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Workmen's compensation premiums are going up. How high may depend on the Congress which will be considering a Federal workmen's comp bill this season. Presently, the bill's authors are flirting with an occupational disease benefits formula that would prove mighty costly . . .

WOULD NEW FEDERAL WORKMEN'S COMP STANDARDS BRING A FLOOD OF OCCUPATIONAL DISEASE CLAIMS?

LEGISLATION establishing minimum Federal standards for workmen's compensation is virtually certain to be introduced in this Congress.

The bill would doubtless require the States to peg benefit levels to the average weekly wage in the State, permit benefits to rise with wage averages, and continue benefits for life or the duration of the disability with no arbitrary cutoff date or amount. It may also order States to expand coverage to all employees, and to ease eligibility requirements for claimants.

If such legislation is enacted, your workmen's compensation will go up. Whether they rise like a balloon or a Saturn rocket will most likely depend on the law's occupational disease provisions.

In the past, Congressional leaders of the drive to establish Federal standards, notably Senators Harrison Williams (D-N.J.) and Jacob Javits (R-N.Y.), have favored formulae for eligibility similar to those contained in the Black Lung Benefits Act of 1972.

Under that law a coal miner needn't prove conclusively that he has Black Lung disease in order to qualify for an award. The law requires the compensating authority to presume the claimant is suffering black lung and that the disease is work-related if he meets certain conditions of disability and work history in coal mines:

- If a miner worked 10 years or more in coal mines and is suffering from pneumoconiosis (black lung), there is a rebuttable presumption that his disease arose out of or in the course of his employment.
- If a dead miner worked 10 or more years in coal mines and died of a respiratory disease, there is a rebuttable presumption that his death was due to pneumoconiosis.
- If a miner suffers (or suffered before his death) a chronic dust disease, and X-ray, biopsy, or autopsy shows opacities or lesions characteristic of pneumoconiosis, then there is an *irrebuttable* presumption made that he is totally disabled by occupational pneumoconiosis.
- If a miner has worked 15 years in the mines, in cases where evidence establishes existence of a totally disabling respiratory or pulmonary disease, *even if X-rays are negative*, there is a rebuttable presumption made that the miner is a victim of black lung. The presumption can be rebutted only if it can be established that the claimant did not have pneumoconiosis, or that the respiratory or pulmonary impairment did not arise out of or in connection with his employment.

These are the controversial "presumption" features of the Black Lung Benefits Law. Since Congress enacted them, critics have dubbed them everything from a monumental treasury raid to a miners' pension program masquerading as workmen's compensation.

Present indications are that a Federal workmen's compensation standards bill would require compensating authorities to make similar presumptions about other occupational diseases in cases where medical evidence indicated a connection between the diseases and certain jobs or industries. For example, insulation workers who worked with asbestos might be presumed to be suffering job-related disease if they developed asbestosis after 10 or 15 years on the job; foundry workers or glass makers who developed silicosis after years on the job might be presumed to have an occupational disease. These are, of course, only examples. At presstime no Federal standards bill had yet been submitted.

There are, however, several likely candidates for inclusion in the occupational disease coverage provisions, in addition to the diseases

"Black lung costs, first estimated to run \$40 million a year in fact exceeded \$328 million the first year and then soared to \$1 billion a year. The AMIA puts a yearly \$3 billion pricetag on proposed workmen's comp benefits."

named: berylliosis (for beryllium workers), byssinosis (workers in cotton textile plants), talcosis (anyone exposed to talc in the paint, rubber, paper, or other industries), angiosarcoma of the liver (workers exposed to vinyl chloride), and lung cancer (for coke oven workers in the steel industry).

Retroactivity of benefits is another feature of the Black Lung Benefits Act that may find its way into Federal minimum standards legislation. The Black Lung Act extends benefits to miners who stopped working in the mines before December 30, 1969, the day the law was enacted.

Constitutional question

Are retroactivity and presumptions constitutional?

There is no doubt about retroactivity. The United States Supreme Court has upheld a decision by a U.S. District Court (*National Independent Coal Operators Association v. Brennan*) that held retroactive benefits are constitutional. The Court ruled Congress intended to make benefits available even to older, retired miners who developed symptoms of black lung long after they quit the mines.

About presumptions, there are still a few questions. The Supreme Court appeared to uphold presumptions in the case brought by the National Independent Coal Operators when it refused to alter the U.S. District Court's decision. The lower court had ruled the Secretary of Labor was not violating the constitution when he established ground rules for implementing the presumptions contained in the Black Lung Benefits Act. The judges ruled presumptions "do not and will not deprive the plaintiffs of their property without due process of law or deny them equal protection of the law."

U.S. District Court for the Eastern District of Kentucky has taken a slightly different position in the case of *Turner Elkhorn Mining Co. v. Brennan*. The Court upheld the rebuttable presumptions of the Black Lung Benefits Act: that the disease arose out of employment if a miner suffers black lung after 10 years in the mines, and that he's presumed to have black lung after 15 years in the mines even if X-rays are negative.

The Court struck down as unconstitutional the irrebuttable presumption that a miner suffering acute pneumoconiosis is automatically assumed to be totally disabled. Proof that a disease exists and proof that the victim of the disease is totally disabled are two different matters, and each must be defined and prescribed separately, held the court.

Also held as unconstitutional was the requirement that the compensating authority could rebut a miner's claim only by proving the miner did not have pneumoconiosis. The Court held the compensating authority should be free to produce whatever evidence may be admissible generally to rebut the presumption.

As things stand now:

- The rebuttable presumptions have been upheld, though the compensating authority has a freer hand as to what type of evidence he may present to disprove a claim.
- The irrebuttable presumption that acute pneumoconiosis is totally disabling has been struck down. Claimants must prove disability as well as disease.
- Retroactive benefits have been upheld.

The U.S. Department of Labor has appealed the decision in the Elkhorn Mining case to the Supreme Court. Most legal observers feel that, considering the high court's ruling in the National Independent Miners Case, there's a better than even chance the Elkhorn decision will be overruled and that all the presumptions contained in the Black Lung Benefits Act as written by Congress will be reaffirmed.

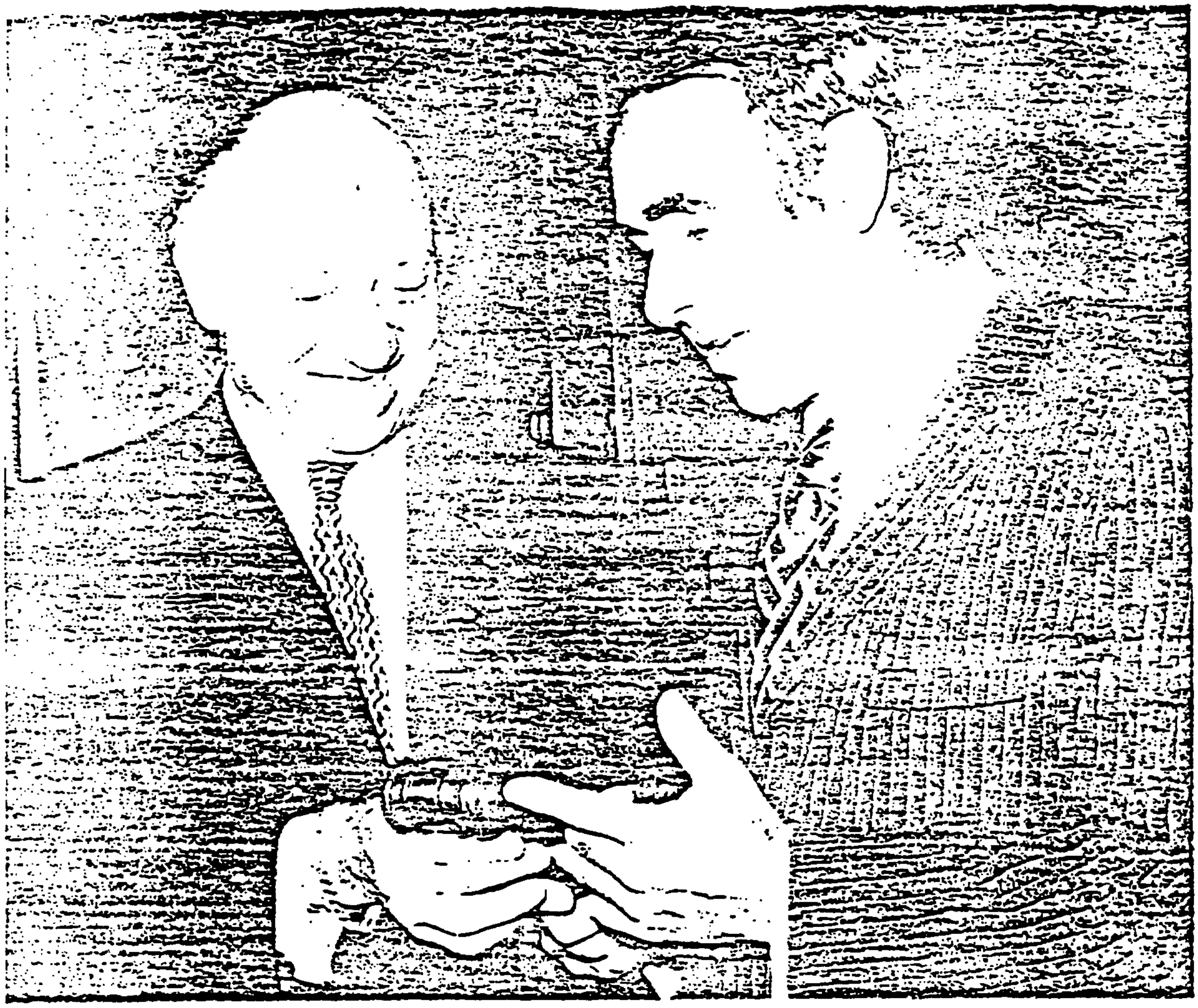
Skyrocketing costs

So far, only the Federal government has had any measurable experience with the cost of black lung claims. That's because all awards allowed before July, 1973, are paid out of the Federal treasury. The mine operators have been paying for less than two years—not long enough to have amassed conclusive cost data.

But, if the Federal government's experience is any yardstick, costs for operators are going through the roof. During the 1969 Congressional deliberations on black lung benefits, estimates on the cost of the program were running at about \$40 million a year. In fact, the cost in the first year alone exceeded \$328 million, and has since jumped to an annual rate of about \$1 billion a year.

The American Mutual Insurance Alliance has sought to put these figures into perspective: "These huge expenditures are for one disease in one relatively small industry. The annual expenditure of \$1 billion may be compared with an expenditure of about \$3 billion for total incurred medical and compensation benefits for all types of injuries and occupational diseases throughout the United States."

Now that the mine operators are responsible for black lung benefits, they're paying through the nose. Last year, the National Council on



Senators Jacob Javits (left) and Harrison Williams confer during a break in committee hearings. They plan to reintroduce legislation to allow suits against States and employers failing to meet Federal standards.

Compensation Insurance estimated operators were paying an average premium of $25.90 per $100 payroll in coal mining States where private carriers write all policies. In States with a competing State fund the premium is lower. In Colorado, for example, the premium was $17 per $100 of payroll.

Keep in mind that, because of the black lung benefits package, coal mining is the only industry paying two sets of premiums: one for occupational disease, a second for traumatic injury. So, add that $25 per $100 to a second substantial accident compensation premium. In Alabama, for example, a mine operator will pay $25.49 per $100 for occupational disease coverage and $8.95 for injury coverage. Total: $34.44 per $100.

There is some indication that the high cost of black lung benefits to the government is the result of its having to do a lot of catch-up, paying off all the claims that accumulated until Congress acted. Now that mine operators are developing an experience with claims, some insurance officials believe the cost of occupational disease insurance will come down.

Mrs. Nancy Snyder, associate director for coal mine workers' compensation, Office of Workers' Compensation, U.S. Department of Labor, noted: "We have right now only a 20-percent approval rate, and I frankly don't see it getting much higher than that in the future. In fact, I think it may decline. Because we have experienced an unfortunately high denial rate, the coal mine operators will probably be paying lower rates for occupational disease coverage."

Our sources at the National Council for Workmen's Compensation note that most States will be taking a second look at their individual rates later this year. It seems likely that most States will lower their rates—some predict by about one half.

Of course, even $12.50 per $100 payroll just for occupational disease coverage is a lot of money. The average payment for all industry is $2 per $100, and that provides both accident and disease coverage.

The lesson

Carl Bagge, president of the National Coal Association, issues this warning to American industry: "Black lung is the first major occupational disease to be treated comprehensively, but black lung is only the tip of the iceberg. Clearly, there are literally millions of workers who are exposed to occupational health hazards and who. in fact, are killed or disabled by those hazards. The inexorable logic which brought black lung compensation to the coal industry must, in time, bring the same sort of coverage to all other industries. Thus, the same questions to which we are now addressing ourselves will be asked by other industries facing staggering occupational disease benefit costs, questions relative to the cost of the program, to eligibility determinations, to retroactivity, to governmental responsibility levels, and all of the areas connected with a complicated program of this type."

Last year Senators Harrison Williams and Jacob Javits introduced a Federal minimum standards workmen's compensation bill that contained presumptions and retroactivity for several occupational diseases. The bill quietly died in committee, but be advised that's not the end of the controversy.

"We'll be reintroducing the Federal standards bill in a revised form this year." Senator William Executive Report: "We p change the enforcement mechanism in deference to the State system so that the Secretary of Labor or the claimant may bring suit in Federal court against a State or employer failing to meet the minimum Federal standards enumerated in the law. But apart from that change the bill won't be all that dissimilar from its predecessor. And, I might add, we're most optimistic concerning its prospects for enactment in this Congressional session."

On the House of Representatives side, Congressman Dominick V. Daniels (D-N.J.) chairman of the Subcommittee on Manpower, Compensation, Safety, and Health, has officially announced: "I intend to introduce appropriate workers' compensation legislation in this session of Congress."

Opponents of Federal minimum standards legislation argue that the States, by improving their com- -sation coverage and benefit have effectively eliminated the for any Federal law. They believe the Ford Administration is committed to States rights, and to holding the line of Federal spending. It's unlikely, in their view, that President Ford would sign a bill infringing on the States and setting up a costly new benefits program.

Proponents of Federal workmen's comp legislation insist that its time has come and that Congress shares this feeling. They attach considerable significance to Senator Williams' remark to an *Occupational Hazards' Executive Report* editor when Williams was asked if considerable anti-recession legislation being funneled through the Senate Labor and Public Welfare Committee might table a workers' compensation standards bill for 1975.

Chairman Williams responded promptly and decisively. "Our committee's resources may be taxed by the legislative demands of the -omy, but, nonetheless, wo compensation standards and -ers' safety and health won't take a back seat. They're matters of considerable priority."

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