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SHIPBUILDERS COUNCIL OF AMERICA
1730 K STREET N. W. • WASHINGTON 6, D. C.
FEDERAL 8-7722

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October 1, 1965

TO: SHIPYARD DELEGATES

Gentlemen:

Subject: Compensation and the Occupational Diseases

At a recent meeting of the Council's Safety Committee, the attached papers were reviewed. The main thrust of the presentation is that State Workmen's Compensation and Federal Medicare conflict and the time has now arrived for a decision, with regard to occupational diseases, on whether Workmen's Compensation should be abondoned in favor of Medicare coverage. The Committee agreed that the situation should be referred to the shipyard Members of the Council for their advice.

Please review the proposal and submit your views to the Council promptly so that an early decision can be reached.

Edwin M. Hood
President

Enclosures

PLAINTIFF'S EXHIBIT
SBCA 5004
exhibitsticker.com

August 9, 1965

COMPENSATION AND THE OCCUPATIONAL DISEASE
ADDENDUM TO PAPER DATED 8/26/64

Approximately one year has elapsed since the subject paper was prepared and during this time there has been wide-spread publicity given the subject in newspapers, magazines and other media. Union membership groups are being addressed in many areas of the Country by attorneys for the purpose of letting employees know their rights under the Workmen's Compensation Laws to make claims against employers for such health impairments as hearing, occupational bronchitis, impairment of vision due to repeated removal of foreign bodies, heart ailments, hand tremors through the continued use of air tools, and the like. While it is still wise for industry to be discreet in its discussion of this subject, to avoid encouragement of open debate with opposing forces, believe the time has come when it should start taking definite steps toward defending itself.

Following are some suggested arguments that might be used by industry in attempting to have the occupational disease feature removed from our Workmen's Compensation Laws and handled as a separate coverage:

1. Awards for occupational diseases are bound to conflict with benefits received by our older citizens under Medicare; most awards for health deficiencies are, of course, made in the majority of instances to employees pretty well up in age.

2. The shipyard industry acknowledges responsibility for very few O. D. claims because of its hiring practices, as set out in the attached memorandum. Because of this fact, employees are given awards purely through the socialistic and welfare tendencies of the courts or other bodies before which these claimants appear.

3. Because of these unstable grounds upon which awards are presently made, it is believed the unions, feeling that the wind might not always blow in this same direction, would be receptive to a more stable means of having their worn-out members cared for.

4. There appear to be two alternatives to the present effort of handling the problem, i.e., private industrial health insurance carried by the employees, or an amendment to the Medicare bill. The Medicare amendment would certainly seem to be the more logical of the two since the claims of workmen in the age group of perhaps 50 years on up are the pure result of long years of physical labor which should not, and really connot, be charged to a company, corporation or industry.

5. Needless to say, if the shipyard industry were to be hit with the full impact of all possible awards under its Workmen's Compensation coverage for employees who endure deficiencies falling within the occupational disease group, it would be a financial burden which very few, if any, corporations could meet.

# # #

August 26, 1964

CONFIDENTIAL

COMPENSATION AND THE OCCUPATIONAL DISEASE

It appears that the time has come for the shipyard industry to take inventory of its position and vulnerability with regard to the health factors of its employees and the relation of these factors to so-called occupational diseases for which employers are so often unfairly held to be responsible.

The integrated shipyards have taken great strides forward during the last decade in the protection of employees from physical injuries, this made possible by improvement of personal protective equipment, sounder safety programs, improved production practices, and the like. The compelling factor in this improvement, aside from the basic one of humaneness, is the ever-mounting cost of compensation and medical claims which threaten the very competitiveness of a yard.

Now, as far as actual physical injuries to life and limb are concerned, industry is facing a known adversary and can help protect its economic soundness with sound safety programs, close liaison with its underwriters on compensation controls, etc. However, when we approach the subject of employee health, we enter an area that is pretty much beyond employer control. True, considerable attention is given respiratory protective equipment, ventilation, etc., but when an employee's general health is considered the employer's problem and responsibility under compensation laws, the latter had better place this problem in the proper perspective and attempt to do something about it before it becomes a monster. While compensation law practice always included so-called occupational diseases, present-day ideology can very well expand this subject far beyond the bounds of reason and acceptance.

When an employee is originally hired, and likewise when an employee reports for work on each shift, his general overall physical condition is quite obvious, with the possible exception of his back or other muscular systems. So, he is turned loose on the job, and if he is subjected to any physical damage such as cuts, bruises, fractures, burns, etc., he is treated for same and compensated for the time lost as the result thereof. And, truthfully, where he has brought an off-the-job injury to work with him that day and has successfully, though feloniously, hidden it from his superior, he can and does have it repaired under his employer's coverage. The employer is tacitly quite aware of these instances, especially with the many infamous back cases with which he is charged.

However, when our industry considers defense against or employee protection against occupational diseases, we have a frightening spectrum facing us. As a matter of fact, we must express our concern cautiously lest we start a rash of claims that can bury us.

While the whole subject is in tiself baffling, the real puzzler is the fact that were employers to humanely and praiseworthily make a more positive move to guard and improve the wellbeing of their employees, such as proposed, for example, by the Director of the Bureau of Labor Standards in letter of April 22, 1964, addressed to Mr. Edwin M. Hood, President of the Shipbuilders Council of America, they would, under present laws and court philosophy, be programming their own doom. Suppose, for instance, a shipyard employer, for his own protection and in a vital determination to safeguard his employees from injury and hazards, decided to hire only those new employees who could pass a rigid health examination, and further required the examination of each of the employees on his current payroll toward the end of eliminating all but those who were physically fit. We believe the following would result:

(1) The unions would not allow elimination of any regular employees who failed to meet the standards.

(2) Those on the payroll who failed to meet the standards would sue immediately for compensation awards, claiming their deficiencies were the result of working conditions - and win.

(3) The number of new hires who passed the physical standards would be so low as to make it impossible to fill manning requirements.

Therefore, it must be concluded that if our industry is going to continue to do the maximum to protect its employees, the staggering potential burden of awards for occupational diseases must be eliminated from our compensation laws, or the laws rewritten to protect the employer from "buying" health deficiencies caused outside of employment. The answer would seem to be private procurement of industrial health insurance by the employee. No doubt negotiation of labor agreements would ultimately throw at least part of the health insurance premiums to the employer, but the final judgment as to whether or not this would ever be acceptable would be based upon the type coverage involved. Now that Medicare is a fact rather than a dream, perhaps we could privately prevail upon some wild liberal to sponsor an amendment to cover our needs.

If this proposal rings of brutality, hesitate briefly before making the accusation and ask yourself whether the need for such proposal is not actually based on extremist moves on the part of our courts, lawmakers, and the like, to make the shipyard employer totally responsible for the health of his employee when he really controls in a minute way only eight hours of the man's twenty-four hour day and only five days of the man's seven-day week, or 2,080 hours out of a total 8,760 hours per year. During this small portion of the employee's life, his exposure to health contaminents, in an industry such as ours, is extremely small and, at that, protected by every device so far contrived. Possibly the outstanding argument against health responsibility is the fact that because of the "feast or famine" nature of our business a majority of our employees do not work

steadily at any one shipyard. And being interim, or day-by-day, employees, the shipyard has no knowledge of the contamination exposure of its employees during days or periods when they are working elsewhere.

What industry is actually saying then is that if it is furnished with completely healthy employees whose off-the-job activities, including diet, are beyond reproach, and if such employees will wear all prescribed protective equipment, even when the supervisor is not observing, and if such employees will submit to regular re-examinations to make certain no disease has been contracted privately or during employment elsewhere that might be aggravated by their regular work, industry might then, and only then, consider the burden of occupational diseases to be fair and reasonable when properly adjudicated by the courts.

In summary, cannot we in industry, who are already shouldering a tremendous burden in this cost of compensation for physical damages to employees, do something to prevent utter ruin in the form of health impairment responsibility. This is, at present, a smoldering menace which may and probably will at any time break out into a holocaust.

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