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G. M. MAINES
VICE PRESIDENT

Indexed

Association of Casualty and Surety Executives

Number One Park Avenue

New York

PACIFIC DEPARTMENT
333 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA

August 31 1937

Mr. William T. Cameron
Division of Labor Standards
Washington, D. C.

Dear Sir:

The writer was invited to address the recent annual meeting of the Western Safety Conference at Portland on the subject "The Problem of Occupational Disease in Industry."

After the meeting a number of the delegates requested copies of the talk and one of the Industrial Accident Commissioners from a Pacific Coast State suggested that it might also be a good idea to send a copy to your good self.

In accordance with this suggestion, I am enclosing a copy of the talk herewith, assuming that you are interested in the subject and, if it should happen that you could make use of additional copies, please call on me. I will be glad to take care of your requests.

With best wishes, I am

Sincerely,

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REGINALD MOSS
Manager
Pacific Coast Department

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THE PROBLEM OF OCCUPATIONAL DISEASES IN INDUSTRY.

by REGINALD MOSS,
Pacific Coast Manager, Association of
Casualty and Surety Executives.

(An address before the third annual meeting of the Western Safety Conference at Portland, Oregon, August 20th.)

As a preface to this discussion of "The Problem of Occupational Diseases in Industry", I would like to explain briefly the interest in the subject of the Association of Casualty and Surety Executives, which I have the honor to represent. The Association is composed of some 60 of the leading casualty insurance and surety companies of the country, the majority of which write a substantial volume of workmen's compensation insurance. Its activities are largely along research lines -- studying problems and situations that are of mutual interest to its member companies and the insuring public. The development of occupational disease-consciousness in recent years, and the bringing of such diseases under the workmen's compensation laws of the various States, with a resultant increase in the cost of compensation benefits, is such a problem, and consequently has received the careful study of the Association.

It is recognized that where a workman's death or disability results from a disease that arises out of his employment, he or his dependents are entitled to compensation just as if the calamity had resulted from an accident in the course of employment. At the same time it is felt that occupational disease coverage should be carefully studied and drafted so that, first, any abuses will be obviated at the outset, and, second, that the costs of compensating such disabilities will not place too heavy a burden on industry. Hence, the research work which my Association has done on the subject.

This is a Safety Conference. On first thought, "safety" denotes only accident prevention; and nearly all the workmen's compensation laws -- with a few exceptions in this country -- originally covered only "injuries by accident", (otherwise called "accidental injuries"). But from the social standpoint, "safety" calls for just as much protection against diseases as against accidents; and to be included as safety measures are all the campaigns that have been or are being waged for the prevention of yellow fever, smallpox, diphtheria, tuberculosis and other scourges of humanity. Now the workmen's compensation laws are being brought into

the same category, by being amended or liberally construed to cover occupational diseases, thereby placing the burden upon industry of preventing such diseases or of compensating for their consequences.

In principle, occupational diseases mean only those diseases for which industry (in the person of the employer) can rightly be held responsible; that is, diseases which are peculiar to and characteristic of particular processes, occupations or employments, as distinguished from those diseases which are more or less common to humanity or to the community, regardless of differences in occupation.

A number of the workmen's compensation laws in this country cover occupational diseases implicitly by including all "injuries" -- and not merely "accidental injuries" -- arising out of the employment, or by expressly covering "occupational diseases" but without defining them, or by covering "occupational diseases" as defined in general terms. But a majority of our compensation laws that cover occupational diseases, and nearly all of such laws abroad, define such diseases by listing them in a schedule.

The great weight of expert opinion, I believe, is in favor of this "schedule plan." It not only avoids much uncertainty and wasteful litigation, including possible abuse of power by Industrial Commissions, but, by directing the attention of employers specifically to the diseases for which they will be held responsible, it is also most conducive to prevention. The experience in California, in my opinion, confirms the merits of the "schedule plan." Ever since 1918, our workmen's compensation law has implicitly covered silicosis, as well as other industrial diseases; but hardly anybody ever heard of silicosis and few employers had any idea of its seriousness or of means of preventing it, until, in 1930 and 1933, a series of decisions validating long belated claims surprised them and their insurance carriers with a mass of liabilities for cases of a disease contracted years before and of which they had had no warning.

In connection with compensation for occupational diseases, prevention is of first importance. Experience indicates that the standard occupational diseases -- that is, those which have longest been or now are more generally recognized, such as lead, zinc, mercury and phosphorus poisoning, the "bends" or compressed air illness, etc. -- can be almost entirely prevented, or greatly reduced, by practicable means. But as to that more lately recognized occupational disease, silicosis, there are doubts and difficulties. In Great Britain and New South Wales, where

they have had longer experience with compensation for silicosis than anywhere in this country, the losses therefrom, as represented by the cost of compensation, still show increasing tendencies.

It is true, according to reports, that in the mines of South Africa, where measures for prevention of and compensation for silicosis originated, and where the most elaborate methods for elimination of harmful silica dust have been most thoroughly tried out, the losses are being reduced. But such favorable results, I am informed, may be ascribed in large part to peculiar labor conditions. In those mines the common labor, most exposed to silica dust, is almost entirely negro; the negroes are medically examined monthly, and are laid off at the first indication of bronchial affection or loss of weight; and their employment is only temporary, seldom for longer than three years. Manifestly such means of prevention are hardly practicable with white labor. Declarations by public authorities in some of our compensation States that silicosis therein is already on the way to extinction may be accepted as a pious hope, but has no adequate basis in experience to support it as a prediction.

The peculiar difficulties about silicosis (and the same is approximately true of asbestosis and any other dust disease of the lungs) arise from the facts that it is a disease of gradual contraction, the average period of contraction being said to be between seven and twelve years: that it is incurable, though it may be arrested in its earlier stages but thereafter becomes progressive; that by itself it seldom causes disability or death, but is commonly complicated with tuberculosis, silicotics being especially susceptible to tuberculosis and the tubercular being especially susceptible to silicosis; that traces of silicosis may be thought to aggravate or accelerate disability or death from diseases of ordinary life or old age; and, finally, that silicosis with its complications is extremely difficult to diagnose correctly.

A danger that employers and their insurers have good reason to fear from these characteristics of silicosis is that they may be held responsible for the entire results wherever disability or death from some ordinary disease or the infirmities of old-age can be found -- upon the opinion evidence of one partial physician -- to have been accelerated or otherwise contributed to by mere traces of silicosis. This means expanding the payment of compensation for silicosis beyond its legitimate purpose and intent far in the direction of high-level health, old-age

and life insurance for the general run of workmen in the dusty trades. That would entail a cost which would be utterly unendurable. To avoid this danger it is essential that, on claims for compensation, medical questions shall be determined by impartial medical experts, and that where some other disease or infirmity is the principal cause of disability or death, the employer shall not be held liable for compensation for more than the degree to which silicosis has contributed to the result.

There are other safeguards against abuses that, I believe, need to be incorporated in any statute extending the compensation law to cover silicosis; but I have not time to enumerate and discuss them now. However, I feel that I should not omit to point out that such safeguards against abuses have also a bearing on prevention. The more clear-cut and definite the responsibility for silicosis and obligations for its prevention that are placed upon the employer, the greater are the probabilities of successful prevention. To hold the employer responsible for every aggravation of ill health to his employees, which a jury or commission of laymen may choose to attribute to dust exposure in his plant, affords no practicable standard of duty for him and is discouraging to reasonable efforts for prevention.

An especially serious difficulty in the way of compensating for silicosis arises from the fact that the disease is of such slow contraction. Whenever conditions are first studied, there are found in nearly every plant in the dusty trades a substantial proportion of the workmen who are affected with silicosis, in various stages, resulting from various periods of past exposures. These men are not yet disabled, some even may never be disabled by the disease, but inevitably many of them will eventually become prematurely disabled thereby, and the employer or his insurance carrier of the date when the disabilities occur may have to pay compensation for the consequences of the past years of contraction. These contingent impending liabilities for past events are, in insurance parlance, termed "accrued liabilities"; and, in the aggregate, they may amount to immense sums. The problem of meeting such charges may be handled, though not without difficulties, if employers and insurance carriers be long forewarned. However, the accrued liabilities constitute, practically, a barrier to the sudden imposition of a novel liability to compensate for silicosis without special provisions to reduce the burden from the ex post facto imposition of the so-called accrued liabilities for subsequent disablements and deaths resulting from a disease largely contracted in the past.

This difficulty is illustrated by experience in New York. In 1935 the Workmen's Compensation Law of New York was extended by amendment to cover disablement or death from silicosis on practically the same terms and conditions as accidental injuries. Thereupon the insurance carriers proposed rates for such coverage, with loadings for the accrued liabilities, that aroused a loud protest from the industries affected, even when reduced by the Superintendent of Insurance, whose approval was necessary for the premium rates of private companies. The approved rates were then so far below actuarial estimates of the probable loss-cost of the accrued liabilities that the private companies quite generally refused to provide the insurance. When application was made to the competitive New York State Insurance Fund -- which is required to accept all risks offered but is permitted to make its own rates -- that institution fixed its rates higher, and in some cases very much higher, than the maximum rates permitted to the private carriers. The result was that many of the industrial establishments, or the branches affected, shut down, in some cases sending their work to other States, and thousands of workmen were laid off.

As a consequence, at the next session of the New York Legislature, with almost unanimous approval -- including that of organized labor -- the workmen's compensation law was amended to limit compensation for silicosis to $500 in cases where disability should result in the first month thereafter; to $550 where disability or death should result in the second month, and so on, increasing the limit $50 from month to month until a final limit of $3000 should be reached. That amendment reduced the cost of silicosis coverage to endurable rates, the shut-down industries promptly resumed, and the workmen who had been laid off were promptly taken back. A similar provision for reduced compensation benefits during a transitory period is included in the occupational diseases law recently adopted in Michigan. I believe that some such provision is essential in every measure that may be enacted, newly providing for compensation for silicosis, asbestosis or other dust disease of the lungs.

In another way and another sense, accrued liabilities cause trouble, especially for insurance carriers, in the field of compensation for silicosis. Experience in Wisconsin, and to some extent also in California, indicates that claims for silicosis do not eventuate from year to year, fairly regularly, in proportion to the exposures incurred, as do claims for accidents and the majority of

occupational diseases. Instead, they come in waves, in periods of depression, when workmen are laid off from other causes and then first feel that they are disabled. As long as employment is good, workmen affected with silicosis hang on and the accrued liabilities keep piling up, to mature in the indefinite future. Under present employment conditions there are relatively few claims made for compensation for silicosis. But the less cost of claims under such conditions affords no basis for premium rates adequate to build up reserves to meet the losses from silicosis that will eventually result from exposures during the good times. The rates must be specifically loaded for that purpose, and if the loadings be not adequate, it means ruin for insurance carriers -- whether private companies or State funds. That rates adequate therefor will not be obtainable under the public pressure for cheap insurance is an imminent peril affecting most directly insurance carriers, but indirectly all concerned.

I have said that, in regard to occupational diseases, prevention comes first, compensation second. Therefore I would wish to impress it upon you that the matters relative to compensation just discussed are all pertinent to prevention. I believe that the imposition upon employers of a liability to compensate for occupational diseases is a most effective incentive to their prevention -- but only, I would emphasize, upon condition that such liability be reasonable and practically endurable and that the insurance provided be at adequate rates, proportionate to the risks covered by individual policies. If the liability for occupational diseases imposed by law be unendurable in any respect or degree, it will in that respect or to that degree merely kill the goose that lays the golden egg -- as happened in New York.

And if the insurance be so provided that industry may shift any material proportion of its losses onto insurance carriers, or that the bad risks may distribute their excess losses among the good risks, the incentive for prevention will be greatly reduced, where not entirely eliminated. Further and, in my opinion most reasonably, it is contended that if employers be made liable for compensation for all known occupational diseases, "regardless of fault", such liability should, as between employer and his employees, be exclusive of all other liability for injuries to the health of employees alleged to arise out of the employment otherwise than "by accident."

Reasonable standards of sanitary conditions in all industrial employments

should be enforced by the State. Beyond that to hold the employer liable for compensation for such occupational diseases as may nevertheless result and yet to leave him liable to damages in speculative litigation, based upon his alleged negligence, wherever there is some speculative casual relation between the working conditions and an employee's illness, would be intolerable. A primary purpose of the workmen's compensation law is to eliminate the wasteful litigation and uncertainties of the old employers' liability system. Whatever law for the compensation of occupational diseases may be adopted, it should be so drawn as to fulfill that purpose.

Turning now to the direct methods and means for occupational disease prevention: Manifestly these are matters for formulation by specialists -- by engineers, chemists, biologists and industrial physicians. Given a compensation law such as I have advocated, the more highly organized industries may be relied upon to meet the problems of prevention by methods dictated by their own experts. But the general run of industries will need authoritative advice. And the marginal establishments will need to be whipped up to the maintenance of minimum standards. Moreover, if the schedule plan of defining occupational diseases be generally adopted, as I hope it will be, there will be need of appropriate procedure to determine additions to the schedule as new industrial diseases are developed.

As to the public machinery best adapted to promote prevention, there may be reasonable differences of opinion, but the experts upon whom I rely recommend the creation of a Bureau of Industrial Hygiene in the State Health Department or Labor Department -- preferably, since more appropriately, in the Health Department -- with a personnel of highly qualified specialists, and adequately equipped to perform the following functions:

First: To study the causes of diseases occurring among employees in industry; to instruct and advise as to the means for their avoidance and prevention; and to recommend to the Legislature additions to the schedule of occupational diseases, along with such amendments to the law relative to occupational disease compensation as experience may demonstrate to be needed. It may be advisable to go even further and to empower the Bureau of Industrial Hygiene itself to add to the schedule of occupational diseases, subject to special regulations.

Second: Such Bureau of Industrial Hygiene should be empowered to make, amend and enforce reasonable rules for the protection of the health of employees in industry. Such rules should be clear, plain, intelligible and practicable, so as to

establish standards that all persons affected can understand and live up to in certainty. Such rules should replace all existing statutes that are arbitrary, out of date, or that impose upon employers obligations ignorantly intended for the protection of the health of employees, but which are so indefinite that compliance can seldom be certain, leaving it open for ignorant juries to find the employer at fault and to mulct him for damages whatever he may do.

Such rules -- which would naturally take the form of codes for various industries -- should be adopted or amended only after ample public notice and hearings open to all parties affected, and should be subject to review by the courts as to their reasonableness. A model for provisions to regulate the rule-making power to be delegated to such a bureau as here advocated may be found in the Illinois Health and Safety Act as enacted in 1936. Finally, the rules so formulated should be enforced by appropriate penalties; and it should be provided that they shall not serve as bases for damage suits for alleged non-compliance.

One of the most difficult features to agree upon in a program for occupational disease prevention relates to the practices of pre-employment and periodical medical examinations of workmen. Organized labor is inclined to oppose anything in that line that may be proposed. In the New York law, labor succeeded in having inserted a declaration to the effect that pre-employment examinations are against the public policy of the State. But some such examinations are necessary. I believe that the difficulties in the way of general agreement upon essential practices in this respect can be ironed out and the necessary examinations made, under public regulation, to avoid the abuses that labor fears. But I can not venture to predict how this can or will be worked out.

It will doubtless interest you to know how the eight States in what is commonly known as the Pacific Coast field treat occupational diseases under their respective workmen's compensation laws.

The Arizona act specifically excludes occupational and other diseases except as they result from injuries by accident.

In California the law was amended by the 1917 Legislature to cover occupational diseases by enactment of the provision: "The term 'injury' shall include any injury or disease arising out of the employment."

The present Idaho law does not cover occupational diseases except cases resulting from injuries by accident, but the 1937 Legislature passed a bill creating

an Occupational Disease Commission, which is to work with the State Department of Health in making a survey of the industrial disease problem and report its findings to the next Legislature.

The Montana Legislature likewise this year adopted legislation to provide for a survey of the occupational disease situation as a possible basis for future legislation. The commission has been appointed and is at work.

In Nevada, where the business of insuring the compensation liability of employers is a State monopoly, the law excludes occupational diseases except where they are caused by accident.

Oregon likewise does not cover occupational diseases under its workmen's compensation act, but a resolution was adopted by the Legislature this year for appointment of a commission to prepare an amendment for submission to the 1939 Legislature that would extend compensation to include industrial diseases.

The Utah workmen's compensation act excludes occupational diseases except such cases as result from injuries by accident.

In Washington, the compensation act was amended by this year's Legislature so as to include under compensation benefits a schedule of 21 specific industrial diseases. The amendment provides that the cost of occupational disease coverage shall be borne equally by the employer and the employee.

Taking the country as a whole, it is found that there are nine States, including the District of Columbia, that provide compensation for occupational diseases under general provisions. These states include California, Connecticut, Illinois, Indiana, Missouri, Nebraska, North Dakota and Wisconsin. Twelve other States require employers to compensate for occupational diseases under a schedule provision which specifies the diseases for which benefits shall be paid. Several other States, notably Massachusetts, have by court decisions extended the scope of compensation laws to include at least certain occupational diseases.

I have now outlined the subject assigned to me as comprehensively as I am able. The particular program that I have advocated follows generally the "Suggestions for Provisions for a Workmen's Compensation Plan for Occupational Diseases," formulated by an Advisory Committee of the Association of Casualty and Surety Executives. Copies of this brochure may be obtained upon request addressed to the Association at No. 1 Park Avenue, New York City. Such program, it is recognized, would need some variations to adapt it to local conditions in any particular State.

It is also to be understood that many of the features of such program may not be generally agreed to. But I hope that by presenting what I am led to believe is a consistent and practicable program for dealing with occupational diseases, I have aroused your interest in the subject sufficiently to incite you to a detailed study of the problem, with all its complexities.