FILE NAME: Saranac 7th Symposium (SSY)

DATE: 1952

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DOCUMENT DESCRIPTION: Transcript of Presentation by Mr. Wisely with Discussion

TAKEN FROM PAGE 697.

BY [illegible]:

Thank you, Ted. I am very happy that I have been able to attend this symposium. I am 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 go to Lawrence Lake. I told the Governor I wouldn't do it. We know that - he's a very good friend

of mine, of course, that's the only reason I could tell him that. He said, "All right, Otto, if you don't think you could go, but I think you should go", and I'm very happy that Paul induced the Governor to order me to attend this symposium.

There is another reason why I am happy to be here. Very early after the occupational disease law was adopted, became effective, on July 1st, 1941, in Utah, my first silicosis hearing found us with very few, if any, men, medical men who knew anything about silicosis. There was one exception to that, and that's the gentleman who, this day, is still the pioneer in industrial medicine, and one of the outstanding experts in the disease of pneumoconioses, and that's Doctor Paul S. Richards, and he suggested that we had better lay a foundation, and we did.

We had Doctor Roy Gardner, Doctor George Wright, from Saranac and Doctor Hussey, who at that time, was with Johns-Hopkins. They did a splendid job, and I want to say to these men that that case, the France case, never did go to the Supreme Court. It was too damned well done, laid the foundation for all future hearings, and we're deeply indebted to these three gentlemen and to the pioneering work that Doctor Paul Richards did.

My grand daughter frequently tells me that patience is a virtue. Well, I have been patient all week. I had a

lot of questions that popped up in my mind, as the various speakers paraded across this platform, but all those questions were asked. Patience, you see, but not all of them were answered, as you well know.

Now, I have been asked to speak to you briefly on the same subject that has been discussed, from the viewpoint of management, and this will be rather a peculiar way to express the viewpoint of management, because you will not understand our philosophy and our procedures unless you come to Utah. It's easy to read a law and you may interpret it as you think any lawyer or any court would interpret it, but you'd better not pass judgment on the Utah occupational disease disability law until you come to Utah and see us in action, see what we've done.

Now, we have about 30,000 reportable injuries in the state every year, not many of them o.d.'s. Of course, and of that number last year only 78 went to a formal hearing, not a bad record, I would judge. Since we amended the statute, and created our medical panel for occupational diseases, particularly for silicosis, three and a half years ago, not one single case has gone to the Supreme Court of the State of Utah and not once did either party question the medical findings and the diagnosis of our medical panel.

The only formal hearing we have had in an occupational disease case in the last four years, posed only one

question and that was the degree of disability which, of course, was very interesting to me. I took the position that a man who is rated seventy-five percent disabled, should be rated totally disabled if, for no other reason, than that a man seventy-five percent disabled certainly is not on the labor market after that.

As far as rating his disability, we have no particular trouble. We don't contend that we're right always. We think we get within ten percent either way, generally. The parties seem to be satisfied and, after all, that's the important thing, if you make an award, is to satisfy the applicant that he has received enough money, so we get along very nicely in that respect.

Another thing about our procedure, and all the way through now, you might as well be thinking of management, as I'll show you in just a few minutes, this is management's viewpoint, we believe, in speedy action.

If the Referee -- I only have one at this time -- doesn't get the rough draft of his proposed findings of fact and conclusions of law to me within ten days after he hears a case, I'm going to get a new Referee, and that decision is out in the mail within twenty-four hours after the Referee finally sends the final proposed findings of fact and conclusions of law.

I understand that some cases in some states have

been pending for years. If that happened in Utah. we'd get a new commission, new referee, new everything. The - it just doesn't make sense. Our procedure is extremely simple and I believe laws that we have, particularly the o.d. law and the amendments in the last few years, have the complete and always have had the complete approval of management.

As a matter of fact, I might tell you here at this point that since 1945, four successive legislative sessions, every law pertaining to labor and industry compensation, laws and labor laws, were submitted to the Senate and the House, in agreed form with a letter accompanying the bill. We don't want any amendments. We can't even cross a T or dot an i. We want those laws passed just the way we hand them to the Secretary of the Senate and the Clerk of the house, and I hope we'll succeed in doing that the next session.

Now, some of you might think that in that kind of a deal, labor would get the short end. That is not true. In every single instance, labor has received more than they requested in many, many respects, and the net result has always been a law that is completely satisfactory at the moment and later on for that matter, to both sides.

Now, as far as medical problems are concerned, we don't have any trouble with that either. If I catch a doctor who doesn't tell the truth, and some of them do not, some of them are just plain ignorant, you know, but some of

them just don't tell the truth, all we do is send the transcript of the testimony to the Utah State Medical Society and the Board of Censors makes short work of any man who gives us any ridiculous testimony.

To give you an example, if you say this wouldn't happen, it did. A man was hit in the mouth, loosened a couple of teeth and I think they were already loosened because he had a very bad case of pyorrhea, went to a dentist. A dentist pulled a couple of teeth, bled a little bit, swallowed the pyorrhea infected blood. One of our doctors took the witness stand and under oath, testified that this man developed a peptic ulcer that had reached the near perforation stage in three weeks. The pyorrhea germ did it. I tried to take him off the hook by telling him, why, what you really mean is that he had an ulcer and the germs sort of aggravated it, effected it a little bit. He didn't swallow that hook either. So I sent a record to the Medical Advisory Board. They called him in, I mean the State Medical Society. They called him in, and he said, "I didn't say it". They showed him the transcript. He said, "Well, I guess I did, shouldn't have gone quite that strong". They said, well, "Why did you say it". Well he says "The guy told me he lived in a trailer camp and I wanted to help him". You see, there was a doctor that was practicing economy in that medicine. We have had a few like that, and as I say,

we make short work of them.

Of course, here is a secret. I'm a lawyer until recently a member of the law school faculty of the University of Utah and a lot of other civic jobs, and I want every lawyer to make a living, but if you are practicing law in Utah and you depend on workmen's compensation fees for a living, well you wouldn't even pay your office rent. Our fees are very low. There are times, however, when a lawyer will make something out of nothing, as we say, and we will pay him, order a substantial fee paid him.

Now, how do we accomplish all this? For example, the Utah Occupational Disease Disability Law has a definition. We don't like definitions in Utah. We don't have any trouble with them. We do have one definition, and that is the definition of disablement. Disablement is defined as inability to carry on any gainful work or occupation for remuneration or profit.

Well, sir, you know, for eleven years, there has not been one employer in Utah that has ever raised that defense and they could have done it in every damned case we had. Now, that's the attitude of the employer. Same thing on disability. In our state, a man must become totally disabled within two years, not from the last day of exposure, but from the last day of employment, and then he has one more year in which to file a claim. A widow has six months

in a case of death, to file a claim.

We also have in Utah, a compulsory autopsy law, for both W. C. and O. D. It has been extremely helpful and I'm getting back to this medical panel now. I'm nuts about the medical panel, in fact, so much so that I'm going to ask the next session of the legislature to amend the Workmen's Compensation Act to authorize me to appoint a medical panel to determine disputed medical questions in accidental injury cases.

We also have a non-statutory medical advisory board that examines men who claim they have a permanent partial disability following recovery and they meet on Fridays, examine these men, recommend rating to us and we always accept their rating. In eleven years I have been on the Commission, not one of those has gone to a Supreme Court and we have had less than six formal hearings growing out of that kind of procedure.

Now, you might say, well, you're either terribly dumb in Utah, employers, employees, labor unions, medical society, and so on. That isn't the case at all. We have tried to do, and we've accomplished it, I think, is to decrease, to an irreducible minimum, the distance that so frequently exists between labor and management, the commission and labor and management, the commission and the medical society, and so on. They're friends of ours.

Now, they fight like Hell over other labor problems, but when it comes to workmen's compensation, occupational disease laws, as I have already told you, they work together hand in hand in a very friendly manner and present to the legislature, the changes in the law that both parties believe, experience has taught us should come.

Now, on this question of rehabilitation, Ted, take another minute is all, we are just beginning to think about it, because our permanent partial disability law for o.d. cases has given us a little headache. That, too, I think we can solve, perhaps without any legislation. We could shoot a couple of insurance adjustors and our attorneys in Utah, there are only two out of eighty-five, and it isn't one of them, we wouldn't have any trouble.

These men who are permanently partially disabled and so rated, they go back to work in a mine if the panel says they should. They go to work anywhere in the State of Utah, but they have two insurance carriers who just raise particular Hell, and so we have not a compensation problem, no difficulty determining that they're partially disabled or what the degree of disability is, but they come back to me from Park City, the CIO Steelworkers man, he says, "Hell, Colo, the guy can't get a job; what are you going to do with him"? Well, that's the question I'm mulling around in my mind, and not long ago, and with this same employer again,

the Secretary of the Utah Miners Association, and the Secretary of the Calcium Assurers Association, and said, "Otto, when you get back, you're not going to have any more trouble with those permanent partial disability cases. The panel says they can work somewhere; we'll see that they do". Thank you.

MR. WATERS:

It's a wonderful way when you can hear a Commissioner tell that type of story. I do not have to remind this audience that the responsibility and role of the medical director of our modern corporations is important. The physician who is successful in that role is more than a doctor. He enjoys a personal relationship to the men who is subject to his charge, that is probably closer than that of any other representative of management. To state it simply, he serves for the confessor to his employees, and he is successful only insofar as he instills complete confidence in his men in the discharge of his duties.

Lloyd Hamlin is Medical Director of one of the largest and best managed of our industrial corporations, the American Brake Shoe Company, a company that certainly knows all that should be known about silicosis, or the pneumoconioses. His experience has been so extensive that he is fully familiar with the medical problems presented in the administration of compensation law. Forgetting administration

of compensation laws for a moment, the problems presented by these diseases among the employees of the company and the role of the medical departments and their relationship in the proper administration of compensation laws. Doctor Hamlin.

BY DOCTOR HAMLIN:

(Doctor Hamlin read a prepared paper which is on file at the Sarnoc Laboratory.)

BY MR. WAGERS:

I am pleased to advise the audience that the airplane schedule has been changed. The weather apparently has cleared and there is not the quite pressure of time that we were subject to when we started the meeting.

It is always the chairman - the prerogative of the chairman of any meeting to reverse his field, and I'm going to reverse my field today. There have been a number of prepared questions to be directed to the panel, but I think the audience comes first and we will welcome any questions that you may wish to direct to any individual member of the panel. In propounding those questions, kindly give your name, the company with which you are affiliated or your address and the participant of the panel to whom you wish your question directed. If you run short of questions, I've got one or two that I want to slap to the members of the panel myself, but at the moment, I invite

AMERICAN BRAKE SHOE COMPANY
MEDICAL DEPARTMENT
2501 BLUE ISLAND AVENUE
CHICAGO 8, ILLINOIS

September 9, 1952

Arthur J. Vorwald, M. D., Director
The Freedom Foundation and
The Saranac Laboratory
Saranac Lake, New York

Dear Art:

I have revised my talk along the lines you suggested and also since writing you I have added another case record because it points out very definitely the type of thing I am talking about. Will you kindly therefore insert the attached three pages, numbers 3, 4, and 5 to replace page 3 of the manuscript you already have. Kindly number the succeeding pages to conform with these.

I have also attached my replies to the questions I submitted in the event you wish to see these before the panel discussion.

Yours sincerely,

L. E. Foslin, M. D.
Medical Director

leh/ca
Encls.

cc: Mr. Theodore C. Waters, Baltimore, Md.

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L. E. Emslie, M. D.
Medical Director

leh/ca
Encls.

cc: Mr. Theodore C. Waters, Baltimore, Md.

August 28, 1952

L. E. Hamlin, M.D.
Medical Director
American Brake Shoe Company
Medical Department
2301 Nine Island Avenue
Chicago 1, Illinois

Dear Doctor Hamlin:

I Doctor Yonwald's absence while on a business trip, I wish to acknowledge and thank you for your letter of August 26 enclosing a copy of your talk for the panel discussion of our Seventh Kansas Symposium. This is the first manuscript paper we have received and I know that Doctor Yonwald will be very happy to have it on his return to the laboratory the first of the week.

Sincerely yours,

Lillian B. Ellam (Mrs. A.B.)
Executive Secretary to -
Arthur J. Yonwald, M.D.
Director

LBE:bf

August 28, 1952

L. E. Hamlin, M.D.
Medical Director
American Brake Shoe Company
Medical Department
2601 Blue Island Avenue
Chicago 8, Illinois

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Sincerely yours,

Hilliam R. Ellam (Mrs. A.R.)
Executive Secretary to -
Arthur J. Vorwald, M.D.
Director

LVE:daf

AMERICAN BRAKE SHOE COMPANY
MEDICAL DEPARTMENT
2501 BLUE ISLAND AVENUE
CHICAGO 8, ILLINOIS

August 26, 1952

Arthur J. Vorwald, M. D.
Director, The Trudeau Foundation
and The Saranac Laboratory
P. O. Box 591
Saranac Lake, New York

Dear Art:

I am enclosing herewith a copy of my talk for the panel discussion, as you requested. I hope it meets with your approval. I am also sending a copy to Ted Waters.

I plan to show about a dozen slides to demonstrate the variety of conditions that may simulate silicosis.

Kindest regards.

Yours sincerely,

L. E. Hamlin, M. D.
Medical Director

leh/em
Encl.

TAKEN FROM PAGE 707.

BY MR. HATHES:

I am pleased to advise the audience that the airplane schedule has been changed. The weather apparently has cleared and there is not the quite pressure of time that we were subject to when we started the meeting.

It is always the chairman - the prerogative the the chairman of any meeting to reverse his field, and I'm going to reverse my field today. There have been a number of prepared questions to be directed to the panel, but I think the audience comes first and we will welcome any questions that you may wish to direct to any individual member of the panel. In propounding those questions, kindly give your name, the company with which you are affiliated or your address and the participant of the panel to whom you wish your question directed. If you run short of questions, I've got one or two that I want to clap to the members of the panel myself, but at the moment, I invite

your questions. Any questions, gentlemen?

BY MR. KALMYKOW:

I'd like to address this question to the last speaker, which relates to the question of whether there should be a liability based on last injurious exposure or not, and Mr. Kouchle, if I'm not mistaken, didn't express an opinion on that subject himself. I was wondering if the last speaker would think it advisable to have a long and extensive litigation and evidence having to be presented to the chairman, the extent of exposure under all employers which may spend a considerable period of time, to be able to allocate cost of liability between each in a particular silicosis case, just as a practical matter, how would you handle a situation like that?

BY DOCTOR HAMLIN:

That's a pretty long, involved question for me, and I don't claim, as I said, to know much about the administration. I think that's a question that might be directed better to one of the other speakers. I'm not sure that I quite understand just what you were - what the gist of your question is.

BY MR. HARRIS:

Commissioner Hill, do you mind if Commissioner Hill answers that?

BY MR. KALMYKOW: No.

BY COMMISSIONER HILL:

I may not be able to answer it, but I got the gist of it. You say does he oppose a system whereby the last exposure pays all the liability? Now, as I understand it, the insurance companies like that system. In Michigan, we have - we're able to apportion liability between employers, but the last employer is stuck, but we've suggested that in order to facilitate employment of employees with abnormal chest X-rays, that there should be contribution between insurance companies, but they don't want that.

Now, in Michigan, the last employer is stuck with the entire amount. We have not had any situations that involve as little as one day. The Ford Motor Company, in one case, employed a man and told him on pre-employment that they couldn't get the result of his X-ray examination for three days, but if it showed that he had abnormal - an abnormal chest condition, that he would be released and so as it did, he was released. Then a claim was filed naming the Ford Motor Company and another employer, and the commission in their ultimate wisdom, didn't use the provision of the last employer, but held the employer previous to the Ford Motor Company, and the court said we were correct.

But your whole - the whole problem here is that the - if the last employer is stuck for the full amount, he can call in the other employers. Now, that rule has been in

effect in Michigan since 1937 and I can recall only three to five cases, generally the employers settle it by agreement, and say you contribute so much, you contribute so much, you contribute so much.

Now, remember that all cases are not contested and there have been cases in which employers have contributed where they have agreed that the man had a disabling silicosis and the amount payable should be paid by the last one under the law, but the boys getting together, the several employers, and say, I'll pay this much and I'll pay that much. They do it not under some regulation, I mean they just arbitrarily fix the amount each is going to pay out of the total amount due. There is no particular formula. Now, I don't know if that answers your question or not.

BY MR. WATERS:

Thank you, Jim. I am going to again exercise another prerogative and direct a question to one of the members of the panel that has been the subject of discussion in the course of the meeting yesterday afternoon and this morning. Ben Kuehle happens to be one of my father confessors in this field. This question is not prepared for him, but I'd like to get his reaction, both from the standpoint of management and an insurance carrier, with respect to this question.

Ben, what can be done to minimize the unemployability

as a disabling factor in dust disease cases? Would you say a word about that?

BY MR. KEUCHLE:

That gives me an opportunity to read a paragraph from a letter from Mr. Harry Nelson, the Director of Compensation of the Wisconsin Industrial Commission, which I neglected to read when I was up here before. I submitted my talk to him, because I didn't want to make any errors in speaking about the statute, various statutes of limitations that we have in our law, and his concluding paragraph, in sending the draft back to me is this:

> "As I read your talk, I again wondered why other states flounder around with elaborate and obstruse provisions for partial disability, which is really not existent."

Now, your question, what can be done to minimize the non-employability of an individual who has some evidence, clinical or X-ray, naturally would have to be X-ray, at least of silicosis - that depends entirely on what sort of a law you have and what sort of administration you have.

Now, I know over in Jim Hill's state, the great State of Michigan, you have a pretty desperate situation. They have a law, and Jim Hill and his associates have got to administer it the way the legislature put it on the books. Industry is, in fact, refusing to employ people in the State of Michigan who have X-ray evidence of fibrosis, am I right, Jim?

BY COMMISSIONER HILL:

Yes, I mean, they refuse to employ them, some of the foundries discharge them, just say, you're out of a job on a periodic X-ray examination, that starts the trouble.

BY MR. KEUCHLE:

Now, here is an employer group who, in fact, by their actions, say that a man with that amount is silicosis is a hazard to them as far as employment is concerned. It isn't the Commission's fault, it isn't the employer's fault, the law is faulty, and the administration can't do anything but administer the law the way they have it on the books.

Now, we have no such trouble in Wisconsin. You gentlemen and ladies here would be amazed, and Doctor Sander would verify this if he's here, when I tell you that in Wisconsin today, in our foundries where we know dust control is adequate, we're keeping well within safe limits, industry is employing on the recommendations of Doctor Sander and other equally qualified physicians, men who have silicosis today, who may come from another state or from another foundry in the State of Wisconsin or from some other industry that we will recognize - that have well recognized nodular silicosis, because our Commission, as Mr. Nelson pointed out in this letter, takes the position that there is practically no such thing as a disabling silicosis from the standpoing of the man continuing to do his work. Now, let's remember

what this -- am I talking too long?

BY MR. WATERS:

Go ahead.

BY MR. KEUCHLE:

Let's remember what we have compensation laws for. Some people seem to be laboring under the delusion that compensation laws were primarily designed to give people money. That is not correct. I happen to be well acquainted with the committee from the Wisconsin Legislature, in 1909, that drafted the law which was passed in 1911. The Chairman of that Commission, Mr. Sanborn, was a personal friend of mine. I talked with him many times, and when that bill was submitted to the legislature, they gave - the Committee gave several reasons for a compensation law, and number one reason was to reduce the number of accidents and injuries in industrial pursuits.

Now, that is the goal we have been trying to follow, and that is the goal every administrator should have in mind. Wealth is only created through the use of human energy in the development of our natural resources, and in no other way do you produce real wealth. When a man is not permitted to work for any reason, who is employable, you are sacrificing part of the wealth, potential wealth of this nation of ours, and every agency, every individual who plays a part in administering a compensation law, should,

first and foremost, look to the one factor of keeping a man at work.

Now, it's true that some of these fellows in the foundries, have extensive silicosis and they can't run a hundred yard dash, but how much better to let them go on for the rest of their life at their favorite occupation without a wage loss, and we've got people in Wisconsin in a lot of the foundries we insured, who had nodular silicosis twenty years ago and they are still working. Why not keep them at work rather than to give them a few thousand dollars and throw them out of work? That's when they die; that's when they become a burden on society; that's when we've got to support them through public and private charity. I say that every law ought to be looked at again with the idea of designing it in such a way that in the administration of that law, there is every inducement to keep men at work rather than to pay them money.

BY MR. MASTERS:

Thank you, Ben. It's not surprising that Bill Connolly's remarks ran head-on into one of the subjects that I happened to discuss at the meeting yesterday afternoon. Perhaps Bill wasn't here, but it dealt with this other germain subject of the question of limitations. In summary, you recall that I mentioned that in damage actions, all states imposed limitations of time within which suit or

claims must be filed and under most of the compensation statutes, there are specific limitations of time when the compensability of the claim must arise or the time within which that claim must be filed.

Now, if I understood Bill correctly in his remarks, he'd like to throw some of those limitations statutes out of the window. This is just another area of the many disagreements that I have with him, and many of the other members of the panel, but in the light of that discussion, and I think it is of vital interest to the record of this symposium, that Bill should have the opportunity to say a little more concrete form, what he thinks. To that end, I'd like to direct to him this question:

Should time limitations on the filing of claims for pneumoconioses be liberalized or abolished? Will you say a word about that, please, Bill?

BY MR. CONNOLLY:

Glad to, Ted. In answering that question, and when my paper was prepared I had one thing in mind, that at no time did I want to discriminate against people with dust diseases. We haven't, anywhere in the United States, a law on our books, which says that a man who is going to be compensated for the loss of a hand, the time limitation starts from the time of his exposure to what may cause the loss of the hand, and that's exactly what most of the laws

say today on silicosis.

They say from the time of last exposure. Now, if you're going to put time limitations on other sections of the adt, then do the same thing with silicosis, but if you're not, then treat silicosis victims exactly the same way, in other words, I would say that if there is going to be that statute of limitations, then it should be from the time of this disablement, exactly the same as if he lost his hand, from the time that the hand comes off, he would have two years to report that accident.

Now, there is always going to be disputes if you say the time of last exposure, because the man may go two or three years without knowing it or he may know it and be careful about it, or be careless about it and then, when he is disabled, come in and make his claim, and it's disallowed on the basis of the statute of limitations.

Now, I had that problem when I administered the law in Rhode Island, and strange as it may seem, I made the administrative ruling that that meant from the time of the disablement and not one case was challenged on the basis of that. Every claim was paid and we have quite a few insurance companies writing insurance in Rhode Island. I think were some 70, and so, that's my position on it. I just want the silicosis person treated exactly the same way as any other accident or any dust diseases.

I'm using the word silicosis perhaps when I should be using that pneumoconiosis and if they can't be treated the same as any other accident, then I say abolish the statute of limitations.

BY MR. WATERS:

Very well done.

BY MR. KEUCHLE:

Now, can I fight?

BY MR. WATERS:

Sure, come ahead, three minutes to fight.

BY MR. KEUCHLE:

I don't think Bill's comparison is appropriate at all. In one case, you're dealing with a disease that is progressive; in another case you're having a man's hand chopped off. However, I do agree with Bill that there ought to be, if you're going to have any statute of limitations at all, a very liberal statute. It ties right in with what I said a moment ago, if you want to keep these men at work, they've got to have some reasonable assurance while they're working that if eventually they break down they're going to be taken care of.

BY MR. CONNELLY:

Well, I agree with that.

BY MR. KEUCHLE:

We have attempted, in Wisconsin, to handle that

situation in such a way so that a man practically has no statute of limitations ever applying against him. Now, some of you may want to write my president and tell him I ought to be fired.

BY MR. BARDICH:

Mr. Waters, may I ask a question?

BY MR. WATERS:

You may, Mr. Bardich.

BY MR. BARDICH:

We were told on Monday that cases of beryllium disease were turning up ten years after the termination of the exposure. From my past experience, I'll bet a cookie that two years from now, she'll be telling us that cases are turning up twelve years from the last exposure. Now, on that basis, how are you going to set any kind of a definite time limit?

BY MR. WATERS:

Since I am not a member of the panel, I'm going to ask one of my good brethren to answer Mr. Bardich's question. Jim, I see Doctor Richards seems - would like to comment upon it, is that correct, Paul?

BY DOCTOR RICHARDS:

Yes. I would say one of the greatest difficulties that we are encountering on this panel today is that we have written too many laws in ignorance. Now, to come back with

my good frien , Otto Wisely, and recapitulate somewhat of a pattern of the thing that he brought before you, now, we are just a little sagebrush state out there, folks, but we have twenty years of thorough investigation before we wrote an occupational disease law. When we got ready to write that law, we brought in labor, we brought in management, we brought in the attorneys, we brought in the environmental engineers and lo and behold, they permitted a couple of us doctors to creep into the crowd.

Well, now, then with that background, that as a basis, we all sat down with equal responsibility and wrote a law. Well, you may not agree with it, but the damned thing has worked. Now, then if you don't agree with it, then give us some reason why it isn't reasonable.

BY MR. CONNOLLY:

Well, I didn't disagree; I said it's almost impossible.

BY DOCTOR RICHARDS:

It isn't impossible, because it's been done. Now, then with that as a background, when we confront the law that we've got today, labor is just as responsible for that law as management or as the attorneys or as the health engineers or as the doctor. So we've got a law on our statutes that when it went before our legislature, there was not one single dissenting vote in that legislature, and now then

if labor wants to come and condemn this law, we say, all right, gentlemen, you are condemning the law that you helped to build after twenty years of investigation, after a thorough, after a thorough analysis of all of our health problems, as accurately as we could make them, in a health - in a health investigation throughout our state, which resulted in the taking of thousands of films, so our pneumoconioses problem was not met indiscreetly and without a little foresight. Therefore, I feel that if we could establish a pattern whereby all of the parties involved sit down in council on what they want to do, I believe a lot of these problems would be worked out.

Now, I think a lot of the problems that have come before this group today will only be worked out educationally. The success of the operation of this thing will be how well can our boards that are to administer these laws get along with management, with labor and all the other factors involved. If we can still sit down, in the united capacity of a cooperative and amalgamated group in studying our problems, there is still an agreeable solution to all of these things.

BY MR. WATERS:

Gentlemen, you know, I wish that this plane that's supposed to leave Saranac, would leave at five o'clock in the morning instead of five o'clock in the afternoon. I

predicted today we were going to have a slugging match, and Bill Connolly just whispered in my ear that he couldn't take everything that Doctor Richards had said and he wants to reply. I am going to let him reply, but I'm sorry to tell you that when he is through, I must again exercise my prerogative and make a few remarks. Time is running out and I would like to hear from Bill, for the record.

BY MR. CONNOLLY:

One of the greatest problems we have in the United States today is, as Doctor Richards very well put it, poor laws. We, in the Bureau of Labor Standards, have been trying to develop a so-called model law that will at least get some of our states in line with others. Now, if you take perhaps the Governor there has control of his legislature, but let me tell you that when I went in as Director of Labor in Rhode Island, we had a very bad law, and as the Director of Labor, I submitted twenty-three amendments to correct some of the abuses in that law. I just succeeded in making that law more hodge-podge than it was in the beginning.

Sure, we did correct some things here and there. I then went to the Governor of the State and asked him to set up a commission to study the law and to bring back to the legislature a report on what a model law should contain. He did that. That bill has been before our legis-

lature for three long years. We still have the hodge-podge law in Rhode Island.

Now, we can go straight across this country and we can't find two workmen's comp laws that are anywhere near alike, and one of the greatest fights I'm having right now, if you please, in Washington, is to prevent the federalization of workmen's compensation.

Now, that is not coming from the federal government. It is coming from people outside the government, and I have taken my stand that the workmen's compensation can not be federalized, and for that reason, I oppose it. The International Association of Accident Boards and Commissions which is made up of all of the workmen's compensation commissioners in this country, and I am the Secretary-Treasurer of that organization, they also have asked to call a meeting in Washington, of all workmen's compensation commissioners for the purpose of getting up this model law. We can't even get agreement there. We have some people that want to come into that meeting that - and their views are so wide apart and so far apart that we'd only succeed in having another knock-down, drag-out fight where we couldn't do the job.

Now, we're all working toward the end of simplifying workmen's compensation laws, but when I said it was impossible, I say that there are too many people in our state legislatures who differ in their views on what should be

here or what should be there in a law, and that is the main difficulty, and that is why I said it was impossible. If we could control these legislatures, fine, we certainly could get up a good model law, the law that is now in Mississippi is one of the best laws around that part of the country, I guess, of any of the laws, for they just enacted their law in 1948. That law was drawn up in the Bureau of Labor Standards. When it got down there, they did make changes in it, changes that we didn't like. However, it came out in pretty good form and they were the last state in the union to enact a workmen's compensation law, and as I say, it was in 1948, but that's the closest we've come to being able to put into one act, all of the things that we think are good throughout the nation.

BY MR. WATERS:

Gentlemen, word has come to me that I may have been mistaken, after all, in honest confession is good for the soul, and I must ask my friend, Doctor Richards, with respect to this, the time for the departure of the plane. The reason I ask that is that word has come to me that a number of those in the audience would like to stay on for further discussion. Paul, do you know about the plane?

BY DOCTOR HUSSEY:

The bus leaves the hotel at 5:35 daylight time.

BY DOCTOR VORHAUD:

That's the time on the clock there.

BY DOCTOR RICHARDS:

We have one hour before the bus leaves.

BY MR. WATERS:

Well, then I think I was perhaps a little premature in my remarks. I understood it was five o'clock. Therefore, with your forbearance, let's continue this discussion a few moments. Are there any other questions you would like to direct to the panel?

BY MR. BARNAKO:

Mr. Connolly, in your opposition to the statute of limitations, are you talking about exposure or disability?

BY MR. WATERS:

Do you mind addressing the question so the audience can hear? This is very important and I'm sure that this discussion will be helpful.

BY MR. BARNAKO:

My only question is your opposition to the statute of limitations, is whether you're opposed to them generally or whether it's a problem of from the last exposure or date of disability?

BY MR. CONNOLLY:

Date of disability, that's my position.

BY MR. BARNAKO:

And that's what you would desire?

BY MR. CONNOLLY:

That's right.

BY MR. WATERS:

Are there any more questions from the floor? Commissioner Hill wants to say something; all of them want to talk.

BY COMMISSIONER HILL:

Well, I'll tell you, the reason that he started to ask me to try to attempt to answer the gentleman's question about disability, from delayed disability from exposure to beryllium, and that was called to my attention and that is why I asked that he return. Now, somebody is going to have to take care of these people that become disabled and die from berylliosis or any other disabling result from exposure to beryllium.

The workmen's compensation laws are designed to provide benefits for disability or death that result from an injury which arises out of and in the court of the employment and the term injury, includes diseases and under an all-inclusive type occupational disease coverage, it would include any kind of a disease that would result from exposure to beryllium and if beryllium was listed in the schedule, it would also be covered.

Now, you're either going to have to pay them compensation benefits under the compensation law or the state

or the federal government or somebody else is going to have to pay benefits under some plan.

Now, I submit that they should get it under workmen's compensation, and that the only possible limitation you can have would be a limitation from the date of disablement. Now, the delayed reaction, nevertheless, if you can establish that it's due to the employment, that's the test. If it can be established that it's due to the employment, then there, I agree that there should be some limitation from the date of disablement in which claim should be made or in which proceedings should be started, but certainly I don't think that a worker should be barred merely by the lapse of time. If the effects of beryllium are not felt or do not become disabling until ten or twelve or fifteen years later, nevertheless, if the condition arises out of and in the course of the employment, than it should be compensated.

BY MR. WATKINS:

Here is an important question, gentlemen, one with which I, upon which I personally have had a strong opinion. I'm going to direct it to two members of the panel, Ben Keuchle and Roy Hamlin. In your opinion, should employees be permitted to sign waivers when continued exposure to - would definitely jeopardize their future health; under the statute of many states, provision is made for an employee

to sign a waiver which would limit or eliminate the continuing monetary liability of the employer under the statute. May I repeat the question: Should employees be permitted to sign waivers when continued exposure would definitely jeopardize their future health? Will you say a word about that, Ben?

BY MR. KEUCHLE:

Personally, I think waivers are an abomination. We have never permitted a policyholder of ours, knowingly, to take a waiver from an employee. If a man's condition is such that he shouldn't remain at further exposure, there is only one humane thing to do and that's -- what happened -- there is only one humane thing to do and that is take him out of the employment, but to take away, which most employees don't understand when they sign what they call a waiver, but the implications of it they do not understand and never will understand, and I think it's nothing short of criminal to permit the taking of waivers.

BY MR. WATERS:

Doctor Hamlin, will you comment for just a moment upon that subject?

BY DOCTOR HAMLIN:

I think that most of us would agree that, with what Ben just said, that it isn't the fair thing to ask any employee to sign a waiver, anything that might possibly

prejudice his future health. There are other things, however, that might effect that.

If an employee could be put to work with the assurance that he would not suffer any more exposure and I mean through the use of industrial hygiene and dust ventilation and cutting down all hazardous exposures, then, of course, a waiver wouldn't be necessary. I see no object, whatsoever, and I don't think that you can - you can take a chance even where you have exposure that's pretty well controlled, in allowing an employee to continue where there might be some hazard.

Now, that brings up the question of maintance on that job. We know perfectly well that you can reduce dust concentrations to a satisfactory safe limit and can carry on, but unless that is maintained adequately over a long period of time, and constantly kept in mind, you can not guarantee that that employee is not going to have some future exposure. Legally, as far as I understand, it's not permissible and I don't think that it should even be considered.

BY MR. WATERS:

Glad to say that these gentlemen agree with me. Doctor Orenstein of South Africa is with us, and if he'd be kind enough, I'd appreciate it if he'd say just a word as to the practice in his country, as to the use of waivers,

Doctor, would you be good enough to do that? Do you mind coming to the platform, please, sir?

BY DOCTOR OPENSTEIN:

It is, by statute, forbidden to sign such a waiver. The underlying philosophy that you may - that you may prejudice your own rights, but you have no right whatever to prejudice the rights of your dependents.

BY MR. WATERS:

Thank you, Doctor. I'm going to pose one more question to the two commissioners who are present. I think it's an important question, because of the symposium here, and Now, general interest and concern with those concerned with compensation laws.

The question is this. I direct it first to Commissioner Wisely and, secondly, to Commissioner Hill, and if Bill Connolly wants to get mad with them, I'll listen to him for a half a minutes. Commissioners, from your experience, what is the most difficult problem in determining contested pneumoconioses cases? Otto, would you say a word about that?

BY COMMISSIONER WISELY:

Let me put this in the record: My answer is, Hell, I don't have any. You asked me to speak from experience. Frankly, the first seven years of my experience have been just a hit and miss proposition, and I couldn't get

Doctor Richards to help me make or read the X-rays and arrive at a diagnosis, we just had to accept the report of some silly ass sent in, basing his diagnosis entirely on employment history, no knowledge of whether the man did or did not have exposure, and since we have had our medical panel, we have proven rather conclusively that we have a Hell of a lot of doctors in Utah who don't know silicosis from measles, and you might be interested to know, that because of our autopsy, compulsory autopsy law, twenty men who have been processed by our panel of experts died. We did a post on every one of them. We weren't satisfied with just our panel diagnosis. I sent many of them to Canada, some to Doctor Sander, some to Doctor Pendergrass, and in every single instance, they verified the diagnosis of our panel and, of course, the autopsy verified the diagnosis of both groups, so at the present time, I say we don't have any difficulty.

Now, if you want to go into the question of exposure, there again I'm sorry to say to you, in spite of the doubts that some of you seem to have that we don't have any problem, because in 19[illegible], the very first case that I processed, I personally heard it, wrote the decision. It went to the Supreme Court and I was affirmed. The evidence showed, and the medical testimony was God-awful rotten, all we had was the radiologists' reading of the film, and

his diagnosis of silicosis, and inactive tuberculosis.

Now, the State Insurance Fund didn't do anything about it so the record stood. The employer was unpredicted, and the superintendent of the mind testified that there was some silica rock in the mine and the evidence showed that that was the only place the man worked, so I said, on that record, gentlemen, this man has made a prima facie case. He has the disease, he's totally disabled, this is the only place he worked, the evidende shows that there was free silica dioxide dust exposure, so we made the award. The Supreme Court said, that's right, and our court has gone farther than that.

All of our cases, so far, come from the mine. Our Supreme Court takes judicial notice of the fact that every non-ferrous mine and every coal mine in the State of Utah has or exposes the employee to free silica dioxide dust, so we don't have any problem.

Now, we have that thirty day thing. The last employer is liable, in other words, the last employer in whose employ the employee was exposed to free silicon dioxide dust, he never takes the trouble any more to make dust counts. We don't have to go into the evidence; we don't have any problem.

BY MR. WATKINS:

Jim, I'm going to ask you to take three minutes

to comment on that subject, if you will, please. For the benefit of the audience, I'll repeat the question: From your experience, what is the most difficult problem in determining contested pneumoconioses cases?

BY COMMISSIONER HILL:

I wish that I could agree with my brother, Mr. Wisely. Our biggest problem is simply this: Is the man disabled? Now, in - I can illustrate it best by a couple of typical situations.

Here is a man in his fifth decade, who has been working in a foundry for twenty or thirty years, and all of a sudden he says, I can't take it any more; I'm tired out. I'm all in, I'm short of breath walking upstairs. My chest feels kind of tight and I'm coughing all the time; so he just quits. He doesn't, he hasn't been to a lawyer. He's going to get there pretty soon.

So he starts a claim. He just says he can't work and then, of course, we're in this disputed medical again, and is that man disabled? He says he can't work. There may be some disagreement as far as the X-ray diagnosis is concerned, but frequently, they'll say he has either early silicosis, that there is some fine nodulation, but that does not interfere with his ability to work. Nevertheless, the man says he can't work and, of course, the physician who testifys for him says it would not be advisable for him to

return to work.

Then we have the situation where a man has been working a long time, probably in the same age group. He gets a stubborn cold, maybe it's bronchitis, maybe he has pleurisy. He's treated during the winter by his family physician and in the course of the treatment, the physician sends him to a radiologist and he says that he - reports that he has early silicosis, maybe some mineral fibrosis, maybe some more, so the family physician tells the man, you got dust in your lungs, Joe, you shouldn't go back to work at the same job. I'll prepare a note and you take that in to your employer when you go back to work, so he does, and the employer says, O. K., and you have the plant physician examine him, take X-rays and they say, yes, you've got a mineral silicosis, but it won't interfere with your returning to the same job. You either work at that job or no job at all.

Now, how in the world do you decide those cases? Those are just simply almost insurmountable problems, and it seems to me that to be realistic in the first illustration, here is a man with a good work record of long years and all of a sudden he quits. Are we going to say that he is not disabled, because you look at the X-ray evidence and you look at the X-ray and you say, no, this doesn't fit the pattern of the man who is supposed to be disabled from

silicosis? And in the second instance, are we going to say that the man doesn't have a right to rely on the advice of his family physician?

BY MR. WATERS:

It's a good thing that that question was not directed to a lawyer as to what he considers to be the most difficult problem dealing with contested pneumoconioses cases, because it might not reflect too much credit upon some of the Commissioners.

Gentlemen, it is indeed with regret that I must bring this panel discussion to a close, because many of the questions that have been presented, and I'm sure that many of them still in your minds, are highly controversial and I'm certain that there exist differences of opinion among us with respect to them. I think it is only fair to say that we are indebted to the Saranac Laboratory for this opportunity to receive such authoritative information and advice about these problems with which all of us must deal in the transaction of our respective businesses.

On your behalf, I wish to thank the participants in the panel for the excellent presentations that they have made and for their honest expressions of opinion and on their behalf, I wish to thank you for your interest, consideration and participation in the proceedings of the panel. I know that Doctor Vorwald and his associates in the laboratory

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are deeply indebted to you and to the participants in the program for the job that they have done in their contributions, and now, Doctor Vorwald.