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Occupational Disease - The Insurance Viewpoint

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Special Article

OCCUPATIONAL DISEASE—THE INSURANCE VIEWPOINT

HENRY D. SAYER, New York City

(General Manager, Compensation Insurance Rating Board, New York)

TO THE extent that compensation laws play a vital part in our social and economic life, insurance has served, and will continue to serve, an essential interest in our industrial system. In so doing, it performs a public service in a high degree. In that view of the matter it is of little consequence to insurance, as such, what the coverage under the law may be. It is sufficient that the obligation is insurable, that it is sufficiently definite and described to permit the setting of reasonable and adequate rates, and that it is expressed in definite and certain language so as to be readily understood by those affected by it and to warrant fair administration and the avoidance of wasteful litigation.

While it may be assumed that the original purpose of compensation statutes was to cover only disability and death due to injury by accident, possibly because injury to health gave no right of action against the employer under the old common law, logically, no one can disagree with the principle of compensation for those diseases that are as definitely occupational as are industrial accidents. In many jurisdictions diseases to be compensable under the law must be due to causes and conditions characteristic of and peculiar to the occupation.

Industry and insurance have joined in advocating passage of occupational disease laws. Insurance has urged in various places and on various occasions that these laws be drawn with such directness and explicit terminology that there be a correct understanding of the rights and obligations created, thereby leaving little room for litigation.

We are not particularly concerned, at this gathering, with those diseases and infections that follow naturally and unavoidably from injury caused by accident; we are concerned rather with those diseases that result from conditions in the employment caused by exposure to or contact with toxic substances, radioactive emanations, exposure to dangerous dusts, gases or fumes, or other conditions necessarily present and characteristic of a particular employment. More particularly are we here concerned with those diseases affecting the lungs and respiratory tract.

The greatest difficulties have been encountered in the consideration of silicosis and asbestosis as occupational conditions. While diseases of the lungs due to inhalation of dust have been recognized from the earliest times and have been referred to in the ancient literature, until recent years little was known scientifically of their pathology, etiology, and therapeutics. Medical science in recent years, especially under the inspired leadership of Drs. Trudeau and Gardner, has made great strides in research and the determination of the facts as to the nature and development of these diseases. Over the years while a worker is being exposed to dust and is very slowly

acquiring pathologic changes that may eventually result in his total disablement or death, he may be employed by a number of different employers, or have sporadic employment for the same employer, and in these various employments conditions may be very different, and the character and concentration of dust may widely differ. His employments may not all be within the same state and may be governed by different laws. His various employers may have been insured by different insurance carriers. The right to compensation having been established, the worker or his dependents are concerned only with the receiving of the benefits set forth in the law and have no particular concern with respect to the carrier that is liable for such payments. But the determination of those questions is the responsibility of the administrative authorities.

Similar complications arise when the law creating the liability for benefits is of more recent existence than the period of exposure from which the condition arose. Thus, a period of total disability may arise within a very brief period after the enactment of the new law, while the period of exposure out of which the disease arises may almost completely antedate the law creating the liability. Here then, a condition may arise for which liability is newly imposed by law, while the conditions out of which the disability arose may be wholly or in large part due to conditions of employment at a time when the law created no liability upon the employer or his insurer for such a disability.

Recognizing these manifest facts, the New York State Legislature accepted certain very important principles in enacting the law with regard to the pneumoconioses, namely, that the liability for compensation shall be imposed wholly upon the employer who last employed the worker in a dusty employment, and that the liability for silicosis or asbestosis under the new law shall be, in the beginning, merely minimal, taking little account of the exposures in employment which took place prior to the law's enactment. The benefits, however, were increased gradually until full and unlimited benefits are payable.

By fixing the liability on the last employer in a dusty exposure, there is avoided endless difficulty in attempting to assess upon each employer by whom the injured person was employed his proportion of liability for the entire condition. This would be a manifestly impossible task.

By always assessing the liability on the last employer, the principle of distribution of cost brought about by insurance makes such procedure fair, and it averages out fairly.

A somewhat different and very complex question is presented in the matter of compensation for partial disability from silicosis or asbestosis. At a superficial glance, it might be assumed that partial disability should be compensated in the dusty trades the same as it is in the case of injury due to accident.

* Condensed from a paper read at the Saranac Symposium on Tuberculosis, Saranac, New York, October 8, 1947.

But upon slight reflection, it will be recognized that a very different situation must be faced.

In the first place, just what do we mean by "partial disability" in dust disease of the lungs? Having in mind the infinitely slow progressive nature of the disease, at what point does it become partially disabling? And how is that disability to be measured? Do we think of partial disability as a mere physical condition, or must it be both physical and economic?

There are a great many workers in dust, perhaps more than we realize, who have definite lung pathology, demonstrable clinically and by x-ray, that may be deemed a partial permanent physical impairment, but who have, nonetheless, a full earning capacity. These men do a full day's work, are fully productive, and earn full wages when they have jobs. Should we say these men must be compensated? If so, for what and how much? We cannot compensate them for loss of earnings, for they have suffered no such loss; nor can we compensate them for inability to get jobs, for they have jobs when work is available. Their skill, born of years of experience, has been found in many instances in practice to offset any supposed unemployability due to physical impairment, and unless they make claim for compensation and are physically examined, an employer does not know of the existence of any degree of fibrosis in their lungs, whether partially disabling or not.

It is certain that in some trades the workers prefer not to know that they have a mild degree of silicosis, and they assuredly do not wish their employers to learn of their condition through physical examinations. They seem to prefer jobs and the wages that they earn to any compensation allowance and to the certain branding of them as silicotics that would be entailed in any system of compensating for partial disability. They appear to regard that as economically disastrous, and there can be little doubt of the bad psychologic effect of such knowledge.

In cases of partial disability from silicosis or asbestosis, partial disability, if it arises at all, comes on gradually and insidiously. Physical findings by x-ray are usually the first evidence of the disease. Never is any disability present at the outset. Progress is not toward improvement, as is the case in recovery from traumatic injuries, but if exposure continues, the disability increases. It may progress slowly to eventual total disability, or the worker may continue working almost to the time of his eventual death.

To the medical man these distinctions may not be very significant; to the administrator and to the insurer they are vital. If a worker is compensated for partial disability in a dust disease case, it is almost a certainty that he will continue under partial disability until total disability or death occurs. Total disability will not be long in following the partial disability, for once the worker is officially certified as a silicotic, his days will be numbered in his trade.

Insurance under the law for partial disability would present almost insuperable difficulties. In the first place, we have no reliable facts as to the number of workers at any time who have silicosis or asbestosis in any degree, whether partially disabling or not. What the exposure is, or may be, we have no way of knowing. Accordingly, this would raise serious difficulties in the way of fixing insurance rates that would be both reasonable and adequate. The setting of proper rates is at the very basis of effective insurance.

If one recalls the principles referred to at the outset of this paper, it would seem that so far as the New York State law is concerned, the obligation for occupational diseases has been made insurable, susceptible of rating, and is stated in reasonably definite and certain language. Insurance may be relied upon to do all in its power to make such law workable and effective to accomplish the objectives set before us.

CORRESPONDENCE

Further Note on the Specialty Boards

To the Editor:

I would like to express my agreement with the opinion of Dr. M. S. Lloyd in regard to the tactics of the Specialty Boards, as stated in his letter published in the JOURNAL, February 1, 1948. Although within the past twenty years the field of peripheral vascular diseases has assumed the status of a distinct specialty and is recognized as such, not only by the profession but also by the New York State Labor Department with a distinct designation of SM 16, the Specialty Boards refuse to recognize this subdivision. Instead, they allow the peripheral vascular specialist to smother himself under the classification of general surgery or general medicine. The inconsistency of

this is evident in the fact that the competent peripheral vascular surgeon must be well versed in both medicine and surgery and would, therefore, under present regulations, have to qualify in both fields.

It seems to me that the state medical societies can exert sufficient influence to review, and perhaps revise, the present standards of specialization arbitrarily set up by the self-instituted boards.

(Signed) SAUL S. SAMUELS, M.D.
151 East 83rd Street
New York City

February 12, 1948

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Editorials

The Annual Meeting, 1948

It is time now to plan to attend the Annual Meeting of the Medical Society of the State of New York, to be held this year at the Hotel Pennsylvania, May 17 to 21, in New York City.

Again let us urge you to reserve hotel accommodations early if you have not already done so. The winter having done its worst, it is highly probable that by the time of the meeting the weather will be such as to make driving attractive again for those who will come by automobile.

It is yet too early to announce with certainty the principal speakers at the annual banquet, which will be held on Wednesday night, May 19, but we feel sure that you will want to hear them, whoever they are.

The chairmen of the Scientific Program and of the Scientific Exhibits have worked hard and productively to make this year's meeting of more than usual interest. More applications for the scientific exhibit space have this year been received than could be filled, even with a better arrangement of floor space than was possible in 1946.

The Teaching Day Programs of the Council Committee on Public Health and Education will fill the entire day of Tuesday, May

18, and promise to be of extraordinary interest, we are informed. In addition, the section on Radiology will again conduct its film reading session on the basis of submitted roentgenograms. We are informed that the section on Industrial Medicine and Surgery will include a symposium on Hand Surgery with a number of papers to be read by invitation that are of more than usual interest.

We hope that the Annual Meeting of 1948 will be better attended than any previous meeting of the Society. The House of Delegates will commence its sessions on Monday morning, May 17. The complex structure of our modern civilization is enveloping the practice of medicine, our system of medical education, the research groups, clinics, and hospitals in a vast web of changing laws, attempts to break down standards of licensure and practice, and to impose government control upon the profession.

Medicine must preserve its fluidity; it must be able to adapt itself functionally to the real, the demonstrable needs of a changing economy, a changing social structure, and to make its own constantly improved technology and practice readily available to the sick. It must be jealous of its own independence of thought and action but without