FILE NAME: Saranac 7th Symposium (SSY)

DATE: 1952

DOC#: SSY049

DOCUMENT DESCRIPTION: Text of Presentation by Ms. Donlon

Workmen's Compensation Board
State Office Building
Albany, New York
Albany 3-5511, Ext. 333

Address of Hon. Mary Donlon, Chairman of the New York State Workmen's Compensation Board, at the Seventh Saranac Symposium at Saranac Lake, New York, Friday, September 26, 1952

VIEWPOINTS ON COMPENSATION FOR PULMONARY AND OTHER OCCUPATIONAL DISEASES

My viewpoint, as to workmen's compensation for pulmonary and other occupational diseases, is of course the viewpoint of the administrator. As such, I am grateful for the opportunity of participating in this discussion today. In the past, the contribution of workmen's compensation administrators to discussions of the occupational diseases -- outside of their own organizations -- has been much too small. In part, this is the fault of the administrators because they have usually been too busy handling the details of cases to have time also to record and organize their experience. The viewpoints of lawyers and doctors, as to compensating occupational diseases, have therefore often received more consideration -- especially during legislative committee hearings -- than have the viewpoints of administrators.

I shall present my viewpoint in the light of the historical development of occupational disease coverage in the States.

At the start of our major developments in this field, many looked upon occupational disease coverage, and especially the full or general coverage of such diseases, as a leap in the dark. The atmosphere in which discussion took place was that of fear born of ignorance. Speakers brought forth a portfolio of precedents from the experience of foreign countries, and presented this material with an air of overwhelming erudition. Stunned audiences were convinced that the most complicated and restrictive schemes,

so impressively described to them, embodied the last word of the world's existing wisdom upon the subject of occupational disease compensation. So it happened that schedules, often double-column schedules, were imported from abroad and sold to the state legislatures. It seemed irrelevant to note that the diseases listed in the schedules often were not prevalent in the particular State which, however, might be afflicted with hazards not mentioned at all. It was like buying a hat from Paris, just because it was a hat from Paris and regardless of whether it suited the wearer's face.

It happened, however, that in one or two States where the original injury coverage provisions had been left broad and simple, omitting the restrictive word "accident", the courts held that the word "injury" included occupational diseases. Such States therefore started, almost by "accident", with the same compensation coverage of occupational diseases as of accidental injuries. Other States observed the result and liked it. The prevailing pattern in this country now is full or general coverage of occupational diseases. In this respect America leads the world. With almost every session of the legislatures, the column showing the list of States with schedule or restricted coverage of occupational disease shrinks, while simultaneously the column showing the list of full coverage States lengthens.

In every stream there are main currents and counter-currents. Alarm as to compensation coverage for silicosis flared up during the depression that followed 1929, and this alarm started a tidal wave of restrictive bill-drafting, in part applicable to the dust diseases. In consequence many of the State compensation laws are now cluttered with restrictive and discriminatory provisions applicable either to occupational diseases

told that loose practice on the part of administrators in compensating alleged occupational diseases would turn workmen's compensation into "health insurance." Rare or exceptional instances in which questionable awards had been made were seized upon, publicized and magnified out of proportion to their real significance. Calm and well-informed discussion of the problem was sometimes impossible because the opinions of many had been formed by vivid impressions of exceptional cases, rather than by statistical compilations from considerable aggregates of experience. The cost estimates, not anchored to aggregates of mature experience, were sometimes fantastic. The production of a statistical average is often the best, if not the only, cure for distorted thinking both as to performance and cost.

In 1935 the private insurance carriers would not provide coverage, in New York State, for silicosis. Insurance could be obtained only from the State Insurance Fund. The Fund set its insurance rates high and held its breath, waiting for disaster. It was soon discovered that the insurance risk had been exaggerated. Mr. Muller, a former executive director of the Fund, said: "We were afraid of a wolf that was not there." Of course in the absence of a dependable statistical basis for forecasts, insurance actuaries do feel compelled to make full-sized cost estimates. That is their business responsibility.

When the actuaries had done their work, the lawyers were then called upon to draft legal restrictions and limitations upon compensability. The resulting patterns of occupational disease legislation in some of the States can best be described as barbed wire entanglements. Fantastic restrictions were put in the way of compensability, especially as to silicosis; and sometimes the benefits for occupational diseases were put

on a lower level than for accidental injuries, either as to cash payments or medical care, or both. The laws in some States are still cluttered with discriminatory details that are hard to get rid of. Such petty and harassing restrictions are a liability to insurance carriers and employers because they arouse hostility in the ranks of labor, the consequences of which are out of all proportion to the pinch-penny savings effected by the restrictive provisions. This is beginning to be apparent in the conflict as to compensability of partial disability from silicosis. Such things keep workmen's compensation laws in politics and they should be above political considerations.

In New York, and also in some of the States where the law and administration are well advanced, the second stage of thinking about occupational disease, and especially silicosis coverage, has now been reached. This second stage of thinking on the subject of occupational disease coverage, is marked by preoccupation with an effort to deal justly and without discrimination with all the victims of occupational diseases. The question arises, can we do this, and if so, how? It becomes necessary to try to see the problem in human terms.

When occupational disease problems are seen in human terms, appropriate action may be expected. Some of the difficulties of coverage ay be obscure because the flood-light of research has not yet been rned upon them. On the other hand, some of the remaining tasks for gislatures can be approached through demonstration. In a certain ricultural State, there had been persistent and formidable opposition occupational disease coverage. Committees had reported adversely on proposal. There had been the usual negative arguments. It was sted in the first place that there was no occupational disease problem

in that State, and in the second place that the cost of occupational disease coverage would be ruinous. Such a juxtaposition of conflicting and incompatible arguments is a not uncommon phenomenon in hearings before legislative committees. When at last the proposal for coverage reached the floor of the legislature, the proponents of coverage asked permission to furnish a demonstration. Permission was granted. A parade then started. A group of women employees who had contracted dermatitis while working in fruit and berry processing establishments marched down the aisle, holding out their tortured hands for observation. Full coverage of occupational disease was immediately and unanimously adopted by the legislature.

One of the most perplexing of the unsolved problems in many States is that of compensating partial disability from silicosis. This is the case here in New York. There is a dearth of information based upon comprehensive administrative research. Two hypotheses are encountered. One is that there is no such thing as partial disability from silicosis. Another is that the administrative problems of handling partial disability from silicosis are insuperable. In the face of such conflicting opinions, information is needed as to what happens to the victims of silicosis before they reach the stage of total disability for work.

We know that in the quarries of Vermont and Massachusetts there are men who have worked in stone all their lives, who are getting along with the vital capacity of their lungs reduced to a fraction of normal capacity. If you do not rush them, they can do a day's work. However, they have no reserves. But their disability is not reflected in their earning capacity, because their skill and experience offset satisfactorily to

the employer their lack of physical speed. These men usually have a strong sense of family responsibility, and with great determination they go on with their accustomed work, often with undiminished earnings. Those who base their generalizations upon this segment of experience may argue that there is no such thing as partial disability from silicosis, so far as the workmen's compensation laws are concerned, because there is no wage loss attributable to such disability. This contention comes more easily from a person who does not himself have silicosis, than from those who have to struggle for breath. In short, one segment of experience, as to silicosis, is commonly disposed of, in workmen's compensation administration, by the contention that there is no such thing as industrial disability, partial in degree, from uncomplicated silicosis. On the other hand, some spokesmen for organized labor insist that the prevailing practice of not compensating partial disability from silicosis is unjust, and some of them are becoming militant in respect to this grievance.

While some States do not provide compensation for partial disability for silicosis, some jurisdictions have had considerable experience with taking care of such cases in one way or another. The main needs are for maintenance, with or without medical aid, and for rehabilitation and for jobs. Under varying types of law, the maintenance payments may be on the basis of wage loss when the worker has to change to work that is less exacting physically. Or there may be payment based upon estimated "degrees" of nodulation. The rehabilitation provision may be with, or without, a special award to cover the roughly estimated cost to the worker of changing from one kind of employment to another. These varying provisions can, of course, either be used well or abused.

The rehabilitation type of provision, for the silicotic, at first glance looks ideal, especially if the attempt at change of employment is accompanied by a lump sum payment. However, it should be remembered that in Wisconsin the provision for a hardship payment is used by the administration to discourage employers from discharging their workers when an X-ray shows nodulation. Some types of rehabilitation provisions can be used primarily to close out the employer's future liability, rather than to improve the health and status of the worker which is the true purpose of rehabilitation. If there is an allergy, an effort should be made to arrange a satisfactory change of employment. However, the circumstance that a worker gets a new job, does not necessarily mean that he will either keep it or be able to get continuous employment at other jobs.

Where the shop housekeeping has been cleaned up and the dust removed from the air, it seems preferable not to interrupt the accustomed employment of a worker who has silicosis because, in many areas, when he has been thrown on the employment market it is very hard to him to get another job. In part because of the way some compensation provisions are written, in some States employers will not hire a man who has an unfavorable chest X-ray. Faulty compensation bill drafting, together with oppressive hiring practices, shunt too many truly employable persons toward the permanent total disability classification, or toward the public welfare rolls.

So far as New York is concerned, compensation for partial disability from silicosis is still a problem for the legislature. If compensation is provided by law for this category of disability, the New York Workmen's Compensation Board will of course face another disability rating problem. At this point, it should be said that in compensating occupational disease

cases administration is hampered by the lack of early and correct diagnosis of disease. Inexpert diagnosis and the lack of wide experience with industrial processes, sometimes give a false start in the investigation of cases. Without competent and prompt diagnosis, maximum benefits do not flow from treatment. At present, so far as the workmen's compensation authority is concerned, the two stages of handling occupational disease cases are almost completely separated. The first stage is diagnosis and treatment; the second stage, disability rating and adjudication.

In many States today there is a hue and cry about the high cost of workmen's compensation. Of course, the public should be concerned about all excessive costs. However, in discussions of the cost of workmen's compensation the public is frequently misled into supposing that the legal benefit rates are too high or that the workmen's compensation administration is excessively liberal in its interpretations and awards. A properly worded statement would be that probably in all States the workmen's compensation costs are too high in relation to what is delivered in payments and services. What the public has not been told and does not now understand is that the major source of unnecessary loss is not the administrative processing of claims -- which, of course, is not perfect -- but faulty diagnosis and treatment.

At the present stage of administrative development in the States, the workmen's compensation authority often has the sad task, when settling or adjudicating both disease and accidental injury cases, of mopping up the results of prolonged unsatisfactory medical care. How much longer this situation will be tolerated, especially by the more advanced administrations, remains to be seen.

I have mentioned two historical stages of development in the provision of occupational disease coverage in the States. In the first, the main preoccupation was that of shielding industry from allegedly unbearable cost. In the second the main preoccupation was on compensating, without discrimination, all victims of occupational disease. We are now in a third stage of historical development in workmen's compensation, with emphasis upon prompt and complete restoration of injured workers to their fullest work capacity. Because of an obsession with legal problems many of them excessively technical, we have been late in waking up to the possibilities for reducing both human losses and monetary costs in the field of workmen's compensation, both through obtaining the right type of specialized medical care and by supplementary teamwork in medical care, which means what we have called "rehabilitation."

The advent of this new stage of development calls for an integration of the supervision of medical care which, of course, eventuates in disability rating and adjudication. At the present time administration deals chiefly with what is really only a fragment of the total medical problem. A report by the late Dr. Howard N. Prince on Medical Examining Facilities of the New York State Workmen's Compensation Board, several years ago, contains this statement: "The Chief Medical Examiner should institute an integrated medical program for workmen's compensation." Such a thing has not yet been done in any State. This failure is responsible, not alone for huge monetary losses, but also for tragic and unnecessary human loss. As you know, the monetary cost of workmen's compensation arises from, and is augmented or diminished by, the extent of the human loss. We worry about monetary loss -- perhaps we ought to worry more about it -- but our paramount concern should be with the

DATE: JUL 3, 1970
M.E.M

human loss. If we reduce the human loss, the monetary loss will dwindle also.

Our effort in New York is to protect injured workers to the fullest possible extent. If the programs of prevention and restoration are fully developed, the cost of adequate payments and services for injured workers should not be oppressive to industry. At present the program of prompt and full restoration of injured workers, in New York and elsewhere, is the most undeveloped segment of workmen's compensation administration. The resulting loss, both in human and monetary terms, may well be appalling. We shall study how best we can serve the injured worker and, as new light is thrown upon the task, will confidently count upon the cooperation of our people in perfecting the New York performance, so far as may be humanly possible.