

AIR HYGIENE FOUNDATION OF AMERICA, Inc.

Legal Series, Bulletin No. 1, Supplement No. 1



1869

A Survey of the Statutes and Court Decisions Respecting Occupational Disease from Air Pollution

(For the Confidential Information of members. Not for re-
production, wholly or in part.)

7613.6007

A29

no. 1 suppl. 1, no 2-3

PITTSBURGH, PENNSYLVANIA

MARCH 1, 1937

LEGAL SURVEY

LEGAL SERIES BULLETIN No. 1
SUPPLEMENT No. 1

With respect to Occupational Disease Resulting from Air Pollution, Comprising a Study of the Statutes and Court Decisions of States of the United States.

Prepared for the Legal Committee
of

AIR HYGIENE FOUNDATION OF AMERICA, INC.

by

WILLIAMS, EVERSMAN & MORGAN,
ATTORNEYS,
TOLEDO, OHIO

Central - Adult

no. 1 suppl no. 1, no. 2-3 Cop. 1

CONTENTS Supplement No. 1

Chapter	Page
I Scope and Purpose of Survey.....	1
II Resume of Workmen's Compensation Laws as They Affect Occupational Disease.....	2
III Common Law Rights and Liabilities.....	10
IV Alabama.....	11
V Arizona.....	12
VI Arkansas.....	13
VII California.....	15
VIII Colorado.....	17
IX Connecticut.....	18
X Delaware.....	20
XI District of Columbia.....	21
XII Florida.....	22
XIII Georgia.....	23
XIV Idaho.....	27
XV Illinois.....	28
XVI Indiana.....	29
XVII Iowa.....	34
XVIII Kansas.....	35
XIX Kentucky.....	36
XX Louisiana.....	37
XXI Maine.....	39
XXII Maryland.....	40
XXIII Massachusetts.....	41
XXIV Michigan.....	43
XXV Minnesota.....	46
XXVI Mississippi.....	48
XXVII Missouri.....	50
XXVIII Montana.....	57
XXIX Nebraska.....	58
XXX Nevada.....	59
XXXI New Hampshire.....	60
XXXII New Jersey.....	62
XXXIII New Mexico.....	64
XXXIV New York.....	65
XXXV North Carolina.....	67
XXXVI North Dakota.....	71
XXXVII Ohio.....	72
XXXVIII Oklahoma.....	75
XXXIX Oregon.....	76
XL Pennsylvania.....	78
XLI Rhode Island.....	80
XLII South Carolina.....	81
XLIII South Dakota.....	82
XLIV Tennessee.....	83
XLV Texas.....	84
XLVI Utah.....	85
XLVII Vermont.....	86
XLVIII Virginia.....	87
XLIX Washington.....	88
L West Virginia.....	90
LI Wisconsin.....	92
LII Wyoming.....	93
Index of Cases Cited.....	94

FOREWORD

In Legal Series, Bulletin No. 1, Parts i to vii inclusive, Air Hygiene Foundation of America presented to its members the report of its Legal Committee, in which were summarized the statutes and court decisions of all states in the United States with respect to industrial diseases and the rights and liabilities growing out of air pollution hazards in industry. The preparation of that report required a number of months' work, and it was completed in September, 1936. At the request of the Foundation, the Legal Committee has prepared this supplemental report which is designed to bring its previous report down to March 1, 1937. This supplemental report, as was the original report, was prepared by Henry A. Middleton, a member of the law firm of Williams, Eversman & Morgan, of Toledo, Ohio.

This report will be known as Legal Series, Bulletin No. 1, Supplement No. 1, and will be available to members for their confidential information and use.

H. B. MELLER,
Managing Director

4400 Fifth Avenue,
Pittsburgh, Pa.,
March 1, 1937

CHAPTER I

SCOPE AND PURPOSE OF SURVEY

The basic survey of statutory and case law with respect to the rights and liabilities growing out of dust hazards and air pollution in industry was completed in September, 1936, and was published by Air Hygiene Foundation of America as Legal Series, Bulletin No. 1, Parts i to vii inclusive. Since completion of that report, many court decisions have been rendered and important legislation has been considered by several state legislatures. The purpose of this report is to supplement the basic survey and bring it down to date. It is manifest that the task of procuring information from all of the states with respect to pending legislation requires a very considerable amount of time and that it is difficult to correlate this information as of one particular day. The information may, however, be considered as substantially correct as of the date of this supplemental report, which is March 1, 1937.

In compiling this report, we have followed the same chapter numbers and headings as were used in the basic survey, which was published as Legal Series, Bulletin No. 1, Parts i to vii.

CHAPTER II

RESUME OF WORKMEN'S COMPENSATION LAWS AS THEY AFFECT OCCUPATIONAL DISEASE

The tabulation which appears in Chapter II of the basic survey was prepared approximately a year ago. A sufficient number of changes in the laws of the various states have occurred in that time to make it desirable that this chapter be reprinted in its entirety with a considerable number of corrections. As of present date, the corresponding chapter in the basic survey should be disregarded and this chapter should be considered as substituted therefor, in its entirety.

This tabulation is not submitted as a sufficiently exhaustive treatment of the subject, and reference must be made to the chapters covering the individual states, both in the basic survey and in this supplement, for complete information.

Section 1. States with No Compensation Acts:

Arkansas
Mississippi

Section 2.

States Having Compensation Acts Which Exclude Compensation for Occupational Disease, Either Expressly Or By Construction of Court:

Alabama:

Expressly excludes disease unless the disease shall result proximately from the accident.

Arizona:

Does not include a disease unless resulting from an injury by accident.

Colorado:

Allows compensation "where the injury or death is proximately caused by accident arising out of and in the course of his employment." This would exclude occupational diseases, except any such cases as are proximately caused by accident.

Delaware:

"Shall not include a disease or infection except as it shall result from the injury when reasonably treated." Injury, as used in the Act, means injury by accident.

Florida:

Includes such diseases or infections as result from such injury by accident.

Georgia:
"Shall not include a disease in any form except as it results naturally or unavoidably from the accident."

Idaho:
"Shall not include a disease except as it shall result from the injury." Injury must be the result of an accident, but the courts have very liberally construed "accidental injury" and have gone very far in holding disease to be the result of "accidental injury" and therefore compensable.

Indiana:
"Shall not include a disease in any form except as it shall result from the injury." Injury must be the result of accident.

Iowa:
"Shall not include a disease unless it shall result from the injury." No requirement that the injury must result from accident but there is obiter dictum to the effect that occupational diseases are not compensable under the Act.

Kansas:
Covers "personal injury by accident" only.

Louisiana:
Only covers injuries by violence to the physical structure of the body and such diseases or infections as naturally result therefrom. Occupational diseases are excluded, except as above. Accident must be an unexpected, unforeseen event happening suddenly and violently, with or without fault, and producing at the time objective symptoms of an injury.

Maine:
"Personal injuries by accident" are compensable. Diseases are excluded by court construction, except such cases as are caused by accident.

Maryland:
"Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment, and such disease or infection as may naturally or unavoidably result therefrom."

The courts of Maryland have placed unusual constructions upon "accidental injury" and the chapter of this report on Maryland law must be consulted.

Michigan:

Covers "personal injuries arising out of and in the course of his employment." Occupational diseases are excluded by court construction, except where such is result of an accident.

Montana:

"Injury refers only to an injury resulting from some fortuitous event, as distinguished from the contraction of some disease." Occupational diseases are thereby excluded.

Nevada:

Compensation is provided for "personal injuries by accident." Disease is not mentioned and is therefore excluded.

New Hampshire:

"Personal injury by accident" is compensable. Disease is not mentioned and is therefore excluded, except possibly such cases as are caused by accident.

New Mexico:

"Personal injury by accident" is compensable. Occupational diseases are not covered.

Oklahoma:

"Injury" and "personal injury" mean only accidental injuries arising out of and in the course of employment and such diseases or infection as may naturally result therefrom.

Oregon:

"Personal injuries by accident caused by violent or external means" are compensable. Diseases are not mentioned and are therefore excluded, except such cases as may be caused by accident due to violent or external means.

Pennsylvania:

Injury means only violence to the physical structure of the body, and such disease or infection as naturally results therefrom. By construction occupational disease is excluded.

South Carolina:

"Shall not include a disease in any form, except where it results naturally or unavoidably from an accident."

South Dakota:

"Shall not include a disease in any form, except as it shall result from the injury."

Tennessee:

"Shall not include a disease in any form, except as it shall result from the injury."

Texas:

"Injury in course of employment" is compensable. "Injury shall be construed to mean damage or harm to the physical structure of the body and such diseases or infections as naturally result therefrom." Courts have declared the injury must be accidental.

Utah:

"Personal injury by accident" is compensable, and "shall not include a disease except as it shall result from the injury."

Vermont:

"Personal injury by accident" is compensable, and "shall not include a disease except as it shall result from the injury."

Virginia:

"Shall not include a disease in any form except where it results naturally and unavoidably from the accident."

Washington:

"Personal injuries" are compensable. "Injury" means a sudden and tangible happening of a traumatic nature. Diseases are not mentioned and are therefore excluded, except such physical condition as results from injury of a traumatic nature.

Wyoming:

Personal injuries sustained in enumerated extra hazardous employments are compensable. The terms "injury" and "personal injury" shall not include a disease except as it shall directly result from an injury incurred in the course of employment.

Section 3.

States Having Workmen's Compensation Acts Which Include Compensation for Occupational Disease, Either Expressly Or by Construction of Court:

California:

Injury includes "any injury or diseases arising out of the employment, including injuries to artificial members." Silicosis is compensable by court construction.

Connecticut:

Includes occupational diseases as defined. "The words 'occupational disease' shall mean a disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of the employment as such." Silicosis is compensable by court construction.

District of Columbia: Injury includes "such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury * * *." No decision involving silicosis, but it would undoubtedly be compensable under the Act.

Illinois:

Occupational disease is not compensable under the Workmen's Compensation Act. Silicosis and some other dust diseases were not compensable under the old Occupational Disease Act, which was effective until October 1, 1936. Under the new Occupational Disease Act, effective October 1, 1936, all occupational diseases, including silicosis are compensable.

Kentucky:

"* * * personal injury by accident as herein defined shall not include diseases except where the disease is the natural and direct result of a traumatic injury by accident, nor shall they include the results of a preexisting disease, but shall include injuries or death due to the inhalation in mines of noxious gases or smoke commonly known as 'bad air', and also shall include the injuries or death due to the inhalation of any kind of gas."

"* * * and any employers and their employees engaged in the operation of glass manufacturing plants, quarries, sand mines or in the manufacture, treating or handling of sand may, with respect to the disease of silicosis caused by inhalation of silica dust, in like manner voluntarily subject themselves thereto as to such disease."

Massachusetts:

Disability resulting from occupational diseases is compensable in Massachusetts by court interpretation. This is because of a provision in the Act for making a claim for compensation, alleging that an injury is due to an occupational disease, and also because there is no requirement that an injury result from an accident in order to be compensable. The only requirement is that it be a personal injury arising out of and in the course of employment.

Minnesota:

Disability resulting from any of the twenty-three occupational diseases enumerated in the Act is compensable. Silicosis is not included in this list.

Missouri:

The terms "injury" and "personal injury" shall in no case, except as hereinafter provided, be construed to include occupational disease in any form, nor shall they be construed to include any contagious or infectious disease contracted during the course of the employment, * * *. Nothing in this chapter contained shall be construed to deprive employees of their rights under the laws of this state pertaining to occupational diseases, unless the employer shall file with the commission a written notice that he elects to bring himself with respect to occupational disease within the provision of this act. * * * This makes it possible for the employer by election to bring occupational disease under the Act.

Wisconsin: Injury is mental or physical harm to an employee caused by accident or disease. Silicosis and other dust diseases are compensable by court interpretation.

Nebraska:

Occupational diseases peculiar to the smelting or metal refining industries are compensable. The statute specifically excludes all others.

New Jersey:

The Act covers only eleven diseases which are specifically enumerated. Silicosis is not so enumerated.

New York:

Compensation is payable for 27 enumerated occupational diseases if acquired in the occupation set opposite the particular disease in the schedule. By amendment effective September 1, 1935, group 28 was added, extending coverage to "any and all occupational diseases." By further amendment, effective June 6, 1936, silicosis and other dust diseases were removed from group 28 and made compensable under a separate chapter.

North Carolina:

The schedule enumerates 25 compensable occupational diseases, including asbestosis and silicosis.

North Dakota:

The term "injury" includes, in addition to any injury by accident, any disease proximately caused by the employment.

Ohio:

The Act covers 21 enumerated diseases. The list does not include silicosis, asbestosis or other dust diseases.

Rhode Island:

Prior to September 15, 1936, the Act provided compensation for nothing but "personal injury sustained by accident." As of that date, an amendment became effective making 31 groups of diseases compensable. Silicosis, asbestosis and other dust diseases are not included.

West Virginia:

Disability or death caused by silicosis is compensable at the election of the employer, subject to certain limitations. No other occupational diseases are covered by the Act.

CHAPTER III

COMMON LAW RIGHTS AND LIABILITIES

The importance of determining the law as announced by the courts, as distinguished from statutory law and court constructions thereof, is demonstrated by the number of decisions cited and discussed in the basic survey, which was published as Legal Series, Bulletin No. 1. Additional decisions appear under appropriate subheadings in the various chapters of this supplement.

CHAPTER IV

ALABAMA

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Alabama Legislature was called into special session on November 23, 1936, and at the time of this writing has not as yet been adjourned. We are informed, however, by the Workmen's Compensation Division of the Alabama Bureau of Insurance that there is no active movement being made to bring occupational diseases of any nature within the provisions of the Workmen's Compensation Act.

As yet no official survey of dust hazards has been made and no administrative rules have been issued relating to measures to be taken by employers having dust hazards in their employment.

CHAPTER V ARIZONA

- I. Workmen's Compensation Act.
No change
- II. Other Statutes.
No change
- III. Common Law Liability.
No change
- IV. Miscellaneous Matters of Interest.
The Legislature convened in regular session on January 11, 1937. We are informed by the Industrial Commission of Arizona that no bills are now pending before the present session of the Legislature which would make silicosis and other diseases resulting from dust hazards in industry compensable under the Workmen's Compensation Act or relating to precautionary measures to be observed by employers with respect to dust hazards existing in their employments.
No official survey has been made of dust hazards and silicosis in Arizona.

CHAPTER VI ARKANSAS

- I. Workmen's Compensation Act.
No change
- II. Other Statutes.
No change
- III. Common Law Liability.
In *Field v. Gazette Publishing Co.*, 187 Ark. 253, 59 S. W. (2d) 19 (1933), the plaintiff brought his action at law to recover for disability resulting from lead poisoning contracted during his employment by defendant as a linotype operator from January, 1924, until April, 1926, and intermittently thereafter from February, 1927, until September, 1927, and from December, 1927, until July, 1928. The jury found as a matter of fact that during these subsequent periods of employment no additional injury was sustained by the plaintiff. The plaintiff alleged that the defendant was negligent in furnishing an unsafe and dangerous place in which to work. It appeared that in October, 1926, the plaintiff underwent an amputation of the toe; in November, 1926, an amputation of the right foot; in September, 1927, an amputation of the left foot; and in July, 1930, an amputation of a portion of his leg. One of the defenses of the defendant was to the effect that the injury had occurred prior to June 10, 1926, so that plaintiff's action was barred by the three year statute of limitations.

Plaintiff admitted that if the statute began to run prior to June 10, 1926, then the finding should be for the defendant. However, the plaintiff contended that the statute was held in abeyance until it was determined that he was suffering from lead poisoning.

The court held that plaintiff's cause of action arose and the statute of limitations began to run from the date of the defendant's negligent act and not from the time when the extent of plaintiff's injury should be ascertained, so that plaintiff's cause of action was barred.

In *Barber v. Parker*, 190 Ark. 34, 76 S. W. (2d) 973 (1934), the plaintiff, an inexperienced employee, brought his action for recovery for burns and other injuries sustained when, in the course of a single day's employment, he was required to wade in green concrete. The jury returned a verdict for \$1,000 in favor of the plaintiff which was affirmed on appeal. In its opinion, the court said:

"The evidence * * * is substantial and sufficient to fix liability on appellant under the law govern-

ing an employer and employee. Appellant was cognizant of the latent danger incident to wading in green concrete, and the appellee was not. Appellee had no knowledge by experience or otherwise that, if the green concrete got into his boots or overalls, it would burn his feet and legs. Under the circumstances, the law imposed the duty on appellant (employer) to warn appellee (employee) of the latent danger incident to the employment. The danger was not patent; so, under the circumstances, appellee was not required as a matter of law to take notice of it. As soon as he was instructed to wash out his boots and overalls, he did so; hence it can not be said as a matter of law that he was guilty of contributory negligence."

Although the two decisions above discussed do not involve inhalation of dust, there is reason to believe that, in view of those decisions, the employee has a common law right of action against his employer for injury or death resulting from an occupational disease caused by the inhalation of dust in the course of employment where negligence on the part of the employer can be proven.

IV. Miscellaneous Matters of Interest.

The Arkansas Legislature convened January 11, 1937, and has since adjourned. We are informed by the Bureau of Labor and Statistics that the Legislature had before it a workmen's compensation act, which was not passed, but that a measure setting up a three man commission or board to make rules and regulations in reference to safety, including occupational diseases, was passed. However, this board will not be appointed for twelve months.

The Bureau of Labor and Statistics further informed us that there is, and has been for a number of years, an active movement to bring into existence a workmen's compensation act but that, so far, this movement has met with failure and also that no survey with reference to silicosis and dust hazards has been made in Arkansas.

CHAPTER VII CALIFORNIA

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 4th of this year. The Industrial Accident Commission informed us that, due to agreement between the insurance carriers and itself, there is no pending legislation on silicosis or dust diseases, except a single bill introduced in the Assembly wherein an endeavor is made to limit the time within which applications may be filed for adjustment of claims of this nature.

Under authority of Section 39 of the Workmen's Compensation Act, the Commission has adopted and is enforcing "Dusts, Fumes, Vapors and Gases Safety Orders," which became effective December 28, 1936. The orders deal with general ventilation, local exhaust ventilation, personal protective equipment, the substitution of non-hazardous equipment in material or process, dust-attaying media, isolation of hazardous operations and sanitation and cleanliness. The Commission also recommends certain dust count limitations set out in an appendix to the Safety Orders. Since violation of any of these orders constitutes a misdemeanor punishable by a fine of \$500 or six months' imprisonment, or both, it is advisable that employers acquaint themselves with these orders, copies of which can be procured by communication addressed to the Industrial Accident Commission, San Francisco, California.

The committee appointed to investigate pneumoconiosis and allied industrial diseases, pursuant to legislation enacted by the 1935 Legislature, has held numerous hearings. The Industrial Accident Commission stated, however, that, to its knowledge, a report of its findings was as yet not available.

The Industrial Accident Commission also commented that several months ago the Insurance Commissioner, after numerous hearings, adopted a schedule of additional rates under classification of employments where industrial dust diseases might arise. A complete schedule of these additional rates and surcharges can be procured by communication addressed to the

CHAPTER VIII

COLORADO

- I. Workmen's Compensation Act.
No change
- II. Other Statutes.
No change
- III. Common Law Liability.
No change
- IV. Miscellaneous Matters of Interest.

The Legislature convened in regular session on January 6th of this year, but we are informed by the Industrial Commission that there are no bills pending before the present session which would make silicosis and other diseases compensable under the Workmen's Compensation Act or which relate to precautionary measures to be observed by employers having dust hazards in their employments.

No rules or regulations relating to dust hazards have been promulgated by the Commission, and no official survey has been conducted dealing with such hazards since the time of the completion of our basic survey.

CHAPTER IX CONNECTICUT

I. Workmen's Compensation Act. 4. Court Construction.

A. Construction of "Occupational Disease." In *Madeo v. Diber & Bro., Inc.*, 186 A. 616 (S. Ct. of Errors, July 1936), compensation was denied under the Workmen's Compensation Act for disability caused by tuberculosis contracted as a result of working in defendant's dressmaking factory under very unsanitary conditions, which exposed plaintiff, as she alleged, " * * * to infection in excess of the ordinary hazards of employment as such." Plaintiff contended that she was suffering from an occupational disease as defined in the Act, i. e., " * * * a disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such." In denying this contention, the court said:

" * * * to constitute an occupational disease, the disease must be a natural incident of a particular kind of employment, one which is likely to result from that employment because of its inherent nature. It does not include a disease which results from the peculiar conditions surrounding the employment of the claimant in a kind of work which would not from its nature be more likely to cause it than would other kinds of employment carried on under the same conditions. * * * Thus, pneumoconiosis resulting from wet grinding is an occupational disease; * * * but pneumonia resulting from exposure incurred in highway construction is not, * * *."

The court concluded that other trades carried on under the conditions alleged by plaintiff would have been as likely to cause the disease as the manufacture of dresses.

There are no other changes in this section.

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature convened in regular session on January 6th of this year and at the time of writing has not been adjourned. We are informed by the Workmen's Compensation Commission that there is nothing in the way of legislation in the general assembly which pertains solely to silicosis or diseases due to dust, but that there will be bills presented relating to the payment of something in the nature of specific indemnity to workers

who contract occupational diseases which disable them from following their usual occupations but which do not totally disable such workers.

CHAPTER X DELAWARE

I. Workmen's Compensation Act.

1. Statutes.

No change has been made in the Workmen's Compensation Act as it relates to occupational diseases; however, a bill is now pending in the Legislature relating to the compensability of occupational diseases. For comment on this pending bill, see part IV of this chapter.

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 5, 1937. House Bill No. 88 is now pending in the Legislature. This bill proposes solely to redefine "injury" and "personal injury," as used in the Workmen's Compensation Act, by amending 6114 Sec. 44 of Chapter 175 (previously known as Sec. 3193 rr of Chapter 90) so as to read:

"The terms 'injury' and 'personal injury' as used in this Article, shall be construed to mean and include any injury or disease arising out of and in the course of employment as well as such disease or infection as naturally results directly therefrom when reasonably treated; and whenever death is mentioned as a cause for compensation under this Article, it shall mean death resulting from any injury or disease arising out of and in the course of the employment, as well as from any disease or injury arising out of and in the course of the employment, when reasonably treated as aforesaid, and occurring within two hundred and eighty-five weeks after the incurring of the injury or disease."

The proposed amendment would also eliminate paragraph (c) of 6115 Sec. 45 of said chapter, which now reads:

"It" (personal injury sustained by accident arising out of and in the course of the employment) "shall not include a disease or infection, except as it shall result from the injury when reasonably treated."

The Industrial Accident Board has informed us that no bill is now pending relating to precautionary measures to be taken by employers with regard to dust hazards and that as yet said Board has made no rules or regulations in regard to such hazards.

CHAPTER XI DISTRICT OF COLUMBIA

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The United States Employees' Compensation Commission has informed us that there is no legislation pending in the Congress of the United States which would affect the compensability of silicosis and other diseases resulting from exposure to dust hazards under the Longshoremen's and Harbor Workers' Compensation Act, which is effective in the District of Columbia, or which relates to precautionary measures to be taken with respect to dust hazards in the District of Columbia. The Commission further informed us that it did not know of any plans directed toward the enactment of such legislation and that it had not considered the advisability of sponsoring similar legislation, since dust diseases do not present an unusual problem in the District of Columbia.

CHAPTER XII

FLORIDA

- I. Workmen's Compensation Act.
No change
- II. Other Statutes.
No change
- III. Common Law Liability.
No change
- IV. Miscellaneous Matters of Interest.
The Legislature will convene in regular session on April 6th of this year. There are no bills now pending which would make silicosis and other dust diseases compensable under the Workmen's Compensation Act or which relate to precautionary measures to be taken by employers with respect to dust hazards.
No rules or regulations have as yet been adopted by the Industrial Commission which prescribe measures to be adopted by employers in regard to dust hazards.

CHAPTER XIII

GEORGIA

- I. Workmen's Compensation Act.
 1. Statutes.
There has been no change in the statutes since the publication of the basic survey, but the Legislature is now in session and is considering two bills. Attention is directed to the discussion of those bills in Sec. IV of this Chapter.
 4. Court Construction.
 - B. Exclusiveness of the Act. The law of Georgia appears to have been changed in this regard by a court decision which was rendered immediately after the basic survey, with respect to this State. By that decision the former decisions appear to have been reversed.

The late decision to which we refer is *Covington v. Barkley Granite Corp.*, 182 Ga. 235, 184 S. E. 871 (decided in March, 1936, and published in May, 1936). In that case the Court of Appeals certified to the Georgia Supreme Court the question whether the provisions of the Workmen's Compensation Act should be construed as excluding the right of an employee to bring an action at common law for injuries sustained by the negligence of the employer where the injuries were not such that the Compensation Act was applicable. It was stated in the question certified that the employee sustained injuries which caused him "to contract silicosis, an occupational disease," and that such "injuries were not the result of an accident and were not compensable under the provisions of the Workmen's Compensation Act."

The court held:

"Under the terms of the act as quoted and as construed with its caption and other provisions, the remedy provided by this statute is exclusive within the field of its operation, but it does not exclude redress in cases in which it is not applicable. Consequently, if the act does not apply to an 'occupational disease' caused by injuries which were 'not the result of an accident and were not compensable under the provisions' of the act, the employee may maintain an ordinary or common law action for damages against his employer, provided a cause of action exists in his favor under the law relating to the liability of a master, independently of the workmen's compensation act * * *."

The court referred to the decisions cited in our basic survey and added that those decisions, if construed as holding at variance with the present ruling, were to that extent disapproved.

In 185 S. E. 386 (Apr., 1936), the Court of Appeals, following the ruling on the question certified, held that the plaintiffs petition stated a cause of action and overruled a decision of the lower court dismissing plaintiff's action on demurrer.

There are no other changes in this section.

II. Other Statutes.

No change

III. Common Law Liability.

There is reason to believe that by virtue of *Covington v. Berkley Granite Corp.*, supra, an employee has a common law right of action in Georgia for injury or death from occupational disease caused by the inhalation of dust in the course of employment where negligence on the employer's part can be proved.

IV. Miscellaneous Matters of Interest.

The Legislature convened in regular session on January 25th of this year and has not as yet adjourned.

1. Pending Legislation.

Two bills are now pending which relate to recovery for disability or death from occupational diseases. One is House Bill No. 186 read for the first time on January 26th. This bill attempts a complete redraft of the Workmen's Compensation Act. The more important features of the bill as they affect employers are commented upon to give an idea of the nature of the relief provided.

The act would provide compensation to an employee or his dependents for personal injury or death; personal injury being defined as "any injury or disease arising out of and in the course of employment, and such disease or infection as may naturally and unavoidably result therefrom," and death as "only death resulting from such injury, * * *" (Sec. 2 (c) and (f)).

Practically all employers and employees are covered by the bill (Sec. 2 (a), (b), and (c)), but it is elective as to both except that in the absence of proper notice there is a presumption of acceptance by employers and employees (Secs. 3 and 8). Where both parties are subject to its provision the remedies provided are exclusive except where the employer has failed to properly insure his liability thereunder in which event the employee may elect to claim under the act or sue at common law. If the latter remedy is pursued, the defenses of contributory negligence, negligence of fellow servant and assumed risk are not available to the employer (Sec. 4). Similarly where both employer and employee reject the act or where only the employer rejects the act such defenses are lost to the employer in a common law action brought against him for in-

jury or death, but where the employer accepts and the employee rejects such defenses are available (Secs. 9, 10, and 11).

Compensation is provided without regard to the employer's fault but recovery is barred "when the injury has been solely occasioned by intoxication of the injured employee while on duty or by wilful intention of the injured employee to bring about the injury or death of himself or another" (Sec. 5).

Provision is made for medical and hospital services and supplies, at the employer's expense, subject to the Board's approval or regulation (Sec. 13). The maximum amounts payable under the bill are as follows: for permanent total, temporary total, and permanent partial disability, \$10,000; for temporary partial disability, \$7,000; and for death, burial expenses of \$150 plus a death benefit of \$10,000 (Secs. 15 and 16).

Notice of disability or death must be given to the Board and the employer within 30 days after the date of such injury or death (Sec. 18). The claim for compensation must be filed within one year after the injury, or in case of death, within one year after the death (Sec. 19).

An employee claiming compensation must submit to such physical examination by a duly qualified physician designated or approved by the Board as the Board may from time to time require. The employee's physician may be present. A refusal to submit to such examination forfeits the compensation payable during the time of such refusal (Sec. 24 (g)).

Employers must insure payment of compensation or give satisfactory proof of ability to pay directly. In the latter situation adequate bond or other security may be required (Sec. 37 (a)). If an employer fails to so secure the payment of compensation he will be subject to a maximum fine of \$500, or imprisonment for not more than one year, or both (Sec. 40).

In all, the bill which is some 40 pages long and consists of 53 sections is not substantially different from the present Workmen's Compensation Act, with the exception that injury is defined to include diseases. No mention is made of diseases other than in the definition of injury. The procedure for recovery for injury or death resulting from disease is the same as for injury or death resulting from an accident. The bill contains no provision for a Medical Board.

The other bill now pending is House Bill No. 535, and was read the first time February 22, 1937. It proposes solely to amend Sec. 114-102 of the Workmen's Compensation Act, set out below, by inserting that part which is in bold face type:

"Injury" and 'personal injury' defined. —'Injury'

CHAPTER XIV

IDAHO

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened on January 4th of this year. Senate Bill No. 109 was presented, which would have amended the Workmen's Compensation Act to include silicosis, monoxide gas poisoning, chronic lead poisoning, and such skin diseases as are traceable to the industry, as compensable occupational diseases in the same manner as a personal injury by accident is now compensable thereunder. The bill further provided that no workman or his dependents should be entitled to compensation if the symptoms of the occupational disease for which compensation was claimed had manifested themselves at any time within two years after the proposed section became effective; and, also, that no person was to be entitled to compensation for death or disability resulting from the enumerated occupational diseases unless for one year next preceding the contraction of the disease the workman should have been a resident of Idaho. The bill was defeated in the Senate.

No bills are pending relating to precautionary measures to be taken by employers with respect to dust hazards. However, the Industrial Accident Board does require that all employers comply with the safety devices prescribed by the National Safety Council. Copies of these rules can be procured by communication addressed to the Industrial Accident Board at Boise, Idaho.

In response to our inquiries regarding the adoption of rules which relate to dust hazards the State Inspector of Mines informed us, "Wherever there is a dust hazard we require the wearing of respirators. At the present time some of the leading companies have engineers on the job checking for dust hazard in a program to fight against silicosis and we are awaiting the assembling of that data." It seems that there are no rules or regulations in regard to such hazard but that, upon inspection, mine operators will be requested to furnish respirators where a hazard is found to exist.

and 'personal injury' shall mean only injury by accident arising out of and in the course of the employment and shall not include a disease in any form except where it results naturally and unavoidably from the accident, or where it results naturally from the inherent nature, hazard and character of the work of the employment nor shall 'injury' and 'personal injury' include injury caused by the wilful act of a third person directed against an employee for reasons personal to such employee."

We are further informed by the Department of Industrial Relations that no bills are pending relating to precautionary measures to be observed in regard to dust hazards.

2. Rules and Regulations.

The Department of Industrial Relations has not promulgated any rules or regulations in regard to such hazards.

CHAPTER XV

ILLINOIS

- I. Workmen's Compensation Act.
No change
- II. Workmen's Occupational Disease Act. (Old Act)
This Act was repealed, effective October 1, 1936.
- III. Workmen's Occupational Disease Law—The Present Act.
No change
- IV. Other Statutes.
No change
- V. Common Law Liability.
No change
- VI. Miscellaneous Matters of Interest.
The Legislature assembled in regular session on January 6th of this year, but a letter from the Industrial Commission has informed us of no pending legislation which would alter, amend, or add to the recent Workmen's Occupational Disease Law. We are advised, however, that pursuant to the Health and Safety Act, a subcommittee has been appointed to prepare rules relating to dust hazards for the consideration of the Commission. A public hearing on such rules is to be set in the near future; and those employers who desire to be notified as to the date of hearings should communicate with the Industrial Commission, 205 W. Wacker Drive, Chicago, Illinois.

CHAPTER XVI

INDIANA

- I. Workmen's Compensation Act.
 1. Statutes.
No change has been made in the Workmen's Compensation Act but your attention is called to the pending Occupational Disease Act discussed in Sec. IV of this chapter.
 4. Court Construction.
(In *Cunningham v. Warner Gear Co.*, 198 N. E. 808 (S. Ct., Dec. 1935), death resulting from the heat prostration of an employee in good health, who was at the time of collapse working on an extremely hot evening near pots containing solution heated to a high temperature, was held compensable as resulting from an accident.
In *American Income Ins. Co. v. Kindlesparker*, 200 N. E. 432 (S. Ct., March, 1936), compensation was awarded for personal injuries sustained by a section foreman while engaged in lifting a hand car onto the tracks of the railroad.
The above cases further define the meaning of the word "accident," as found in the Workmen's Compensation Act, but otherwise they are not applicable to injury or death from occupational disease caused by the inhalation of dust in the course of employment.
There are no other changes in this section.
- II. Other Statutes.
 - III. Common Law Liability.
No change
 - IV. Miscellaneous Matters of Interest.
 1. Pending Legislation.
The Legislature is now in regular session, having convened on January 4th of this year.
There is now pending before the Legislature a Bill known as the "Indiana Workmen's Occupational Disease Act." As House Bill No. 169, it was read for the first time on January 28th and referred to the Committee on Labor.
The proposed act is separate and distinct from the Workmen's Compensation Act, but it will in no way affect the right to compensation under the latter act (Sec. 2). Provision is made (Sec. 20 (1)) for amending and proceeding under the new act where a claimant has misconceived his remedy and proceeded under the Workmen's Compensation Act. The Indus-

trial Board is to administer the proposed act in addition to its administering the Workmen's Compensation Act (Sec. 16).

The proposed act is lengthy and we are confined to setting out in a general way its more important features as they affect employers.

All employers and employees, with some few exceptions (Secs. 5 (a), (b), (c)), are covered by the act. A common law remedy is given the employee or his dependents for injury or death from a disease contracted in the course of employment and caused by the employer's negligence as against an employer who has not elected to be bound by the compensation features of the act. Recovery is limited to \$10,000, and the violation of a state statute intended for the protection of the health of employees constitutes negligence within the meaning of the act. Suit must be commenced within two years after the last day of the last exposure to the hazards of the disease, or, in case of death, within one year after the death and within three years after the last day of the last exposure to the hazards of the disease. If the employer has rejected the compensation features of the act, the common law defenses of contributory negligence, negligence of fellow servant and assumed risk are not available to him; but where the employer has elected to abide thereby and the employee has rejected its terms, such defenses are available to the employer (Sec. 3 (a) and (b)).

Any employer may elect to be bound by the compensation features of the act, in which event, such provisions will govern and be the exclusive remedy in all cases where the last day of the last exposure occurs on or after the effective date of the election. Such election relieves the employer of the common law liability given the employee under the act (Secs. 4 (a) and 4 (e)). An employer once having elected to be so bound may thereafter elect to reject on October 1, 1937, and on each October 1st for four years thereafter. He may subsequently reject, but, having so elected a second time to be bound, he cannot thereafter withdraw (Sec. 4 (c)). Employees employed at the time of the employer's election are presumed to have elected to be so bound unless they file proper notice of rejection; employees hired after an employer has elected have no right of rejection (Secs. 4 (c) and (d)).

Compensation is provided under the elective features of the act for disability or death resulting from an occupational disease (Sec. 4 (a)). "Disablement" means "the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the

occupational disease by the employer from whom he claims compensation, or equal wages in other suitable employment" (Sec. 5 (d)). Disability, to be compensable, must occur within one year after the last day of the last exposure to the hazards of the disease, except in cases of occupational diseases caused by the inhalation of silica or asbestos dusts, and, in such cases, within three years thereafter (Sec. 5 (e)). With some exceptions, compensation will not be paid for death resulting from an occupational disease unless death occurred within one year after disablement (Sec. 5 (f)). "Occupational disease" means "a disease arising out of and in the course of employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section" (Sec. 6 (a)).

"A disease shall be deemed to arise out of the employment, only if there is apparent to the rational mind, upon consideration of all of the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workmen would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence" (Sec. 6 (b)).

Numerous provisions set out the amounts of compensation to be paid for disability or death (Secs. 7-11). It is expressly provided that "the maximum compensation which shall be paid for occupational disease and the results thereof, under any provisions of this act or under any combination of its provisions shall not exceed \$5000 in any case" (Sec. 11 (a)). Furthermore, all compensation payments are for "such occupational diseases and disabilities therefrom as are proven by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the employee himself" (Sec. 8 (n)). If the injured employee is a minor who, at the time of the last

exposure, is permitted to work in violation of any of the state child labor laws, compensation will be double the amount otherwise recoverable (Sec. 5 (b)).

An autopsy will be performed at the request of any dependent, the employer or Industrial Board, by a competent pathologist designated by the Board. Reasonable notice and an opportunity to be present will be given the parties in interest. The pathologist must make a written report on his findings without stating therein his conclusions (Sec. 12 (a)).

An employee must, upon request of his employer or upon the order of the Board, submit to examinations at reasonable times and places. The employee has the right to have his own physician present at the time. A refusal to permit the examination or an obstruction thereof suspends the employee's right to compensation and to prosecute his claim during the time of the refusal or obstruction (Sec. 13).

Compensation will be disallowed for disease or death intentionally self-inflicted by the employee, or due to his intoxication, his commission of a felony or misdemeanor, his willful failure or refusal to use a safety appliance, to obey a reasonably written or printed rule of the employer which has been posted in a conspicuous position in the place of work, or to perform any statutory duty (Sec. 14 (b)).

The Board may appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify thereto, or a disinterested and duly qualified industrial hygienist, industrial engineer, industrial physician or chemist to make any necessary investigation of the occupation wherein the employee claims he was last exposed to the hazards of the disease and to testify with respect to the occupational disease hazard found to exist therein (Secs. 20 (j) and (k)).

No proceeding for compensation can be maintained unless notice has been given the employer of disablement as soon as practical after the date thereof and a claim has been filed with the Industrial Board within one year after the date of disablement (Secs. 25 (a) and (c)).

Section 26 (a) provides:

"An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists. The employer liable for the compensation provided for in this act shall be the employer in whose employment the

employee was last exposed to the hazards of the occupational disease claimed upon regardless of the length of time of such last exposure, provided, that in cases of silicosis or asbestosis, the only employer liable shall be the last employer in whose employment the employee was last exposed during a period of sixty days or more after the effective date of this act, to the hazard of such occupational disease, and, in such cases, an exposure during a period of less than sixty days, after the effective date of this act, shall not be deemed a last exposure. * * *

Employers electing to be bound by the compensation provisions of the act must either insure their liability thereunder or furnish the Board proof of their financial ability to pay directly. If the latter is followed, proper bond or indemnity may be required. A failure to so comply is punishable by a fine of not more than \$50 for each day of noncompliance (Secs. 27 (a), (b), and (c)). Subject to the Board's approval employers may enter into or continue agreements with employees to provide a system of compensation, benefit, or insurance in lieu of the compensation and insurance provided by this act.

2. Rules and Regulations.

No rules or regulations have as yet been adopted by the Industrial Board which prescribe measures to be adopted by employers in regard to dust hazards in their employments.

CHAPTER XVII

IOWA

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Iowa Legislature is now in regular session, having convened January 11th of this year. The Industrial Commissioner has informed us that no legislation is pending which would make silicosis or other diseases resulting from inhalation of dust in the course of employment compensable under the Workmen's Compensation Act or relating to precautionary measures to be taken in regard to dust hazards. However, the Industrial Commissioner commented on the fact that there is a manifest interest in the General Assembly toward making occupational diseases compensable under the Workmen's Compensation Act.

No survey of silicosis and dust diseases has been made since the completion of our survey.

CHAPTER XVIII

KANSAS

I. Workmen's Compensation Act.

4. Court Construction.

In *Smith v. Cudaby Packing Co.*, 64 P. (2d) 582 (S. Ct., Jan., 1937), compensation was awarded for injuries resulting from ringworm allegedly contracted by the employee, a cattle butcher, when handling diseased cattle. The plaintiff at the time had an open cut on his hand which was being treated by company doctors. The court held that plaintiff sustained an injury by accident. In the opinion it was stated:

"The nature of the claim was for an infection known as ringworm. The disease is infectious. It is true, there can be no recovery under the Workmen's Compensation Act for disease alone. * * *

There is no other change in this section.

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Kansas Legislature is now in regular session, having convened January 12th of this year.

We are informed by the Commissioner of Labor that a bill has been introduced to the Legislature which will cover occupational disease. The Commissioner stated that a copy of the bill was not available, and that, while the bill had not as yet been defeated definitely, those sponsoring it had no hope for its passage.

The Commissioner also advised us that no rules had been promulgated by his department in regard to dust hazards.

CHAPTER XIX KENTUCKY

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The fourth special session of the State Legislature of 1936 convened December 23, 1936, and adjourned January 16, 1937. It was not possible for us to ascertain what, if any, legislation was passed in that special session so as to include it in this report. Rather than delay this report, we will include any such legislation in a later supplement.

The Legislature will not meet in regular session in 1937.

CHAPTER XX LOUISIANA

I. Workmen's Compensation Act.

No change

II. Other Statutes.

During the regular session of 1936, the Louisiana Legislature enacted a bill creating a Department of Labor and placing therein the power to promulgate rules and regulations for the safety of employees (Acts of Louisiana, 1936, p. 83).

The Commissioner of Labor supervises and directs the activities of the Department, which consists of the Commissioner, a Bureau of Women and Children, and a Bureau of Standards and Inspection.

Section 6 of the act provides:

"Employer's Duty as to Safety: Every employer shall furnish employment which shall be reasonably safe for the employees therein, shall furnish and use safety devices and safeguards, shall adopt and use methods and processes reasonably adequate to render such employment and the place of employment safe in accordance with the accepted and approved practice in such or similar industry or places of employment considering the normal hazard of such employment, and shall do every other thing reasonably necessary to protect the life, health, safety and welfare of such employees; * * *

Section 8 gives the Commissioner and his representatives authority to enter "any place of employment at any reasonable time for the purpose of collecting facts and statistics relating to the employment of workers and of making inspections for the proper enforcement of all labor laws of the State."

Section 13 (a) provides:

"The Commissioner of Labor shall have the power to investigate and to make and prescribe reasonable rules and regulations for the use of safety devices, safeguards and other protective means for the prevention of accidents and for protection against industrial or occupational diseases in places of employment, and to issue general orders applicable to either employers or employees, or both, for the enforcement of such rules and regulations or provisions of existing law." (Boldface ours)

Before a rule or regulation becomes effective, published notice and an opportunity for oral hearing must be given.

Furthermore, by Sec. 13 (b),

"Such rule, regulation or general order relating to the installation of safety devices, safeguards, etc., and the use thereof, shall conform to approved practices in the industries and places of employment involved, or in industries and places of employment similar in character to those involved; and the employer who is required to install a safety device, safeguard or other means of protection shall have the right to use and employ any such device, etc., as is recognized, used and approved and found effective by the best practice in the same or similar industry or places of employment and such employer shall not be limited to the selection and use of any particular make or type of device, safeguard, etc."

Section 17 provides a penalty of not exceeding \$500 for a violation of the act or a failure or refusal to perform within a reasonable time lawful orders issued by the Commissioner.

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature of Louisiana is not now in session.

CHAPTER XXI

MAINE

I. Workmen's Compensation Act.

Although no change has been made in the Act, a bill is now pending before the Legislature relating to occupational diseases. The bill is commented upon in part IV of this chapter.

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Maine Legislature is now in regular session, having convened on January 6, 1937. There is a bill now pending before the Legislature, Legislative Document No. 485, which proposes to amend the Workmen's Compensation Act by striking out the word "accident" wherever the same is found therein and inserting in place thereof the word "injury." This bill was referred to the Committee on Judiciary in the Senate on February 11, 1937. We are further informed by the Industrial Accident Commission that no bill is now pending relating to precautionary measures to be taken with respect to dust hazards and that no rules or regulations have been adopted prescribing measures to be adopted by employers with regard to such hazards.

CHAPTER XXII

MARYLAND

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature convened in regular session on January 6th of this year and, at the time of writing, is still in session. We are informed by the State Industrial Accident Commission that no bills are pending which would expressly make dust diseases compensable under the Workmen's Compensation Act or which prescribe precautions to be taken by employers with respect to dust hazards in their employments.

Employers are required by the State Industrial Accident Commission to observe certain safety codes and regulations. Such codes and regulations contain specific requirements in relation to smoke, gas, fumes, and dusts generated in employments. Copies thereof may be obtained by communication addressed to the Commission at Baltimore, Maryland.

A survey was recently conducted by the State Department of Health in conjunction with the United States Public Health Service, the office of the Commissioner of Labor and Statistics of Maryland, and the Baltimore City Health Department at the request of the Maryland Commission for the Study of Occupational Diseases. The survey was made for the purpose of assisting this Commission in preparing a report, with recommendations for the control of occupational diseases, for the Legislature, which is now in session. Special consideration was given to potential occupational disease hazards involved in the various types of industry carried on in this state. The records have been tabulated and the report on the findings is now being prepared. The report has not yet been released, but we are informed by the State Department of Health that it will probably be available shortly through the United States Public Health Service.

The Commission for the Study of Occupational Diseases has informed us that its report will be submitted to the Governor during the week of March 9th, and will recommend the enactment of legislation for the prevention and compensation for occupational diseases in Maryland.

CHAPTER XXIII

MASSACHUSETTS

I. Workmen's Compensation Act.

1. Statutes.

There is no change to date in the statutes, but attention is called to a bill now pending and which is discussed in Sec. IV of this chapter.

4. Court Construction.

In *Waukowak's Case*, 5 N. E. (2d) 3 (S. Ct., Nov., 1936), following a long line of Massachusetts cases, it was held that disability or death resulting from the inhalation of dust in the course of employment is compensable under the Workmen's Compensation Act. The deceased herein constantly inhaled lime, rust, and soap dust over fifteen years' employment in defendant's plant.

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

1. Pending Legislation.

The Legislature is now in regular session, having convened January 6, 1937. We are informed by the Division of Occupational Hygiene of the Department of Labor and Industries that only one bill is now pending in the Legislature which would specifically affect either the control or compensability of silica dust hazards. That bill is House Bill No. 1257 and provides that the Department of Industrial Accidents may, upon application therefor, and after investigation, issue to any employer in the foundry business a certificate of compliance with its rules and regulations relative to the installation and operation of suitable devices for the prevention of silicosis and may at any time, for cause, suspend or revoke such certificate. "Silicosis" is defined, for the purpose of the section, as "that form of pneumoconiosis caused by the inhalation of siliceous dust other than that of asbestos." The bill also makes provision for the handling of rejected risks by insurance companies subject to the provisions of the act. A hearing on the bill was set for February 18, 1937.

2. Rules and Regulations.

No rules or regulations relating to the granite dust hazard have actually been adopted as yet. We are informed, however,

CHAPTER XXIV MICHIGAN

I. Workmen's Compensation Act.

1. Statutes.

No change has been made in the Workmen's Compensation Act as regards occupational disease. Several bills are now pending before the Legislature in regard to this matter. For comment upon these bills see Sec. IV of this Chapter.

4. Court Construction.

A. *Accidental Injury.* In *Curley v. Beryllium Corp.*, 270 N.W. 202 (S. Ct., Dec., 1936), the plaintiff inhaled chlorine gas over a period of two months while engaged in installing machinery in defendant's new plant. He became disabled as a result thereof and filed a claim for compensation, which was denied on the ground that no accidental injury was involved. Plaintiff then instituted suit at law alleging negligence on the part of the defendant in failing to provide a safe place in which to work, to warn him of the danger of the chlorine gas, and to furnish him with a gas mask and other safety appliances.

At the close of all proofs, the court below granted defendant's motion for a nonsuit on the ground that plaintiff's disability was the result of an accidental injury compensable only under the Workmen's Compensation Act. The court affirmed the decision of the lower court, declaring that where an accidental injury arising out of and in the course of employment was involved, as was true under the facts in the present case, the employee's only forum was the Department of Labor and Industry, in whom is vested the administration of the Workmen's Compensation Act. The injury did not result drop by drop, little by little, day after day, for weeks and months, but was the result of an unforeseen breaking of certain tubes and the fortuitous release of chlorine gas.

As to whether or not plaintiff would have a right of action at common law for an occupational disease, the court did not commit itself. It did restate the position taken in *Tworck v. Munising Paper Co.*, 275 Mich. 174, 266 N. W. 311, to the effect that the problem of the alleged hiatus in the law was a legislative rather than a judicial problem.

There is no other change in this section.

II. Other Statutes.

No change

III. Common Law Liability.

Attention is called to *Curley v. Beryllium Corp.*, supra, in

regard to the right of action at common law for an occupational disease.

IV. Miscellaneous Matters of Interest.

The Michigan Legislature is now in regular session, having convened January 6, 1937.

The commission appointed by the Governor to study occupational diseases, pursuant to Act 164 of the Public Acts of 1935, completed its investigation and submitted two reports, which are set out in full in the Journal of the Senate of the regular 1937 session, No. 12, dated February 1, 1937. The bill drafted pursuant to the majority report of this commission is House Bill No. 192; the bill drafted pursuant to the minority report is House Bill No. 63. In addition, House Bill No. 127 and Senate Bill No. 106 are pending, which bills also relate to occupational disease.

Due to the number and length of the pending bills, only the more important provisions will be commented upon.

1. Bill Proposed by Majority Report of Commission—House Bill No. 192.

The bill proposed by the majority of the commission would amend the Workmen's Compensation Act by adding part VII, consisting of 33 sections, which relate solely to making compensable 27 scheduled occupational diseases, including asbestosis, silicosis, poisoning from arsenic, benzol, lead, phosphorus, etc. That bill would provide a method whereby a majority of the Workmen's Compensation Commission and the Medical Board created by the act may add additional occupational diseases to those scheduled. Silicosis and asbestosis are expressly defined in the bill.

For disability from an occupational disease to be compensable, the bill would require that the employee be exposed in employment in Michigan for a period of 90 days after the effective date of the act; provided that, in cases of silicosis or asbestosis, the exposure, in addition to the 90 day period subsequent to the effective date of the act, must amount in all to at least three of the five years immediately preceding disability.

Compensation for silicosis or asbestosis would be payable only in the event of temporary total disability, permanent total disability, or death, and only in the event of such disability or death resulting within two years after the last injurious exposure. The maximum amount payable for disability or death because of silicosis or asbestosis would be \$3,000.

Compensation would be payable by the last employer in whose employment the employee was injuriously exposed to the

hazard which resulted in disability or death. Provision would be made, however, for apportionment among employers exposing the employee to such hazards.

In order to be compensable, the last injurious exposure to the hazard of a scheduled disease must occur before the effective date of the act.

Provision is made in this bill for compulsory medical examination before, during, and at the termination of employment. Refusal to submit to any such examination would relieve the employer of the payment of all compensation benefits under this part of the act. The Medical Board would also be empowered to require that an autopsy be performed; a refusal to permit an autopsy to be conducted would suspend payment of compensation.

The bill provides for creation of a Medical Board, consisting of five physicians having special knowledge in the field of occupational diseases. They would hear and determine all medical questions in connection with claims filed with the Workmen's Compensation Commission.

The bill would make the part dealing with occupational diseases elective as to employers and employees. The administration of the act would be placed in the Workmen's Compensation Commission.

2. Bill Proposed by Minority Report of Commission—House Bill No. 63.

The minority bill proposes an all inclusive occupational disease act similar to that of Wisconsin, wherein all occupational diseases are compensable in the same manner as an injury by accident is now compensable.

3. Other Pending Bills.

House Bill No. 127 proposes to amend certain sections of the existing Workmen's Compensation Act to include all occupational diseases. The total compensation payable would be recovered from the employer last employing the employee under conditions causing the disease, but such employer may, by proper procedure, procure an apportionment among employers in whose employment the employee was subjected to such hazard. Its provision would not apply to disability or death resulting from diseases contracted prior to the effective date of the act.

Senate Bill No. 106 is not available and we are not informed as to its provisions.

CHAPTER XXV

MINNESOTA

I. Workmen's Compensation Act.

4. Court Construction.

A. Injuries by Accident. The case of *Anderson v. Russell Miller Milling Co.*, commented upon in our survey, was again before the Minnesota Supreme Court, but the Supreme Court affirmed the decision of the lower court, denying compensation (267 N. W. 501 (June, 1936)).

II. Other Statutes.

No change

III. Common Law Liability.

O'Connor v. Pillsbury Flour Mills Co., 267 N. W. 507 (June, 1936), involved an action at law to recover for disability from pulmonary tuberculosis alleged to have resulted from inhaling flour dust during two and one-half years' employment in defendant's plant. The plaintiff alleged that defendant was negligent in failing to properly ventilate the room in which she worked, in violation of its statutory duty. The court affirmed the ruling of the trial court granting defendant's motion for judgment, notwithstanding the verdict, on the ground that the evidence showed the cause of plaintiff's condition to be wholly speculative and conjectural. The evidence disclosed, among other things, that, although flour dust was present in the air, such dust was classified as "inorganic" and therefore harmless and also that there were extremely few cases of tuberculosis among workers employed under the same conditions.

There are no other changes in this section.

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 5, 1937. We are informed by the Industrial Commission that two bills are now pending, one which would make all occupational diseases, including silicosis, compensable under the Workmen's Compensation Act and a second bill which would add silicosis and carbon monoxide gas poisoning to the compensable occupational diseases. The Industrial Commission stated that there was more general favor toward making carbon monoxide gas poisoning compensable than toward making silicosis compensable.

The Industrial Commission further informed us that it was not aware of any change in the statutes and in general rules and regulations relating to dust hazards but that its department has and is ordering proper ventilation in all places where there

is a likelihood of contracting any occupational diseases. The Commission also stated that over half of all the quarries in the State are already equipped with mechanical ventilating systems for removing the dust at the point of operation.

CHAPTER XXVI

MISSISSIPPI

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

Meridian Grain & Elevator Co. v. Jones, 169 So. 771 (S. Ct., Sept., 1936), involved an action for damages for injury (chronic bronchitis) allegedly caused by defendant's failure to furnish a reasonably safe place to work. Defendant operated a plant where feed for cattle and chickens was manufactured. Plaintiff had been employed for ten years in charge of the horse feed unit, during which time he constantly inhaled the dust given off in the process. There were two controversies before the court: (1) whether breathing of the organic dust inhaled by plaintiff, as distinguished from inorganic dusts coming from rock, coal and other minerals was harmful and (2) whether the plaintiff was negligent in permitting the defendant to work under such conditions.

The court stated the general rule to be:

"The master is not the guarantor of the safety of the place to work; the obligation to furnish a safe place is not an absolute one. The master is only required to furnish a reasonably safe place, and that obligation is modified by the phrase 'reasonable care'; in other words, he is only required to use reasonable care to furnish his servant a reasonably safe place to work. If the place is not reasonably safe, still there is no liability on the part of the master if he has used reasonable care to make it reasonably safe. * * *

It was undisputed that defendant's plant was a standard plant operated in the customary way, generating no more dust than other like plants, and that the dust generated was organic dust. The court said that, even granting organic dust to be harmful, still,

"There was no evidence whatever tending to show that appellant should have reasonably anticipated the harmful effect of the dust. Appellant had the right to stand on the history of the business which showed the dust generated by such plants to be harmless. It was not required to consult medical experts about a matter unquestioned in the business. There being no evidence that appellant should have

reasonably anticipated the harmful effects of the dust, there was no case for the jury. * * *

In *F. W. Woolworth Co. v. Hayale*, 170 So. 150 (S. Ct., Oct., 1936), the unsupported evidence of plaintiff, a clerk in defendant's soda fountain, to the effect that injury to his hands and feet was caused by chemicals used in dish water was held insufficient for the jury where undisputed testimony showed that the product was extensively used for antiseptic and sterilization purposes and the combination of chemicals would be harmless.

IV. Miscellaneous Matters of Interest.

The Mississippi Legislature will not meet in regular session during 1937.

The Mississippi State Board of Health informed us that at the present time there are no rules or regulations which prescribe measures to be adopted by employers with respect to dust hazards. The Board expressed the hope that in the near future laws will be passed relating to precautionary measures to be taken with regard to such hazards and added that it hoped to be able to make a survey of such hazards in the state in the very near future.

CHAPTER XXVII

MISSOURI

I. Workmen's Compensation Act.

4. Court Construction.

In *Bicanic v. Kroger Grocery & Baking Co.*, 83 S. W. (2d) 917 (St. Louis Ct. of App., 1935), compensation was granted where death of an employee in a bakery resulted from heat prostration which occurred while he was working in a heated oven room where fumes from bread and rolls were only partially carried off. The court declared that the Workmen's Compensation Act should be liberally construed and doubt resolved in favor of employees.

In *Downey v. Kansas City Gas Co.*, 92 S. W. (2d) 580 (1936), the Missouri Supreme Court, on appeal from the Kansas City Court of Appeals reversed the case reported in Chapter XXVII, part III, page 230, of our basic survey. The Supreme Court held that the employee had no right of action at law against his employer for injury to an eye caused by dust and soot being rubbed into it when the employee wiped his eye with the back of his hand or shirt sleeve while engaged in working in the soot and dirt of flues and chimneys in defendant's employment over a period of five or six weeks. Plaintiff's injury was held to be an accidental injury and not an occupational disease, and therefore compensable only under the Workmen's Compensation Act. The court declared that plaintiff did not intend, expect, or foresee the injurious consequences of his acts, so that the event was unexpected and unforeseen within the meaning of the Act. As to whether or not the event happened suddenly, it was stated:

"* * * We think it did. It appears to us that the fundamentally accidental nature of the injury is not altered by the fact that the infection, if it may be so called, was gradual throughout a period of four or five weeks, or that there was a series of accidental injuries cumulating in the same consequential result. * * *

It is apparent that the Missouri Supreme Court has established a precedent for a liberal construction of the word "accident" for future decisions.

There are no other changes in this section.

II. Other Statutes.

No change

III. Common Law Liability.

Sweany v. Wabash Ry. Co., 80 S. W. (2d) 216 (Kansas City

Ct. of App., 1935), involved an action under the Federal Employer's Liability Act to recover for injuries sustained by a section hand from inhaling fumes given off by railroad ties which had been treated with creosote. Plaintiff alleged that the defendant, with knowledge of the harmful effect of the fumes, negligently placed him to work in an unsafe place and negligently failed to warn him of the danger or give him proper instructions. The lower court returned a verdict of \$5,000 for the plaintiff, but the higher court reversed and remanded the case on the ground that the court had erred in refusing to give a charge to the jury which would have presented to it the issue of fact as to whether the effect of the creosote fumes might reasonably have been anticipated by the employer. The charge requested was to the effect that if the jury believed that the injury was so unusual and extraordinary that the defendant did not know and could not have reasonably anticipated such result, then the verdict must be for the defendant. The court held such was a proper charge and its exclusion prejudicial error.

Wolf v. Mallinckrodt Chemical Works, 81 S. W. (2d) 323 (S. Ct., 1935), involved an action at law to recover damages for injuries alleged to have resulted from inhaling poisonous fumes and gases during several years' work in defendant's chemical plant. Plaintiff alleged negligence in failing to furnish a safe place to work and in breaching statutory duties requiring defendant to furnish respirators, hoods, fans, ventilators, etc. Plaintiff was suffering from "combined sclerosis", a degenerative process of the spinal cord. The court upheld defendant's demurrer to plaintiff's petition on the ground that there was no evidence that the disease which plaintiff contracted was peculiar or incident to the work carried on. Beginning at page 327 of the reported case, the court discusses elaborately recovery at common law and under the Workmen's Compensation Act for occupational diseases to clarify the meaning of the latter phrase.

In *Maupia v. American Cigar Co.*, 84 S. W. (2d) 218 (Kansas City Ct. of App., 1935), plaintiff sought to recover at common law for occupational disease alleged to have resulted from inhaling tobacco dust while employed in defendant's cigar factory. Plaintiff claimed defendant was negligent in failing to provide and maintain adequate devices for carrying off injurious dusts and in sweeping during working hours without dampening the floors to prevent the raising of dust. The lower court's verdict was for the plaintiff, but such was reversed

for the reasons that plaintiff failed to prove that the alleged occupational disease was peculiar or incident to the works or process carried on by defendant; that since plaintiff's disease could have resulted from one of several causes, the failure to show with reasonable certainty that her injury was caused by the inhalation of tobacco dust was fatal; and that there was no evidence supporting plaintiff's contention that defendant was negligent in failing to provide respirators for its employees.

Reaves v. Kramer, 97 S. W. (2d) 137 (Kansas City Ct. of App., 1936), was an action at law to recover for occupational disease of a pulmonary nature alleged to have resulted from inhaling steel dust generated in the operation of a portable grinding and polishing machine. Plaintiff used the machine in the interior of a steel tank for approximately ten weeks. The system of exhausting the air did not furnish a means of dispelling the dust generated in the tank. Plaintiff alleged that defendant was negligent in failing to supply a hood with a blower or suction fan to carry off the dust and to furnish adequate and approved respirators. Judgment for the plaintiff for \$5,000 was affirmed.

The defendant furnished plaintiff with two types of respirators in general use in the industry, but the evidence indicated that the filtering devices used did not prevent the dust from becoming caked and plastered over defendant's mouth and that a felt fiber filter would prevent such dust from getting through to the employee. Defendant contended that it was not required to furnish the best, the newest and most modern type of filter but only such type as is generally used in similar businesses. The court overruled such contention on the ground that the statute required that the respirators furnished be adequate and, if inadequate, then defendant failed to comply therewith.

The defendant also pointed out that it was impossible to equip such a machine as plaintiff used with a hood connected with a blower or suction plant. The court held this to be no defense, declaring:

"The statute, in substance, prohibits the use of the machine if it cannot be equipped with a hood, etc."

In *Busen v. Chevrolet Motor Co. of St. Louis*, 100 S. W. (2d) 277 (S. Ct., Nov., 1936), the plaintiff brought his action at law to recover for injuries consisting of disease and impairment of his eyes, diseased sinus and lungs alleged to have resulted from working for approximately four years in defendant's

plant and from inhaling emery and metal dust given off in the process of grinding, buffing, and polishing radiator shells. Plaintiff alleged that defendant was negligent in failing to provide a hood, blower, or suction fan to carry off the dust, as was required by statute. The defendant furnished plaintiff with goggles, but it was shown that they not only impaired plaintiff's work but also increased the danger of plaintiff's getting caught in the grinding wheel. The defendant also furnished a suction system, but such was shown to carry off only about one-third of the dust. The plaintiff had complained of the dust, but no action had been taken. The court affirmed a \$15,000 verdict in favor of the plaintiff as not excessive. The court stated that defendant's failure to comply with the statutory requirement constituted negligence per se and also that the testimony was ample to support the jury's findings that the statute was not complied with and that the failure to remove the dust caused the plaintiff's injuries.

Bleser v. Goran, 100 S. W. (2d) 897 (S. Ct., Jan., 1937), involved an action at law to recover for injury to the lungs of an employee alleged to have resulted from inhaling dust in the course of employment in defendant's plant where silicon was produced and prepared for use in the manufacture of glass. The plaintiff alleged negligence on defendant's part in failing to provide a covering for the chutes and hoppers, blowers, respirators, physical examinations, and notices of the danger as required by statute. The jury in the lower court returned a verdict of \$27,000 for plaintiff. Upon remittitur of \$7,000 in the trial court, a judgment was entered for \$20,000. Plaintiff died after the trial and the cause was revived in the name of his administratrix.

The Supreme Court, after stating that the evidence sustained the charge that defendant failed to perform statutory obligations and that such failure constituted negligence per se, considered what it deemed the more important question, to-wit: Did plaintiff's injury result from dust inhaled while in the employment of the defendant?

The facts disclosed that plaintiff, prior to his first employment by defendant, worked for three or four months for another employer where dust was present in the air. From the spring of 1921 or 1922 until February 1925, he worked for defendant under conditions exposing him to noxious dusts. Plaintiff testified that at the time he quit defendant's employment, his health, so far as he knew, was good. In the spring of 1926, plaintiff worked for seven months for a third

employer. He testified that dust was present in the air where he worked and that when he left the employment, his health was still all right. In April, 1929, he returned to defendant's employ for a period of three months, during which time the conditions in defendant's plant were unchanged. It was during this time that plaintiff stated he first noticed an impairment of health. After leaving defendant's employ the second time, it appears that he worked for brief periods for each of the other defendants, apparently under the same conditions as formerly. There was medical testimony to the effect that plaintiff could develop the condition he was then in by working for from two to four years under conditions as they existed in defendant's plant.

The court reversed the decision and held for the defendant on the grounds that there was no support for the jury's finding that the second employment of plaintiff by defendant caused him to contract silicosis and that there was no evidence upon which the conclusion could be based that plaintiff's silicosis had been contracted during the first period of employment by defendant and then remained dormant until some time during the second period of employment. The result was that plaintiff's testimony showed that the exposure during the first period of employment by defendant could have caused silicosis but did not show that plaintiff's individual case of silicosis resulted from exposure which took place four years before the disease became apparent. The facts and reasonable inferences therefrom were not such as to show defendant to be responsible for plaintiff's injury.

In *Smith v. Hatblson-Walker Refractories Co.*, 100 S. W. (2d) 909 (S. Ct., Jan., 1937), plaintiff sought to recover at law for silicosis allegedly contracted as the result of inhaling dust from fire clay over a period of approximately six years in the course of employment as a grinder for defendant. Plaintiff predicated his action on defendant's negligence in failing to observe statutory requirements relating to the elimination of noxious dusts in employment. Plaintiff obtained a verdict for \$11,000 in the lower court, but, on appeal, the judgment was reversed and the cause remanded.

After a lengthy statement of fact, the court considered the several contentions made by the defendant in its appeal. The court upheld the refusal of the lower court to direct a verdict in defendant's favor for the reason that plaintiff had stated a cause of action under Secs. 13232 and 13234, Revised Statutes of Missouri, 1929 (set out in full in Legal Series

Bulletin No. 1, part iv, p. 222). The court pointed out that the requirements of these sections are mandatory; that an employer must himself determine when and what equipment is necessary to comply therewith; that defendant would be liable thereunder if the dust, without regard as to whether or not it contained silica and without regard as to whether or not the injury caused an occupational disease, caused injury to the plaintiff; that failure to abide thereby constituted negligence per se; and that plaintiff stated a cause of action by showing the use by defendant of a grinding machine creating dust, the failure on defendant's part to provide the grinder with a blower or suction fan of sufficient strength to carry off the dust or so much as to prevent inhalation by plaintiff in injurious amounts, and the inhalation of dust sufficient in amount and of such character as to injure him and which did in fact injure him.

The court held that the lower court erred in granting one of plaintiff's instructions to the jury in connection with Section 13232 to the effect that the verdict should be for the plaintiff if the "defendant failed to ventilate * * as to render harmless all such dusts as near as could be." The court stated:

"* * this instruction permitted recovery for failure to do anything that was possible, rather than fixing the standard to be reasonable means and reasonable safety in ventilation of places of work."

The court then discussed certain of plaintiff's instructions based upon the so-called occupational disease statutes, Secs. 13252, 13254, and 13264 (Legal Series Bulletin No. 1, part iv, pp. 223-225). First pointing out the essential facts which plaintiff should have proven, the court stated that in plaintiff's instruction the fact issues were not clearly set out; that silicosis was assumed to be and was not required to be found a disease peculiar or incident to the kind of work plaintiff was doing; that there was no required finding that the particular dust produced in defendant's plant would cause silicosis; that recovery was authorized for any disease of the lungs without regard to whether there was any evidence to show that plaintiff had such undesignated disease; and finally that they were so vague and general that they gave the jury a roving commission to allow recovery for failure to provide any other means or methods of eliminating dust as they might believe or imagine could be provided to render harmless all dust, whereas, the employer is not an insurer against any occupational disease but is liable only if such disease is contracted by an

employee as a result of failing to provide such devices, means, and methods as have been found to be reasonably safe by usage and are commonly and ordinarily used in other similar places, occupations, and businesses.

The court then discussed at length the difference in requirements upon employers in regard to dust hazards at common law and in an action based upon the Missouri statutes. The opinion should be read in its entirety by employers.

The defendant's final contention was to the effect that the certificates of approval of conditions in its plant, issued by the Commissioner of Labor after inspection, was a defense to plaintiff's action. The court denied such contention, stating:

"* * * The duty to comply with both the specific requirements and general standards of these statutes is an absolute and mandatory duty directly placed upon the employer by the Legislature which does not depend upon any approval or disapproval of the Commissioner of Labor. It is for the employer himself to determine what is necessary to comply therewith. * * *

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 6, 1937. We are informed by the Workmen's Compensation Commission that no bills are pending which affect the compensability of silicosis under the Compensation Act or which relate to precautionary measures to be taken with regard to dust hazards.

CHAPTER XXVIII

MONTANA

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature convened in regular session on January 4th of this year and has not as yet adjourned. We are informed by the Industrial Accident Board that a bill to make silicosis and other diseases resulting from dust hazards compensable under the Workmen's Compensation Act was introduced in the present Legislature but was killed in the House, where it originated. The Board also informed us that no legislation is pending relating to precautionary measures to be observed in regard to dust hazards and that it has not adopted any rules or regulations in regard to such hazards.

CHAPTER XXIX NEBRASKA

- I. Workmen's Compensation Act.
No change
- II. Other Statutes.
No change
- III. Common Law Liability.
No change
- IV. Miscellaneous Matters of Interest.
The Nebraska Legislature convened in regular session on January 5th of this year and has not as yet adjourned. The Nebraska Workmen's Compensation Court has informed us that a bill is now pending which will add to the compensable occupational diseases those occupational diseases peculiar to the battery manufacturing business, but that there is no pending legislation relating to making compensable, diseases resulting from the inhalation of dusts or prescribing precautionary measures to be taken by employers with respect to dust hazards. The Commissioner of Labor has informed us that the Nebraska Safety Code has not been amended since August, 1930.

CHAPTER XXX NEVADA

- I. Workmen's Compensation Act.
No change
- II. Other Statutes.
No change
- III. Common Law Liability.
No change
- IV. Miscellaneous Matters of Interest.
The Legislature is now in regular session, having convened January 18, 1937, but we are not advised that any bills are pending which would be of interest in this survey.

CHAPTER XXXI NEW HAMPSHIRE

I. Workmen's Compensation Act.

4. Court Construction.

In *Moore v. Rumford Printing Co.*, 105 A. 165 (S. Ct., May, 1936), compensation was awarded for death by accident where the employee's death resulted from gas poisoning suffered during several hours of employment on a printing press where un- consumed illuminating gas escaped and was inhaled by him. The court stated that the same definition of "accidental" is used whether the word is applied to cause or effect and also that, under the circumstances, the injury was traceable to a sufficiently definite location in time to be deemed accidental.

In *Ahern v. Eldredge Brewing Co., Inc.*, 188 A. 470 (S. Ct., Dec., 1936), death resulted to an employee as a result of his going into a vat which had just been emptied before the sides had been washed and the poisonous gases present therein dis- pelled. The court said:

"It is plain enough that Mr. Ahern's death was 'accidental' as that term is defined in *Guay v. Brown Co.*, 83 N. H. 392, 142 A. 697."

There are no other changes in this section.

II. Other Statutes.

2. Rules and Regulations Adopted by the Bureau of Labor.

The Bureau of Labor has informed us that no changes have been made in the standards issued by that department.

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 6th of this year. We are informed by the Bureau of Labor that there is no legislation pending which would make silicosis and other diseases resulting from exposure to dust hazards compensable under the Workmen's Compensation Act or which relates to precautionary measures to be taken by employers with respect to dust hazards.

The commission appointed by the Governor for the study of occupational diseases in New Hampshire submitted its report, in which it concluded that occupational diseases in that state are relatively rare; that the greater percentage of such diseases that now exist can be eliminated by more careful preventive measures; that it would be unwise now to set up a new agency

for the handling of claims, which would surely arise if legis- lation were to be enacted providing for the coverage of indus- trial diseases in a manner similar to that obtaining for in- dustrial accidents; that a considerable number of conditions which are really diseases and not true accidents are now taken care of by insurance coverage as accidents, e. g., skin eruptions, acute gas poisonings, etc.; that before intelligent legis- lation can be enacted pertaining to occupational diseases a careful study should be made of the specific problems present in New Hampshire, and, in its opinion, the proper way to handle the matter was by the appropriation of money so that a thoroughly trained engineer could be hired to conduct the in- vestigation.

The commission made special findings in regard to silicosis and concluded that it was not wise to make such disease com- pensable. It pointed out that the granite industry in the state is in a rather precarious situation and that the additional burden of silicosis coverage would be fatal in many cases. It also pointed out that a distinct hardship would be worked upon employees because no employee would be permitted to work un- less he were able to submit definite proof of his freedom from silicosis at the time of his employment. The commission con- cluded that, considering the number of men who would be thrown out of employment and the probable closing down of the granite cutting industry in New Hampshire, the most that could be accomplished would be to further improve dust col- lectors and similar devices for reducing the hazard.

CHAPTER XXXII

NEW JERSEY

I. Workmen's Compensation Act.

1. Statutes.

Although no change has been made in the Workmen's Compensation Act as it affects occupational diseases, there is at present a bill pending dealing with pneumoconiosis. The bill is discussed in part IV of this chapter.

4. Court Construction.

A. Compensation for Injuries by Accident and for Occupational Disease.

In *Raimo v. Ford Motor Co.*, 185 A. 639 (Cl. of Common Pleas of Bergen County, June, 1936), compensation for the loss of the sight of an eye was denied where the evidence disclosed such to have resulted from the natural progress of the disease of tuberculosis with which the employee was afflicted and not from a blow as alleged. The court stated that compensation will not be paid for injuries caused by the natural progress of a disease from which a workman may be suffering.

There is no other change in this section.

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 12th of this year. We are informed by the Commissioner of Labor that Senate Bill No. 63, introduced January 27, 1936, to bring pneumoconiosis within the Workmen's Compensation Act, was referred to the Committee on Labor, Industries, and Social Welfare and never reported but that an identical bill, Assembly No. 30, was introduced January 25, 1937, and has been referred to the Committee on Miscellaneous Business. The Commissioner commented that, in all probability, such bill would not be brought to vote this year.

No amendment was made in the "Sanitary and Engineering Industrial Standard" issued by the Department of Labor.

The only publication on the subject of occupational hazards recently published by the Department of Labor is that on the subject of industrial dermatoses, i. e., inflammation of the skin

caused by one's occupation. A copy of such publication can be procured by addressing the above Department.

CHAPTER XXXIII NEW MEXICO

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature convened in regular session on January 12, 1937, and has not as yet adjourned. We are informed by the State Labor and Industrial Commission that there are no bills now pending which would make silicosis and other diseases resulting from exposure to dust hazards compensable under the Workmen's Compensation Act or which relate to precautionary measures to be taken with respect to dust hazards.

No rules or regulations have been adopted by the above Department relating to dust hazards.

The only survey conducted in New Mexico was that made in 1934 by Dr. Carl Buck of the American Public Health Association. In that survey a special study of tuberculosis was made, but there has been no investigation as to silicosis or other occupational diseases.

CHAPTER XXXIV NEW YORK

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

Michaelek v. United States Gypsum Co., 16 F. Supp. 708 (D. C., W. D., 1936), was an action at law to recover for disability from pneumoconiosis caused by the inhalation of gypsum dust in the course of employment. At the time of plaintiff's alleged injury, the Workmen's Compensation Act did not cover such disease. Plaintiff's action was based upon violations by defendant of subdivisions 1, 2 and 3 of Section 299 of New York Labor Laws relating to ventilation of factories. The court granted plaintiff's motion to strike defendant's defenses of assumption of risk, negligence of fellow servant, bar of the New York Workmen's Compensation Act, and the unconstitutionality of the aforementioned section of the Labor Laws relating to ventilation of factories.

The court stated that the act was not unconstitutional as a delegation of authority by the Legislature of its legislative functions but merely gave to the Industrial Board the right, and charged it with the duty of making rules and regulations necessary for the administration of the law, and furthermore that the Act was not on its face uncertain, vague, incomplete, or indefinite. The court further declared that since the statutory duty was absolute, the employer could not shield himself from liability because of the negligence of a co-employee of defendant or on the ground that the employee had assumed the risk even though the defendant was aware of such risk. The contention that the Workmen's Compensation Act was a bar to plaintiff's action was disposed of by the statement that the Workmen's Compensation Act did not at that time cover the disease which caused plaintiff's disability.

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 6th of this year. We are informed by the Division of Industrial Hygiene of the Department of Labor that no bills are now pending affecting the compensability of silicosis or relating to precautionary measures to be taken by employers in regard to dust hazards.

The Commissioner and Industrial Board have not as yet adopted any rules under Article 4 (a) of the Workmen's Compensation Act. However, a public hearing was held on January 28, 1937, on proposed rules for the control of silica dust in rock drilling; and these are now up for consideration. Copies of the proposed rules can be procured by communication addressed to the Department of Labor, 80 Centre Street, New York City.

CHAPTER XXXV NORTH CAROLINA

I. Workmen's Compensation Act.

4. Court Construction.

A. *Disease as Accidental.* The case of *Swink v. Carolina Asbestos Co.*, 210 N. C. 303, 186 S. E. 258 (June, 1936), is of interest, particularly because it may be considered as in conflict, to some degree, with the case of *McNeely v. Carolina Asbestos Co.*, 206 N. C. 568, 174 S. E. 509, which was reported in our basic survey (*Legal Series Bulletin No. 1*, part v, page 316). In the *Swink* case the plaintiff employee sought compensation under the Workmen's Compensation Act for disability resulting from pulmonary asbestosis caused by the inhalation of asbestos dust during six or seven years employment in defendant's plant. The injury occurred before asbestosis was expressly made compensable under the Workmen's Compensation Act. On December 19, 1933, defendant, for the first time, installed a dust removal system, which reduced the dust content in the air approximately 90%. Plaintiff was discharged on October 25, 1934, following a physical examination conducted by defendant for all its employees, which revealed plaintiff's poor health. In his petition, plaintiff alleged that defendant was negligent in failing to install the dust eliminating system before December 19, 1933, and that such negligence caused the disability of which he complained. The Commission found as a fact that defendant's failure to install the system before it did was a failure to exercise the reasonable amount of care required of an employer for the safety of his employees. The Commission, however, denied compensation on the ground (which it found as a fact) that plaintiff's injury did not result naturally and unavoidably from an accident as required by the Workmen's Compensation Act. On appeal, the finding of the Commission was reversed and compensation was granted for a personal injury by accident arising out of and in the course of employment as the direct and proximate result of defendant's negligence. The defendant promptly appealed to the Supreme Court, which, in the immediate decision, reversed the court and affirmed the finding of the Commission denying plaintiff compensation. The Supreme Court based its decision upon the principle that the court was bound by the finding of fact made by the Commission, and that only questions of law could be considered by the court.

The facts of the case seem to be quite similar to the facts in the *McNeely* case commented upon in our basic survey as above stated, wherein a different result was reached, but the *McNeely* case was brought in the court, in the first instance, as a common law action; hence there was no finding of facts by the Commission. It was upon the *McNeely* case that plaintiff in the *Swink* case relied, but the Supreme Court said:

"* * * An examination of the opinion in that" (the *McNeely*) "case will show that the instant case is not governed by the decision in that case. In the opinion in that case, it is said that the evidence at the trial showed that the plaintiff was not injured by an occupational disease, but was injured by the negligence of the defendant. It was held that the negligence alleged in the complaint, and shown by the evidence at the trial, was an accident within the meaning of the North Carolina Workmen's Compensation Act, and that therefore the plaintiff's injury was compensable under the provisions of the North Carolina Workmen's Compensation Act. For that reason the judgment dismissing the action was affirmed."

"In the instant case, the Industrial Commission has found that the plaintiff was not injured by the negligence of the defendant, but that his injury was caused by a disease which he contracted while working in defendant's plant as its employee. All the evidence showed that plaintiff's injury was the result of an occupational disease, and for that reason was not compensable under the provisions of the North Carolina Workmen's Compensation Act. It is otherwise since the amendment to the act by the General Assembly at its session in 1935. (186 S. E. 262)"

It is difficult to reconcile these two cases in principle. Both claimants worked for the same employer. One brought his action at law and lost on the ground that he had suffered "injury by accident" which was compensable and not the subject of common law action. The other brought his claim before the Commission on the theory that it was compensable and lost—the Commission finding as a fact that he had not suffered "injury by accident."

At any rate the Supreme Court did not, by its opinion in the *Swink* case, overrule the conclusions stated in the *McNeely* case, that a disease resulting from the inhalation of dust in the course of employment will be an accidental injury, if it happens without the design or expectation of the employee, despite the fact that the inhalation of the dusts took place over a long period of time. In the words of the court in that

case, " * * * the time element should not be paramount or controlling."

There is no other change in this section.

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature convened in regular session on January 6th of this year and has not as yet adjourned. We are informed by letter from the North Carolina Industrial Commission that there is no bill pending before the Legislature to amend the compensability of asbestosis or silicosis under Section 50½ of the Workmen's Compensation Act or relating to rules to be observed by employers in regard to dust hazards. The Commission further informed us, however, that they plan to offer an amendment which will "permit the employment of employees for ninety days on a conditional basis without liability to the employer pending a physical examination by the Advisory Medical Committee."

The Commission further plans to clarify Section 50½ (o), which provides that written notice must be given to the employer in whose employment the employee was last injuriously exposed to the hazards of silicosis or asbestosis within 30 days after the first distinct manifestation, but the exact nature of this change has not been determined. The Commission, in its letter, expresses the opinion that knowledge on the part of the employer is sufficient without a written notice in view of the fact that under the Act the Medical Committee is directed to advise the employer in the case of occupational disease. In commenting upon the meaning of "first distinct manifestation," it was stated that in the cases which have arisen it was held to mean the time when the doctor advised the employee that he had silicosis.

The Commission also has under consideration the change of Section 50½ (j), which provides that the Industrial Commission may, under certain conditions, remove an employee from an employment where he is exposed to asbestos or silica dust. The proposed change will permit the employee to have the rehabilitation fund which is given when he is taken from the employment by order of the Industrial Commission or when he quits his job and finds that he is unable to get further employment, particularly in his experienced vocation, because of

silicosis or asbestosis. The Commission desires to have the Act state that compensation will be allowed under both circumstances.

The Department of Labor has informed us that there is no legislation pending relating to preventive measures to be taken by employers with respect to dust hazards and that although, as yet, its commission has adopted no rules or regulations regarding such hazards, it hoped to take definite steps in this matter at an early date.

The Division of Industrial Hygiene of the North Carolina State Board of Health, cooperating with the Industrial Commission, has recently published a report of a survey made of certain industries in North Carolina involving the siliceous dust hazard. The survey was made in order to obtain a conception of the extent of the siliceous dust problem. In all, some 138 of the 200 industrial establishments and mining operations in the state, in which some or all of the workers were exposed to siliceous dust, were visited. The report on the findings can be procured by communication addressed to the State Board of Health at Raleigh, North Carolina. It is very comprehensive and should be considered by all employers in the state, as well as by other states contemplating a survey of such hazard.

CHAPTER XXXVI NORTH DAKOTA

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature convened in regular session on January 5th of this year and has not as yet adjourned. We are informed by the North Dakota Workmen's Compensation Bureau that no bills are pending at the present time which would affect the compensability of silicosis and other dust diseases under the Workmen's Compensation Act or relating to precautionary measures to be taken by employers with respect to dust hazards and that, as yet, the Bureau has adopted no regulations in regard to such hazards.

CHAPTER XXXVII

OHIO

I. Workmen's Compensation Act.

1. Statutes.

Although no change has been made in the Workmen's Compensation Act as regards the compensability of scheduled occupational diseases thereunder, a bill is now pending in the Legislature which proposes the addition of silicosis to such schedule. For comment, see part IV of this chapter.

4. Court Construction.

A. Injuries by Accident. In *Ford Motor Co. v. Hunter*, 50 O. App. 547, 199 N. E. 85 (1935), compensation was granted for an injury by accident where an employee became ill from heat exhaustion caused by unusual physical exertion in a room in which the temperature was much higher than that prevailing outside.

In *Industrial Commission of Ohio v. Ackerman*, 51 O. App. 125, 199 N. E. 857 (1935), compensation was sought under the Workmen's Compensation Act for the death of an employee caused by pulmonary tuberculosis alleged to have resulted from inhaling carbon monoxide gas in the course of employment. The decedent was engaged in general machine work and die work for the defendant, working over an open charcoal forge which emitted fumes consisting of carbon monoxide gas. These fumes were inhaled by the decedent. The court held that no injury by accident was involved, since the evidence disclosed that the disease resulted from gas poisoning by a slow process through the years and not from any unusual circumstances on the day when he was overcome.

In *Industrial Commission v. George*, 51 O. App. 521, 2 N. E. (2d) 10 (1935), the plaintiff sought compensation under the Workmen's Compensation Act for injury to his kidneys caused by the constant jar occurring in the course of his employment as a truck driver. Plaintiff made no claim that in driving the truck there was ever on any occasion any accident, any specific injury or any unusual or unexpected event on any day different from any other day. On the contrary, he alleged frankly that the constant vibration and jarring of the truck from day to day, due to driving a truck equipped with solid rubber tires, brought about his injury. The court denied compensation on the ground that no injury by accident was concerned, declaring that no recovery can be had where disability arises from occupational sources unless it was "an accident, a

specific physical injury, an unusual or unexpected occurrence on a specified occasion different from other occasions."

There are no other changes in this Section.

II. Other Statutes.

No change

III. Common Law Liability.

It was stated in the Ohio chapter of our basic survey (*Legal Series Bulletin No. 1, Part v, p. 347*) that in *Mosingo v. Marion Steam Shovel Co.*, after it had been dismissed by the United States Supreme Court for want of a substantial federal question at 56 S. Ct. 959, a petition for rehearing had been filed with that court. This rehearing was denied October 12, 1936, at 57 S. Ct. 6.

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 4, 1937. Sub. House Bill No. 71, which proposes the addition of silicosis to the schedule of compensable occupational diseases, is now pending and provides in substance as follows:

"Silicosis" is defined as "a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules, distributed through the lungs and demonstrated by x-ray examination or by autopsy."

Compensation for disability or death resulting therefrom will not be payable unless the employee has been subject to injurious exposure to silica dust "in his employment in Ohio preceding his disablement, for periods amounting in all to at least five years, some portion of which shall have been after the effective date of this act." Moreover, compensation will be payable "only in the event of temporary total disability, permanent total disability, or death, and only in the event of such disability or death resulting within one year after the last injurious exposure; provided that in the event of death following continuous total disability commencing within two years after the last injurious exposure, the requirement of death within two years after the last injurious exposure shall not apply."

If the employee has been exposed to silica dust in Ohio employment for periods amounting in all to at least five years after the effective date of the Act, compensation will be payable in accordance with the amounts fixed in the Workmen's Compensation Act; but if the exposures after the effective date of the Act amount to less than five years, then the maximum compensation is not to exceed the sum of \$500 plus \$50 "for

each calendar month which may elapse after the effective date of this Act and before the month in which disability shall begin but shall not exceed, in any event, the sum of three thousand dollars."

Compensation will be barred unless application is made within one year after total disability began or within six months after death. The failure or omission on the employee's part to state truthfully, when seeking employment, the place, duration and nature of previous employment, in answer to the employer's inquiries, will also bar compensation.

The Industrial Commission is to appoint three "silicosis referees" who are to be licensed physicians in good professional standing and who have acquired special knowledge of pulmonary diseases; at least one of them must be a roentgenologist. Before awarding compensation for disability or death from silicosis, the Commission must refer the claim to the referees for examination and recommendation with regard to the diagnosis, the extent of disability and other medical questions. The employee must submit to such examinations, including chemical and x-ray examinations, as the Commission may require. The Commission may also designate a duly licensed physician, a pathologist, or such other specialist as may be deemed necessary to make an autopsy examination and tests to determine the cause of death and certify written findings to the silicosis referees. If an employee refuses to submit to the examinations after notice from the Commission, or where death occurs and the claimant for compensation fails to produce necessary consents or permits, after notice from the Commission, for the autopsy, then all rights for compensation are thereupon forfeited.

CHAPTER XXXVIII OKLAHOMA

I. Workmen's Compensation Act.

4. Court Construction.

A. Disease as Accidental. In *Wilson & Co. v. State Industrial Commission*, 58 P. (2d) 905 (S. Ct., 1936), compensation was awarded for injury to an employee's lungs resulting from the inhalation of black pepper. This occurred when the employee sneezed, inhaling violently the black pepper which thickly coated a ham which he was carrying in the course of his employment. The defendant contended that plaintiff was suffering from an occupational disease, but the court denied such contention, stating:

"In this case there is no evidence that the claimant had progressively become worse from the ill effects of breathing pepper, but the facts are undisputed that his disability dates from a certain and definite time and that his disability came on suddenly, was unforeseen and unexpected."

The court cited with favor the following quotation from *Tri-State Contractors v. Althouse*, 166 Okla. 296, 27 P. (2d) 1041:

"* * * 'An injury to an employee, engaged in a hazardous occupation, resulting from exposure to, and inhaling of, cement dust during a short period of time (three weeks in this case), which begins to manifest itself soon after the employee is first exposed, and grows progressively worse, culminating at the end of such short and definite period of time in a disability, is sufficiently certain and definite in point of time to be an "accidental injury" within the meaning of that term as used in connection with the Workmen's Compensation Act.'"

There are no other changes in this section.

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature has not yet adjourned from its regular session, which met for the first time on January 5, 1937. The State Industrial Commission has informed us that there are at present no pending bills which would place occupational diseases within the jurisdiction of that Commission.

CHAPTER XXXIX

OREGON

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

1. Statute of Limitations.

The case of *Pinkula v. Pillsbury Astoria Flouring Mills Co.*, 15 Ore. 304, 42 P. (2d) 921, petition for rehearing denied 44 P. (2d) 162, (1935), was not included in the survey; but because of its bearing on the application of the statute of limitations as applied to occupational diseases, we feel it should be made the subject of comment.

The action was brought at law by a widow to recover for the death of her husband alleged to have resulted from inhaling, in the course of several years employment by defendant, flour dust which the defendant permitted to permeate the air of his plant contrary to enumerated state statutes. It was admitted that an action by the employee for personal injuries must have been commenced within one year after the accrual of the cause of action and that the action for death could have been commenced within two years after the death. The court qualified the latter statute to the effect that at the time of the death the two year statutes must not have barred the decedent's right of action for his injuries. The question to be decided was whether or not at the time of the death of plaintiff's husband the two year statute of limitations had run upon his right to recover for his injuries.

The decedent commenced work on August 28, 1929; on September 17, 1930, he began noticing difficulties in breathing; in January of 1931 he left defendant's employment; on January 21, 1931, he entered a hospital and for the first time realized the extent of his ailment; and on June 8, 1933, he commenced an action which was pending on December 14, 1933, the date of his death. The court held that on September 17, 1930, the defendant had already breached a duty which it owed plaintiff's husband and that such breach had resulted in an injury to him of which he was actually aware. The court concluded that the statute began to run not later than September 17,

1930, and therefore barred plaintiff's present action since more than two years had elapsed before plaintiff commenced her suit.

2. Surveys and Legislation.

The Legislature is now in regular session, having convened on January 11, 1937. We are informed by the State Industrial Accident Commission that a bill is now pending which provides for the appointment of an interim committee for the purpose of making a study of occupational diseases. This bill provides for the appointment of two representatives of industry, two representatives of labor, and a chairman who is to be a member of the State Industrial Accident Commission.

Since our survey, a General Safety Manual has been issued by the State Industrial Accident Commission. Certain provisions in this manual have to do in a general way with dust hazards. A copy of such manual can be procured by a communication addressed to the above Commission at Salem, Oregon.

CHAPTER XL PENNSYLVANIA

I. Workmen's Compensation Act.

4. Court Construction.

In *Helser v. Lincoln Realty Co.*, 121 Pa. Super 516, 184 A. 305 (Apr., 1936), compensation was granted where a janitor's death resulted from pneumonia contracted as the result of exposure after he had repaired a bursted steam pipe. The court pointed out that the breaking of the pipe was an unforeseen and untoward happening—something out of the ordinary—which was not to be reasonably anticipated in the course of deceased's regular work.

In *Trovato v. W. J. McCahan Sugar Refining Co.*, 122 Pa. Super 499, 186 A. 163 (July, 1936), compensation was awarded for death by accident where such death resulted from a heat stroke suffered while working in a boiler room of defendant's sugar refining plant. Although the day was hot, decedent was working in a boiler where the temperature was much higher.

There are no other changes in this section.

II. Other Statutes.

No change

III. Common Law Liability.

In *Piazak v. Allegheny Steel Co.*, 188 A. 130 (S. Ct., Nov., 1936), the plaintiff, an employee, brought an action at common law to recover for disability resulting from silicosis contracted as the result of inhaling deleterious dust during the course of four years' employment by defendant. Plaintiff alleged that defendant was negligent in failing to provide sufficient devices to carry off the noxious dusts and sufficient air space for each employee as required by statute. The jury returned a verdict of \$15,000 for the plaintiff, but the court granted a new trial, from which order the plaintiff appealed. The defendant likewise appealed for the refusal of the court to grant its motion for judgment non obstante veredicto.

The court pointed out that the verdict established defendant's negligence; that the plaintiff, by continuing in defendant's employment, did not assume the risk of defendant's breach of statutory duty; and that the Workmen's Compensation Act did not provide a remedy for plaintiff's disability.

The trial court had submitted a special interrogatory request-

ing the jury to ascertain the date on which employment terminated and the jury reported April 5, 1930, as the last working day. Since suit was commenced March 28, 1932, the plaintiff's action would not have been barred by the two year statute of limitations. The trial court held, however, that such finding was against the weight of the evidence and ordered a new trial.

The court refused to disturb the order for a new trial but made certain comments in regard to the statute of limitations. Among other things, it said:

" * * * The time when the injury has been wrongfully inflicted, when the cause of action accrues, and from which the limitation period begins, in actions of the class to which this belongs, is when the breach of duty to provide a reasonably safe working place occurs. If the relation is continuous, as in that of master and servant, and the default is likewise continuous until the cumulative effect produces disability in the form of occupational disease, total or partial, the master's failure to perform his duty, as we said above, is regarded as a single wrong continuing so long as the employment continues. Such wrong must therefore be redressed by action brought within two years and not thereafter from the time when the employment terminates. * * * "

The court refused to consider the effect of fraud or concealment by defendant of the fact that plaintiff was afflicted with silicosis.

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened on January 5th of this year.

We are informed by the Department of Labor and Industry that a bill will be introduced to the Legislature on occupational diseases at a later date. No copy of the bill was available, so we are not aware of its nature.

CHAPTER XLI RHODE ISLAND

I. Workmen's Compensation Act.

No change

II. Other Statutes.

Chapter 2360, Section 3, page 411, and Chapter 2426, Section 1, page 565, of the 1936 Session Laws amend Chapter 85 of the general laws of Rhode Island entitled "Of Factory Inspection" as regards the employment of children under 16 years of age in any factory, mechanical, or manufacturing establishment within the state.

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened on January 5, 1937. We are informed by the Division of Industrial Inspection of the Department of Labor that there is no bill pending which would make silicosis or other dust diseases compensable under the Workmen's Compensation Act or which relate to precautionary measures to be taken by employers in regard to dust hazards.

In our survey we called attention to the fact that the recently created Division of Industrial Hygiene of the Department of Public Health was directed to study the occupational disease problem in industry, to recommend to the Legislature enactments which it deemed advisable, and to maintain records of its studies, recommendations, and other activities. We are informed by the Division of Industrial Hygiene that no definite method of legislation concerning silicosis has been considered, but that it is the intention of that Division to defer action until after the National Silicosis Conference has made its report. However, the Division is engaged at the present time in making a survey of the granite quarries and stone-cutting establishments within the state and hopes in the future to include a study of foundries and occupational diseases resulting therein. Upon completion of this work, a report will be published.

CHAPTER XLII SOUTH CAROLINA

I. Workmen's Compensation Act.

No change

II. Other Statutes.

The Legislature, during the regular 1936 session, created a Department of Labor, with the Commissioner of Labor as its administrative head. The Commissioner is empowered to enter and inspect any factory, store, workshop, laundry, mine, etc., but there is no provision giving him authority to adopt rules for the safety of employees. It is the duty of the Commissioner to secure the enforcement of state statutes dealing with the inspection of factories, mercantile establishments, mills, workshops, etc., in the state. (Page 1615 of the 1936 Session Laws)

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 12, 1937. We are informed by the South Carolina Industrial Commission that no bills are pending which would make silicosis and other dust diseases compensable under the Workmen's Compensation Act or which relate to precautionary measures to be taken by employers with respect to dust hazards. As yet no rules or regulations treating such hazards have been promulgated by the Commission. Certain recommendations were made by the Commission to the General Assembly, but there was no reference therein to occupational diseases.

CHAPTER XLIII SOUTH DAKOTA

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 5, 1937. We are informed by letter from the Industrial Commission that no bills are pending which would make silicosis and other dust diseases compensable under the Workmen's Compensation Act or which relate to precautionary measures to be taken by employers in regard to dust hazards.

No rules or regulations have as yet been adopted by the Commission prescribing measures to be adopted by employers in regard to such hazard.

CHAPTER XLIV TENNESSEE

I. Workmen's Compensation Act.

No change

II. Other Statutes.

5. Department of Labor.

The Factory Inspection Division of the Department of Labor has issued the "Handbook of Industrial Safety Standards." One section of the Standards provides that on each machine, group of machines or equipment of those types which are listed, there must be a hood or ventilator connected by means of a pipe to an exhaust fan or other suction device which will remove all fumes, gases, or dusts arising from the work. Among those machines listed are bronze powdering machines, buffing wheels, cement grinders, dry grinding wheels, emery wheels, sandblasting and woodworking machines. The section also provides that all explosive, noxious, or poisonous gases, dusts, or fumes produced in workrooms from other than the listed items of equipment must be removed by means of exhaust fans, suction systems, blower systems, or other positive devices. A copy of the handbook can be procured by a communication addressed to the Department of Labor, Nashville, Tennessee.

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 4, 1937. We are informed by the Division of Work-shop and Factory Inspection of the Department of Labor that a bill is now pending which purports to make occupational diseases compensable under the Workmen's Compensation Act in the same manner as injury by accident is now compensable thereunder. A copy of the bill was not available, but the above Division informed us that, in substance, it will amend Section 6852 (d) so that the terms "injury" and "personal injury" will include diseases arising out of and in the course of employment.

The Division also informed us that no bill is pending relating to precautionary measures to be observed by employers with regard to dust hazards.

CHAPTER XLV

TEXAS

I. Workmen's Compensation Act.

4. Court Construction.

A. *Accidental Injury*. In *Amana v. Republic Underwriters*, 100 S. W. (2d) 778 (Ct. of Civil Appeals, Dec., 1936), plaintiff, a truck driver, sought compensation for disability resulting from exposure to rain, wind, and weather on a fixed day. Such exposure was occasioned by the fact that the truck furnished him at the time to transport freight for his employer had a window out. The court denied compensation, saying that if plaintiff could recover, "then every employer who is engaged in labor that actually tires the body and causes what the layman calls a 'run-down condition' can recover compensation by showing that his work weakened him and lowered his resistance and caused him to succumb to the attack of any disease, which he would otherwise have been able to resist."

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in session, having convened January 12, 1937. We are informed by the Bureau of Labor Statistics that there is no legislation now pending which would make silicosis and other dust diseases compensable under the Workmen's Compensation Act or which requires precautionary measures to be taken by employers with regard to dust hazards, and that no rules or regulations have been adopted relative to such hazards.

CHAPTER XLVI

UTAH

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 11th of this year. We are informed by the Industrial Commission of Utah that no bills are now pending which would make silicosis and other dust diseases compensable under the Workmen's Compensation Act or which relate to precautionary measures to be taken by employers with respect to dust hazards, that no official survey of dust hazards has as yet been made, and that no orders have been issued by the Commission in regard to lessening of dust hazards in industry in Utah other than those governing underground metal mine and coal mine operations which were commented upon in our survey.

CHAPTER XLVII

VERMONT

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature convened January 6, 1937, and, at the time of writing, is still in session. We are informed by the Commissioner of Industries that no bill is pending which would make silicosis and other dust diseases compensable under the Workmen's Compensation Act or which relates to precautionary measures to be taken by employers with respect to dust hazards, and that no rules or regulations regarding such hazards have as yet been made by the Public Health Department, in which is vested jurisdiction to make such rules.

A preliminary report entitled "Dust Control in the Granite Industry—Survey and Recommendations" was recently completed by the Vermont Department of Public Health. This report was the result of a request made in the fall of 1936 by the Granite Manufacturers' Association and the Granite Cutters' International Association of Barre, Vermont, to the State Board of Health. A copy of the report can be procured by communication addressed to the State Board of Health, Burlington, Vermont. The Commissioner of Industries informed us that if these recommendations are deemed workable in the granite industry, there is a possibility that the State Board of Health may adopt them.

CHAPTER XLVIII

VIRGINIA

I. Workmen's Compensation Act.

No change

II. Other Statutes.

Chapter 409, page 773, of the 1936 Session Laws of Virginia amended the Child Labor Act as previously set out in our basic survey. Employers should acquaint themselves with the Act as amended.

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature will not convene in regular session this year. We are informed by the Industrial Commission that no legislation is pending which would make silicosis and other dust diseases compensable under the Workmen's Compensation Act or which relates to precautionary measures to be taken by employers with respect to dust hazards and that no rules or regulations have as yet been adopted by the Commission in regard to such hazards.

CHAPTER XLIX WASHINGTON

I. Workmen's Compensation Act.

1. Statutes.

No change has been made to date in the Workmen's Compensation Act as it relates to occupational diseases, but two bills are now pending before the Legislature relating thereto. For comment on these bills, see Section IV of this chapter.

II. Other Statutes.

No change

III. Common Law Liability.

In *McGinnis v. Globe-Union Mfg. Co.*, 50 P. (2d) 900 (S. Ct., Nov., 1935), plaintiff sued at common law for disability from lead poisoning alleged to have resulted from inhaling dust and fumes given off from a vat around which plaintiff worked in defendant's battery manufacturing plant. Plaintiff alleged that defendant was negligent in failing to provide adequate devices to carry off the dust and fumes. Defendant furnished plaintiff with a respirator, instructed him to be sure to use it, and furnished him with facilities for keeping it clean. The jury returned a verdict for plaintiff. On appeal, the court found that there was sufficient evidence to take the case to the jury but, nevertheless, reversed and remanded the case because, by defendant's unrefuted testimony given by a competent chemical engineer, the fumes and gases contained no lead. The court stated that, since plaintiff was complaining of lead poisoning only and since it appeared that the gas and fumes contained no lead, plaintiff's motion to withdraw from the jury the question of gases and fumes should have been granted so that the jury would not have been permitted, by speculation or guess, to find that such gases and fumes caused the lead poisoning.

IV. Miscellaneous Matters of Interest.

The Legislature is now in session, having convened January 11, 1937. We are informed by the Department of Labor and Industries that two bills are now pending relating to the compensation of occupational diseases. They are House Bills Nos. 315 and 316.

House Bill No. 315 proposes to amend Section 7675 of the Workmen's Compensation Act so that "injury", as used in this Act, "refers to an injury resulting from some fortuitous event, and to such occupational disease or infection as arises nat-

urally out of such employment or as naturally or unavoidably results from such accidental injury."

House Bill No. 316 proposes to amend the Workmen's Compensation Act by adding a new section, 7679-1, to provide compensation for disability or death incurred by an employee resulting from 21 enumerated occupational diseases, including disability or death to "any persons employed in any industries where intense dust prevails." This bill also provides that it shall not be construed to apply to any case of occupational disease in which the last injurious exposure to the hazards of the disease occurred prior to January 1, 1937.

The Department of Labor and Industries also informed us that no bill is pending relating to precautionary measures to be taken by employers with respect to dust hazards and that no change has been made in the General Safety Standards issued by that Department since the time of the completion of our basic survey.

CHAPTER L WEST VIRGINIA

I. Workmen's Compensation Act.

4. Court Construction.

A. *Compensable Injuries.* In *Rasmus v. Workmen's Compensation Appeal Bd.*, 184 S. E. (S. Ct. of App., Feb., 1936), compensation was awarded for death from heat prostration where decedent, at the time he was overcome, was exposed to heat to a greater extent than was the general public in the same community.

There is no other change in this section.

II. Other Statutes.

No change

III. Common Law Liability.

In *Blatt v. United Zinc Smelting Corp.*, 188 S. E. 491 (S. Ct. of App., Oct., 1936), plaintiff brought an action at law to recover for disability from silicosis allegedly contracted as the result of inhaling silica dust during five years' employment in defendant's plant. Plaintiff alleged that, although the use of proper devices would have eliminated the hazard, no such precautions were taken; that, although defendant knew, or in the exercise of ordinary care should have known, of the danger, he failed to warn plaintiff thereof; and that he himself was ignorant of any such danger. The court held that plaintiff stated a good cause of action and overruled the lower court's judgment sustaining defendant's demurrer. The court pointed out that plaintiff's action had been commenced within one year after the right to bring the action had accrued, as required by statute.

IV. Miscellaneous Matters of Interest.

The Legislature is now in regular session, having convened January 13, 1937. The State Compensation Commissioner informed us that there is no legislation pending which will affect the compensability of silicosis under the Workmen's Compensation Act, which would make other diseases resulting from the inhalation of dust compensable under this Act, or which relates to precautionary measures to be taken by employers with regard to dust hazards. The Commissioner is of the opinion that election to the workmen's compensation silicosis fund should be compulsory or should be governed in accordance with Article 2 of the Act.

At the present time, the Bureau of Industrial Hygiene of the

State Department of Health is surveying the various industries in West Virginia, wherein it is thought there may be a possible exposure to silica dust. This survey is being made primarily to procure information necessary to the proper promulgation of rates. The survey is not complete; hence, no report thereon is available.

CHAPTER LI WISCONSIN

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature is now in session, having convened January 13th of this year.

The Industrial Commission informs us that a bill is now being prepared for presentation which will accord to an employee, who may be discharged because of nondisabling silicosis, compensation benefits not to exceed the sum of \$3500. Payment under this provision is predicated on discharge of the employee because of non-disabling silicosis. Provision is to be made that, if the employer discharges the employee without a finding of the Industrial Commission that it is no longer advisable for him to remain in the dusty trades, the insurance carrier will assume the payment. The intention of this provision will be to prevent indiscriminate discharge of silicotics whose disease has not advanced to the stage where it is unsafe for them to work under proper conditions. It is also to provide for indemnity to those employees whose condition, although non-disabling, has reached a stage where the employee should be removed from work.

The Industrial Commission also informed us that no bill is now pending relating to precautionary measures to be taken by employers with respect to dust hazards and that no change has been made in the "General Orders on Dusts, Fumes, Vapors and Gases" since the time of our basic survey. As regards the work being carried forward in the granite finishing plant at the State Reformatory at Green Bay, Wisconsin, the Commission informed us that the fund appropriated had proven inadequate for installation of equipment and has so far been consumed in the construction of a building.

CHAPTER LII WYOMING

I. Workmen's Compensation Act.

No change

II. Other Statutes.

No change

III. Common Law Liability.

No change

IV. Miscellaneous Matters of Interest.

The Legislature convened in regular session on January 12, 1937, and adjourned February 20, 1937. The Workmen's Compensation Department informed us, by a letter dated February 19, 1937, that no bill was pending which would make silicosis and other diseases resulting from dust hazards compensable under the Workmen's Compensation Act or which related to precautionary measures to be taken by employers with respect to dust hazards.

INDEX OF CASES CITED

Case	Page
Ahern v. Eldredge Brewing Co., Inc. (N. H.)	60
Amann v. Republic Underwriters (Tex.)	84
American Income Ins. Co. v. Kindlesparker (Ind.)	29
Anderson v. Russell Miller Milling Co. (Minn.)	46
Barber v. Parker (Ark.)	13
Bianic v. Kroger Grocery & Baking Co. (Mo.)	50
Bieser v. Goran (Mo.)	53
Blatt v. United Zinc Smelting Corp. (W. Va.)	90
Busen v. Chevrolet Motor Co. of St. Louis (Mo.)	52
Covington v. Berkley Granite Corp. (Ga.)	23
Cunningham v. Warner Gear Co. (Ind.)	29
Curley v. Beryllium Corp. (Mich.)	43
*Downey v. Kansas City Gas Co. (Mo.)	50
Field v. Gazette Publishing Co. (Ark.)	13
Ford Motor Co. v. Hunter (Ohio)	72
*Guay v. Brown Co. (N. H.)	60
Heisler v. Lincoln Realty Co. (Pa.)	78
Industrial Commission of Ohio v. Ackerman (Ohio)	72
Industrial Commission v. George (Ohio)	72
Madeo v. I. Dibner & Bro., Inc. (Conn.)	18
Maupin v. American Cigar Co. (Mo.)	51
McGinnis v. Globe-Union Mfg. Co. (Wash.)	88
*McNeely v. Carolina Asbestos Co. (N. C.)	67
Meridian Grain & Elevator Co. v. Jones (Miss.)	48
Michaelck v. U. S. Gypsum Co. (N. Y.)	65
Moore v. Rumford Printing Co. (N. H.)	60
*Mozingo v. Marion Steam Shovel Co. (Ohio)	73
O'Connor v. Pillsbury Flour Mills Co. (Minn.)	46
Pinkula v. Pillsbury Astoria Flouring Mills Co. (Ore.)	76
Plazak v. Allegheny Steel Co. (Pa.)	78
Raimo v. Ford Motor Co. (N. J.)	62
Rasmus v. Workmen's Compensation Appeal Board (W. Va.)	90
Reaves v. Kramer (Mo.)	52
Smith v. Cudahy Packing Co. (Kan.)	35
Smith v. Harbison-Walker Refractories Co. (Mo.)	54
Swany v. Wabash Ry. Co. (Mo.)	50
Swink v. Carolina Asbestos Co. (N. C.)	67
*Tri-State Contractors v. Althouse (Okla.)	75
Trovato v. W. J. McCahan Sugar Refining Co. (Pa.)	78
*Twork v. Munising Paper Co. (Mich.)	43
Wilson & Co. v. State Industrial Commission (Okla.)	75
Wolf v. Mallinckrodt Chemical Works (Mo.)	51
Woolworth, F. W. v. Haynie (Miss.)	49
Waukowsky's Case (Mass.)	41

*These cases were also cited in basic survey. See Bull. No. 1, part vii.

AIR HYGIENE FOUNDATION OF AMERICA, Inc.

Legal Series, Bulletin No. 2



A Critical Study of Provisions for Occupational Disease Legislation (For the Confidential Information of members. Not for re-production, wholly or in part.)

PITTSBURGH, PENNSYLVANIA

1937

LEGAL SURVEY
Bulletin No. 2

A CRITICAL STUDY OF PROVISIONS FOR
OCCUPATIONAL DISEASE LEGISLATION

Prepared for the Legal Committee

of

AIR HYGIENE FOUNDATION OF AMERICA, INC.

by

MULLIKIN, STOCKBRIDGE & WATERS
ATTORNEYS
BALTIMORE, MARYLAND

FOREWORD

Bulletin No. 1 of the Legal Series presented to the members of Air Hygiene Foundation of America, Inc., a survey of existing statutes and court decisions relating to the rights of employees for compensation for injuries caused by occupational diseases suffered during the course of their employment. This survey analyzed the Workmen's Compensation Acts and Occupational Disease Acts of the various States with respect to their provisions for compensation of occupational disease injuries and reviewed the state decisions dealing with the rights of employees to maintain actions at common law against their employers for such injuries so sustained in the course of employment.

In view of the national interest in the problem of prevention of and compensation for occupational disease injuries, it is probable that during the coming year there will be introduced into our several State Legislatures numerous bills relating to this subject. The purpose of the present Bulletin is to present to the members of the Foundation a discussion of the important basic principles to be considered in such legislation. The views here expressed do not purport to be the views of the Foundation or the views of its members with respect to the matters here-in contained. The Board of Trustees of the Foundation has decided that the Foundation should not lend its efforts to draft or to support model occupational disease legislation, or to oppose such legislation, but desires to present to its members an impartial discussion of the controverted issues presented thereby.

The Legal Committee of the Foundation is constituted of Alfred C. Hirth, Chairman, Vandiver Brown, and Theodore C. Waters.

H. B. MILLER,

Managing Director

Fifth and Bellefield Avenues,
Pittsburgh, Pennsylvania

January 5, 1937

A CRITICAL STUDY OF PROVISIONS FOR OCCUPATIONAL DISEASE LEGISLATION

The problem of occupational disease injuries suffered by employees in the course of their employment and the prevention of them and compensation therefor, has received extensive publicity and attention throughout the country during the past several years. In many of the industrial states important amendments to existing laws have recently been made, liberalizing and extending the provisions for compensating for such injuries. In certain states provision has been made for the appointment of Commissions to make studies of the conditions existing therein and to draft or recommend appropriate legislation. At the 1937 sessions of our State Legislatures there will be introduced various bills upon this subject, and the proposals thereby presented will be of vital importance to industry, employer and employee alike, as well as to the general public.

During the past several years the publicity that has been given to injuries arising from industrial diseases has served to mold public opinion so as to demand that such diseases should be eliminated from our industrial processes in so far as the engineering control thereof is able. Those who are responsible for the direction and control of our industrial processes recognize the obligation of industry to provide for its employees a safe place in which to work. Employees are justly demanding protection against the hazards of occupational disease injuries. A new emphasis has been placed upon industrial hygiene and all interests affected accept the need for legislation designed to eliminate hazards from industry. A similar need has been recognized for legislation to compensate for occupational disease injuries suffered by employees in the course of their employment. Upon industry should be placed the cost of com-

1 California, Maryland, Michigan, New Hampshire and Pennsylvania have such commissions. The Illinois Commission reported in 1936, and important changes in the law were made within the present year. The New York Commission reported in 1935, and important changes in the law were made in that year. A committee in each of these states is now drawing up rules and regulations relating to procedure under the present law. In Massachusetts a Commission was appointed in 1933, filed its report, and important changes were made in the laws of that state pursuant thereto.

2 In 1937 the Legislatures of all the states except the following will convene: Alabama, Kentucky, Louisiana, Mississippi, and Virginia.

pensation for those injuries which result directly from our industrial processes and from accidents or the disease hazards incident to employment therein. The difficulty presented by the problem of occupational disease injuries is to find the medium or agency for such compensation. Various agencies, including Federal and State officials, the medical, engineering and legal professions, together with industrial groups and labor organizations, have devoted extensive time and study to this problem in an effort to find some constructive answer thereto. Many of the issues presented are controversial and give rise to substantial disagreement among the parties in interest.

The ultimate solution to the problem of occupational disease injuries must be found in the development of engineering methods to eliminate the hazards that cause such diseases. During the past several years there have been substantial improvements in engineering methods tending to control and eliminate the causes that produce these injuries. Today there are available to industry scientific and approved methods designed to control injurious dusts, poisonous chemicals and other deleterious substances, which methods have brought about material improvement in the operating conditions of our industrial processes. The cost of the installation of such machinery and equipment has been a considerable factor, especially with reference to small industrial operations, but with an increased demand for such devices and with quantity production thereof, these costs are being lowered. Further, engineering research and study must be made to perfect these processes and to decrease their cost to employers. Furthermore, the need exists to distribute and disseminate among all classes of manufacturers information with respect to the desirability, suitability and economy in installing such machinery and equipment in our modern industrial operations. Unfortunately, until the last few years, there have been only a limited number of agencies to which, industry could turn for authoritative information with respect to methods of prevention and control of hazards. Today, through Federal and State agencies, and through organizations that have interested themselves in these problems, information is available to enable those industries that have particular problems of health hazards to procure reliable information and assistance in the elimination and control thereof.

In industrial medicine there has recently been a renewed interest in the subject of occupational diseases. Through the agency of the United States Public Health Service, assistance has been granted to the several State Departments of Health to disseminate information with respect to the causes, effect

and treatment of occupational diseases. In the states there have been and are being established units of industrial hygiene and, through these agencies, material assistance will be given to employer and employee alike upon the health problems that may exist in manufacturing and mining operations. The problem of health has become a matter of major consideration. Continued medical research and study as to certain of the diseases is vitally essential in order to develop effective means for their treatment and cure. Careful consideration must be given to the disabilities sustained in order to provide compensation that is adequate and fair both to employer and employee. Certain diseases may be transmitted and in such cases provision must be made to remove the employee afflicted with such disease from his employment, or to provide proper safeguards for the protection of the health of his fellow employees.

The fact that employees are affected by occupational diseases does not necessarily render them unfit for further useful employment. In many cases the resulting disability is only partial or temporary, and, by proper diagnosis and treatment, the disease may be arrested and often completely cured. The function of medicine should not merely be to determine the fact of injury, but should discover the ways and means to rehabilitate employees who have contracted occupational diseases and return them to useful employment.

Common Law Rights of Action by an Employee against an Employer for Occupational Disease Injuries

Prior to the adoption of the Workmen's Compensation Acts an employee injured in the course of his employment could only recover from his employer for those injuries which could be attributed to the negligence of the employer. The rule of liability was stated in the following terms:

"Except insofar as the common-law rules have been modified by statute, the master is, where the relation of master and servant exists, liable to the servant for personal injuries sustained by him-and which have been incurred by him while he is within the course and scope of his employment by reason of the master's negligence, except insofar as his liability may be affected by the application of the

doctrines of assumed risk, contributory negligence, and of fellow servant."
39 Corpus Juris, 259.

Therefore, recovery was dependent upon the negligence of the employer and the employer was not an insurer of the employee's safety. In cases of injury to an employee, the employee resorted to actions at common law based upon this alleged negligence of the employer. In such actions the employer interposed the common law defenses of the master as above related.

Upon issue joined upon the pleadings, jury trials would be had, with their attendant motions, verdicts, new trials, and appeals, and after extended delay, some final adjudication of the cause would be obtained.

This type of litigation was expensive to both parties—to the employee, in that counsel retained upon a high percentage basis, received a substantial part of the award while the employers, victims of the whims of juries, were subjected to increasingly large verdicts. The employer and employee alike desired some more satisfactory method of determining their legal disputes and the mechanism of the Workmen's Compensation Acts was designed.

While these Acts in our several states are of comparatively recent enactment, they have generally answered the problem for which they were drawn. Under these Acts, the employers became insurers of the safety of their employees against accidental injuries. They deprived the employee of his common law right of action for such injuries and the employer of his common law defenses. As originally designed, they did not purport to cover occupational disease injuries; they provided compensation only for accidental injuries, that is, those injuries which occurred at a specific time, at a specific place, and which could be ascertained and determined coincidentally with the infliction of the injury.

Thirty-two states¹ have enacted Workmen's Compensation Acts which exclude compensation for occupational disease in-

3 Air Hygiene Foundation of America, Inc., Legal Series, Bulletin No. I, parts i and ii

Alabama	Iowa	Nevada	South Dakota
Arizona	Kansas	New Hampshire	Tennessee
Colorado	Louisiana	New Mexico	Texas
Delaware	Maine	Oklahoma	Utah
Florida	Maryland	Oregon	Vermont
Georgia	Michigan	Pennsylvania	Virginia
Idaho	Minnesota	Rhode Island	Washington
Indiana	Montana	South Carolina	Wyoming
	Nebraska		

juries, either expressly or by judicial interpretation. Fourteen States⁴ and the District of Columbia have:

- (a) Workmen's Compensation Acts which include compensation for occupational diseases, either expressly or by judicial interpretation, or
- (b) Specific Occupational Disease Acts.

Therefore, in view of the failure of the Workmen's Compensation Acts in certain of our states to make provision for occupational disease injuries, either expressly or by judicial interpretation, the employee in those states retains his common law right of action against his employer. In certain states, the maintenance of this common law right of action by the employee has been recognized by judicial interpretation; in other states it has been denied. In those states where it has been recognized, the right is based upon the negligence of the employer in conducting the industrial processes wherein the occupational disease injury is sustained. The prevalence of such causes of action in many of our states throughout the past several years has exaggerated this problem in industry. In view of substantial verdicts rendered by juries in common law trials, an unjustified emphasis has been placed upon the liability of employer for such injuries, and in many instances has resulted in the cancellation by insurance carriers of Workmen's Compensation and Employer's Liability Insurance or the imposition of prohibitive rates for such protection. This has created a new and serious problem for the employer and employee alike. Due to inability to procure insurance protection at reasonable rates, certain employers have discontinued or curtailed their production in those states where they are subjected to the payment of prohibitive costs. This has resulted in loss to the employer and unemployment for those previously engaged in their plants. In some cases where substantial jury verdicts have been procured against the employers and insurance companies have cancelled their Workmen's Compensation policies or refused to provide insurance for such risks, the employers may have been forced into receivership, in which event the employee receives but a small dividend upon his claim or nominal settlement thereof. Thereafter, the employees find themselves discriminated against and are unable to procure employment in manu-

4 Air Hygiene Foundation of America, Inc., Legal Series, Bulletin No. I, parts i and ii

California	Massachusetts	New York	Ohio
Connecticut	Minnesota	North Carolina	West Virginia
Illinois	Missouri	North Dakota	Wisconsin
Kentucky	New Jersey		

facturing operations similar to those in which their alleged injuries have been sustained. Industrial and social loss follows and such employees may eventually become charges upon the community in which they live.

The Legal Basis for Recovery in Common Law Actions

The usual form of declaration in common law actions alleges that the defendant manufacturer caused the plaintiff to work under conditions where the occupational disease hazard existed; that the defendant employer knew or should have known that certain materials used in the industrial processes contained harmful or dangerous agencies or substances that were destructive to life and health; that the defendant employer was guilty of negligence in failing to warn the plaintiff of the danger and in failing to provide the plaintiff with a safe place in which to work or safe appliances with which to work; that thereby deleterious substances became introduced into the plaintiff's body, causing permanent injury. The defense pleadings raise the common law defenses:

1. Plaintiff's assumption of risk.
2. Plaintiff's contributory negligence.
3. Negligence of plaintiff's fellow servants.
4. General denial of the allegations of negligence as charged by the plaintiff.

Upon trial, the plaintiff, his co-workers and industrial hygienists will testify as to the hazards existing in the working areas of the defendant's plant; of defective machinery, equipment and industrial processes; of the failure of the employer to warn the employee of the dangers; of the failure of the employer to furnish efficient protective equipment. Doctors for the plaintiff then describe the particular disease from which the plaintiff is alleged to be suffering in detail, its effect, with ensuing disability. The defense offers testimony to support its pleadings although the real basis of defense generally rests in the fact that the plaintiff has failed to prove negligence of the employer as charged.

The seriousness of this type of litigation is readily recognized. Class is arrayed against class. The local agencies of publicity may, in many instances, grossly exaggerate the effect of the injuries alleged to have been suffered by the plaintiff and often whole communities will become aroused and industrial strife fomented. Frequently, it is impossible to procure impartial trials, due to the prejudices of the local communities. It is fair to state that such litigation is not a satisfactory method by which to adjudicate this type of dispute. In certain instances,

employer and employee alike have preferred and do still prefer such legal procedure to the enactment of legislation to provide compensation for such injuries, and it is interesting to consider the advantages and disadvantages to the parties involved.

To both parties this litigation means substantial expense. The employee usually retains counsel under an agreement to pay to him a large percentage of the amount recovered and in the event of a plaintiff's verdict, after counsel fees and the expenses of trial have been paid, he receives an inadequate portion of the jury's award. Due to the delays of legal procedure, an extended time elapses before the litigation is finally determined. In the meantime, assuming that the plaintiff is suffering from disease, he has been unable to work, has received no compensation and may even become a public charge upon the community in which he lives. In many instances, he is the victim of conscienceless lawyers and incompetent doctors by whom he may be convinced that he has suffered injuries which, as a matter of fact, he has not sustained.

From the standpoint of the employer, his entire relationship with his employees may be seriously affected. Questionable attorneys may solicit groups of claims from employees at some particular plant where an occupational disease hazard exists, and the employer may be subjected to wholesale litigation. Many of the claims may be baseless but his only method of defense is to endure long, expensive, and harassing trials in courts of law before juries.

Therefore, from the standpoint of the interests of all parties it seems desirable to design some legislation to remove this type of dispute from our courts of common law. The honest employer desires to provide compensation for those injuries occurring to his employees as the result of the industrial processes in which they are engaged and which are peculiar thereto; the honest employee similarly desires compensation only when he has suffered actual injury.

Form of Legislation Providing Compensation for Occupational Disease Injuries

In the past there have been legislative attempts to extend the existing Workmen's Compensation Acts to cover occupational disease injuries, providing compensation therefor in the same manner as compensation is provided for accidental injuries. This effort has failed to recognize the basic problem presented by occupational disease injuries and their essential difference from accidental injuries. The Workmen's Com-

pensation Acts were designed to compensate solely for traumatic injuries, those occurring at a specific time, at a specific place, and while the employee was in the employ of a particular employer. Occupational disease injuries differ essentially in their nature, cause and effect; they clear up and recur; they may exist and the employee may not be disabled in continuing in the particular processes in which he may be profitably engaged; the disease may be contracted while he is working for one employer but may not manifest itself until he is working for another employer; some diseases may result from the accumulation of injurious substances over an extended period of time and in different forms and types of employment. Therefore, in considering legislation for occupational disease injury, the problem is fundamentally different from that presented by accidental injuries, and the whole theory and form of such legislation must recognize and give effect to that difference. There must be provision for new methods and agencies to supplement those created for dealing with injuries arising from accidents.

The present tendency of State Legislatures and Commissions that have given consideration to this problem is to provide compensation for occupational disease injuries separate and distinct from the Workmen's Compensation Laws of those states providing compensation for accidental injuries.

In those states now having State Funds, it is desirable that Occupational Disease Compensation Funds be established and administered independently of Workmen's Compensation Funds already established. In this manner the cost of such compensation is imposed upon those industries wherein the particular occupational disease hazard exists and each employer will pay for such compensation in accordance with the experience record that develops in his own plant and operation. Such procedure would tend to penalize those employers who do not install such protective equipment as would reduce or eliminate the particular hazards to which their employees are subject. In due course of time, such employers would find that it would be economically profitable to expend their money for efficient engineering devices to protect the health of their employees, thereby reducing their compensation costs.

Provisions to be Considered in Compensation Legislation

In drafting legislation to provide compensation for occupational disease injuries, many important items arise for consideration. It must be borne in mind that the state, as well as employer and employee, has a direct interest in the subject mat-

ter of such legislation, and some method must be devised to serve the interests of all parties whose interests are affected. The goal of legislators should be to provide the mechanism to determine the existence of injury properly attributable to the particular employment that is to be charged with compensation and to provide the ways and means of administration in justice to those who may be subjected to the provisions of the law. The following elements are of vital importance in the consideration of Occupational Disease Legislation, and should be considered and analyzed in detail:

1. Designation of State Agency for Administration.
2. Medical Board.
 - (a) Organization.
 - (b) Duties and Powers.
3. Apportionment of Accrued Liability.
4. Method of Defining Diseases to be Compensated.
 - (a) General Coverage.
 - (b) Schedule.
5. Limitation Provisions.
 - (a) As to Period of Employment and Exposure within State.
 - (b) As to time of Filing Claims.
6. Penalty Provisions for False Statements.

1. Designation of State Agency for Administration. With respect to this problem, there is fortunately but little controversy among the interests affected. The primary consideration is to provide the most efficient and economical method of administration. In most of the states that have Workmen's Compensation Acts now effective, Bureaus or Commissions have been established to administer such Acts. The Commissions and officers identified with these agencies are generally familiar with the industrial conditions that would be involved in claims arising under the Occupational Disease Compensation Acts. The tendency of recent legislation has been to charge these agencies and their existing personnel with the administration of such proposed legislation. Experience has proven this to be satisfactory, and thereby the cost and establishment of a new agency may be avoided. By this method such Bureaus or Commissions retain jurisdiction over all disputes involved in the relationship of employer and employee, and the convenience of the parties is served with respect to the filing of claims, hearings, medical examinations, supervision of State Funds and the other administrative provisions of the law.

2. Medical Board. Perhaps the most important feature of Occupational Disease Legislation is the provision for the creation of a Medical Board to determine and adjudicate controversial medical questions arising in the course of administration of the law. The average medical practitioner knows but little about diseases that may be classified as occupational. This is true particularly in large industrial centers where but little attention has been paid to date to the problem of industrial hygiene. Many active medical practitioners have not seen many cases of occupational diseases that may be prevalent in the communities where they practice. They are not trained in the diagnosis, care and treatment of such diseases, nor are they able to appraise intelligently the resulting disability that may arise therefrom.

Among the principal objections on the part of employers to the enactment of occupational disease legislation is the apprehension that they will be subjected to false and baseless claims, and that the Board that passes upon the medical aspects of such claims will be inclined to award compensation to the employee. On their part, employees have opposed such legislation because of their apprehension of the partiality of the Board passing upon their claims. In order to ensure the confidence of all parties concerned, it is vitally essential that some agency should be established, competent, experienced, impartial and qualified to determine the effect of occupational disease injuries and the extent of disability arising therefrom. The natural agency to be created for this purpose is a medical board, composed of physicians thoroughly experienced in the diagnosis and treatment of industrial diseases. The ultimate success of the administration of occupational disease legislation will depend primarily upon this Board and, therefore, the appointments of its members should be divorced from political patronage.

(a) Organization. In most of our states there are now established recognized schools of medicine or responsible medical societies that enjoy the confidence and respect of the particular communities which they serve. It is suggested that the members of the medical board should be appointed by the Governor of the state from candidates recommended by the leading medical schools or societies of such state.

As to the personnel of the Board, all of its members should have had extensive practice in the diagnosis and treatment of occupational diseases, and at least one of such members should be a roentgenologist. Compensation should be upon the basis of their per diem services, and it would be desirable that such

members continue in active practice and not be dependent upon their work with the Medical Board for their livelihood. The members of the Board should be prohibited from accepting employment to testify in any court or commission proceeding on behalf of employers, employees, or insurance carriers. Terms of office should be for six years, with provision for the expiration of the original terms of two of the members at the end of two and four years respectively, thus ensuring the continuation in office at all times of two members experienced in the administration of the law.

(b) Duties and Powers. It is desirable that full and complete powers shall be granted to the Medical Board with respect to the medical questions that may be submitted to it for determination, and every attempt should be made to avoid subjecting the decisions of such Board to reversal by courts or juries upon appeal. It is submitted that the successful administration of occupational disease legislation is dependent upon the procedure and findings of this Board and in the event that its rulings may be impeached by other agencies, the confidence of the parties affected by such legislation will be thereby destroyed.

Full power should be granted to the Medical Board for the examination and re-examination of claimants, with the right to conduct autopsies in death cases where the Board considers such procedure to be essential to the determination of the cause of death. All medical questions arising in connection with claims should be referred to the Medical Board for investigation and report, and further proceedings with respect to the claim should be stayed until the Board has completed its investigation and filed its report determining the medical questions in controversy.

The claimant should be required to submit to such clinical and roentgen examinations as the Board may deem to be necessary and proper. Physicians selected by the parties to the controversy should be permitted to attend and participate in the examinations. After full medical consideration of the case, the Board should file, in writing, with the agency administering the law, its full and complete report, stating its conclusions as to all medical questions, including its determination of the extent of disability suffered by the claimant. True copies of this report should be made available to the claimant and to the employer upon request.

The conclusions of the Medical Board should be binding upon the agency administering the law and should not be subject to review unless objection to such findings should be filed

serves to provide for this liability nor has he insurance protection that will answer his problem. In surveying the possible effect of the new legislation he considers the examination of his employees before the effective date of the law, because by this method he may determine the extent of the liability that will be imposed upon him. Upon examination, he retains in employment only those who are physically fit and discharges those whose examinations reveal evidence of occupational disease injuries. As a result, workmen are thrown out of employment and find that the doors of their chosen trades are thereafter forever closed.

In an effort to meet this situation, there have been three methods of recent legislation that deserve study and consideration. In each instance the laws have been effective for such a short period that it is difficult to appraise the merit of each experiment. These methods may be described as:

1. "Waiver Method", whereby provision is made for employees to waive the benefits of the Act. Example—the Illinois Workmen's Compensation Occupational Disease Act of 1936.
2. "Limited Compensation Method", whereby provision is made for limited benefits during the first few years after the Act becomes effective, with increased benefits as injurious exposure increases. Examples—Occupational Disease Amendments to the New York Workmen's Compensation Act of 1936; Amendment to the West Virginia Compensation Act, providing compensation for silicosis, 1935.
3. Method providing for full compensation upon the effective date of the Act. Example—Amendments to the North Carolina Workmen's Compensation Act, 1935.

Waiver Method

By this method an employee having a non-disabling occupational disease injury as of the effective date of the Act, may apply to the Industrial Commission for permission to waive his rights for compensation under the Act. He must submit to the Industrial Commission satisfactory medical evidence that the disease with which he is afflicted is not disabling. After investigation and approval by the Industrial Commission, such employees are permitted to continue in their employment, but in the event of subsequent disability from the occupational disease injury from which they are suffering as of the effective date of the Act, they will only be entitled to proportionate benefits under the Act. Such benefits may be specified in percentages, ranging from 25% to 100%, dependent upon the

within the time limit provided for review or appeals. Upon the hearing of such objections, the members of the Board and the physicians of the parties attending the hearings should appear and submit to examination and cross examination upon the medical issues involved, and the conclusions of the Board should be sustained unless the party moving for such review shall prove such conclusions to have been erroneous or due to fraud, undue influence or mistake of fact or law. The Board should have continuing jurisdiction of the case and the right to review or amend its findings from time to time as it deems proper. Any decision by the agency administering the law that sets aside, reverses, or modifies a finding or conclusion of the Medical Board should be, upon appeal, subject to review by courts of appeal upon all questions, whether of fact or of law.

3. Apportionment of Accrued Liability. The term "accrued liability" relates to the potential claims that may exist prior to the enactment of the proposed occupational disease legislation. In fact, it is a misnomer, because until the Act becomes effective such claims may not be any liability whatsoever to the particular employer under whom the employee may be engaged. In the case of certain diseases, for example, the pneumoconioses, there may have been the prolonged accumulation over periods of years of injurious substances that may have produced material physical changes in the employees evidencing diseases occupational in their nature, so that upon the effective date of such legislation the employee may be in position to assert and maintain a claim for disability thereunder. As a practical matter, it is impossible to measure the extent of such potential claims in the modern industrial state, due to the lack of reliable records as to the physical and medical condition of employees. This potential liability, representing the accrual of injuries over previous years of employment, presents a most important and perplexing problem.

The employee contends that he is entitled to compensation benefits for disabling injuries, regardless of the time when those injuries were produced or aggravated. He is concerned with the fact of his disability; the fact that he cannot continue to pursue the particular trade to which he has devoted his life work. He believes that the industry wherein that disability has been caused, should be responsible to him for compensation.

The employer is faced with the burden of costs theretofore untemplated. For years he has been permitted to maintain his industrial operation without responsibility for the condition of health of his employees. He has accumulated no re-

length of exposure to the occupational disease hazard after the Act becomes effective.

By this method an employee may be partially deprived of compensation for injuries that he may have suffered prior to the enactment of the legislation. He thereby assumes part of the cost of his compensation. From his standpoint, one of the benefits of such a system is to enable him to continue in the particular occupation in which he is engaged and for which he is best suited. The employer is partially relieved of the liability that has accrued to the date the Act becomes effective and the total cost of compensation is thereby distributed over a period of years.

Limited Compensation Method

During the transition period immediately following the effective date of the Act, the employee becomes entitled to limited compensation payments which are graduated with continued exposure to occupational disease hazards. Under the New York Law, in the event of disability or death occurring during the month following its enactment, with respect to compensation for pneumoconiosis, such benefits are limited to \$500.00 and increase at the rate of \$50.00 each month thereafter. The payments are graduated until they reach the maximum of \$3,000.00.

By this method, the employee bears a proportionate part of the cost of compensation for injuries that he has suffered prior to the time that the Act becomes effective, and the cost of compensation to the employer is spread over a period of years.

Another example may be cited by the provisions of the 1935 Amendment to the West Virginia Workmen's Compensation Act providing compensation for silicosis. By this method, compensation is payable for specific stages of the progression of the disease upon the theory that in its first stage the employee has suffered no practical disability and the payment provided for such stage will afford compensation during the transition period when he seeks other employment. For the second stage, there is an increased payment to compensate for the disabilities suffered, while for the third stage, payments are provided upon the same basis as if the claimant had suffered permanent and total disability as a result of accidental injuries.

Method providing for full compensation

By this method the total liability that has accrued prior to the effective date of the Act is imposed upon the employer,

and full benefits to the employee become immediately available. The cost of such compensation becomes an immediate liability of the employer and he is not enabled to distribute such cost over an extended period of time.

The principal objection to this method is the imposition of costs for compensation upon employers for conditions that existed prior to the effective date of the Act, requiring his assumption of such compensation even though prior to such enactment, he may not have been legally responsible therefor.

4. **Method of Defining Diseases to be Compensated.** One of the most controversial questions in Occupational Disease Legislation is the method of providing compensation. The opposition to such legislation has been based primarily upon the apprehension that it would ultimately lead to General Health Insurance, making employers liable for all the human ills suffered by their employees during the course of their employment. This concern may be justified and in the drafting of such legislation every effort should be made to avoid such an eventuality. The basic purpose of such legislation is to compensate solely for Occupational Diseases. Upon this principle, all parties agree, but when attempts are made to legally define such diseases, substantial differences of opinion occur.

(a) **General Coverage.** The burden rests upon the State Legislature to define the diseases that such legislation purports to compensate, and such definitions and interpretations should not be left to courts of law in construing the meaning and intent of those who draft the law. The ideal method would be to use language to cover every disease that could possibly be occupational in its nature and, therefore, full consideration must be given to the views of those who advocate the general coverage plan. By this method, diseases that may be occupational in their nature would be covered by the Act, even though unknown to industry, or to the medical profession as of the time the Act becomes effective. Such an end is desirable, provided it does not lead to error in the administration of the law.

This method calls for a legal definition of the term "Occupational Disease" but considerable difficulty is experienced in procuring such a definition as properly satisfies the general purpose of this type of legislation.

The recent Illinois Occupational Disease Act (1936), which is typical of the General Coverage Method, defines such diseases

as follows:

"In this Act the term 'Occupational Disease' means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the said diseases follow as an incident of an occupational disease as defined in this section."

The immediate objection to this definition may be seen in that it is vague and indefinite, and uncertain as to the diseases that it purports to cover. What agency is to determine the exact meaning of this language? What are the ultimate rights and liabilities of those who are subjected thereto? The result of the administration of this provision may be to extend compensation to employees suffering from certain diseases which may not be occupational as contemplated in the general purpose of the Act.

One of the most satisfactory definitions of Occupational Diseases is that contained in the Rhode Island Amendment to the Workmen's Compensation Act (1936). This Act uses the following language:

"The term 'occupational disease' means a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process or employment."

This definition, however, is open to the criticism that certain diseases that occur in the course of employment may still be interpreted by the administrative agency as "Occupational Diseases" and, therefore, compensable under the Act, when, as a matter of fact, such diseases may be attributable to the ills of ordinary life or to some condition other than the industrial processes wherein the employee is engaged.

(b) Schedule. The Schedule Method of compensation sets forth by schedule the exact diseases for which compensation shall be allowed. Schedules should be complete and comprehensive, listing all known occupational diseases to which the employee may be subjected in the particular state wherein such legislation is proposed, and such schedules should be classified to describe the particular processes wherein such diseases may occur.

This method is definite, certain and not subject to additions or subtractions by the administrative agency—the employer is apprised of the exact diseases for which he will be responsible and may thereby be inclined to afford further protection to

his employees against the particular occupational disease hazards that exist in the processes in which they are engaged. The sole objection to this method exists in the possibility that an employee may suffer some disease not covered by the schedule. This objection may be avoided by granting to the Medical Board provided for by the Act, the right to add new diseases to the schedule, as the development of industrial processes makes such additions necessary, such amendments, however, not to have an effect that would be retroactive, and to be made only after advertisement of such proposed amendments to the schedule with the opportunity for public hearings to be held by the Medical Board, at which time any persons interested in the proposed amendment may appear before the Board and raise such objections as they may deem necessary or proper. After full hearing the Board should be authorized to amend the schedule to include new diseases which it may determine to be occupational. Objections may be raised as to the constitutionality of such procedure, but if these objections may be overcome, this plan seems to be desirable. The right to amend and enlarge the schedule is always available and should effectively provide compensation for such diseases that occur in the development of new processes.

5. Limitation Provisions. (a) As to the Period of Employment and Exposure within State. Occupational disease legislation now effective provides employment and exposure within the State for varying periods of time before claims for disability may be sustained against employers of that State. The purpose of such provisions is to avoid the transfer to new employment of employees who have received injuries in other States or in other industries, in such manner as to impose the cost of compensation for such injuries previously sustained upon their new employers. These provisions are fair and equitable to all parties concerned. Many of the occupational diseases are slow and gradual in their development and the industry should not be burdened with the cost of injuries that have been inflicted elsewhere. Reasonable periods of limitations are desirable and protective to employer and employee alike. While industrial conditions may vary in different States, a minimum period of employment and exposure for two years would seem to be necessary in the cases of pneumoconioses, such minimum period of employment and exposure as to other diseases to be adjusted dependent upon the length of time in which such diseases may develop.

(b) As to Time of Filing Claims. The question of limi-

tations as to the time of filing claims is one that has created considerable difficulty in the administration of methods of compensation for occupational disease injuries. This has been particularly true with respect to common law actions. In some states courts have held that the period of limitations runs from the date of last exposure to the hazard or the termination of employment; in others, that it runs from the date of discovery by the claimant that he is suffering from the disease. Workmen's Compensation Acts provide periods of limitations for filing claims and Occupational Disease Acts have generally provided some similar methods for the injuries they cover.

The fact of occupational disease injury suffered by an employee in the course of his employment is determinable as of the time of termination of such employment or within a relatively short period thereafter. Assuming that the employee has been exposed to certain occupational disease hazards he has the opportunity at the time of termination of his employment to submit to medical examination to determine whether or not he has sustained injury. Such examination would disclose the injuries that he has sustained and it is, therefore, equitable to impose upon him some period of limitations within which he should file claims for such injuries.

In the absence of such limitations provisions, such employee may pass from one employer to another and from one occupation to another and eventually, upon disablement, assert a claim against his last employer. This creates confusion and may impose upon one employer the responsibility for injuries sustained by such employees in the course of employment with some former employer. The only objection to limitation provisions is that an employee may not have discovered the occupational disease injuries which he may have suffered at the time of his last exposure to the hazard. In contemplation of the successful administration of the law, such provisions are desirable, and employees who are subjected to particular occupational disease hazards must be educated to submit themselves to periodic examinations in order to determine the actual condition of their health. Certain inequities may arise by the enforcement of such limitation provisions but in few instances will employees suffer any detriment as a result thereof.

6. **Penalty Provisions for False Statements.** With the advent of legislation compensating occupational disease injuries, a renewed emphasis has been placed upon statements of employees in their applications for employment, particularly

with reference to their previous employment records. In view of the responsibility placed upon employers, they seek to find only those employees who are physically fit to engage in the particular occupations where disease hazards may exist. In order to insure themselves as to such conditions, the employers may require the employee to fill out and sign a detailed employment application containing affirmative representations by the employee that the statements therein contained are true, and that in the event they should be untrue, he would be barred from the benefits of compensation for occupational disease injuries that he might thereafter sustain. Provisions for such penalties are generally contained in the Acts that have heretofore been adopted in those States providing for compensation.

These provisions are fair and equitable and afford to employers reasonable protection without serious infringement upon the rights of employees. Such facts as are sought to be ascertained by these inquiries are peculiarly within the knowledge of the employee, and may well be a material consideration as to his acceptance for employment. In order to effectively bar recovery the statement should be material, and recovery should not be denied when the matters involved are unimportant or inconsequential.

Form of Legislation for the Prevention of Occupational Disease Injuries

Prevention of occupational diseases is and should be the goal of all parties interested in industrial hygiene. Employees are more interested in the maintenance of their health in their particular employment than in compensation for injuries to that health, and to employers the cost of prevention of occupational disease injuries will prove to be but a small fraction of the cost of compensating for such injuries.

In the past there has been but limited information as to the methods of eliminating or controlling most of the occupational disease hazards that exist in industry. There has been an apparent lack of interest and information upon the most important phase of the problem. In the past several years, through agencies such as the United States Public Health Service, the Federal Department of Labor, State Departments of Health and Labor, Universities, and other agencies conducting engineering research, there has become available to employers reliable and authoritative information as to the means and methods to eliminate or control most of the occupational disease hazards that exist in industry. Continued scientific research

will be necessary in order to perfect such methods, and more effective means must be developed to make known to industry the results and benefits of such studies.

There is definite need today for education of employers and employees in the ways and means of utilizing methods of prevention. The burden of prevention does not rest solely upon the employer. It is his obligation to install such protective equipment and furnish such appliances that medical and engineering science may have found practicable and desirable to control the hazards to which his employees may be subjected. In so far as is possible, these hazards must be controlled at their source, and individual appliances should only be used where they are needed to supplement other machinery designed for that purpose. Upon the employee rests the obligation to utilize such equipment that may be recommended by public officials or his employer. The full cooperation of both employer and employee is essential to realize the full benefits of such methods.

State Departments of Health and Labor should be developed to assist in the protection of workmen against occupational disease injuries. Under such departments, the inspection of working areas should be made more complete to develop full information as to the hazards of the employment and methods whereby they may be reduced to a minimum. Inspectors, trained in industrial hygiene, could effectively enforce rules and regulations designed for the protection of health and promote a program of good housekeeping in those industries where potential hazards exist. With the cooperation and advice of such state agencies, many of the existing hazards should be eliminated or controlled.

Legislation designed to prevent occupational diseases should be definite, certain and reasonable in its provisions. Since the problem is primarily one of health, it would be desirable to establish a Bureau of Industrial Hygiene in the State Department of Health, which Bureau should be charged with the supervision, regulation and control of industrial processes. Funds should be appropriated to survey the entire state to ascertain the occupational diseases that may exist in its industries, to devise the means and methods of eliminating such diseases, and to disseminate this information to those responsible for the operation of such industrial processes. To this Bureau should be assigned the following specific duties:

1. **Reporting System.** To install a complete and effective occupational disease reporting system. At the present time there exists only meagre information as to the hazards of occupational

disease injuries that exist in our States. This is undoubtedly the result of the absence of authoritative records as to occupational disease injuries that have heretofore existed. The maintenance of records will make known to the proper State Department conditions that could and should be rectified, and enable such departments to devise proper methods of control.

2. **Rules and Regulations.** To establish rules and regulations for the control and prevention of occupational diseases, enforceable by the State Department of Health under its general powers. It is vitally essential that complete authority should be given to the State Department of Health to control occupational disease injuries in the same manner as such State Departments are empowered to protect the public health under existing laws. In establishing its rules and regulations, the Bureau should take into consideration the operating problems in the particular industries with which they may be concerned, and should cooperate with such industries to find some practical method to control or eliminate its hazards. In order to make its program effective, the Bureau should be empowered to require the installation and proper maintenance of approved equipment and devices for the elimination and control of hazards.

3. **Inspection.** To maintain an adequate and competent inspection service of the industries within the State in order to ascertain hazardous conditions to which the employees may be subjected and to require the correction of such conditions. The personnel of this Bureau should include inspectors who are thoroughly trained and experienced in industrial hygiene and in approved methods for the control of occupational diseases. Through this agency, operating in cooperation with industry, material improvement in industrial processes may be effected.

4. **Research.** To conduct research as to the conditions causing occupational diseases. The Bureau should set up and maintain a Department of Research to continue its studies as to the causes, treatment of, and disabilities arising from occupational diseases. Such department should cooperate with other agencies, national, state, and private, that are engaged in the problems of health in industry. As a result of the studies of this Bureau, recommendations may be made from time to time for further legislation that may be necessary to correct or perfect existing legislation dealing with this problem.

Federal Legislation

Federal legislation, designed to prevent and compensate for occupational disease injuries in those industrial operations conducted within the several states, would be subject to criticism as to its constitutionality, and it is doubted that any serious attempt will be made to procure such enactment.

Laws purporting to deal with and to solve the problem of occupational disease injuries are peculiarly within the province of the states and should be framed to remedy the conditions in the particular states where they are to apply. Industrial and mining operations differ in various parts of the country, and consideration must be given to the different topographic and climatic conditions under which employees may be engaged. Primary emphasis should be placed upon the obligation of each state to deal with all matters of health within its borders, and this responsibility should not be relieved by attempting to pass the burden thereof to federal agencies.

The problem is one that is essentially local in its nature, individual and distinct for each state, and the Federal Government should not be burdened with its solution for the entire nation. State Departments of Health and Labor must be developed to perfect means of prevention and control, while State Medical Boards and Administrative Agencies must be established to provide for the proper determination of injuries and their compensation.

The United States Public Health Service and the United States Department of Labor have been most effective in their assistance to State Departments and to industry in connection with the problem of occupational diseases. The officers of the Health Service and the representatives of the Department of Labor have approached this subject intelligently and with intense desire to render service wherever it may be needed. To these Departments should be granted further appropriations to enable them to pursue and to expand the studies of occupational diseases in industry that they have heretofore begun, and to continue their research with respect to the medical, engineering, economic, insurance and legal phases thereof. Industry, including employer and employee, has been most fortunate in the attitude of these national departments and by the continued cooperation of all agencies it is to be hoped that the solution to the problem of occupational diseases may soon be found.

AIR HYGIENE FOUNDATION OF AMERICA, Inc.

Legal Series, Bulletin No. 3



Compensation Legislation — A Critical Review

(For the Confidential Information of members. Not for reproduction, wholly or in part.)

PITTSBURGH, PENNSYLVANIA

1937

LEGAL SURVEY

Bulletin No. 3

**COMPENSATION LEGISLATION
A CRITICAL REVIEW**

Prepared for the Legal Committee

of

AIR HYGIENE FOUNDATION OF AMERICA, INC.

by

**MULLIKIN, STOCKBRIDGE & WATERS
ATTORNEYS**

BALTIMORE, MARYLAND

CONTENTS

	Page
PREFACE	1
CHAPTER I -- Compensation vs. Common Law Actions	3
CHAPTER II -- Subject Matter of Compensation Legislation	11
CHAPTER III -- Compensation	15
State Agency for Administration of the Law	15
Method of Defining Diseases to be Compensated	16
Medical Board	23
Compensation for Partial and Total Disability	25
Physical Examinations of Employees and Autopsies in Death Cases	31
Potential Liability of an Employer for Disease Injuries Existing at the Effective Date of the Law	34
Legislative Provisions Dealing with Potential Liability under General Coverage Statutes	35
Legislative Provisions Dealing with Potential Liability under State Stat- utes Scheduling Compensable Dis- eases	37
Limitation Provisions	40
Alternate Remedies or Liabilities of Employers and Employees Electing or Rejecting Compensation under Provisions of Occupational Disease Acts	43
CHAPTER IV -- Prevention and Control	45
Establishment of a Bureau of Indus- trial Hygiene	52
Pre-Employment and Periodic Post- Employment Examinations of Em- ployees	53
CHAPTER V -- Charts	61
Part 1 - Summary of Occupational Disease Compensation Acts	61
Part 2 - Alternate Liabilities or Rem- edies of Employers and Employees Electing or Rejecting Compensa- tion under Provisions of Occupa- tional Disease Acts	66
Part 3 - Compensable Occupational Diseases under Schedule Coverage Acts	68

FOREWORD

Bulletin No. 1 of the Legal Series presented to the members of Air Hygiene Foundation of America, Inc., a survey of existing statutes and court decisions relating to the rights of employees for compensation for injuries caused by occupational diseases suffered during the course of their employment. This survey analyzed the Workmen's Compensation Acts and Occupational Disease Acts of the various States with respect to their provisions for compensation of occupational disease injuries and reviewed the state decisions dealing with the rights of employees to maintain actions at common law against their employers for such injuries so sustained in the course of employment.

In January, 1937, the Foundation issued Legal Series Bulletin No. 2, A Critical Study of Provisions for Occupational Disease Legislation.

The purpose of the present Bulletin is "to analyze in summary form the existing laws of the several states and to discuss in detail certain of the subjects and problems that are peculiar to these laws."—From the author's preface.

The views herein expressed do not purport to be the views of the Foundation or the views of its members with respect to the matters herein contained. The Board of Trustees of the Foundation has decided that the Foundation should not lend its efforts to draft or to support model occupational disease legislation, but desires to present to its members an impartial discussion of the controverted issues presented thereby.

The Legal Committee of the Foundation is constituted of Alfred C. Hirth, Chairman, Vandiver Brown, Walter S. Paine, and Theodore C. Waters.

H. B. MELLER,
Managing Director

4400 Fifth Avenue,
Pittsburgh, Pennsylvania

December 27, 1937

PREFACE

The importance of legislation providing compensation for occupational diseases has been particularly emphasized in the past several years. Most of the industrial States have adopted legislation, either in the form of amendments to existing Workmen's Compensation Acts or separate Occupational Disease Acts, providing compensation for occupational disease injuries sustained by employees during the course of their employment. These laws have not been uniform, although they are concerned with economic problems that are common to all States. Many of their provisions are novel and untried, and it is to be expected that amendments may become necessary and desirable as administration develops their deficiencies.

This subject is one of the most controversial affecting employer and employee relationships. Authoritative occupational disease data and experience records have not been available in the large industrial States and it has been impossible to foretell the effect of this legislation upon the industries that may be affected thereby. Some insurance carriers have declined to insure under the laws so passed, while in some States rates have been prohibitive. Compensation insurance policies have been cancelled and long term employees who have been previously exposed to disease hazards have become potential claimants and denied continuation of their employment, thereby creating industrial conditions that have been most disturbing to certain industries.

With respect to certain of the occupational diseases there continues to be substantial disagreement as to the cause, nature and effect of the disease. This has served materially to complicate the legislative program. It is generally accepted that compensation should be provided only for those diseases that are peculiar to and arise from the industries wherein they occur and should not be extended to the ordinary ills of human life. Therefore, occupational disease legislation should be directed solely to those diseases that are truly occupational and should avoid the aspect of general health insurance. To state this purpose is somewhat simple, but to apply the principle to statutory provisions is of necessity a perplexing and intricate problem.

The purpose of the present survey is to analyze in summary form the existing laws of the several States providing compensation for occupational diseases and to discuss in detail certain of the subjects and problems that are peculiar to these laws. The specific statutory provisions of each State

are readily available to those who may be concerned with some local problem and no attempt will be made to analyze the State statutes in ultimate detail. Consideration will be given to the history, general scope and purposes of this legislation, and an analysis made of the principal subjects that form the basis thereof.

During the year 1987, seven States enacted occupational disease laws or amended their Workmen's Compensation Acts to provide compensation for occupational diseases. In the judicial interpretation and construction of these laws many important controverted legal questions will arise and this bulletin does not attempt to construe or interpret their provisions. It is suggested that employers and employees consult their own counsel with respect to the interpretation and construction of these laws insofar as they may affect their local problems.

Chapter I deals with the historical development of the theory of an employer's legal liability for occupational disease injuries sustained by employees, Chapter II treats with the scope and purpose of occupational disease legislation, Chapter III treats generally with the principles that are common to the occupational disease legislation of all States, Chapter IV treats with the legislative provisions for the prevention and control of occupational diseases, and Chapter V contains charts summarizing the provisions of occupational disease compensation acts now effective.

CHAPTER I

COMPENSATION VS. COMMON LAW ACTIONS

Legal Series Bulletin No. 1 of Air Hygiene Foundation of America, Inc., presented a survey of the laws of the States affecting the legal rights of employers and employees for occupational disease injuries caused by air pollution, and analyzed State statutes and court decisions relating thereto. Legal Series Bulletin No. 2 set forth the general legal principles relating to the liability of an employer for occupational disease injuries sustained by an employee in the course of his employment and discussed generally certain legislative subjects pertinent to occupational disease legislation, with particular reference to silicosis. Reference is hereby made to the latter bulletin for a preliminary discussion of the subjects comprising this bulletin. Bulletins Nos. 1 and 2 will give to the reader the general principles involving the liability of an employer for occupational disease injuries sustained by his employees, and the review of these bulletins is essential to an understanding of the problems presented by statutory provisions compensating such injuries. Such legislation has changed the nature and extent of the employer's liability, providing a system for insurance of the health of employees for those diseases made compensable by the statute and abolished common law rights of action for such injuries based upon the negligence of the employer.

Certain jurisdictions have recognized the common law liability of an employer for occupational disease injuries sustained by his employees, while other jurisdictions have declined to recognize any common law right of action for injuries so sustained. The primary purpose of the Workmen's Compensation Acts of the several States was to make the employer an insurer for accidental injuries sustained by his employees. By judicial interpretation of these statutes, the courts of some States have held that occupational disease injuries were within the definition of "personal injuries," while the courts of others have expressly denied the inclusion of occupational disease injuries as within the purpose or contemplation of such acts. The rules of law applicable to master and servant have been materially affected by changing industrial conditions and the proper understanding of the problems presented by legislation compensating occupational disease injuries requires a brief review of the theories underlying the common law rules relating to the employer's liability for injuries to his employees and the industrial conditions existing at the

time these rules became introduced into our system of law.

The English common law has always recognized and enforced the liability of an employer for injuries to his employees caused by the employer's negligence. This rule became qualified in common law actions for injuries sustained by employees by legal recognition of the defenses of

- (1) Employee's assumption of risk
- (2) Employee's contributory negligence
- (3) Negligence of employee's fellow servants

It is interesting to note that these defenses grew out of the case of *Priestley v. Fowler*, 3 Mees. and W. 1, decided just one hundred years ago in the Exchequer Chamber. At that time the Industrial Revolution had already taken place in England, and the use of machinery in industrial processes had become generally established.

This is the first reported case in which an employee attempted to assert the liability of his employer to respond in damages for injuries received in the course of his employment. An employee had been directed to accompany a fellow servant on the employer's van and assist in the care and delivery of goods to be transported therein. The van broke down, throwing the employee into the street and fracturing his hip. Recovery for the injury sustained was sought by the employee in an action based upon the negligence of his employer. Judgment for the plaintiff was entered upon the jury's verdict and arrested upon the defendant's motion. The court, in sustaining the defendant's motion, said:

" . . . He (the employer) is no doubt bound to provide for the safety of his servant in the course of his employment, to the best of his judgment, information and belief. The servant is not bound to risk his safety in the service of his master, and may if he thinks fit, decline any service in which he reasonably apprehends injury to himself; and in most of the cases where danger may be incurred, if not all, he is just as likely to be acquainted with the probability and extent of it as the master. In that sort of employment, especially, which is described in the declaration in this case, the plaintiff must have known as well as the master, and probably better, whether the van was sufficient, whether it was overloaded, and whether it was likely to carry him safely. In fact, to allow this sort of action to prevail would be

an encouragement to the servant to omit that diligence and caution which he is in duty bound to exercise on behalf of his master, to protect him against the misconduct or negligence of others who serve him, and which diligence and caution, while they protect the master, are a much better security against any injury the servant may sustain by the negligence of others engaged under the same master, than any recourse against his master for damages could possibly afford."

"Could a stage-coachman who has a restive horse to drive, which he knows to be so, sue his master for an injury done him by the horse? The plaintiff was not bound to go by an overloaded van; he consents to take the risk."

This ruling was followed in the cases of

Hatchinson v. The York, Newcastle and Burwick Railway Co., (1860), 5 Exch. 343; and
Wigmore v. Jay, (1850), 5 Exch. 354.

The first English case involving a masters' liability, without negligence of a fellow servant contributing to the injury, is the case of *Seymour v. Maddox*, (1851), 20 L. J. Q. B. 327. There the plaintiff was employed to sing in the defendant's theater, and was injured by falling through an unguarded hole in the stage. Judgment was entered upon a jury verdict rendered in favor of the plaintiff and the court, in sustaining the defendant's motion in arrest thereof, said:

" . . . The servant is not bound to enter the master's service, but if he does, and he finds things in a certain state, he must take the consequence of anything that may occur owing to such a state of things. . . ."

This rule was followed in other English cases relating to the same subject, and thereby an employer's common law defenses became established.

The first reported case in the United States involving the common law liability of a master for injuries to his servant is the case of *Murray v. So. Car. R. Co.*, 1 McMul. (S. C. 385), decided four years after *Priestley v. Fowler*, 1841. However, the leading case in this country is *Farwell v. Boston & W. R. Corp.*, 4 Metc. (Mass. 49), 1842. In this case, a railroad employee had been injured in the course of his duties through

the negligence of a fellow employee, and brought suit to recover damages for the injuries which he sustained. In relieving the employer from liability for these injuries, the court applied the doctrine announced in *Priestley v. Fowler*. This authority has since been generally followed by decisions of the courts of the several States.

In the case of *Clark v. Holmes*, 7 H. and N. 937, decided in the Exchequer Chamber in 1862, the master was held liable for injuries caused by his failure to repair a rail guarding machinery, despite the fact that the employee had continued in his employment after having notified his employer of the defective condition. In discussing the employer's liability, Judge Byles said:

"* * * But the principles laid down in *Priestley v. Fowler*, and all the examples there given of their application, relate to the conveniences and casualties of ordinary or domestic life, and ought not to be strained so as to regulate the rights and liabilities arising from the use of dangerous machinery.

"It is, in most cases, impossible that a workman can judge of the condition of a complex and dangerous machine, wielding irresistible mechanical power, and if he could, he is quite incapable of estimating the risk involved in different conditions of the machine; but the master may be able and generally is able, to estimate both. The master again is a volunteer, the workman ordinarily has no choice. To hold that the master is responsible to his workman for no absence of care, however flagrant, seems to me in the highest degree both unjust and inconvenient."

This decision recognizes an employer's negligence in failing to protect the employee against defective machinery known to the employer, and imposes upon the employer the duty to use reasonable care to supply to his employees safe tools and machinery and a safe place in which to work. In those cases where the employer has been guilty of negligence, the common law defenses are still available, but their efficacy as a bar to recovery has been impaired by the creation of questions of fact, determinable by juries, as to whether the injury was caused by the employer's negligence, or by assumption of risk, contributory negligence, or the negligence of fellow servants.

An employer may be charged with negligence when he fails to warn his employees of unusual dangers incident to the employment. The case of *Coombs v. New Bedford Cordage*

Co., (1869), 102 Mass. 572, 3 Amer. Rep. 506, was apparently the first case in the United States that recognized and enforced this liability. In that case, the plaintiff was a boy fourteen years of age, employed to tend machinery in the defendant's factory. On the second day of his employment, while he was standing in his proper place, tending a drawing machine, his left hand was caught and badly injured in the cogs of a machine standing in dangerous proximity. The defendant requested that the case be withdrawn from the jury, contending that there was no proof of negligence.

In overruling this contention, the court, after reviewing the early English cases relating to this subject, said:

"The jury should be instructed that * * * if * * * they should be satisfied that the defendant knew, or had reason to know, the peril to which he (plaintiff) would be exposed, and did not give him any sufficient or reasonable notice of it, and if he, without any negligence on his own part, from inexperience or reliance upon the instructions given him, failed to perceive or appreciate the risk, and was injured in consequence, they would be responsible to him for his action."

This doctrine has been generally followed in other jurisdictions where similar questions have been presented.

At the time the common law rules affecting the relationship of master and servant were formulated, the modern highly organized industrial operations were unknown. There was no extensive diversification of industry in any one community and actual knowledge of the hazards of employment in the local plant or factory was confined primarily to those who worked therein. Those who knew most about the hazards incident to a particular trade were the employees engaged in that trade, while employers, as a class, were not concerned with the subject of industrial hygiene. Governmental or scientific organizations that could study the hazardous conditions of employments had not yet been established and there was no way to disseminate health knowledge to those engaged in trade. As a result, the legal theory was developed that as a condition of, and by the acceptance of employment, the employee assumed the risks that were incident thereto.

In applying the doctrine of assumption of risk, the courts have generally held that the employee assumes those risks that are ordinarily incident to his employment, but does not assume extraordinary risks that occur because of unusual conditions. However, the statement of this general rule is

subject to various interpretations, dependent upon the jurisdiction wherein it may be applied. Certain of the occupational diseases have been classified as extraordinary risks, particularly in those cases where employees as a class do not know of their hazard or, if knowing of their hazard, do not have a full understanding of the effect of the disease upon their health. In some instances the hazard of disease may be known to the employer, but unknown to his employees. In such cases, the failure of the employer to make known to his employees the fact and effects of the hazard may constitute negligence upon which an employee may base a common law action to recover damages for injuries so sustained. On the other hand, the employee may be charged with the assumption of extraordinary risks when he knew or, by the exercise of reasonable care, should have known of their existence. It is impossible to state any fixed rule with respect thereto. These questions are largely factual and, therefore, are subject to determination by juries.

Assuming that an employer was not negligent in the conduct of his business, he was legally entitled to rely upon this assumption of risk by his employees, and permitted to interpose this defense, even though the injury sustained had been caused solely as the result of duties to his employer. This defense contributed materially to the denial of recovery for injuries.

The defenses of negligence of fellow servant and contributory negligence are based upon the doctrine of assumption of risk and they, together with other risks, are incident to the employment which an employee has accepted. In cases involving occupational disease claims, however, these defenses are practically impossible of proof, which materially restricts their utility.

While the reported cases contain repeated reference to claims for occupational disease injuries, and the application of common law principles thereto, it is significant that only in recent years has there been substantial public interest in this question. This may be explained by the lack of authoritative information that has been heretofore available. Prior to 1900, the subject of occupational disease compensation legislation received only minor attention. Public and private agencies were either unaware of the problem or considered it of little importance to the general welfare of industrial employees. Since 1900, governmental agencies of the continental countries and of Great Britain and its dominions have undertaken extensive studies and surveys and Workmen's Compensation Laws have been liberalized to provide compensation for

such injuries.¹ In the United States the State occupational disease compensation laws have been of comparatively recent enactment.² Common law litigation has proved to be unsatisfactory and inadequate for the determination of this type of dispute, and the need for legislation compensating all types of industrial injuries has been recognized.

Common law litigation involving occupational disease injuries has always received extensive publicity, particularly as to certain of these diseases, such as radium poisoning, phosphorus poisoning, acid poisoning, dermatitis, lead poisoning, and silicosis. This publicity usually presents a gruesome picture of the injured employee, the conditions under which he has worked, and the fate to which he has been subjected, arousing industrial communities, and creating unfortunate industrial problems. This has directed the attention of Federal, State, and private agencies to the problems of occupational diseases, and authoritative investigations have been sponsored for the purpose of determining the extent and effect of occupational disease injuries. These investigations have indicated that there are less disabling occupational disease injuries than was popularly believed a few years ago, and public hysteria has been gradually allayed.

Federal and State Departments of Health and Labor, and scientific research institutions have recently sponsored movements to disseminate information upon all phases of the subject of industrial hygiene. Despite these efforts, manufacturing interests and labor organizations throughout the country are without adequate information concerning occupational diseases. The experience with common law litigation has aroused suspicion and mistrust in employers and employees of the merit of compensatory legislation, and the general apathy of industrial leaders has served to retard constructive

1 First occupational disease law passed by Switzerland on March 28, 1877.
Great Britain passed law on December 21, 1906 (6 Edw. 7 (1906) Ch. 57) providing compensation for certain diseases named by schedule.
Ontario passed law May 1, 1914 (4 Geo. 5 Ch. 26, Sec. 100), making certain diseases compensable.
In Germany, by an order of the Ministry of Labor, dated May 12, 1925, a number of occupational diseases were made compensable.
South Africa made miner's phthisis compensable in 1911.
Australia passed an occupational disease law in 1920.

2 California—1919
Connecticut—1927
Delaware—1937
Illinois—1936
Indiana—1937
Kentucky—1934
Massachusetts—1933
Michigan—1937
Minnesota—1927
Missouri—1931
Nebraska—1935
New Jersey—1924
New York—1930
North Carolina—1935
North Dakota—1925
Ohio—1931
Pennsylvania—1937
Rhode Island—1936
Washington—1937
West Virginia—1935
Wisconsin—1919

legislation. In many instances, ill-advised laws have been enacted, leading to difficulties of administration and to the creation in some States of unfortunate industrial conditions, which might have been avoided by more careful supervision of their legislative programs. However, the administration of these laws will develop their deficiencies and within the next few years State departments charged with their administration may be able to intelligently appraise their good and bad points and make legislative recommendations for changes that are necessary or desirable.

CHAPTER II

SUBJECT MATTER OF COMPENSATION LEGISLATION

In determining the scope and purpose of proposed legislation it is essential that the term "occupational disease" shall be defined, so that compensation will be provided for those diseases that may be properly classified as occupational in their nature, cause and effect, and denied for the ordinary ills of human life from which employees may suffer. Many of the State laws define the term, although most of the laws omit such definitions, and leave the determination of the subject matter to judicial interpretation. In the absence of legislative definition, it is impossible to foresee or foretell the diseases that may be compensable, and the liabilities imposed upon an employer and the benefits given to an employee by the law may not be known at the time the act becomes effective. Since one of the purposes of legislation is to remove from litigation controversies between the employer and employee, and to fix the employer's liability with certainty, it is essential that the term should be defined.

Legal Series Bulletin No. 2 treated with the difficulty of providing compensation for occupational diseases by amendments to existing Workmen's Compensation Laws, and distinguished between certain types of occupational disease injuries that differed in their nature from accidental injuries. This distinction is particularly important in considering legislation compensating these injuries. From the experience that has been developed in those States providing compensation for such injuries, the following diseases have come to be regarded as occupational in their nature:

Anthrax

Lead poisoning or its sequelae

Zinc poisoning or its sequelae

Mercury poisoning or its sequelae

Arsenic poisoning or its sequelae

Phosphorus poisoning or its sequelae

Poisoning by wood alcohol

Poisoning by benzol or nitro-, hydro-, hydroxy-, and amido-derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelae

Poisoning by carbon bisulphide or its sequelae, or any sulphide

Poisoning by nitrous fumes or its sequelae

Poisoning by nickel carbonyl or its sequelae

Dope poisoning (poisoning by tetrachloromethane or any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose), or its sequelae

Poisoning by formaldehyde and its preparations

Chrome ulceration or its sequelae

Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product or residue of any of these substances

Glanders

Compressed air illness or its sequelae

Miners' diseases, including only cellulitis, bursitis, ankylostomiasis, tenosynovitis and nystagmus

Cataract in glass workers

Radium poisoning or disability due to radio-active properties of substances or to roentgen rays

Methyl chloride poisoning

Carbon monoxide poisoning

Poisoning by sulphuric, hydrochloric, or hydrofluoric acid

Respiratory, gastro-intestinal or physiological nerve and eye disorders due to contact with petroleum products and their fumes

Disability arising from blisters or abrasions

Disability arising from bursitis or synovitis

Dermatitis (venenata)

Silicosis

Asbestosis

Many of these diseases are similar to accidental injuries in cause and effect. The great majority present immediate manifestations of injury, are simple of diagnosis, and there is no substantial medical controversy over the fact or method of evaluating the resulting disability. Their development does not depend upon continued exposure over periods of years before the injury becomes manifest or the employee suffers disability; they develop within a relatively short time, usually at a specific place and during the term of a specific employment. For example, in cases of compressed air illness, the disease develops rapidly after exposure, with easily discernible manifestations, and disability immediately results.

The cause of the illness may be readily determined, its diagnosis is simple, its treatment standard, and the disability arising therefrom may be fairly evaluated.

Some diseases differ materially, however, from accidental injuries and, in order to render full justice to the employee, to the employer for whom he worked when he contracted the disease, and to the employer for whom he worked when his injured condition became manifest and disability began, these differences must be thoroughly understood and carefully considered in drafting compensatory legislation therefor. Silicosis offers an example of the diseases in this group. In the opinion of the medical profession, it is developed only after prolonged exposure to free silica dust, and the disease may not manifest itself in disability for some time after contraction. Under these circumstances, diagnosis is difficult and uncertain at best, and an employee who has contracted silicosis in an occupation having such hazard may not learn of the existence of his disease or suffer actual disability therefrom until a later period, while engaged in an occupation devoid of silica hazard. It appears, therefore, that justice should require legislation to render liable for compensation the employer in whose occupation the disease was contracted, and relieve from responsibility the employer in whose occupation the disease was not contracted, even though the employee became disabled while in his employ. A method for proper diagnosis of the disease should be devised and an attempt made to provide equitable compensation for it. It must be immediately recognized that for this class of disease special legislative provisions are necessary, differing from the provisions of the Workmen's Compensation Laws now effective. Some method must be provided to determine the fact of injury, and to assess liability therefor upon that employer in whose employment the injury was sustained.

A further consideration is the form of the proposed legislation, whether it should be accomplished by an amendment of the existing Workmen's Compensation Act, or by a separate law compensating occupational diseases. For those diseases that are similar in their nature to traumatic injuries, the amendment of existing Workmen's Compensation Acts may be desirable; for those diseases that differ in their nature from traumatic injuries, it would be desirable to have a separate occupational disease act or a separate chapter added to the Workmen's Compensation Act so that the special problems presented by such diseases would receive full consideration.

In the preparation of legislation, study should be made of

the local industrial conditions and legislation should be designed to compensate those diseases that arise from the existing processes. The law itself should make provision for the following:

1. An agency for administration.
2. A method for competent diagnosis of the disease, and evaluation of disability.
3. Award adequate compensation for injuries.
4. Impose the cost of compensation upon the employer responsible for the injury.
5. Relieve from liability an employer not responsible for the injury.
6. Special limitation provisions relating to the filing and establishment of claims.
7. Supervision for prevention and control of diseases.

It will be noted that the items above mentioned include subjects that deal first, with compensation, and second, with prevention and control, which will be discussed in detail in the succeeding chapters.

CHAPTER III

COMPENSATION

State Agency for Administration of the Law

In view of the fact that the acts of most States providing compensation for occupational diseases represent amendments to existing Workmen's Compensation Laws, the administration of such laws has been delegated to the agency previously established to administer the Workmen's Compensation Law. This has worked successfully and there is no apparent need for the establishment of an independent commission or bureau.

Problems of administration of Occupational Disease Laws are essentially similar to those presented by the Workmen's Compensation Laws, and existing boards are familiar with industrial conditions and the general nature of occupational disease claims that would arise. The establishment of a separate agency would entail additional expense, education of personnel, inconvenience to claimants and employers, and generally serve no public benefit.

There is decided advantage in having one agency to determine all disputes that may arise between employers and employees. Experience in administering laws compensating accidents will prove to be invaluable to the agency that administers laws compensating occupational diseases. Rules of procedure already established for the administration of the Workmen's Compensation Acts would prove to be suitable for occupational disease claims. Bureaus of Industrial Hygiene and Medical Boards created by the law could cooperate with existing State agencies for efficient administration of the law.

With respect to State Funds, it is desirable to separate the accident from the occupational disease fund. Thereby the rates applicable to those industries having no occupational disease hazard would not be increased. With a separate fund, those employers having occupational disease hazards would pay rates determined by the experience in their particular plants and the cost of insurance coverage would be imposed upon those industries having such hazards. Experience has proved that employers who have been subjected to the expense of compensating occupational diseases seek effective means for their prevention and control. The incentive to obtain favorable rates will, of itself, lead to the installation of machinery and equipment designed to eliminate or control objectionable hazards. The establishment of separate funds leads to efficient administration of the law and should enable

the administrative agency to better maintain the solvency of its funds.

Method of Defining Diseases to be Compensated

As has been previously stated, it is essential that the proposed occupational disease law should define the diseases that are to be compensable thereunder in order that the law may be definite and certain and that the ordinary ill of human life should not be made compensable by its terms. Three methods of defining diseases compensable under State statutes have been followed:

- (1) By judicial interpretation of the Workmen's Compensation Acts
- (2) By scheduling specific diseases
- (3) By general coverage

(1) The Workmen's Compensation Acts of some of the States, although designed primarily to provide compensation for accidental injuries, have, in certain instances, been construed to provide compensation for those occupational diseases that are similar to accidents in their nature. This construction has involved the terms, "injury," "personal injury," and "injury by accident," contained in the several Workmen's Compensation Acts, being based upon the theory that the injury inflicted was accidental in that it could not be foreseen or expected by the employee in the discharge of his duties. Court decisions allowing compensation for diseases under the Workmen's Compensation Acts are found in the following States:

Alabama	Maryland
Colorado	Maine
Georgia	Montana
Idaho	Oklahoma
Iowa	Tennessee
Kansas	Texas
Louisiana	Wyoming

- (2) The following States and territories having occu-

³ See Legal Series Bulletin No. 1, Air Hygiene Foundation of American, Inc., for reported cases.

national disease laws have adopted the method of scheduling specific diseases that are compensable⁴:

Delaware	Ohio
Kentucky	Pennsylvania
Michigan	Rhode Island
Minnesota	Washington
Nebraska	West Virginia
New York	Puerto Rico
North Carolina	

Under the law of Kentucky, the term "personal injury by accident" includes "injuries or death due to inhalation in mines of noxious gases or smoke, commonly known as 'bad air,' and also shall include the injuries or death due to the inhalation of any kind of gas." Injuries of this type are similar to accidents in their nature and have been generally held to be accidents by courts in the construction of the Workmen's Compensation Acts. Compensation for silicosis is provided for "employees engaged in the operation of glass manufacturing plants, quarries, sand mines or in the manufacture, treating or handling of sand," provided employer and employee voluntarily subject themselves to the law with respect to this disease. Silicosis, therefore, is the only recognized occupational disease that is compensable under this statute.

Under the Nebraska law, the only occupational diseases that are compensable are those "which arise out of and during the course of employment and are peculiar to the smelting and metal refining industries." This provision is indefinite and does not contain a specific schedule of compensable diseases, but is limited to diseases peculiar to the industries named.

The New York law schedules twenty-seven compensable diseases and, by the Act of 1936, Chapter 254, the following was added: "Item 28. Any and all occupational diseases." The New York law does not define the term "occupational disease," which is left to judicial interpretation. Practically speaking, this provides general coverage and departs from the original form of schedule law effective in that State.

The law of the State of Washington schedules twenty specific diseases and adds as item 21: "And any persons employed in any industry where intense dust prevails." The Act contains no definition of dust diseases and leaves this open for

⁴ See Chapter V, Part 3, for scheduled diseases.

judicial interpretation. This provision is indefinite and would make compensable all the pneumoconioses.

The schedule laws of the States above enumerated, with the exceptions noted, are definite in their provisions as to the diseases that are made compensable. They avoid controversy with respect to the scope and subject matter of the law, and make known to employers and employees the specific diseases for which compensation may be allowed.

(3) The laws of the following States and territories provide general coverage for occupational diseases:

California	Missouri
Connecticut	North Dakota
District of Columbia	Wisconsin
Indiana	Hawaii
Illinois	Philippine Islands
Massachusetts	

The Workmen's Compensation Act of California, Section 3, subsection (4), provides as follows:

"The term 'injury,' as used in this act, shall include any injury or disease arising out of the employment, including injuries to artificial members. In case of aggravation of any disease existing prior to such injury, compensation shall be allowed only for such proportion of the disability due to the aggravation of such prior disease as may reasonably be attributed to the injury."

The Connecticut Workmen's Compensation Act provides at Section 5223, in part as follows:

"The words 'personal injury' or 'injury' as the same are used in this chapter, shall be construed to include only accidental injury which may be definitely located as to the time when and the place where the accident occurred, and occupational diseases as herein defined. . . ."

For the District of Columbia, The United States Code, (1934), Title 33, provides:

"Section 902. Definitions.—When used in this chapter * * * (2) The term 'injury' means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from

such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment."

Section 3 of the Workmen's Occupational Diseases Act of Illinois provides in part as follows:

"Where an employee in this State sustains injury to health or death by reason of a disease contracted or sustained in the course of the employment and proximately caused by the negligence of the employer, unless such employer shall have elected to provide and pay compensation as provided in section 4 of this Act, a right of action shall accrue to the employee whose health has been so injured for any damages sustained thereby; . . ."

Section 3 (a) of the Indiana Workmen's Diseases Act contains the following provision:

"Where an employee in this state dies or sustains injury to health, by reason of a disease contracted or sustained in the course of the employment, and proximately caused by the negligence of the employer, unless such employer shall have elected to provide and pay compensation as provided in section 4 of this act, a right of action shall accrue to the employee whose health has been so injured for any damages sustained thereby; . . ."

Chapter 152, Section 26, of the Massachusetts Workmen's Compensation Act provides in part as follows:

"If an employee * * * receives a personal injury arising out of and in the course of his employment * * * he shall be paid compensation by the insurer, . . ."

Section 3305, subsection (b) of the Missouri Workmen's Compensation Law provides in part as follows:

". . . The term 'injury' and 'personal injuries' shall mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom. The said terms shall in no case except as hereinafter provided, be construed to include occupational disease in any form * * * Provided, that nothing in this chapter shall be construed to deprive employees of their rights under the laws

of this state pertaining to occupational diseases, unless the employer shall file with the commission a written notice that he elects to bring himself with respect to occupational disease within the provisions of this act . . ."

Section 396a2 of the North Dakota Workmen's Compensation Act provides in part as follows:

"Injury means only an injury arising in the course of employment, including an injury caused by the wilful act of a third person directed against an employee because of his employment, but shall not include injuries caused by the employee's wilful intention to injure himself or to injure another. The term 'injury' includes in addition to an injury by accident, any disease proximately caused by the employment."

Section 102.01 of the Workmen's Compensation Act of Wisconsin provides in part as follows:

" . . . 'injury' is mental or physical harm to an employee caused by accident or disease; . . ."

The United States Employees' Compensation Act (United States Code, 1934, Title 5) provides in part as follows:

"Section 790, Definitions.—* * The term 'injury' includes, in addition to injury by accident, any disease proximately caused by the employment * *"

Section 7480 of the Workmen's Compensation Act of Hawaii provides in part as follows:

"* * * If a workman receive personal injury by accident arising out of and in the course of the employment or by disease proximately caused by the employment, or resulting from the nature of the employment, his employer or the insurance carrier shall pay compensation in the amounts and to the person or persons hereinafter specified."

The Workmen's Compensation Act of the Philippine Islands, (Public Laws, Vol. 23, Act No. 3428) provides as follows:

"Section 2. Grounds for compensation.—When any employee receives a personal injury from any accident due to and in the pursuance of the employment or the result of the nature of such em-

ployment, his employer shall pay compensation in the sums and to the persons hereinafter specified."

It is vitally necessary that those State laws providing general coverage should include a satisfactory definition of the term "occupational disease" in order that the scope and purpose of the law may be legally defined. It is the apparent purpose of those who advocate occupational disease legislation to restrict compensation to those diseases that are peculiarly incident to employment, and to avoid legislation that would amount to health insurance. The following definitions of the term "occupational disease" are found in those State laws providing general coverage:

"The words 'occupational disease' shall mean a disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such."

Connecticut, General Statutes 1930, Section 5223.

"As used in this Act, the term 'occupational disease' means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section."

Indiana Occupational Disease Law, Section 6 (a).

"In this Act the term 'occupational disease' means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the said diseases follow as an incident of an occupational disease as defined in this section."

Illinois, Acts of 1936, Section 5.

The law of Rhode Island, while it provides schedule coverage, contains the following definition:

Section 1 (c). "The term 'occupational disease' means a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process or employment."

In considering the methods of defining diseases to be compensable under any proposed law it is apparent that the schedule method of coverage is the most certain and exact for the purpose of excluding those diseases constituting the

ordinary ills of human life, and those States using the schedule method avoid the necessity of continuing litigation to determine the scope and purpose of the law. Assuming that it is the legislative intention to avoid provision for health insurance, those State laws that have general coverage are subject to interpretation by administrative agencies and by the courts, and compensation may thereby be extended to diseases that are not occupational.

The sole reasoned objection to the schedule method of coverage is that new diseases may develop from the perfection of new industrial processes and the use of newly discovered chemicals and gases or their compounds for which compensation would not be provided. In such cases, however, the law could be amended to provide for the new occupational diseases that become recognized and accepted by the medical profession. The advantage of the schedule system in defining the specific diseases to be compensated is real, in that employers subject to its provisions know definitely the diseases that are compensable and are relieved from liability for those diseases that may be unknown at the time the law becomes effective. An additional advantage is that their insurance rates would not be increased because of the reserves that would otherwise be necessary to cover unknown and uncontemplated costs for compensating diseases that might develop in the future. Schedules should be as comprehensive as possible to include all known diseases, and should be subject to future amendment as the occasion demands.

Bulletin No. 625 of the United States Department of Labor quotes the following resolutions adopted by the International Association of Industrial Accident Boards and Commissions at its meeting in Buffalo, New York, in 1929:

"Whereas the experience of several States, including especially the States of California, Connecticut, North Dakota, and Wisconsin, reliably indicates that the cost of including all occupational injuries and disabilities is insignificant and would add not exceeding approximately 1 percent to the present insurance cost of accident disabilities: Therefore be it

"RESOLVED, That this association hereby recommends to the several States and Provinces the inclusion of all occupational injuries and disabilities in their compensation laws, and it does hereby place itself on record as favoring such legislation."

The Bulletin then refers to the conference on labor legislation called by the Secretary of Labor in Washington on

February 14th and 15th, 1934, citing the recommendation of the committee on workmen's compensation that the term "injuries" should include occupational diseases, and that "blanket" coverage of occupational diseases was preferable to the "schedule" coverage, with further reference to the approval of this latter recommendation by conferences called by the Secretary of Labor in 1935 at Asheville, North Carolina, and in 1936 at Washington, D. C.

Despite the fact that these recommendations contend that the cost of compensation under the general coverage method is little more expensive than under the schedule method, it is true that during the past several years insurance rates and the cost of compensation of occupational disease injuries and disabilities have materially increased and in some instances have become prohibitive. Furthermore, the apparent tendency of the States that have recently enacted occupational disease laws has been to adopt the schedule system.⁶

Medical Board

Legislative provisions creating Medical Boards and defining their duties and powers have been among the most controversial presented by proposed occupational disease laws. The recognition of the need for compensatory legislation admits the necessity of establishing an agency for the diagnosis of disease and the appraisal of the disabilities arising therefrom. The factual aspects of claims, other than the medical phases, do not present problems that differ materially from those presented by accidental injuries, but the determination of the fact of injury and the evaluation of disability from disease injuries has always been controversial. In contested claims, with controverted expert medical testimony, it is essential that the administrative agency should have competent, impartial and qualified medical advice for the purpose of reaching its decision.

Representatives of labor have consistently opposed provisions for the creation of Medical Boards or the grant of power to these Boards for the determination of the injuries of the claimant, contending that Medical Boards would be partisan. They have preferred the determination of medical issues by

⁶ The schedule system of compensation for occupational diseases was included in the occupational disease laws passed at the 1937 sessions of the legislatures of the following states:

Delaware
Michigan
Pennsylvania
Ohio
Washington

Indiana was the only State which adopted the system of general coverage in 1937.

the administrative agency or, upon appeal from the findings of the administrative agency, by jury trials. Employers have generally favored the creation of Medical Boards, but have opposed the grant to them of the power to finally determine the physical condition of the claimant.

The laws of the following States provide for the appointment of Boards or examining physicians whose powers are limited to be advisory to the agency administering the law:

California	North Dakota
Illinois	Ohio
Indiana	Pennsylvania
Kentucky	Rhode Island
Minnesota	Washington
New York	West Virginia
North Carolina	Wisconsin

The laws of the States of Massachusetts and Michigan provide for Medical Boards whose diagnoses and opinions are final. The laws of the States of Connecticut, Delaware, Missouri, Nebraska, and New Jersey make no provisions for the appointment of Medical Boards. In North Carolina and West Virginia, provision is made for the appointment of a permanent Board, composed of three members with staggered terms, so that the membership of the Board will always include two physicians who have previously had experience in the administration of the law.

In those States providing for the appointment of Medical Boards, the appointments are made by the agency administering the law, and the Board is required to subject claimants to such examinations as may be necessary to determine the fact of injury. In certain instances, power is granted to order autopsies where this is deemed necessary to scientifically determine the cause of death. The Board renders its opinion upon all the medical questions involved in the claim and after examination of the claimant, may either file a written report of the members or offer testimony for the benefit of the administrative agency.

It is submitted that Medical Boards are essential for the successful administration of occupational disease laws. There continues to be extensive disagreement among the members of the medical profession as to the diagnosis and effects of many diseases and the average claim presents medical questions that are difficult to answer. Partisan physicians, testifying on behalf of either party, present and assert their respective views and, in the absence of competent and impartial medical advice, the administrative agency may often be un-

able to properly decide the medical issues presented by the claim. Each claim may involve new issues concerning the disease for which compensation is sought and unless the administrative agency has available expert medical advice, the parties to the litigation may be subjected to considerable expense to procure such testimony. A Medical Board, composed of competent, impartial, qualified physicians representing the State, disinterested as a party to the proceeding, is better able to determine these issues and, by its experience, would become expert in industrial diseases.

An important function to be served by Medical Boards is the supervision of autopsies that may be authorized under the law. Provision should be made for the parties to the cause to have their own physicians attend and examine the condition of the decedent. A written report of the autopsy findings should be filed in the records of the proceedings and those physicians participating in the autopsy should be subject to examination by the members of the Medical Board and by the parties at the time of the hearing.

Compensation for Partial and Total Disability

The occupational disease laws generally award compensation for both partial and total disability in the same manner and under schedules similar to those applicable to disabilities caused by accidents. However, in several of the laws recently enacted, compensation for partial disability caused by the pneumoconioses has been denied. The development of the pneumoconioses is unique and unlike traumatic injuries and those occupational diseases which present immediate manifestations, symptoms and disabilities. Many employees having some determinable evidence of pneumoconiosis are presently engaged in trade, not knowing of the fact of their affliction, demonstrating no noticeable or distinguishable disability, and fully capable of performing the same duties in which they were engaged prior to their affliction. Therefore, for this class of disease, and in recognition of the purpose of the compensation acts to provide compensation solely for disability, there have been incorporated into the laws of some of the States provisions dealing especially with disability from the pneumoconioses.

Precedent for the denial of compensation for partial disability was established by the method of awarding compensation for silicosis in South Africa where medical classifications of the stages of the disease were provided in the law. In its first stage (ante-primary), relatively low compensation was

payable, so that the employee would be compensated for the time that might elapse from the date of his removal from the employment where he was subject to the hazard of silica dust until the time he could find employment in some other trade. This idea found expression in the law of the State of West Virginia, effective 1935, which describes the stages of silicosis as follows:

"An employee shall, for the purpose hereof, be deemed to have silicosis: (1) in the first stage when it is found by the commissioner that the earliest detectable specific signs of silicosis are present, whether or not capacity for work is or has been impaired by such silicosis; (2) in the second stage when it is found by the commissioner that definite and specific physical signs of silicosis are present, and that capacity for work is or has been impaired by that disease; (3) in the third stage when it is found by the commissioner that the employee has silicosis accompanied by tuberculosis of the lungs evidenced by the presence of tubercle bacillus in the sputum."

The compensation payable for the disease in the first stage is \$500; in the second stage, \$1,000; and in the third stage or in death cases, full compensation in the same manner and at the same rate as is provided for permanent disability or death from accidental injuries. It is to be noted that the compensation payable for the first stage is not dependent upon a finding of any disability, while compensation payable for the third stage (silicosis with infection) awards to the employee the full benefits of the law.

In the laws of all of the States compensating partial disability, there is the legal presumption that proof of some disability is a condition precedent to the grant of an award, and that medical testimony to the effect that the claimant has evidence of the disease is not of itself sufficient upon which to base an award. In actual practice, however, proof of the existence of the disease may be the basis of awards for partial disability, and compensation for partial disability is now being awarded under existing laws.

The laws of the following States specifically deny compensation for partial disability from silicosis:

New York:

"Sec. 66. Compensation payable for disability or death. Compensation shall not be payable for partial disability due to silicosis or other dust diseases. . ."

Ohio:

Sec. 14-65.68a. "Compensation, medical, hospital and nursing expenses on account of silicosis shall be payable only in the event of temporary total disability, permanent total disability, or death, and only in the event of such disability or death resulting within one year after the last injurious exposure; provided that in the event of death following continuous total disability commencing within two years after the last injurious exposure, the requirement of death within two years after the last injurious exposure shall not apply."

Pennsylvania:

Section 5 (b). "Compensation shall not be payable for partial disability due to silicosis, anthracosis or asbestosis. . . ."

Michigan:

Section 4. "Compensation shall not be payable for partial disability due to silicosis or other dust disease."

The law of Wisconsin apparently recognizes that silicosis may be non-disabling, but nevertheless awards compensation for partial disability:

"(1) When an employee working subject to this chapter is, because he has a nondisabling silicosis, discharged from employment in which he is engaged, or after an examination of an employee as provided in subsection (2) and a finding by the commission that it is inadvisable for the employee to continue in his employment, such employee terminates his employment, and suffers wage loss by reason of such discharge or termination of employment, the commission may allow such compensation on account thereof as it may deem just, not exceeding thirty-five hundred dollars."

The majority opinion of physicians is that simple silicosis may not be disabling:

"It should be stressed that a diagnosis of simple silicosis does not necessarily mean disability, and, therefore, a complete diagnosis should state whether there is a decreased capacity for work and, if possi-

ble, how much. Evaluating disability is still a most difficult problem. As infection, especially tuberculosis, constitutes such an important factor in silicosis, one should always state whether a pulmonary infection is present and, if present, whether it is active or quiescent."⁶

"Attention is called to the fact that the definitions stated do not specify that a diagnosis of silicosis necessarily means disability. Silicosis is a slowly developing disease, and roentgenological evidence of pulmonary changes may in some cases exist for many years prior to the demonstration of any decreased capacity for work."⁷

The medical profession is also agreed that there is no present satisfactory method of evaluating partial disability. This being true, it is apparent that when State laws provide compensation for partial disability from the pneumoconioses, the problem of administration is increased.

In those occupations involving exposure of employees to dust, such employees, upon examination, would show some fibrosis of the lungs not in fact disabling. The intricacies of the medical aspects of these diseases are generally unknown to the average physician and it is difficult to obtain doctors expert in their diagnosis and interpretation. The medical schools of the country have heretofore failed to emphasize the subject of industrial hygiene in their curricula and most physicians now engaged in active practice frankly admit their lack of knowledge and information about the pneumoconioses, their causes, diagnoses, and disabling effects.

In view of the difficulty of diagnosis and, since any physician, whether qualified or not, may be a witness for either party in the trial upon a claim, there has developed medical legal persecution of employers and employees as to these diseases. In many instances, physicians, untrained and inexperienced in the pneumoconioses, have advised employees that they are suffering from one of these diseases. Accepting such medical advice, the employee, in his concern about his condition, may give up his employment wherein he was exposed to dust, even though that particular trade may be the only one in which he is able to earn his living. He may

⁶ Air Hygiene Foundation of America, Inc., Medical Series, Bulletin No. 1, "Silicosis and Allied Disorders—History and Industrial Importance," Pittsburgh, Pennsylvania, April 15, 1937.

⁷ Summary Report of the Committee on Prevention of Silicosis through Medical Control, National Silicosis Conference, 1936-37.

then find that he is not acceptable for employment in other industries, and becomes unable to earn a living wage. He suffers, his family suffers, and eventually they may become public charges upon their community. This might have been avoided had the employee been properly advised that he had suffered no actual disability and that the risk of continuing in his employment was negligible. Employers likewise suffer from improper diagnoses, with the resulting persecution of common law suits or unjustified compensation claims. Not only is this litigation excessively expensive, but it may have a far reaching detrimental effect upon the entire employer-employee relationship, tending to destroy public confidence in an industry which may, as a matter of fact, be well managed, properly equipped and operated with full consideration for the health of its employees.

In recent years irresponsible statements have been made in the public press by uninformed persons about the subject of disability from the pneumoconioses. Nationwide publicity has been given to the disease of silicosis and considerable hysteria resulted. This culminated in the National Silicosis Conference, called by the Secretary of Labor (1936-1937), and the Conference devoted its attention to a study of the medical, engineering, economic, legal, insurance, and administrative phases of the problem. The Conference found that there is far less disabling silicosis in industry than had theretofore been popularly believed, as is evidenced by the following quotation from Bulletin No. 13 of the United States Department of Labor, Division of Labor Standards:

"No one knows exactly how many workers have silicosis. Most of the surveys made in this or in any other country have been confined to the mining industry. From these reports, however, and from other available data a number of estimates have been advanced on which there is rather general agreement. It is estimated that of the 49,000,000 workers in the United States, only 1,000,000 (2 percent) are in any way exposed to the hazard of silicosis. Perhaps half of this number, 500,000 (1 percent of the total) are exposed to a serious hazard. Approximately 110,000 (two-tenths of one percent of the total) have silicosis in some degree, but it is likely that the number of workers who suffer any work disablement at this time from this disease is on the order of 4,000 to 5,000 (a fraction of 1 percent). This calculation is based upon medical examination of men actually at

work and does not include those already permanently detached from their employment by reason of disabling silicosis.

"From a purely statistical point of view, therefore, the problem of silicosis is not as serious or general as some other industrial problems, such as lead poisoning and industrial accidents."

There are persuasive reasons supporting provisions denying compensation for partial disability, just as there are persuasive reasons for the award of such compensation. Those State laws that provide compensation for partial disability from the pneumoconioses require the proof of disability to support such awards. Assuming that an approved method is available for the purpose of evaluating partial disability, such provisions are not only equitable, but desirable. However, protection should be afforded by the law itself, to devise and perfect the method of determining disability. This subject again emphasizes the importance of legislative provisions creating a Medical Board, heretofore discussed, for the Board, in its study of and experience with cases involving partial disability, may be able to determine some satisfactory method of evaluating these claims.

Compensation for total disability does not present difficulties comparable to those presented by partial disability. Total disability resulting from the majority of occupational diseases is readily determinable. Of the pneumoconioses, silicosis deserves particular mention in this connection. This disease becomes totally disabling when accompanied by active pulmonary tuberculosis.

The employee affected by silicosis accompanied by active pulmonary tuberculosis should be removed from the hazard of dust, not only for his own protection, but for that of his fellow workmen, in order to relieve them from the possibility of infection. Such affected employees should receive the full total disability benefits of the law. A recommendation to this effect is contained in the summary of the Report of the Committee on the Prevention of Silicosis through Medical Control of the National Silicosis Conference, Bulletin No. 13, issued by the Department of Labor, Division of Labor Standards.

It is recommended that the following provisions be adopted: That an employee who has been exposed to dust or fumes in such a manner as to cause him to develop silicosis, and who is found to be suffering from silicosis, shall be entitled to receive the full total disability benefits of the law. This disability is obviously total, so long as active

tuberculosis is present. A few of these cases, following early and successful treatment, may regain their health to the point where they may be safely employed at other work."

Employers may oppose provisions compensating tuberculosis, irrespective of the subject's employment, since tuberculosis has not been classified by medical authorities as an occupational disease. However, certain of the pneumoconioses are occupational and become disabling when complicated with tuberculosis, so that compensation should be payable therefor, irrespective of whether pneumoconiosis or tuberculosis is the disabling factor. Pre-employment examinations enable employers to avoid the employment of tubercular or tubercular suspects and by this method they may relieve themselves from a considerable portion of the potential liability that exists because of this disease when complicated with the pneumoconioses.

Physical Examinations of Employees and Autopsies in Death Cases

An essential provision of all occupational disease laws is the requirement that claimants subject themselves to physical and roentgen examinations by a physician selected by the employer or designated by the agency administering the law. The acts of the several States vary in language and form as to this requirement, but the principle has become definitely established, with the result that the refusal of the claimant to subject himself to examination operates as a bar to compensation.

The following quotation from the Workmen's Compensation Act of Wisconsin contains a typical provision as to physical examinations of employees:

"102.13. Examination by physician * * * .

(1) Whenever the right to compensation exists in favor of any employee, he shall, upon the written request of his employer, submit from time to time to examination by a practicing physician, provided and

that the employer shall pay the cost of such examination, and the physician shall report to the employer the results of such examination.

The Labor or Death Cases of certain States require physical examinations prior to the time that an employee is sub-

jected to certain hazards, and periodic examinations thereafter during the course of employment. New Mexico requires an employee "at the time of his employment or thereafter at the request of his employer," to submit to an examination by a physician for the purpose of determining his physical condition. Louisiana, Maine, New Jersey, New York and Pennsylvania require physical examinations of employees before they are permitted to work under compressed air, with periodic examinations during the course of employment. Missouri, New Jersey, Ohio and Pennsylvania have statutes requiring monthly examinations of employees engaged in any work or process exposing them to the hazard of lead poisoning. Missouri has a statute requiring monthly examinations of employees exposed to the hazards of "antimony, arsenic, brass, copper, lead, mercury, phosphorus, zinc, their alloys or salts or any poisonous chemicals, minerals, acids, fumes, vapors, gases, or other substances * * * dangerous to the health of the employees."

Another important provision is the requirement for autopsies in death cases. Most of the occupational disease laws authorize autopsies in the event of disputed claims, and the refusal of the beneficiaries of the decedent to consent to the autopsy may operate to bar the benefits of compensation. The importance of autopsies is generally recognized by the medical profession, and in certain of the occupational diseases, affords the best method for an affirmative diagnosis of the disease⁸.

It is desirable that the parties in interest should be notified of the proposed autopsy and permitted to have their own physicians attend and examine the decedent's condition. The examining physician should be required to file his report and certificate of his findings in the record of the case and submit to examination by either party at the time of the hearing.

Section 10 of the Occupational Disease Law of the State of

⁸ The laws of the following States contain such provisions:

Illinois (claims for silicosis or asbestosis)	Pennsylvania
Indiana	New Jersey
Ohio (silicosis)	West Virginia (silicosis)
North Carolina	Wisconsin

⁹ "The only other examination that has not been discussed is the post-mortem examination. This is extremely important and often provides an opportunity for correlation with the roentgenographic findings. It should include gross, microscopic, pathologic, and chemical examination of the lungs, including a polarized light examination, and whenever possible, a roentgenographic examination of the inflated lungs upon removing them from the body." Air Hygiene Foundation of America, Inc., Medical Series, Bulletin No. 1, 1937.

Pennsylvania is typical of provisions of this type, providing as follows:

"The Workmen's Compensation Board or Referee shall order an autopsy to be made upon the decedent for the purpose of examination and tests to determine the cause of death in the following cases:

"(1) When the Workmen's Compensation Board or Referee upon the advice of the Medical Advisory Board deems such an autopsy to be necessary to determine the cause of death.

"(2) Upon application of the employer when the Medical Advisory Board recommends an autopsy to determine the cause of death.

"The findings resulting from such examinations and tests shall be filed with the State Department of Health and certified copies thereof shall be filed with the Workmen's Compensation Board or Referee and shall become public records in the case."

The purpose to be served by provisions authorizing examinations or autopsies is evident. Without them, the commission is unable to determine the actual condition of the claimant, or, in the case of death, the cause thereof. Both parties to the claim should be given a complete hearing, with the opportunity to submit relative evidence upon all phases of the claim, and the administrative agency itself should have the opportunity to obtain such independent, competent medical opinion as in its judgment is necessary to enable it to decide the issues presented.

In those States providing for the appointment of a Medical Board, it is desirable to have the examinations and autopsies conducted under the Board's supervision. Members of the Board could attend and participate in the examinations and thereby determine for themselves the exact condition of the claimant or the claimant's decedent. This emphasizes the importance and necessity of the Medical Board in that the administrative agency would be better enabled to reach its own conclusion with respect to the medical features of the claim.

In the administration of the law, it is difficult to conceive of instances where compulsory examinations of employees or claimants, or autopsies in death cases, may be used to the prejudice of either party. Certainly, with respect to occupational diseases, they make available the most relevant testimony as to the condition of the claimant or the claimant's decedent, and effectively determine the merit or demerit of the claim.

Potential Liability of an Employer for Disease Injuries Existing at the Effective Date of the Law

In each State that contemplates the enactment of occupational disease legislation, the problem of compensating certain pneumoconioses is serious because of the employer's potential liability for injuries sustained by employees during the years of their employment prior to the time the proposed law becomes effective. In the case of employees who have long been exposed to the hazard of dust, roentgen examinations would reveal evidence of dust in their lungs, representing the accumulation of injurious substances over a period of years. It is probable that medical interpretation of these examinations would disclose fibrosis of the lungs or evidence of some nodulation that would justify a diagnosis of silicosis or asbestosis. Prior to the effective date of the proposed law, the liability of an employer for diseases suffered by his employees, would be dependent upon negligence, and he would not be an insurer of the health of his employees against any diseases which may be compensable by the law. This legal liability is that imposed by the common law rules and would be dependent upon the facts of any given case. Assuming that the law proposes to compensate certain of the pneumoconioses, then, upon its effective date, this potential liability becomes real and there is imposed upon the employer actual liability for injuries that the employee has sustained prior to the effective date of the act. This liability has been commonly called by the misnomer, "accrued liability," and has been a matter of grave concern to employers and their insurance carriers in contemplating the enactment of compensation legislation.

Of all the occupational diseases, silicosis and asbestosis have presented the greatest difficulty in any legislative program, and the principal criticism directed against occupational disease laws providing general coverage is the failure to make special provisions for these diseases. During the past several years there have been instances of industrial disturbances caused by the enactment of compensation laws that imposed full liability upon employers for silicosis and asbestosis. An amendment to the New York Workmen's Compensation Act, effective April 8, 1935, added to the list of compensable diseases the following:

"Item 28. Any and all occupational diseases."

By its general terms, this included these diseases, without giving consideration to the problems that they present. There

followed in that State the cancellation by insurance companies of outstanding Workmen's Compensation insurance policies in certain industries where dust hazards existed, and many industries were unable to procure insurance coverage at reasonable rates. Apprehensive of the burden placed upon them, many industries were either forced to shut down or migrate to other States, while countless employees lost their employment. As a result the law was amended by the enactment of Chapter 887, Laws of 1936, effective June 6, 1936, which provided limitations of liability and special provisions for the dust diseases. A similar condition arose pursuant to the enactment of the Illinois Occupational Disease Law, effective October 1, 1936, and may arise in some of the States that have passed occupational disease laws during the present year.

Upon the enactment of laws fixing an employer's liability for injuries that may have occurred prior to the effective date of the act, it is to be expected that a material increase in insurance rates will be inevitable to provide for this liability. Those laws that fail to make special provision for this potential liability in cases of silicosis and asbestosis immediately effect a change in the contractual relationship existing between employers and employees. Full liability for injuries is imposed upon the employer and the existing condition of the employee determines his right to compensation. On their part, employees are concerned solely with the fact that they have contracted the disease, and the disability from which they are suffering. They are not interested in legal and medical distinctions that attempt to appraise the injuries they may have sustained prior to the time that the act becomes effective, desiring full compensation for those injuries, regardless of the time that they were sustained. Therefore, representatives of employees have consistently opposed any legislative provision that would require the assumption by the employee of any part of this potential liability.

In recognition of this problem, the proposed legislation should

- (a) Limit the employer's liability,
- (b) Apportion that liability between employer and employee, or
- (c) Impose some part of the liability upon the State.

Legislative Provisions Dealing with Potential Liability Under General Coverage Statutes

The following States whose laws provide general coverage do not distinguish between the liability of an employer for

the pneumoconioses and the other occupational diseases, nor is there any limitation of the employer's liability therefor:

California	Massachusetts
Connecticut	Missouri
District of Columbia	North Dakota

Under the Workmen's Compensation Acts of these States, with the exception of Missouri, the original Act provided compensation for all occupational diseases and at the time of enactment emphasis had not been placed upon claims for silicosis and asbestosis. Employees subject to compensation under these laws have worked for extended periods of time since they became effective, and the potential liability of employers for injuries sustained prior to the effective date has been relatively small.

In the following States where general coverage is provided, special provisions of the laws are applicable to silicosis and asbestosis:

Indiana	Wisconsin
Illinois	

Under the laws of Illinois and Indiana, an employee previously subjected to the hazards of silica and asbestos dust, is permitted to waive partial compensation benefits. The Indiana law provides as follows:

"Sec. 24. No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the industrial board; but any employee who, prior to the taking effect of this act, has contracted silicosis or asbestosis but is not disabled therefrom, may, within sixty days after the taking effect of this act, file with the industrial board a request for permission to waive full compensation on account of disability or death resulting from silicosis or asbestosis, or any direct result thereof, supported by medical evidence satisfactory to the industrial board, that he has actually contracted silicosis or asbestosis but is not disabled therefrom, and if the industrial board shall approve such waiver, the compensation payable for such resulting disability or death of such employee, after further exposure in the employment of any employer who has elected pur-

suant to the provisions of sub-sections (a) and (b) of section 4 of this act, shall be fifty per centum of the compensation which but for such waiver would have been payable by any such employer."

This identical provision is contained in Section 23 of the Illinois Occupational Disease Act, effective 1936.

An amendment to the Wisconsin law, effective 1937 (Chapter 180, Laws of Wisconsin, 1937, Section 102.665, subsection 1) prescribes a limitation of liability for non-disabling silicosis, providing that where an employee suffering from a non-disabling silicosis has been found by the Commission to be unsuited to continue his employment and thereafter terminates his employment, suffering wage loss as a result thereof, the Commission "may allow such compensation on account thereof as it may deem just, not exceeding \$3500.00."

Legislative Provisions Dealing with Potential Liability under State Statutes Scheduling Compensable Diseases

Silicosis and asbestosis are not included in the schedules of diseases in the following States:

Delaware	Nebraska
Minnesota	Rhode Island

In the following States, special provision is made with respect to compensation for silicosis and asbestosis:

Michigan	Ohio
New York	Pennsylvania
North Carolina	West Virginia

Of these States, Michigan (Occupational Disease Amendment 1937, Section 4), New York (Article 4 a, Chapter 887, Laws of 1936, Section 66), and Ohio (Laws of 1937, Section 1465-68A), impose a limitation of the employer's liability by fixing a maximum benefit of \$3000, with a limitation of Five Hundred Dollars for the disability of an employee occurring during the first month the Act becomes effective, and progressive increases of Fifty Dollars per month thereafter, until the maximum is reached.

Section 14 of the Michigan law contains the following waiver provisions for employees exposed to the hazards of silicosis and stone cutter's or grinder's phthisis:

"Notwithstanding the provisions of the workmen's compensation law, any employee who has hernia, or,

prior to the taking effect of this part, shall have been exposed to the hazard of silicosis resulting from mining, or moulding, or stone cutter's or grinder's phthisis resulting from quarrying, cutting, grinding or polishing of stone or marble or metal, may file with the department of labor and industry a written request for permission to waive all compensation benefits on account of disability or death resulting from such occupational disease, and, if the department of labor and industry shall approve such waiver, it shall issue an order to that effect and shall furnish to the employee such certified copy or copies thereof as the employee may require. Any employer of such employee, to whom such certified copy shall have been furnished by the employee, shall be exempt from any liability under this part, because of such disability or death of such employee due to such occupational disease: Provided, That such written request or petition requesting such waiver shall be filed on or before one hundred twenty days from the effective date of this Act."

The Pennsylvania Occupational Disease Act (1937) fixes \$3600 as the maximum employer's liability for silicosis and/or asbestosis. Section 7 (a) of this Act provides as follows:

"In the case of such occupational diseases as the Workmen's Compensation Board shall determine develop to the point of disablement only after an exposure of five or more years the compensation for disability or death due to such diseases shall for a period of ten years immediately succeeding the effective date of this act, be payable jointly by the Commonwealth, and the employer as follows: If disability occurs or if no compensable period of disability occurs, if death occurs, during the first year in which this act becomes effective, the employer shall be liable for and pay one-tenth of the compensation for such disability or death and the remainder of such compensation shall be paid by the Commonwealth out of moneys to the credit of the Second Injury Reserve Account in the State Workmen's Insurance Fund. Thereafter for each successive year of such ten-year period in which disability occurs, or if no compensable period of disability occurs, if death occurs, the employer shall be liable for and shall pay one-tenth

more of such compensation and the remainder of such compensation shall be paid by the Commonwealth out of moneys to the credit of the Second Injury Reserve Account in the State Workmen's Insurance Fund. After the expiration of such ten-year period the employer shall pay the compensation for disability or death occurring thereafter in full."

The North Carolina Law, Section 8081, subsection 10, provides that where an employee "though not actually disabled, is affected by asbestosis and/or silicosis," the Industrial Commission may order his removal from the industry wherein he was employed and shall require the payment of compensation for temporary total or partial disability, as the case may be, until he can obtain employment in some other occupation, providing a limitation of compensation for a period of not longer than twenty weeks to an employee without dependents, or one hundred and forty weeks for an employee with dependents.

The West Virginia Workmen's Compensation Law, Article 6, Section 7, prescribes three stages of silicosis, providing compensation in the amount of \$500 for the first stage, \$1000 for the second stage, and full benefits of the Workmen's Compensation Act for the third stage.

The provisions of the laws above referred to recognize the necessity for limitations upon the liability of an employer to compensate silicosis and asbestosis. In view of the present limited experience in the administration of these laws, it is impossible to determine the most satisfactory method to apportion the potential liability for these diseases. Those laws permitting waivers of liability may work injustice to employees who later become disabled because of the disease, and provide an incentive to employers to cause their employees to be examined to ascertain their present physical condition for the purpose of avoiding legal responsibility for the payment of compensation in the event the employee should later become disabled. However, on behalf of the employee, such provisions may benefit him by enabling him to continue in his employment.

The laws providing limitations of liability of an employer avoid the incentive for prejudicial physical examinations of employees and resulting loss of employment. By this method, the potential liability existing at the effective date of the law is apportioned between the employer and the employee. The plan adopted by the Pennsylvania Law apportions the liability between the employer and the State and raises economic ques-

tions in that it burdens the taxpayers of the State with the cost of compensation payable to employees in a limited number of industries. This is a departure from the accepted theories of the Workmen's Compensation Laws which have heretofore imposed the burden of compensation upon those industries wherein industrial hazards exist and whose employees suffer disabling injuries.

Limitation Provisions

In all occupational disease legislation it is essential that provision should be made for a period of limitations after exposure or injury, within which formal proof of claim for compensation must be filed. The provisions of the State laws in this respect are not uniform and examination must be made of the individual statutes in order to determine the rules applicable.

These provisions relate to:

- (a) A period of employment within the State as a pre-requisite to the filing of claim for compensation and/or
- (b) The time within which claims for compensation must be filed after injury or the termination of employment.

Those occupational diseases that are similar in their nature and effects to accidental injuries present no particular problem because they generally develop during the course of employment while the employee is exposed to the hazard of the disease that causes injury. In such cases, it is not difficult to determine the employment within which the injury has been sustained and, since the manifestation of disease is immediate, limitations of time for the filing of claims present no undue burden upon the employee who has sustained the injury.

Other occupational diseases require longer periods of exposure for their development. The exposure may occur while the employee is working for different employers, and the employee may not suffer disability, there being no immediate manifestation of the disease. This is particularly true of silicosis and asbestosis which require special limitation provisions.

For the successful administration of the law, it is essential that limitation provisions should terminate the liability of the employer within a reasonable time after the employment ceases or the hazardous exposure has been terminated. The

employer desires to know his actual liabilities during each year that he is engaged in business and, if he is required to continue contingently liable for injuries, he finds that his risks become uninsurable. The assertion of claims at an extended period after employment has terminated is not only unsound economically but is also unnecessary. From the standpoint of the employee the existence of occupational disease and the extent of injury resulting therefrom may be determined at the time of termination of employment by competent medical and roentgen examinations, even though there are no affirmative symptoms or manifestations of the disease. Examinations should not be opposed by employees, but should become the regular practice of those industries wherein hazards exist. Statutory requirements for physical examinations at the time of termination of employment are desirable, and would make known to an employee the fact of injury, enabling him to present his claim for the injury so sustained within a reasonable time after he has been subjected to the hazard of disease. By this method the rights of an employee would be adequately protected and the contingent liability of the employer discharged at a determinable time.

Some of the State statutes require definite periods of employment within the State before claims for compensation may be sustained by an employee. Although the medical profession is agreed that long periods of exposure are necessary for the development of silicosis and asbestosis, the legislative provisions of many of the States contain no requirement as to periods of exposure, while several statutes fix periods of employment within which it would be impossible to contract or develop these diseases.

The following States require exposure in employments within the State as a pre-requisite to the right to file claims:

Illinois—sixty days exposure (all diseases)
Indiana—sixty days exposure (all diseases)
North Carolina—two years exposure (silicosis and asbestosis)
Ohio—five years exposure to silica dust; for other diseases, employee must be resident for ninety days
Pennsylvania—two years exposure (silicosis and asbestosis)
Washington—three years exposure (all diseases)
West Virginia—two years exposure (silicosis)
Wisconsin—ninety days (silicosis)

Another important provision is the requirement that the disease should have been due to the nature of employment

and contracted within a fixed period of time previous to the date of disablement. This requirement is contained in the laws of the following States:

Illinois—two years

Indiana—two years

Michigan—one year

Minnesota—one year

Nebraska—two years

North Carolina—three years (silicosis and asbestosis)

Ohio—one year

Pennsylvania—two years

There is total lack of uniformity with reference to provisions for the filing of claims. All of the compensation acts specify procedure relating to the filing of claims and fix the time after injury or last exposure within which claims must be filed. In order to determine the rules of each State, it is necessary to examine the particular state statutes applicable thereto. The chart contained in Chapter V, part 2, sets forth the requirements of those States providing compensation for occupational diseases.

Many of the provisions for the filing of claims fix the period of limitations from the date of injury or the manifestation of the disease, as distinguished from the date of last exposure to the disease hazard. Such provisions are objectionable because certain occupational diseases may not cause injuries or manifest themselves for a long period of time after employment has been terminated or the employee has been exposed to hazards. Under these laws, claims may be presented many years after the exposure has terminated. For the purpose of determining liability it is, therefore, essential that the period of limitations should run from the date of last exposure.

The controversy that has arisen over legislation compensating occupational diseases has been caused primarily by the difficulty of proper diagnosis of the disease and by the fact that disabilities may arise years after last exposure. The refusal and reluctance of representatives of labor to recognize the necessity for physical examinations of employees has, and will continue to complicate the successful administration of these laws. If legislative provisions are adopted requiring the physical examinations of employees upon the termination of their exposure to disease hazards, the objectionable features of limitation provisions would be obviated.

Alternate Liabilities or Remedies of Employers and Employees Electing or Rejecting Compensation under Provisions of Occupational Disease Acts

The laws of California, Massachusetts, New York, Washington and Wisconsin are compulsory except as to certain classes of employments and, as to the employments covered, the common law actions are abolished.

Under the laws of Connecticut, Illinois and Michigan, an employer has an election to accept or reject their benefits. Those employers electing not to comply with the acts assume the liability of common law actions for damages based upon negligence, without benefit of the common law defenses.

Under the laws of Kentucky and West Virginia silicosis is the only disease compensable and it is not compulsory in these States that an employer should elect to come within their provisions. An employer who fails to elect to pay compensation under these statutes is not deprived of his common law defenses in common law actions based upon negligence.

In Illinois and Indiana, if an employer rejects the act, his liability in death cases is limited to \$10,000.

In Pennsylvania, the rejecting employer not only loses his common law defenses, but the law presumes the employer's negligence upon proof of the employee of his discharge within one year after a physical examination and his failure to obtain work within six months after his discharge.

In New York, if an employer rejects the act, an employee has his election to maintain common law actions for injuries, in which proceeding the employer's common law defenses are denied, or to obtain compensation under the statute.

In Ohio, if an employer rejects the act, he not only is denied his common law defenses, but is subject to receivership proceedings.

A further provision of some of the occupational disease acts is the legal presumption that the occupational disease is due to the nature of the employment, when the employee, at or before the time of disability, was employed in any process or employment wherein the hazard of compensable diseases exists. Such provisions are contained in the laws of Illinois, Indiana, Michigan, New York, and Pennsylvania, the presumption being conclusive in the States of Illinois and Indiana.

The chart in Chapter V contains a detailed analysis of the alternate remedies of employers and employees electing or rejecting compensation under the provisions of the occupational disease acts.

CHAPTER IV

PREVENTION AND CONTROL

The subject of prevention and control of occupational diseases has not received the legislative consideration that is merited. It is unfortunate that primary emphasis has always been placed upon compensation, although the prevention of occupational disease injuries is and should be the goal of those who are interested in or concerned with industrial hygiene. Many of the occupational disease laws provide no machinery for the regulation and supervision of industrial processes for the control of occupational disease hazards, which will result in delay in promulgating an effective program for prevention. The laws of those States making such provision are subject to the criticism that the powers and duties assigned to various State Departments are indefinite and incomplete, and do not provide adequate machinery for an effective program of control.

In some States the agency charged with the administration of the Workmen's Compensation Acts is granted limited and indefinite powers to regulate and control the industries that are subject thereto; in other States specific provision is made for the establishment of Bureaus of Industrial Hygiene, with powers to regulate and control those industries having occupational disease hazards. In view of the importance of prevention, it would seem to be desirable to charge some State agency with the supervision of industrial operations for the purpose of preventing and controlling occupational disease hazards, insofar as this is possible. State Departments of Health are the logical agencies for this purpose and should assume general supervision of health conditions in all industrial operations wherein occupational disease hazards exist, and assist employers in the development of methods to control the particular hazards to which employees may be subject. Physicians, trained in the diagnosis, care and treatment of occupational diseases could promulgate rules and regulations for their prevention. Similarly, trained engineers could assist those industries having occupational disease hazards so to equip themselves as to eliminate or control the hazards. Established Departments have the general confidence of the public in matters concerning public health and, by pursuing a policy of cooperation with employers and employees, efficient results should be obtained.

In order to ascertain all the provisions of State laws relating to the regulation and control of health hazards in indus-

trial operations, it is necessary to examine the Health and Labor Laws of each State. Legal Series Bulletin No. 1, with supplements to date, contains a survey and analysis of these laws and should be reviewed to determine the powers granted to State Departments of Health and Labor for the supervision and regulation of industry. These laws were not primarily designed for the prevention and control of occupational diseases and, in many instances, do not provide adequate machinery for that purpose. The provisions of the occupational disease laws that deal with this subject are of particular interest, and will be discussed in detail.

The California Workmen's Compensation Law, Chapter 586, Laws of 1917, provides in part as follows:

"Sec. 34. Every employer shall furnish employment which shall be safe for the employees therein and shall furnish a place of employment which shall be safe for employees therein, and shall furnish and use such safety devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably adequate to render such employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life and safety of such employees.

"Sec. 35. No employer shall require, permit or suffer any employee to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide and use safety devices and safeguards or fail to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe, and no such employer shall fail or neglect to do every other thing reasonably necessary to protect the life, and safety of such employees, and no such employer shall occupy or maintain any place of employment that is not safe.

"* * *

"Sec. 39. The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules or regulations, or otherwise:

"(1) To declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law or lawful order.

"(2) To fix such reasonable standards and to prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of employees in employments and places of employment.

"(3) To fix and order such reasonable standards for the construction, repair and maintenance of places of employment as shall render them safe.

"(4) To require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may reasonably demand.

"(5) To declare and prescribe the general form of industrial injury reports, the injuries to be reported and the information to be furnished in connection therewith, and the time within which such reports shall be filed. Nothing in this act contained shall be construed to prevent the commission from requiring supplemental injury reports."

Chapter 176, Laws of 1913, Section 7 (4):

"To appoint a superintendent of the department of safety, who shall hold office at the pleasure of the commission and who shall perform such duties as the commission shall prescribe."

The provisions above quoted provide adequate machinery for a comprehensive program of prevention, and enable the agency administering the law to assume complete supervision over the working conditions of those industries that are subject thereto.

Section 3 of the Illinois Occupational Disease Act, 1936, provides in part as follows:

" . . . provided, that violation by any employer of any effective rule or rules made by the industrial commission pursuant to the Health and Safety Act, enacted by the Fifty-ninth General Assembly at the third special session, or violation by the employer of any statute of this State, intended for the protection of the health of employees, shall be and constitute

negligence of the employer within the meaning of this section; . . ."

" . . . Provided further, that in any action to recover damages under this section, it shall not be a defense that the employee either expressly or impliedly assumed the risk of the employment, or that the contraction or sustaining of the disease or death was caused in whole or in part by the negligence of a fellow servant or fellow servants, or that the contraction or sustaining of the disease or death resulting was caused in whole or in part by the contributory negligence of the employee, where such contributory negligence was not wilful."

This provision is penal in its nature and gives to the employee the right of common law action against his employer, in which proceeding the employer's common law defenses are denied.

Section 3 (a) of the Indiana Workmen's Diseases Act, 1937, provides in part as follows:

" . . . Any violation by any employer of any law of this State, intended for the protection of the health of employees, shall be and constitute negligence of the employer within the meaning of this action."

This provision is penal in its nature and gives to the employee the right of common law action against his employer, in which proceeding the employer's common law defenses are denied.

The Workmen's Compensation Law of Kentucky, Section 29, provides as follows:

"Sec. 29. Where an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful regulation made thereunder, communicated to such employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this act shall be increased 15 per cent. In the amount of each payment; where the accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the employer, or to obey lawful and reasonable rule, order or regulation of the board or the employer for the safety of employees or the public, the compensation for which

the employer would otherwise have been liable under this act, shall be decreased 15 per cent. in the amount of each payment; provided, however, that nothing in this section shall be construed to conflict with or impair any of the provisions of section three of this act."

This provision is penal in its nature and applicable both to employer and employee.

Article 4-A, Section 66, subsection 2 of the Workmen's Compensation Law of New York, effective June 6, 1936, provides as follows:

"The industrial commissioner and the industrial board are hereby required to add to the industrial code, as provided in sections twenty-eight and twenty-nine of the Labor Law, effective rules and regulations governing the installation, maintenance and effective operation in all industries and operations wherein silica dust or other harmful dust hazard is present, of approved devices designed to eliminate such harmful dusts and to promulgate such other regulations as will effectively control the incidence of silicosis and similar diseases."

Pursuant to this provision, the Industrial Board of New York has undertaken the promulgation of rules and regulations designed to accomplish the intended purposes of the law. However, this provision relates solely to "silica dust or other harmful dust," and does not include gases or other substances that are injurious to health.

The Occupational Disease Law of North Carolina, Section 8081 (3) provides in part as follows:

" . . . It shall be the duty of the Industrial Commission to make and/or order inspections of employments and to keep a record of all employments subjecting employees to the hazards of asbestosis and/or silicosis, and to notify the employer in any case where such hazards shall have been found to exist. The unreasonable failure of an employer to provide for any examination or his unreasonable refusal to permit any inspection herein authorized shall constitute a misdemeanor and shall be punishable as such."

It will be noted that this provision relates to silicosis and asbestosis hazards.

Article 8, Section 119, of the Rhode Island Workmen's Compensation Law, provides as follows:

"Within said department (Department of Public Health) there shall be a division of industrial hygiene. The director of public health shall appoint a chief of such division, who shall be a physician versed in the diagnosis, treatment and care of industrial and occupational diseases. The functions of such division shall be: (1) To make studies of the industrial hygiene and occupational disease problem in industry. (2) To recommend to the legislature for enactment such measures as its studies and experience may demonstrate to be advisable and (3) To keep and maintain complete records of its studies, recommendations and other activities."

This provision does not specifically grant to the Division of Industrial Hygiene the right to make rules and regulations for the control and prevention of occupational diseases. The law, therefore, may be subject to the criticism of being general and indefinite, although the machinery is provided for the creation of a specific department that would be able to supervise industrial operations for the purpose of preventing diseases.

Article 6, Section 6 of the West Virginia Workmen's Compensation Law, provides in part as follows:

" . . . For the purposes of this article and to prevent employees from contracting silicosis, the commissioner may require all employers to adopt rules which have been approved by him for the protection and safety of his employees, and to keep the same posted in conspicuous places in and about the premises; and the commissioner shall require employers to install, use or adopt such protective or safety appliances or appliances as in the commissioner's opinion are necessary for the protection of the employees. . . ."

In view of the fact that silicosis is the only occupational disease compensable under the West Virginia Law, the provision above quoted is applicable solely to those industries that elect to provide compensation under the West Virginia Silicosis Law, and would not be effective for the prevention and control of other occupational diseases.

Section 102.665 of the Wisconsin Workmen's Compensation Act provides as follows:

"(1) When an employee working subject to this chapter is, because he has a nondisabling silicosis, discharged from employment in which he is engaged, or after an examination of an employee as provided in subsection (2) and a finding by the commission that it is inadvisable for the employee to continue in his employment, such employee terminates his employment, and suffers wage loss by reason of such discharge or termination of employment, the commission may allow such compensation on account thereof as it may deem just, not exceeding thirty-five hundred dollars. In case of such discharge, prior to a finding by the industrial commission that it is inadvisable for him to continue in such employment, the liability of the employer who shall so discharge his employee shall be primary, and the liability of the insurance carrier shall be secondary under the same procedure and to the same effect as provided by section 102.62.

"(2) Upon application of any employer or employee the commission may direct any employee of such employer or such employee who, in the course of his employment, has been exposed to the inhalation of silica, to submit to examination by a physician or physicians to be appointed by the industrial commission to determine whether such employee has silicosis, and the degree thereof. The cost of such medical examination shall be borne by the person making application. The results of such examination shall be submitted by the physician to the industrial commission, which shall submit copies of such reports to the employer and employee, who shall have opportunity to rebut the same provided request therefor is made to the commission within ten days from the mailing of such report to the parties. The commission shall make its findings as to whether or not it is inadvisable for the employee to continue in his employment.

"(3) If an employee shall refuse to submit to such examination after direction by the commission, or any member or examiner thereof, or shall in any way obstruct the same, his right to compensation under this section shall be barred."

This provision is penal in its nature and increases the benefits to be received by employees in the event of an employer's violation of the statutes or lawful orders of the Commission.

Establishment of a Bureau of Industrial Hygiene

Recognizing the importance of prevention, it is essential that a Bureau of Industrial Hygiene should be established, charged with the administration of all laws relating to the prevention and control of occupational diseases. Experience has revealed that where the powers of supervision are granted to several State Departments, unified action will not be obtained, with the result that the program for control is retarded. Each State Department is already concerned with other important duties to serve the functions for which it was created. Therefore, a separate Bureau, with trained personnel, should be established in the Department of Health, with duties limited to this problem.

The Bureau of Industrial Hygiene should disseminate information about the hazards of occupational diseases to those industries of the State wherein such hazards exist. Due to the lack of information about hazardous processes, many industries have continued to permit conditions to exist that could be readily eliminated or controlled. These industries have avoided official investigations because of their apprehension that publicity would be directed to their particular plants, resulting in the exposure of objectionable conditions and precipitating claims for injuries sustained by their employees. Bureaus of Industrial Hygiene could materially assist industries in solving these problems and avoid the objectionable publicity to which employers might otherwise be subjected.

In order to, effectively administer regulatory provisions, the following duties and powers should be assigned to the Bureau:

1. Install a complete and effective occupational disease reporting system
2. Establish rules and regulations for the control and prevention of occupational diseases, enforceable by the State Department of Health under its general powers
3. Maintain an adequate and competent inspection service of the industries within the State in order to ascertain hazardous conditions within the State

to which employees may be subjected and to require the correction of such conditions

4. Conduct research as to the conditions causing occupational diseases

In its administration of the law, the Bureau should take into consideration the economic and social factors involved, and pursue its duties in a spirit of cooperation with those employers and employees affected by the law.

Pre-Employment and Periodic Post-Employment Examinations of Employees

The medical profession recognizes and recommends pre-employment and periodic post-employment physical examinations for the prevention and control of occupational diseases as evidenced by the following citations:

"Control of silicosis calls for adequate medical and engineering measures.

"Medical control should include a practical program of pre-employment and periodic examinations of all workers exposed to dust containing silica. Such examinations should include a complete physical examination of each individual, a careful history of past occupational exposure to dust, and a chest roentgenogram with a standard technic."

Air Hygiene Foundation of America, Inc., Medical Series Bulletin No. 1, "Silicosis and Allied Disorders, History and Industrial Importance," Pittsburgh, Pennsylvania, April 15, 1937.

"While the maintenance of safe working conditions is a direct responsibility of the employer, success in the prevention of silicosis will not be satisfactorily accomplished by his efforts alone. The greatest factor in the production of disabling silicosis is infection and adequate application of health measures to supplement safe working conditions calls for the cooperative efforts of employer and employees. Thus the adoption of measures which will make for successful control of the silicosis hazard in industry is a mutual responsibility. It requires the promotion of a program which will provide,

- "3. Detection of the presence of respiratory dis-

eases in the applicant before he is exposed to even the lowest permissible limits of silica concentrations.

"4. Detection of evidence of respiratory infection developing after employment at the earliest possible time."

Summary report of the Committee on Prevention of Silicosis through Medical Control, National Silicosis Conference, 1936-37.

One of the principal means of medical control is the avoidance of the employment of men who may be peculiarly susceptible to the hazards of diseases that exist in certain industrial operations. In some instances it may be deemed most inadvisable for an employee who may have previously suffered an occupational disease injury to return to an occupation where the elements of hazard that have previously caused his injury may exist. Only by pre-employment examination can the fact of previous injury and its present effect upon the employee's health be satisfactorily determined. With respect to certain potential injuries, it is desirable to avoid the employment of persons predisposed to infections or presently suffering from some disease that may be aggravated or complicated by the known hazards that exist.

Pre-employment examinations are essential to avoid tuberculars in those employments having the hazard of silica dust. Their employment would not only materially increase the risk of injury to them but may be the cause of the infection of fellow-workmen. A parallel condition would exist if an employee who had previously suffered from lead poisoning were permitted to return to work in an occupation where he would again be exposed to the hazard of lead. From his own personal standpoint, the risk of injury would be increased, and he would be subject to a recurrence of the disease, while his prospective employer would be penalized by the compensation payments that would soon become payable. The ultimate control of occupational disease requires that such examinations become an essential part of the program of those industries wherein hazards exist in order to insure the best protection for both employer and employee. The subject of physical examinations has always been one for controversy and has led to the proposal of legislative provisions which, if carried out, may adversely affect a constructive program for medical control.

On their part, employees have criticized the use of medical examinations of employees because they have been used by employers to remove from their employment certain persons

against whom the management might have some grievance, other than their physical defects, or for the purpose of discriminating against elderly workers or workers partially incapacitated¹⁰. There have undoubtedly been instances of the abuse of physical examinations by unconscionable employers, but their proper use should materially reduce the occurrence of occupational disease in industry.

In many industries wherein hazards of disease exist, manufacturers, acting upon the recommendation of their medical advisors, have adopted programs for periodic examinations. Complete authoritative data are not available as to the results of these practices, but experience indicates that the results obtained have justified their use. Those industries requiring examinations are overcoming the objections of Labor and are utilizing the information obtained for the general welfare of all employees engaged. Frequently, examinations have revealed diseases or ailments not attributable to employment. Any complete physical examination will include a general health study, and employees may thereby be advised of conditions that need treatment for the preservation of their general health. Employers usually have the medical examiner discuss such conditions with their employees, resulting in the treatment and cure of conditions that if allowed to continue, unattended, might later become serious. From the social standpoint, the benefits of examinations properly conducted may render to the employees invaluable assistance, and the workman and his family, as well as the employer, will reap immediate and obvious benefits therefrom.

The majority of the State occupational disease laws heretofore enacted do not make reference to the subject of pre-

10 "Further, the present system of compensation insurance through private carriers has discriminated against elderly workers and also has been responsible for the summary discharge of many other workers who, while actually capable of continuing their employment, were dismissed by the employers because the private insurance carriers refused coverage for such employees. Notable among the examples of such discharges is the recent Illinois case wherein approximately 36 employees were discharged by a manufacturing concern because under the newly-enacted silicosis compensation act in that State the insurance carrier refused a compensation insurance on the ground that these employees had some evidence of lung fibrosis. Another case which might be cited is that which arose in Taunton, Massachusetts in April, 1933, wherein 42 foundry workers were discharged following physical examination at the request of an insurance company. (This case is fully described on pages 171 and 172 of House Document 1360 of the Commonwealth of Massachusetts, dated February 1934, and known as "The report of the Special Industrial Disease Commission"). In this latter case, upon re-examination by State medical officers, 41 of the 42 discharged workmen were found to be physically fit, returned to work, and were still employed at the time the report was written." Draft of Report supplementing Report of the Economic, Legal and Insurance Committee—National Silicosis Conference. Presented by Mr. Robert J. Watt.

employment and post-employment examinations. In some of the States, however, there are legislative provisions that merit discussion:

The Missouri Labor Law provides in part as follows:

"Section 13253. The carrying on of any process or manufacture, or labor in this State in which antimony, arsenic, brass, copper, lead, mercury, phosphorus, zinc, their alloys or salts or any poisonous chemicals, minerals, acids, fumes, vapors, gases, or other substances, are generated or used, employed or handled by the employe in harmful quantities, or under harmful conditions, or come in contact with in a harmful way, they are hereby declared to be especially dangerous to the health of the employe."

"* * *

"Section 13255. Every employer engaged in carrying on any process of manufacture referred to in section 13253 shall, as often as once in every calendar month, cause all employes who come into direct contact with the poisonous agencies or injurious processes referred to in section 13253, to be examined by a competent licensed and reputable physician for the purpose of ascertaining if there exists in any employe any industrial or occupational disease or illness or any disease or illness due or incident to the character of the work in which the employe is engaged."

Section 3301 of the Workmen's Compensation Act of Missouri contains the following penalty:

" . . . Where the injury is caused by the failure of the employer to comply with any statute in this state, or any lawful order of the commission, the compensation and death benefit provided for under this chapter shall be increased fifteen per cent. . . "

These provisions make it mandatory upon employers conducting the processes or manufactures described in Section 13253 to cause their employes to be examined as often as once in every calendar month, and failure to conduct such examinations would subject the employer to penalty.

Article 4-A, Section 65, of the New York Workmen's Compensation Law, provides in part as follows:

"Prevention of silicosis and other dust diseases.

1. It is hereby declared to be the policy of the legis-

lature of this state, in enacting this article, to prohibit through every lawful means available, any requirement as a pre-requisite to employment which compels an applicant for employment in any occupation coming within the purview of this article to undergo a medical examination."

This statute does not prohibit pre-employment or periodic post-employment examinations and simply declares a legislative policy. There is no legal violation in the examination of employees under this section.

The North Carolina Occupational Disease Law compels the physical examinations of those employees who are subject or exposed to the hazards of asbestos or silica dust. Section 8081, subsection 9, provides in part as follows:

" . . . On and after the date on which this article becomes operative it shall be the duty of every employer, in the conduct of whose business his employees or any of them are subjected to the hazards of asbestosis and/or silicosis, to provide prior to employment necessary examinations of all new employees for the purpose of ascertaining if any of them are in any degree affected by asbestosis and/or silicosis or peculiarly susceptible thereto; and every such employer shall from time to time as ordered by the Industrial Commission, provide similar examinations for all of his employees whose employment exposes them to the hazards of asbestosis and/or silicosis. "

By these terms examinations are mandatory and failure of an employer to provide for an examination constitutes a misdemeanor.

The Pennsylvania Occupational Disease Law, Section 8, provides as follows:

"In any action brought after the effective date of this act in any court by an employee against his employer who has elected not to be bound by the provisions of Article III of the Workmen's Compensation Act and such action is based upon a claim by the employee for damages for personal injury resulting from an occupational disease, proof on the part of the employee that he had been subjected to a physical examination by such employer and that he had been discharged by such employer within one year after such examination or proof of discharge by such employer and the further fact that the employee was

unable to secure other employment within six months of the date of such discharge by reason of the presence of an occupational disease in any stage shall be prima facie evidence of negligence on the part of such employer. In any such action it shall not be a defense on the part of any employer

"(a) That the injury was caused in whole or in part by the negligence of a fellow employee or

"(b) That the employee had assumed the risk of the employment, or

"(c) That the injury was caused in any degree by the negligence of such employee or

"(d) That the employee was exposed to the hazard of such disease in any other employment more than two years prior to the date of such action.

"The Statute of Limitations in any such action for personal injury resulting from an occupational disease shall commence to run from the date of last exposure to the hazards of such disease in the employment of the defendant."

The effect of this provision is that when an employer does not elect to be bound by the Workmen's Compensation Act, and subjects his employees to physical examination, an employee, discharged within the period of one year after such examination, may elect:

(1) To recover compensation for occupational diseases under the Workmen's Compensation Act as amended, or

(2) To maintain an action at common law against his employer for occupational disease injuries so sustained in which the common law defenses of the employer are denied.

This section of the law operates as a penalty against those employers who have not elected to be bound by the provisions of the Workmen's Compensation Act, including its occupational disease amendments, and prohibits an employer from using the results of such examinations as real or alleged reasons for the discharge of workmen.

The Wisconsin Law (1937 amendment) penalizes employers or insurance carriers when an employer, subject to the provisions of the Act, discharges an employee because of a non-disabling occupational disease, although the employee had been exposed to the hazard of such disease during the course of his employment. The sections applicable are:

"(102.31) (7) If any corporation licensed to trans-

act the business of workmen's compensation insurance shall encourage, persuade or attempt to influence any employer, arbitrarily or unreasonably to refuse employment to, or to discharge employees, the commissioner of insurance may, upon complaint of the industrial commission, under procedure set out in subsection (6) of section 102.31, revoke the license of such corporation.

"(8) If any employer who has by the industrial commission been granted exemption from the carrying of compensation insurance shall arbitrarily or unreasonably refuse employment to or shall discharge employees because of a non-disabling physical condition, the industrial commission shall revoke the exemption of such employer."

These sections of the law do not prohibit medical examinations of employees but enable the industrial commission to deny certain benefits to an employer who the Commission may find has been using oppressive medical examinations or maintaining a policy of hiring only those workmen who are physically perfect, and in refusing to hire employees with slight physical defects.

Pre-employment and periodic post-employment examinations of employees are essential to the medical control of occupational diseases. Periodic examinations of employees are particularly important in order to ascertain the incipency of diseases when employees are exposed to hazards. If the disease is permitted to develop to the stage where it becomes manifest or disabling, it is generally too late to avoid its ultimate disabling effects, and the employee is then limited to the compensation benefits that the statute provides. By prevention, the health of the employee is safeguarded and the employer relieved from the liability for compensation. Therefore, a complete and comprehensive program for medical control, with routine examinations, is essential for the successful administration of these laws.

CHAPTER V

PART 1

SUMMARY OF OCCUPATIONAL DISEASE COMPENSATION ACTS

STATE	ADMINIS- TRATIVE AGENCY	MEDICAL BOARD	POTENTIAL LIABILITY (Accrued Liability)	COVERAGE	LIMITATION PROVISIONS		PENALTIES
					SPECIAL PROVISIONS	PERIOD FOR FILING CLAIMS	
CALIFORNIA	Industrial Accident Commis- sion	Commission may appoint special examiners	Law provides pro- portionate liability for pre-existing disease	General	Notice to employer 30 days from date of injury	6 months from date of injury, 1 year from date of death; in any case not later than 240 weeks from date of injury	No provision
CONNECTICUT	Commis- sioner in each of 6 districts	No provision	Law provides pro- portionate liability for pre-existing disease	General	Claims against previous employer must be made within three years after termination of employment	Injury-one year after first manifestation of disease. Death- two years after first manifestation of disease	No provision
DELAWARE	Industrial Accident Board	No provision	Law provides pro- portionate liability for pre-existing disease	Schedule	Notice must be given to employer within 6 months after last exposure	Claim must be filed with Board within 1 year after last exposure	No compen- sation in case of false statements or willful self-ex- posure
DISTRICT OF COLUMBIA (U. S. C. A. TITLE 33, CH. 18, SECS. 901-950)	United States Employees Compensation Commis- sion	No provision	No provision	General	Notice within 30 days of injury or death to Compens- ation Commission- er and employer. Disease must have been contracted with- in twelve months previous to date of disability	One year after in- jury or death	Bar of claim. Failure to give notice not a bar under cer- tain con- ditions
ILLINOIS	Industrial Commis- sion	Commission may appoint special examiners	Waiver provisions	General	60 days exposure necessary. Disa- blement must oc- cur within 1 year after last expos- ure; silicosis and asbestosis, 3 years. Employee must notify employer within 6 months after disablement	Claim must be filed within 1 year after disablement	No provision

*Made applicable to employments in District of Columbia by Act of May 17, 1923, 45 Stat. 500, c. 612, Secs. 1 and 2. See U. S. C. Supp. pp. 302 et seq., D. C. Code, Title 19, ch. 2, Secs. 11 and 12.

STATE	ADMINIS- TRATIVE AGENCY	MEDICAL BOARD	POTENTIAL LIABILITY (Accrued Liability)	COVERAGE	LIMITATION PROVISIONS		PENALTIES
					SPECIAL PROVISIONS	PERIOD FOR FILING CLAIMS	
INDIANA	Industrial Board	Industrial Board may appoint ex- aminer upon application of either party	Waiver provisions; Employer's liabil- ity limited to \$5,000	General	60 days exposure necessary. Disable- ment must occur within 1 year after last exposure; silico- sis and asbestosis, 3 years. Employee must notify employer with- in 6 months after dis- ablement. To receive death benefits death must occur within 1 year after date of disablement.	Claim must be filed within 1 year after date of disable- ment; in death cases within 1 year after death	No compen- sation in case of wil- ful miscon- duct of employee
KENTUCKY	Workmen's Compensa- tion Board	Workmen's Compensation Board may appoint examiners	No provision	Elective law for silicosis		Claim must be filed within one year after last injurious exposure to silica dust	No compen- sation in case of wil- ful miscon- duct of employee
MASSA- CHUSETTS	Industrial Accident Board	Board selects 3 physicians from panel submitted by Medical Registration Board; Diagnosis is binding	No provision	General; Court Inter- pretation	Notice must be given employer "as soon as possi- ble"	Claim must be made within 6 months after oc- currence of injury; in case of death, within 6 months after death	No provision
MICHIGAN	Industrial Accident Board	Industrial Board ap- points Com- mission of 3 qualified physicians whose report is conclusive	Waiver provisions for silicosis. Sili- cosis—\$500 first month after act in effect; then adds \$50 per month to maximum of \$3,000. No compen- sation for partial disability	Schedule	Notice must be given to employer within 3 months after disablement. Disease must be contracted within 12 months prev- ious to date of disability	Claim must be filed within 6 months after injury or 6 months after death	No compen- sation in case of false state- ments in writing
MINNESOTA	Industrial Commission	Commission may appoint special examiners	Silicosis not com- pensable	Schedule	Notice must be given to employer within 14 days after occurrence of in- jury. Disease must be contracted with- in 12 months previous to date of disability	Claim for injury or death must be filed within 2 years after employer's written report to Commis- sion but not to ex- ceed 6 years from the date of injury	No compen- sation in case of false state- ments in writing

STATE	ADMINIS- TRATIVE AGENCY	MEDICAL BOARD	POTENTIAL LIABILITY (Accrued Liability)	COVERAGE	LIMITATION PROVISIONS		PENALTIES
					SPECIAL PROVISIONS	PERIOD FOR FILING CLAIMS	
MISSOURI	Workmen's Compensa- tion Com- mission	No provision	No provision	General; elective law	Notice must be given within 30 days after injury	Claim must be filed within 6 months after injury or death	No provision
NEBRASKA	Workmen's Compensa- tion Court	No provision	Law provides pro- portionate liability for pre-existing disease. Elective law	Limited to diseases peculiar to smelting, metal refin- ing, or bat- tery man- ufacturing	Notice to employer must be given as soon as possible. Disablement must occur within 2 years subsequent to termination of employment	Claim for injury must be made within 6 months after injury or death. Claim must be filed within 1 year after date of injury or death	No provision
NEW JERSEY	Workmen's Compensa- tion Bureau	No provision	No provision; sili- cosis not com- pensable	Schedule	Notice to employ- er within 14 days after injury	Claim must be filed within 1 year after last exposure	No provision
NEW YORK	Industrial Board	Board of 3 for dust diseases; must have 10 years' ex- perience; re- views special examiner's findings	Silicosis—\$500 first month after act in effect; then adds \$50 per month to maximum of \$3,000. No compen- sation for partial disability	Schedule; also "bian- ket" item in schedule	Notice to employ- er within 30 days of injury	Claim must be filed within 1 year after injury or death	No compen- sation in case of false state- ments in writing
NORTH CAROLINA	Industrial Commission	Periodic, compulsory examinations for employees exposed to hazards of silica or as- bestos dust. Commission appoints Board, 6 year term, approval of Governor	Commission may order removal of employee from employment. Un- authorized return constitutes waiver by employee	Schedule	2 years exposure required. Notice to employer 30 days after manifestation of disease; 90 days after death. Sili- cosis, asbestosis or lead poisoning. No compensation un- less disablement or death occurs with- in 3 years of last exposure or in case of death, within 7 years following continuous disa- bility	Claim must be filed within 1 year after disablement or death	No provision
NORTH DAKOTA	Workmen's Compensa- tion Bureau	Bureau may appoint special ex- aminers	Law provides pro- portionate liability for pre-existing disease	General		Claim must be filed 60 days after in- jury or death, but Bureau may extend period to 1 year for reasonable cause	No provision

STATE	ADMINIS- TRATIVE AGENCY	MEDICAL BOARD	POTENTIAL LIABILITY (Accrued Liability)	COVERAGE	LIMITATION PROVISIONS		PENALTIES
					SPECIAL PROVISIONS	PERIOD FOR FILING CLAIMS	
OHIO	Industrial Commission	Commission appoints 3 silicosis ref- erees who must be licensed physicians	Silicosis—\$500 first month after act in effect; then adds \$50 per month to maximum of \$3,000. No compen- sation for partial disability	Schedule	5 years exposure required for silico- sis; for other dis- eases must be res- ident for 90 days. Disease must be contracted within 12 months previous to date of disa- bility	Claim must be filed within 4 months after disability be- gins. Silicosis claim must be filed within 1 year after total disability or 6 years after death. Death must occur 1 year after last exposure	No compen- sation in case of false state- ments
PENNSYLVANIA	Workmen's Compensa- tion Board	Board selects one or more physicians from panel submitted by Secretary of Labor and Industry	For diseases re- quiring exposure of 5 or more years for disablement compensation is payable as follows: Over 10-year per- iod, first year em- ployer pays 1/10, Commonwealth pays 9/10. Each succeeding year employer's liabil- ity increases 1/10. After 10 years full liability imposed on employer. Max- imum of \$2,600. No compensation for partial disability from silicosis or asbestosis	Schedule	Disability must oc- cur within 2 years after last exposure. In death cases death must occur within 5 years fol- lowing continuous disability. Notice to employer within 14 days; unless giv- en within 90 days claim barred	Claim must be filed within 1 year after accident or death	No provision
RHODE ISLAND	Director of Labor; Courts	Court may appoint examiners	No provisions; sill- cosis not compen- sable	Schedule	Notice to employer within 90 days after disablement	Claim must be filed within 1 year after injury or death	No compen- sation in case of false state- ments
WASHINGTON	Industrial Insurance Department	Commission may employ 1 or more physicians in each county to examine claimant	No compensation where last injurious exposure occurred prior to January 1, 1937. Law pro- vides proportionate liability for pre- existing disease	Schedule, blanket provisions for dust diseases	Three years of exposure required	Claim must be filed 1 year after injury or death	No provision

STATE	ADMINIS- TRATIVE AGENCY	MEDICAL BOARD	POTENTIAL LIABILITY (Accrued Liability)	COVERAGE	LIMITATION PROVISIONS		PENALTIES
					SPECIAL PROVISIONS	PERIOD FOR FILING CLAIMS	
WEST VIRGINIA	Workmen's Compensa- tion Com- missioner	Board of 3, appointed for 6 year terms by Commis- sioner, who may review findings	Compensation only for silicosis; elec- tive law	Schedule	Notice to employer within 1 year after last exposure. Two years of exposure required	Claim must be filed within 1 year after last exposure	Fraud pun- ishable by fine to \$500 and impris- onment to 12 months
WISCONSIN	Industrial Commission	Panel pro- vided; Com- mission may appoint spec- ial examiners	No provision	General	90 days exposure required. Notice to employer 30 days after injury or knowledge of disability	Claim must be filed within 2 years from date of injury or death	No provision

In the following States Commissions have been created for the purpose of studying occupational diseases and recom-
mending legislation therefor:

Alabama
Arizona
Georgia
Kansas

Maine
Maryland
New Mexico
Oregon

Note: For provisions applicable to the Territories, see the following:

Hawaii—(1935, Sec. 7480)

Phillipine Islands—(Public Laws, Vol. 3, Act 3428, pg. 415)

Puerto Rico—(Acts of 1935, No. 45)

PART 2

ALTERNATE LIABILITIES OR REMEDIES OF EMPLOYERS AND EMPLOYEES ELECTING OR REJECTING COMPENSATION UNDER PROVISIONS OF OCCUPATIONAL DISEASE ACTS

STATE	Employer has Election	Employee has Election	If employer and employee elect common law remedy is abolished	If employer elects and employee rejects, employee retains common law remedy and common law defenses are available	If employer rejects, employee retains common law action, with common law defenses denied	If employer and employee reject common law action but common law defenses are available
CALIFORNIA	Compulsory ¹ , except as to specified employers and employees ²					
CONNECTICUT	X	X	X	X	X	X
DELAWARE	X	X	X	X	X	X
ILLINOIS	X	No right of election	X	X	X ³	No provision
INDIANA	X	No right of election	X	X	X ³	No provision
KENTUCKY	X	X	X	X	Note 4	X
MASSACHUSETTS	X ³	X	X	X	X	X
MICHIGAN	X	X	X	X	X	X
MINNESOTA	X	X	X	X	X	X
MISSOURI	X	X	X	X	X	X
NEBRASKA	X	X	X	X	X	X
NEW JERSEY	X	X	X	X	X	No provision
NEW YORK	X ³	X	X	X	X ³	No provision
NORTH CAROLINA	X	X	X	X	X	X
NORTH DAKOTA	X	X	X	X	X	X

STATE	Employer has Election	Employee has Election	If employer and employee elect common law remedy is abolished	If employer elects and employee rejects, employee retains common law remedy and common law defenses are available	If employer rejects, employee retains common law action, with common law defenses denied	If employer and employee reject common law action but common law defenses are available
OHIO	X	X	X	X	X ³	No provision
PENNSYLVANIA	X	X	X	X	X	No provision ³
RHODE ISLAND	X	X	X	X	X	X
WASHINGTON	Compulsory ¹					
WEST VIRGINIA	X	X	X	X	Note 4	No provision
WISCONSIN	Compulsory ¹ , except as to specified employers and employees					

¹Common law actions are abolished.

²Any exempted employer and employee may elect. If either rejects, employee has common law action with defenses of assumption of risk and fellow servant rule abolished, and a rule of comparative negligence substituted for defense of contributory negligence.

³In death cases limitation of employer's liability is \$10,000.

⁴If employer fails to elect he retains common law defenses.

⁵Compulsory under certain circumstances where employees work on machinery.

⁶Act is compulsory as to enumerated "hazardous" employments; elective as to others.

⁷Employee may maintain common law action or obtain compensation under the statute.

⁸Employer also subject to receivership proceedings.

⁹Negligence presumed from discharge of employee within year of physical examination and his failure to obtain work within 6 months after discharge.

PART 3

COMPENSABLE OCCUPATIONAL DISEASES UNDER SCHEDULE COVERAGE ACTS

1. Delaware

Anthrax
 Lead poisoning
 Mercury poisoning
 Arsenic poisoning
 Phosphorus poisoning
 Benzene, and its homologues, and all derivatives thereof
 Wood alcohol poisoning
 Chrome poisoning
 Caisson disease
 Mesothorium or radium poisoning
 Carbon disulphide
 Hydrogen sulphide

2. Kentucky

Silicosis

3. Michigan

Anthrax
 Lead poisoning or its sequelae
 Zinc poisoning or its sequelae
 Mercury poisoning or its sequelae
 Phosphorus poisoning or its sequelae
 Arsenic poisoning or its sequelae
 Poisoning by wood alcohol
 Poisoning by benzol or nitro-, hydro-, hydroxy-, and amido-derivatives of benzene (dinitro-benzol, anilin and others) or its sequelae
 Poisoning by carbon bisulphide or its sequelae, or any sulphide
 Poisoning by nitrous fumes or its sequelae
 Poisoning by nickel carbonyl or its sequelae
 Dope poisoning (poisoning by tetrachlormethane or any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose), or its sequelae
 Poisoning by formaldehyde and its preparations
 Chrome ulceration or its sequelae or chrome poisoning
 Epitheliomatous cancer or ulceration of the

skin or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances

Glanders

Compressed air illness or its sequelae
 Miners' diseases, including only cellulitis, bur-sitis, ankylostomiasis, tenosynovitis and nys-tagmus

Cataract in glass workers

Radium poisoning or disability due to radio-active properties of substances or to roent-gen rays (x-rays)

Methyl chloride poisoning

Carbon monoxide poisoning
 Poisoning by sulphuric, hydrochloric or hydro-fluoric acid

Respiratory, gastro-intestinal or physiological nerve and eye disorders due to contact with petroleum products and their fumes

Disability arising from blisters or abrasions

Disability arising from bursitis or synovitis

Dermatitis (venenata)

Hernia

Stone workers' or grinders' phthisis

Silicosis

Pneumoconiosis

4. Minnesota

Anthrax

Lead poisoning or its sequelae
 Mercury poisoning or its sequelae
 Phosphorus poisoning or its sequelae
 Arsenic poisoning or its sequelae
 Poisoning by wood alcohol
 Poisoning by nitro and amido-derivatives of benzene (dinitro-benzol, anilin and others) or its sequelae
 Poisoning by carbon bisulphide or its sequelae
 Poisoning by nitrous fumes or its sequelae
 Poisoning by nickel carbonyl or its sequelae
 Dope poisoning (poisoning by tetrachlormethane or any substance used as or in conjunction with a solvent for acetate of cellulose) or its sequelae

Poisoning by gonoloma kamassi (African box-wood) or its sequelae
 Chrome ulceration or its sequelae
 Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances
 Glanders
 Compressed air illness or its sequelae
 Ankylostomiasis
 Miner's nystagmus
 Subcutaneous cellulitis of the hand
 Acute bursitis over the elbow
 Inflammation of the synovial lining of the wrist joint and tendon sheaths
 Cataract in glass workers

5. Nebraska

Diseases peculiar to smelting, metal refining or battery manufacturing

6. New Jersey

Anthrax
 Lead poisoning
 Mercury poisoning
 Arsenic poisoning
 Phosphorus poisoning
 Benzene, and its homologues, and all derivatives thereof
 Wood alcohol poisoning
 Chrome poisoning
 Gaiisson disease
 Mesothorium or radium poisoning

7. New York

Anthrax
 Lead poisoning or its sequelae
 Zinc poisoning or its sequelae
 Mercury poisoning or its sequelae
 Phosphorus poisoning or its sequelae
 Arsenic poisoning or its sequelae
 Poisoning by wood alcohol
 Poisoning by benzol or nitro-, hydro-, hydroxy- and amido-derivatives of benzene (dinitrobenzol, anilin and others) or its sequelae

Poisoning by carbon bisulphide or its sequelae, or any sulphide
 Poisoning by nitrous fumes or its sequelae
 Poisoning by nickel carbonyl or its sequelae
 Dope poisoning (poisoning by tetrachlormethane or any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose), or its sequelae
 Poisoning by formaldehyde and its preparations
 Chrome ulceration or its sequelae or chrome poisoning
 Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product or residue of any of these substances
 Glanders
 Compressed air illness or its sequelae
 Miners' diseases, including only cellulitis, bursitis, ankylostomiasis, tenosynovitis, and nystagmus
 Radium poisoning or disability due to radioactive properties of substances or to roentgen rays (x-rays)
 Methyl chloride poisoning
 Carbon monoxide poisoning
 Poisoning by sulphuric, hydrochloric or hydrofluoric acid
 Respiratory, gastro-intestinal or physiological nerve and eye disorders due to contact with petroleum products and their fumes
 Disability arising from blisters or abrasions
 Disability arising from bursitis or synovitis
 Dermatitis (venenata)
 Any and all occupational diseases

8. North Carolina

Anthrax
 Arsenic poisoning
 Brass poisoning
 Zinc poisoning
 Manganese poisoning
 Lead poisoning. Provided the employee shall have been exposed to the hazard of lead poisoning for at least thirty days in the preceding twelve months period, and; provided

further only the employer in whose employment such employee was last injuriously exposed shall be liable

Mercury poisoning

Phosphorus poisoning

Poisoning by carbon bisulphide, methanol, naphtha, or volatile halogenated hydrocarbons

Radium poisoning or injury by x-rays

Blisters due to use of tools or appliances in the employment

Bursitis of the knee or elbow due to intermittent pressure in the employment

Miner's nystagmus

Bone felon due to constant or intermittent pressure in employment

9. Ohio

Anthrax

Glanders

Lead poisoning

Mercury poisoning

Phosphorus poisoning

Arsenic poisoning

Poisoning by benzol or by nitro and amido-derivatives of benzol (dinitro-benzol, anilin and others)

Poisoning by gasoline, benzine, naphtha, or other volatile petroleum products

Poisoning by carbon bisulphide

Poisoning by wood alcohol

Infection or inflammation of the skin on contact surfaces due to oils, cutting compounds or lubricants, dust, liquids, fumes, gases or vapors

Epithelioma cancer or ulceration of the skin or of the corneal surface of the eye, due to carbon, pitch, tar or tarry compounds

Compressed air illness

Carbon dioxide poisoning

Brass or zinc poisoning

Manganese dioxide poisoning

Radium poisoning

Tenosynovitis and prepatellar bursitis

Chrome ulceration of the skin or nasal passages

Potassium cyanide poisoning

Sulphur dioxide poisoning

Silicosis (Silicosis shall mean a disease of the lungs caused by breathing silica dust (silicon dioxide) producing fibrous nodules, distributed through the lungs and demonstrated by x-ray examination or by autopsy)

10. Pennsylvania

Poisoning by lead, mercury, arsenic, or man-ganese, their preparations or compounds in any occupation involving direct contact with, handling thereof or exposure thereto

Poisoning by phosphorus, its preparations or compounds, in any occupation involving direct contact with, handling thereof or exposure thereto

Poisoning by methanol, carbon bisulphide, hydrocarbon distillates (naphthas and others) or halogenated hydrocarbons or any preparations containing these chemicals or any of them, in any occupation involving direct contact with, handling thereof or exposure thereto

Caisson disease (compressed air illness) resulting from engaging in any occupation carried on in compressed air

Radium poisoning or disability due to radioactive properties of substances or to roentgen rays (x-rays) in any occupation involving direct contact with, handling thereof or exposure thereto

Poisoning by or ulceration from chromic acid or bichromate of ammonium, potassium or sodium or their preparations in any occupation involving direct contact with, handling thereof or exposure thereto

Epitheliomatous cancer or ulceration due to tar, pitch, bitumen, mineral oil or paraffin or any compound, product or residue of any of those substances in any occupation involving direct contact with, handling thereof or exposure thereto

Infection or inflammation of the skin or other contact surfaces due to oils, cutting compounds, lubricants, dust, liquids, fumes, gases or vapor in any occupation involving direct

contact with, handling thereof or exposure thereto

Anthrax, occurring in any occupation involving the handling of, or exposure to wool, hair, bristles, hides or skins or bodies of animals, either dead or alive

Silicosis or anthracosilicosis in any occupation involving direct contact with, handling of, or exposure to dust of silica dioxide (SiO_2)

Asbestosis in any occupation involving direct contact with, handling of, or exposure to the dust of asbestos

11. Rhode Island

Anthrax

Arsenic poisoning or its sequelae

Brass or zinc poisoning or its sequelae

Lead poisoning or its sequelae

Manganese poisoning

Mercury poisoning or its sequelae

Phosphorus poisoning or its sequelae

Poisoning by wood alcohol

Poisoning by carbon bisulphide, methanol, naphtha, or volatile halogenated hydrocarbons, or any sulphide, or its sequelae

Poisoning by benzol, or nitro-, hydro-, hydroxy- and amido-derivatives of benzol (dinitrobenzol, anilin, and others), or its sequelae

Poisoning by carbon monoxide

Poisoning by nitrous fumes or its sequelae

Poisoning by nickel carbonyl or its sequelae

Dope poisoning (poisoning by tetrachlormethane or any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose) or its sequelae

Poisoning by formaldehyde and its preparations

Chrome ulceration or its sequelae or chrome poisoning

Epitheliomatous cancer or ulceration of the skin, or of the corneal surface of the eye, due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound, product or residue of any of these substances

Glanders

Compressed air illness or its sequelae

Miners' disease, including only cellulitis, bur-

itis, ankylostomiasis, tenosynovitis and nystagmus

Cataract in glassworkers

Radium poisoning or disability due to radioactive properties of substances or to roentgen rays (x-rays)

Methyl chloride poisoning

Poisoning by sulphuric, hydrochloric or hydrofluoric acid

Respiratory, gastro-intestinal or physiological nerve and eye disorders due to contact with petroleum products and their fumes

Disability arising from blisters or abrasions

Hernia, clearly recent in origin and resulting from a strain, arising out of and in the course of employment and promptly reported to the employer

Infection or inflammation of the skin or eyes or other external contact surfaces or oral or nasal cavities due to oils, cutting compounds, or lubricants, dust, liquids, fumes, gases, or vapors

Dermatitis (venenata)

Disability arising from bursitis or synovitis

Disability from frost-bite

12. Washington

Anthrax

Lead poisoning or its sequelae

Zinc poisoning or its sequelae

Mercury poisoning or its sequelae

Phosphorus poisoning or its sequelae

Arsenic poisoning or its sequelae

Poisoning by benzol or nitro-, hydro-, hydroxy- and amido-derivatives of benzene (dinitrobenzol, anilin and others) or its sequelae

Poisoning by carbon bisulphide or its sequelae, or any sulphide

Poisoning by tetrachlormethane or any substance used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose, or its sequelae

Chrome ulceration or its sequelae or chrome poisoning

Ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen, min-

eral oil, or paraffin, or any compound, product or residue of any of these substances

Compressed air illness or its sequelae
Miners' diseases, including cellulitis, bursitis, ankylostomiasis, tenosynovitis and myasthenia

Cataract in glassworkers

Methyl chloride poisoning

Carbon monoxide poisoning

Poisoning by sulphuric, hydrochloric or hydrofluoric acid

Disability arising from blisters or abrasions

Disability arising from bursitis or synovitis

Dermatitis (venenata)

And any persons employed in any industry where intense dust prevails

13. West Virginia Silicosis