FILE NAME: Saranac 7th Symposium (SSY)

DATE: 1952

DOC#: SSY052

DOCUMENT DESCRIPTION: Text of Presentation by Mr. Wagner

MANNING W. HEARD, PRESIDENT GEORGE D. MEAD, VICE PRESIDENT J. DEWEY DORSETT, GENERAL MANAGER RAY MURPHY, GENERAL COUNSEL

Association of Casualty and Surety Companies

Symposium

SIXTY JOHN STREET
NEW YORK 38, N.Y.

CASUALTY DEPARTMENT
RICHARD C. WAGNER, MANAGER
ANDREW KALMYKOW, ASSISTANT MANAGER

September 12, 1952

Dr. Arthur J. Vorwald
Director, The Trudeau Foundation
and The Saranac Laboratory
P. O. Box 551
Saranac Lake, New York

Dear Dr. Vorwald:

I am enclosing two copies of my paper to be delivered on the first day of the symposium. I am sorry I could not get this to you any sooner.

Very truly yours,

Richard C. Wagner

Richard C. Wagner, Manager
Casualty Department

RCW:HLH
Enc.

One of two Copies - one to Mrs. Gaik

DEFINITION OF PNEUMOCONIOSIS - SOME LEGAL ASPECTS

Paper Read By
Richard C. Wagner, Manager, Casualty Department,
Association of Casualty and Surety Companies, at
Seventh Saranac Symposium, on September 22, 1952,
at The Saranac Laboratory, Saranac Lake, New York.

The question of definition of medical terms would seem, as a matter of first impression, to be a problem exclusively for the medical profession. Certainly it can be conceded that it is primarily a medical problem. Obviously that was the view of the sponsors of this meeting, for here I am the only attorney in a group of five eminent physicians. However, somewhat closer study reveals, as is often the case in the field of occupational diseases, that medical definitions have important, often vital, bearing on legal rights both of employers and employees. This is especially true where such definitions, and any defects they may contain, are incorporated into any statute. They are also of importance where they form part of the testimony or influence the judgment of a medical witness.

Let me illustrate. We are here interested in the definition of the term "pneumoconiosis" and those of the other diseases or conditions that fall within the broad scope of that general term. In New Hampshire for example, the Workmen's Compensation Law provides compensation for certain listed diseases, including "silicosis and other pulmonary dust diseases." Whether a particular condition can be classed as a pulmonary dust disease will determine whether or not that particular individual will receive compensation therefor. The ultimate determination in such a case is very likely to rest on the medical testimony which is presented. Does beryllium poisoning, for example, fall within this category? What about an allergic reaction to let us say flour dust?

A medical expert confronted with the necessity of expressing an opinion on the point might be inclined, if my experience is any criterion, to a liberal interpretation in order to enable the claimant to receive compensation. What

would his testimony be, however, where instead of resulting in the granting of compensation, classifying a particular condition as a pulmonary dust disease would result in reducing or possibly barring the payment of compensation. As no doubt many of you know, many states have special provisions with respect to silicosis and some of the other dust diseases. There are provisions for graduated scales of benefits, the so-called escalator clauses, whereby compensation for disability occurring shortly after the effective date of the law is limited. Special requirements as to exposure or time limitations are also provided. The particular facts of a specific case might well not fit those particular requirements. Yet consistency is necessary. A different answer to the same question can hardly be justified because of the difference in the effect such an answer would have. At the same time, it might be well if in formulating the definitions on which opinions have to be based, the legal effect of the use of particular language may well be given some consideration. Their effectiveness as useful tools in the solution of practical problems would thereby be enhanced.

I have indicated that the problem of definitions is of significance under a schedule type law. It is of importance also, particularly with respect to dust diseases, under a law providing broad occupational disease coverage either with or without definition. As I have mentioned, a number of states have found it necessary because of the special nature of the dust diseases, to include provisions specifically dealing with such diseases which differ from those relating to occupational diseases generally. A general descriptive term is necessary to describe the diseases to which these special provisions should be applicable. At the same time, such a term should not be so broad as to be applicable to conditions to which those special provisions should not apply. The term would have to be general for if specific diseases, say silicosis or asbestosis, only are mentioned, avoidance of these special provisions may be attempted by alleging disability from one of the other dust diseases.

The legislative history of such provisions in Michigan is interesting in this connection. When provisions for compensation for occupational diseases were first enacted in 1937, the schedule of such diseases included three different references to dust diseases. One was stone workers or grinders phthisis caused by quarrying, cutting, crushing, grinding or polishing of stone, or grinding or polishing of metal. The other was silicosis caused by mining. The third referred to pneumoconiosis caused by quarrying, cutting, crushing, grinding or polishing of metal. It is apparent that the Legislature in this instance was having some difficulty with definitions. In 1943 the schedule was repealed and a broad definition substituted. In that state the special dust disease provisions both before and after the 1943 amendment referred to "silicosis or other dust disease." From the use of the word silicosis the inference seems plain that the disease must be pulmonary. Yet I believe the special inclusion of that word would have been desirable. Some doubt as to the scope of these provisions, however, must have existed for in 1945 when provisions for periodic physical examinations were added these referred to "silicosis, pneumoconiosis or other dust disease." These, I may add, have since been repealed when because of indefiniteness they were held unconstitutional by the court.

This legislative history is of interest as indicating the difficulty experienced in the use of terms in just one state. It might be noted further that while the schedule was in force in Michigan there was considerable question whether silicosis was compensable in any industry except mining and whether the term pneumoconiosis was broad enough to include silicosis, Sutter vs. Kalamazoo Stove and Furnace Company, 1941, 297 Mich. 226, 297 N.W. 475; Gerlesits vs. Lakey Foundry and Machine Company, 1947, 319 Mich. 229, 29 N.W. 2d 856; Mercante vs. Michigan Steel Casting Company, 1948, 320 Mich. 542, 31 N.W. 2d 712.

While we are discussing terms, I would like to express a word of caution.

If a condition has a name, there is a tendency among laymen to feel that it is disabling and that it should be compensable. Many different terms, and new ones seem to be cropping up with surprising frequency, have been said to come within the general scope of the word pneumoconiosis. If that term or an equivalent is used without adequate definition in a law, any condition which might be said to come within its scope is deemed to be compensable. Yet, if I am not mistaken, a number of these are not considered to be disabling. The Fifth Edition of Gould's Medical Dictionary (1941) defines pneumonokoniosis as:

"A general term applied to chronic induration or fibrous inflammation of the lungs due to the inhalation of dust. Various names are given to it according to the kind of dust causing the inflammation: anthracosis, that due to the inhalation of coal-dust; siderosis, that due to inhalation of metallic dust; chalicosis, that due to the inhalation of mineral dust."

A layman might well feel that all these conditions are or should be compensable. Let us look, however, at the 1949 Edition apparently of the same book now known as "Blakiston's New Gould Medical Dictionary" First Edition. Pneumonoconiosis is defined as:

"Chronic inflammation of the lungs caused by the inhalation of dust. All of the recognized forms are due to mineral dusts. (Neither irritations of the bronchial tree nor acute infections resulting from inhalation of organic dusts are classed as pneumonoconioses.) The predominant reaction is fibrosis, which varies in type with the etiologic dust. Silicosis and asbestosis are the main forms of pneumonoconiosis known to cause disability. Other forms, known as benign pneumonoconioses, in which the reaction is limited to the stromal tissues, are anthracosis, due to carbon dust, siderosis, due to iron dust, calcicosis, due to marble dust, and baritosis, due to barium dust. Also see beryllosis."

I think you will agree that there is considerable difference in the effect these two definitions would have on laymen.

That my point is not academic, is evidenced by a law recently adopted in Alabama. This law enacted in 1951 (Act No. 180, Laws of 1951, effective June 29, 1951) provides compensation only for "occupational pneumonoconiosis." This is defined as:

> "A disease of the lungs caused by inhalation of minute particles of dust over a period of time and which said dust is due to causes and conditions arising out of and in the course of the employment without regard to whether or not said causes or conditions are inherent in the employment or can be eliminated or reduced by due care on the part of the employer. The term 'occupational pneumonoconiosis' shall include, but without limitation, such diseases as silicosis, siderosis, anthracosis, anthra-silicosis, anthraco-silicosis, anthraco-tuberculosis, tuberculo-silicosis, silico-tuberculosis, aluminosis, and other diseases of the lungs resulting from causes enumerated in this section."

Please note the inclusion of siderosis, anthracosis and aluminosis. I would dislike to attempt to define with any degree of certainty the scope of this law. Yet at least some of you may be called upon to give an opinion whether or not a specific condition is or is not "occupational pneumonoconiosis" within the meaning of this definition.

Some of the other statutory references to dust diseases may be of interest. In New York the reference is to "silicosis or other dust diseases." A rather interesting situation arose under this provision. In 1942 an employee claimed and was awarded compensation under Article 4-A, since repealed, relating to dust diseases. The claim was for disability alleged to have been suffered from exposure to dust from vacuum cleaners, Sturesky vs. Straussman, 1941, 263 A.D. 771, 30 N.Y.S. 886. After a period in military service he reopened his case. He now contended

that his condition, asthma, was not a dust disease but an "occupational disease." The court held that its original decision was not res adjudicata and on the basis of the medical evidence presented, affirmed an award under the broad occupational disease provisions. Apparently, when the original claim was presented, there was doubt whether the claimant's condition was an occupational disease or an ordinary disease of life. The contention that it was a dust disease probably was thought to strengthen his case. Once the occupational nature of his condition was established, apparently to avoid the limiting provisions of Article 4-A, he was able successfully to reject this theory (id. 1948, 273 A.D. 1036, 78 N.Y.S. 2d 633) I may add that in Missouri, on the other hand, asthma from an allergy to wheat dust was held not to be an occupational disease since it was due to the claimant's sensitivity and not to the hazards of the employment as such, Sanford vs. Valier-Spies Milling Co., 1950, 235 S.W. 2d 92.

In Ohio the silicosis provisions are also applicable "to other occupational diseases of the respiratory tract." This language seems somewhat broader than the reference to dust diseases or pulmonary dust diseases found in some of the other laws. It may, for example, well result in a different construction than that which was reached in New York. In Ohio it is interesting to note that berylliosis is specifically excluded from these provisions although the medical experts known as silicosis referees are specifically given jurisdiction with respect to this disease.

A law providing compensation for occupational diseases was enacted in Louisiana this year. This contains a list of compensable diseases, including asbestosis, silicosis and pneumoconiosis. In view of the fact that the courts administer the Workmen's Compensation Law in that state, the interpretation of this term may well present some problems, in the solution of which doctors will have to play an important part.

Besides the definition in Alabama, Florida comes nearest to having a

definition of dust diseases in the statute itself. In that state, compensation is provided for occupational diseases under a broad definition. It is there further specifically stated that "disability from silicosis, asbestosis or any dust disease shall be caused only from the characteristic fibrotic condition of the lungs caused from the inhalation of dust." Thus here we find with reference to dust diseases a specific reference to fibrosis which you will have noted is lacking in some of the other statutory references.

There are, of course, a number of states that make specific mention, either with or without definition, of silicosis and asbestosis. These definitions are fairly similar in wording although they do differ in exact language from state to state. Some include a specific reference to nodulation with respect to silicosis. Others refer to the "characteristic fibrotic condition of the lungs caused by inhalation" of silicon dioxide dust or asbestos dust, as the case may be. I have not heard of any particular difficulty arising from these definitions. Some thought might be given, however, to whether or not the reference to nodulation should or should not be made.

I have endeavored to point to some of the more important legal problems that arise through the use of terms without definitions or where the definitions used are not completely satisfactory. In illustration, specific reference to the provisions of the laws of the various states and experience thereunder has been made. While these are legal problems, lawyers of necessity must look to the medical profession for their solution. I believe it would be of mutual benefit if in formulating such terms and their definitions the medical profession kept some of these questions in mind. Is there a general descriptive term that would cover silicosis and other similar dust diseases and, at the same time, exclude non-disabling conditions? What is and what should be covered under the term pneumoconiosis? These and other questions will require an answer. It would be most helpful if such answers were based on informed opinion reached after mature deliberation.