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Occupational Disease Covered in Symposium

PAPERS READ AT BAR MEETING

Situation in Illinois, Operation of North Carolina Act and Costs To Industry Covered

Occupational diseases was one of the timely round table discussions on the Insurance Section program of the American Bar Association convention in Kansas City this week. This discussion centered around provisions which should appear in statutes for compensation to employes disabled on account of occupational disease and provisions which should not be a part of such statutes. Speakers included Peter J. Angsten, chairman, Industrial Commission of Illinois; J. Dewey Dorsett, of the North Carolina Industrial Commission, and Henry D. Sayer, casualty manager, Association of Casualty & Surety Executives, who is a former Industrial Commissioner of New York State. High spots of their addresses are as follows:

Angsten on Illinois Situation

Mr. Angsten reviewed the occupational disease situation in Illinois in much detail and noted that it was not the legislative intent to cover such diseases under the compensation act. He observed that at one time the situation in Illinois was aggravated by claims of the employers and the insurance carriers that the liability under the workmen's compensation act and the occupational diseases act were distinct and separate and unrelated. The insurance carriers submitted to the Industrial Commission, for approval, forms of endorsements attempting to definitely exclude from under the provisions of the standard workmen's compensation policy liability covering all occupational diseases and particularly those arising out of exposure to silica and asbestos. Such endorsements were submitted to the attorney general and he held that any endorsement attempting to limit or modify the liability of an employer created under the provisions of Sec. 2 of the occupational diseases act was void.

Compulsory Assignment

Mr. Angsten said also that failure on the part of insurance carriers to issue policies covering occupational diseases coverage under the voluntary plan, together with the fear of the insurance carriers because of the broad provisions of Sec. 6 of the workmen's occupational diseases act contributed in a large measure to the enactment of the compulsory assignment bill. He explained operation of the compulsory assignment act passed by the legislature in July of this year and said, "Both the occupational diseases law and the compulsory assignment law enacted within the past year in Illinois should prove practicable. The experience that we will gather during the next few years will determine whether or not there are any provisions in either or both of these laws that will require statutory remedy. We look forward to both laws operating with a decided degree of success."

Dorsett on N. C. Law

Mr. Dorsett's paper was on the occupational disease situation from the point of view of practical administrative experience with an existing law. He featured the North Carolina law, saying in part:

"In North Carolina occupational diseases are synonymous with silicosis and asbestosis. The 'run of mine' occupational disease in our state is not a problem at all. Out of our experience we have made some discoveries. So many conflicting statements have been made about 'disease contracted in the 'dusty trades' that many persons have become confused. Since silicosis and asbestosis are genuine occupational diseases which present nearly all the difficulties presented in all other occupational diseases, much of what I shall have to say will be drawn from our experience with those two diseases but will be equally applicable to occupational diseases in general.

Essential Features of Law

"Occupational disease in North Carolina stands administratively on the same footing as does the administration of accident compensation. Our act was passed in 1935 and we have operated successfully under it. I will discuss the provisions which I believe should be incorporated in any occupational disease law.

"I believe that primary emphasis should be placed on legislation to provide for prevention of occupational disease. I believe that it is absolutely essential to make provision for some kind of impartial medical set-up. Of much importance is the physical examination of applicants for work in those places where there may be a silica dust hazard.

"Our law will be amended to provide that no liability is to attach to employers until after an employe has been at work for some reasonable period, say sixty or ninety days. We feel that the plea that the subject of occupational disease is so complicated that it cannot be administered by a board or commission composed of persons not medically trained is not founded on fact. We do believe that a provision for a medical board or advisory medical committee is a very important one in any type of silicosis act. Employes, employers and the medical profession all have confidence in our present set-up.

"I believe that there should be compulsory coverage for silicosis and asbestosis in the compensation acts of all states. There is no sound reason for granting an election with respect to silicosis compensation differing from such elective provisions in the law of any state. Election prevents preventive efforts, as it invites unfair competition within an industry.

"Disabled employes on account of occupational diseases should be granted the same compensation as those disabled in an accidental injury.

Removal of Employes

"Sometimes we find that an employe for his own benefit ought to be removed. If we find no tuberculosis associated with his occupational disease, and if the employe desires to remain in the industry, we permit him to do so but require him to waive a part of the compensation benefits.

"It is fundamental in law that the equitable adjustment of claims involve a time element. We have in our law a limitation of three years for silicosis and asbestosis as against one year for accidental injuries and occupational disease other than silicosis and asbestosis. What is an equitable time limitation ranks in importance with what is a safe dust concentration. It deserves study.

Minimum Exposure Period

"Only sixteen states compensate for silicosis. The minimum exposure period deals with a problem more imaginary than real. It is a phantom apparently visible by reason of the peculiar governmental set-up of forty-eight states. The minimum state exposure period tends to limit the opportunity of employes seeking employment in other states. It may seriously affect the rights of those engaged in dusty vocations. I think the idea of a minimum state exposure period should be discarded as soon as compensation coverage becomes general and reasonably uniform preventive measures have been put into effect in all the states.

"If pre-employment examinations are to accomplish the intended purpose penalties for false statements as to material facts concerning previous medical or occupational history are necessary. Whether such penalty should completely bar a claim or effect only a reduction in benefits is debatable.

"The law should provide for the removal of workers found with active pulmonary tuberculosis and silicosis from the employment. Such workers should be granted suitable compensation and proper medical care.

Effective Date of Act

"Another serious problem to be worked out in any legislative plan is, when shall the act take effect, particularly as to payment of compensation for silicosis or any other disease which is contracted over a long period of time? Strange as it may seem, since enactment

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Symposium Speaker

HENRY D. SAYER

Better Law Needed On Surety Joint Control

KISSAM TELLS BAR MEMBERS

Explains Improvements That Would Result From Enactment of Proposed Uniform Legislation

Need for additional legislation was urged by Leo T. Kissam, New York, before the Insurance Section of the American Bar Association at Kansas City September 28 in a paper on "Joint Control by Sureties". He said that in every judicial opinion condemning joint control of trust funds by sureties, it has been argued that the practice is contrary to public policy. In some cases, however, the courts suggested that the practice could not be permitted without an act of the legislature. The present unfortunate state of law, he continued, can only be removed by the enactment of a uniform law permitting sureties to exercise joint control of trust funds, and until all the states enact such a law it must be anticipated that the existing inconsistencies in the law will continue as additional decisions are made.

Text of Model Bill

Presenting an argument for a model bill to provide for a uniform law Mr. Kissam said in part:

"During the past year the committee on fidelity and surety insurance law of the Insurance Section of the American Bar Association considered the problems of joint control, and concluded that existing conditions can best be corrected by the enactment of a uniform law. After examination of existing legislation the committee found that the following proposed statute would be the most satisfactory one.

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"The effect of this model bill is threefold. It will constitute a declaration of public policy in any state where it is enacted and thus in one stroke destroy the argument that the exercise of joint control over trust funds by sureties is illegal.

"The proposed bill will immediately meet those decisions extending the liability of the fiduciary and the surety in cases of the loss of bank deposits through bank failure.

"The bill meets the general argument that joint control arrangements deprive the courts of control over the trust administered under their supervision.

Century of Inactivity

"No subject is of more universal interest than the proper administration of trust funds. But more than a century has passed since the subject of joint control by sureties was first considered and in the past fifty years this subject has had but scant attention. It is now to be hoped that within a reasonable time due consideration will be given by all of the state legislatures to enactment of the model bill on this subject."

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of our silicosis law we have had relatively few claims for diseases contracted in the dusty trades, and the cost has been relatively insignificant to the amazement, I think, of our insurance carriers. North Carolina employers insisted that the legislature write into our compensation act for occupational diseases provisions recognizing accrued liability. From the administrative standpoint it certainly simplifies administration of the law.

"The North Carolina act immediately covered every person employed at that time. Insurance rates were made accordingly. The cost to the employer has not been prohibitive. Insurance companies have had no quarrel with this provision. Regardless of the legal aspect as to the retroactive feature it seems impracticable to avoid it."

Sayer Discusses Costs

Unrestricted workmen's compensation benefits for industrial diseases may cost American industry seven times as much as compensation for industrial accidents it was indicated by Henry D. Sayer of the Association of Casualty & Surety Executives, who presented a review of recent legislation on occupational diseases.

The threat of enormous cost to industry, Mr. Sayer pointed out, arises from the enactment and interpretation of so called "all inclusive" statutes covering compensation for occupational diseases. "If industry now regards the cost of compensation for accidents and typical occupational diseases as a heavy burden, what will be the effect when the workers come to realize the capital value of sickness?" he asked.

Citing specific examples Mr. Sayer charged that a court interpretation of the New York law leaves industry vulnerable to exploitation. It is easy to tie up almost any disease to the employment.

The outlook for industry is brighter,