date an amendment to the Wisconsin Law became effective which said that the provisions of the compensation law "are extended so as to include, in addition to accidental injuries, all other injuries, including occupational diseases, arising out of and incidental to the employment." At present our law defines an injury as mental or physical harm caused by accident or disease.

Under this amendment, employers have been required to pay, under the definition of injuries, claims arising out of disabilities due not only to the common occupational diseases such as dermatitis, silicosis, and asbestosis, but claims arising from disabilities caused by smallpox, measles, scarlet fever, and other similar communicable diseases, when the facts indicated that these diseases were contracted through industrial exposure, as for example, a teacher contracting measles from an epidemic of this disease in her schoolroom.

Since 1919 there has never been an attempt through the legislature to restrict the phraseology of the amendment I quoted except in one instance. This occurred during the days of the nation-wide silicosis crisis when many employees who had been exposed to silica, and discharged because of the depression attempted to collect for either a real or usually an imaginary pulmonary disability. In one of our granite-cutting centers, we practically lost a business of competition from Minnesota, which had no occupational disease law. As a result, Minnesota manufacturers were able to export stones, both memorial and monumental, into Wisconsin at a great deal lower cost than they could be produced in the state. The Union requested the legislature to reduce benefits under the compensation law for silicosis claims by 50 per cent. The Bill was passed by both houses of the legislature, but was vetoed by the Governor.

*Address delivered at Seventh Annual Symposium at Saranac Lake, New York, on September 26, 1952.

This incident awakened interested parties in Wisconsin, including employers, labor, d the Industrial Commission to the fact that an occupational disease law such as ours d to be wisely enacted and administered so that compensation could be liberally anted to employees actually disabled with a pulmonary disease and its complication tuberculosis and still not throw out of employment individuals with minimal disease th no complicating infection who were not subjected to excessive exposure which would se progression of their disease.

The steps taken to accomplish these ends, while not discussed in chronological order, re the following:

It was recognized that merely because an individual might have fibrosis, even reaching the nodular stage, as for instance in silicosis, did not necessarily mean t that employee would be better off either socially or economically to be forced to ve his trade, particularly where that content under control measures was within sonably safe limits even though he might be paid a small amount of compensation for a alled medical partial disability. This principle was recognized by the legislature presently the Commission has the authority to award compensation up to $3500 where a medical disability exists, and it is inadvisable for the employee to continue king under further dangerous exposure. Should an employer discharge an employee ause of a nondisabling fibrosis prior to a finding by the Industrial Commission that is inadvisable for the employee to continue employment, the employer who so discharges employee shall be primarily liable for this allowance even though insured for his pensation liability. This payment up to $3500 is in the nature of a rehabilitation ance. If subsequently, the employee should actually become disabled, he is not red from making a further claim although any allowance granted him for the nondisabling ition shall be applied against the award for the disabling condition.

I have in my files a letter from Mr. C. A. Fried, Chief Statistician of the onsin Industrial Commission, reading as follows: "I have the job back to 1920 before ding across a single case of 'nondisabling silicosis.' In the single case the ured was awarded $655 indemnity."

It was further recognized early in the administration of the law that tuberculosis as a complication of fibrosis was the principal factor in producing disability and that it was important to eliminate contact infection. Also that certain individuals seemed to have a more rapid progression of fibrosis even where the exposure was within reasonably safe limits, and that, therefore, removal from further exposure was in the interest of such a worker.

Under the Wisconsin Law the Industrial Commission has the authority to issue orders which have the effect of law, to provide for the safety and health of employees. While no formal orders have been issued requiring physical examinations of employees, our Industrial Commission did sponsor several conferences of representatives of labor and industry with the idea, as stated in the call of one of those conferences, "to endeavor to work out some uniform physical examination program which can be submitted to organized labor and which should have their unqualified approval."

Such a program was approved by representatives of labor and industry, under the title of "Physical Examinations of Industrial Workers" and published by the Wisconsin Industrial Commission in 1939. The statutes are sufficiently adequate to assure against any danger of abuse by industry of the physical examination program as recommended by the Industrial Commission, and I know of no instance where any penalties have been applied against any employer.

To add further incentive for proper measures of dust control, the Industrial Commission has the authority to penalize an employer 15 per cent of the primary compensation and it is not permissible to insure this penalty liability.

Another problem in administration which had to be resolved was the question of pro-rating liability, both as between employers and as between insurance carriers. In the leading case the court held that where an individual was simultaneously employed by two employers who all contributed to the exposure, the liability should be prorated among those employers employing the injured at the time the disability began.

1) Schaefer and Company v. Industrial Commission, 195 Wis. 317.

owever, the court denied the contention of these three employers that two earlier mployers should also be held liable. This ruling was subsequently strengthened by an mendment to the law which fixes the date of disability and the liability for the isability on "the last day of work for the last employer who caused the disability." hile the Industrial Commission is not bound by any specific method in the law as to termination of whether a certain period of employment caused the disability, it has enerally been held by the Commission that approximately 90 days of exposure for the ast employer would be sufficient to spell liability. An employer who is held responsible nder these conditions may not ask for contribution from previous employers even though e exposure may have been of a massive character prior to the last employment and ssel during the period of employment for the last employer.

The insurer of the employer on the last day of work of the employee assumes the ll responsibility. Our Supreme Court held that the relative length of exposure is not pertent and that any other rule would make it very difficult to administer the occu-ational disease provisions of the Act. The Court said that an insurance carrier held on is claim would not be materially harmed because under the law of averages such burdens ould be equalized between carriers.

The Wisconsin statute is designed to protect an employee for disability that may occur n after exposure has ceased. Lack of notice of injury is not a bar to recovery if the loyer was not misled. Regardless of whether notice was received by the employer rty the claim does not become outlawed until two years from the date of injury or th or from the date the employee or his dependents knew or ought to have known the ure of the disability and its relation to the employment. There is another saving rision which holds that the right to compensation shall not be barred if the employer s or should have known within the two-year period that the employee had sustained the ry on which the claim is based. In cases of rehabilitation awards for cases of ccupational illnesses, if disability or death eventually ensues, an application for nefits may be filed at any time. In all cases, the general six-year statute of limitations applies.

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There have been a number of cases in Wisconsin where employees who had been retired on pension eventually become disabled or died from silico-tuberculosis. Full compensation was awarded either to them or their dependents.

That the Wisconsin Plan has proven very satisfactory, is evidenced by a comparison of compensation insurance rates in two typical industrial classifications having a known silicosis hazard. Our actuarial department has supplied us with the rates per $100 of payroll for these two classifications in 1926, 1934 (which was the height of the silicosis epidemic) and 1952. Since 1913, benefits under the Wisconsin law have been increased by successive legislatures by 56 per cent.

Code	1926	1934	1952
[illegible] = Stone Cutting (not otherwise classified)	3.74	10.73	
[illegible] = Stone Cutting - Less than 25% Silica			2.27
[illegible] = Stone Cutting - 25% or more Silica			7.03
[illegible] = Stone Workings	2.15	3.06	2.14

The classification for stone cutting, not otherwise classified, was discontinued in the Insurance Manual some time after 1928.

EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN
EMPLOYERS MUTUAL FIRE INSURANCE COMPANY
WAUSAU, WISCONSIN

B. E. KUECHLE
VICE-PRESIDENT AND CLAIM MANAGER

August 26, 1952

Arthur J. Vorwald, M. D., Director
Edward L. Trudeau Foundation
Trudeau, New York

I am attaching a copy, not completely polished, of my remarks for the Symposium. Look it over, please, and feel perfectly free to use your red pencil.

I'm solely sending you this memo now so that you may know I'm working on the paper. I'm sending it to several people in Wisconsin and elsewhere for comments, to be sure I have all my information correct. Prior to the session I'll send you a final draft.

BEKuechle 22

By Mr. WATERS:

Well done, Ben. Ben's remark on confusion reminds me of a story on one of my professional associates which I am going to take the liberty to tell. It's very short. He defended a criminal convicted upon a criminal charge and sentenced to the electric chair. Just prior to the execution, he visited the death house. Before leaving the prisoner, he tried to say something that he thought would be comforting and stumbled around in his mind for the proper expression and found that he could not say "I hope to see you soon", because he did not hope to see him soon where he was going, nor could he say, "Happy Landing", because he knew that his landing would not be happy. Like a flash, the top expression came to him, and he left him with the greeting "More power to you", so Ben, I say to you and to your insurance associates, "More power to you in this particular problem".

It is with regret that I must tell you that Mr. Earle T. Andrews, who was on the program and had intended to participate in the session this afternoon, representing the point of management, is unable to be here. He called me last night. His company is faced with a strike on Monday morning, and he asked me to convey to Doctor Vorwald and to the audience, his sincere and deep regret that he could not come.

However, I know that we are all most fortunate in that we have found a substitute who will more than fill the

job. Mr. Otto A. Wisely, is the Chairman of the Commission of the State of Utah, administering the compensation law of that state. He is a graduate of the Law School of the University of Utah and is a clinical lecturer in that university in its medical college. He is Chairman of the Commission and has so served for the period of the last eleven years. During the time that the occupational disease law with particular reference to the pneumoconioses became effective, and he has been its daddy.

He is well informed on the whole subject of labor and industrial relations. Perhaps I should express one personal criticism of him, because on more than one occasion, he has had to serve the role of a character witness for our good friend, Paul Richards from the same state. I have asked him to say just a word, particularly with respect to the responsibility of management in the administration of the law, dealing with such subjects as prevention and rehabilitation. Commissioner Wisely.

BY COMMISSIONER WISELY:

Thank you, Ted. I am very happy that I have been able to attend this symposium. I came here because of the insistence of Doctor Paul Richards, and that insistence was in the nature of a telephone call to Governor Fee telling him, you tell Otto to goto Saranac Lake. I told the Governor I wouldn't do it. He knew that - he's a very good friend