SILICOSIS AS AN EMPLOYER PROBLEM

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PLAINTIFF'S EXHIBIT
WH-863

Secretary Perkins has requested me to present the employers' viewpoint of the increasingly troublesome Silicosis problem. I am deeply honored by her confidence and not a little troubled by the magnitude and importance of the assignment. In presenting the employer viewpoint, I do so with full appreciation of the fact that time has not permitted the holding of employer conferences on views and policies on what, after all, is a problem of national scope. Therefore, it is only fair to state that the views expressed by me are not presented as the views of industry as a whole--no one man is in a position to positively state any opinion as official and unanimous for all industry. But there is a well developed body of employer experience and a full understanding of Silicosis as a possible health hazard in certain industries. There is one point, however, which I can state positively as the unanimous opinion of employers in the Nation and that is that this problem is one which is common to both employers and employees and should not be treated as one in which their interests conflict.

The importance of dust as a factor in occupational mortality is well recognized by industry and much of the information we now have in connection therewith is a result of the cooperative effort of industry, the United States Public Health Service and the Bureau of Mines. One of the earliest studies in this country is based on the survey of the granite industry at Barre, Vermont. It was made possible through the efforts of the United States Public Health Service, the manufacturer and the workers. I quote from Page 6 of the official report of the Public Health Service--

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"Fourteen of the granite manufacturers of Barre kindly gave permission to enter their plants and interview their workers and furnished a daily report of absentees for the morbidity study. They also permitted the collection of dust samples in their plants.

"The Granite Workers' Union was very cooperative and many of the members presented themselves for examination and study."

Similarly, in the study of the cement industry, the Public Health Service states that--

"The Public Health Service highly appreciates the excellent cooperation of the cement company, the sound advice and helpful assistance of the superintendent of the plant and the nurse in visiting absentees and maintaining accurate records."

These studies have continued over a period of years, during which time employers have opened their plants and lent their assistance in the study of Calcium Dust, Silica Dust, Metal Dust, Carbon Dust and Vegetable Dust. The most recent of such studies was that of the anthracite industry concluded in 1935. No more convincing evidence of the desire of employer and employee to cooperate in solving this problem could possibly be furnished. In the words of the author who prepared the report--

"The anthracite coal operators and the United Mine Workers of America rendered invaluable assistance throughout the course of the study."

In addition to the assistance which employers have rendered governmental agencies in making their investigations, industry has conducted a tremendous amount of research on its own account.

The insurance companies have been prominent in the study of dust hazards both from the laboratory and operating standpoints. They have maintained large field forces which have made exhaustive dust counts in entire industries to determine the existence of possible hazards.

As new problems have arisen individual companies have called upon the Harvard School of Public Health and Saranac Laboratories to conduct whatever experiments were necessary to discover whether the operation might be deleterious to the health of employees.

Since its inception, the National Safety Council has been interested in occupational diseases. It undertook a study of Silicosis in 1928, the results of which were made available by publication in the American Journal of Hygiene.

The American Standards Association has appointed a special committee who have been active on this problem for the past year and a half. This committee includes representatives of twenty-five organizations and through its subcommittees on fundamentals is giving a great deal of study to the question of toxic limits and other phases of the matter.

Almost every trade association which includes dusty industries has conducted some work on the subject.

The Air Hygiene Foundation of America is now engaged in collecting and coordinating available information concerning pneumoconiosis. The Foundation is composed of approximately a thousand companies and has adopted a program almost identical with that of the Department of Labor as revealed by its committee setup.

As a direct result of this great mass of research, we have been able to design and fabricate mechanical appliances and equipment to such a degree that the existence of a dust hazard is already on its way out.

The current demand for mechanical methods which will prevent Silicosis and other dust diseases has led to an opinion held by some that engineering control of dust is a novel idea. This, however, is contrary to fact.

Historically, the most far reaching program for dust control through engineering means was initiated in the South African gold mines in 1903. At that time, regulations were issued regarding dust prevention in underground mines, modifications of which have been made from time to time as our experience has pointed out new ways and means. This program has been eminently successful, for medical examinations have shown a steady and continuing decline in the Silicosis rate.

We have found that one of the fundamental methods of dust elimination is the substitution of wet for dry processes. Very effective work along this line has been accomplished in the mining industry in the use of wet drills. Similarly, wet grinding has quite generally superseded the old dry processes, batching operations are often performed with materials that are damp to start with or with the addition of water at some stage in the process; mine rooms and passageways are often sprayed with water or some chemical such as salt solution to allay dust during and after blasting; water instead of air is used in cleaning castings. One of the most inexpensive and effective means of dust control that we have found is the isolation of dust producing processes from the rest of the plant. This procedure is used today in almost all sand blast operations, which heretofore have been one of our most serious sources of dust.

It has been our experience that the simple expedient of avoiding "bad practices" in management of factory and mine operations is a time tested preventive of dust diseases. Well supervised mines, for example, schedule their blasting for periods when men are not in the vicinity and do not permit that room to be worked until after the lapse of a specified period. Better managed foundries make it a practise to shakeout in the early morning or at other times when most of the workmen are absent. Many plants

require strict adherence to rules for cleaning and sweeping. They prohibit the blowing off of dusty machinery or clothing with air hose. Sweeping in dusty working rooms is usually done only after working hours and after first sprinkling the floor. Vacuum cleaning either by a portable machine or by a central system has been used in factories and foundries of all descriptions.

We have not been able to eliminate all dust hazards by the comparatively simple procedure outlined above, and in some cases have found it necessary to install exhaust ventilation. By this means we have been able to remove dust laden air from the dust producing process at its point of generation. It is frequently a very expensive installation but in some operations is indispensable.

The principles of exhaust ventilation have been applied by the mining industry very effectively. One of the most outstanding illustrations has been their development of the so-called dust trap on drills, whereby they have been able to reduce dust in dry drilling to a level equal to or less than that attained in wet drilling.

I might go on almost indefinitely in discussing what has been done in industry and what industry proposes to do. I have referred to the subject quite briefly, with the thought in mind that it might be heartening to Madam Secretary if she realized how much had already been done.

The elimination of the dust hazard is inseparably connected with the physical examination of employees. The finest engineering talent is now employed in purifying the air in our plants, but whether or not the hazard has in fact been removed will be finally demonstrated by the fact that the lungs of workmen are not being affected and this can be determined only by an X-ray examination. No effective program of dust elimination can be

inaugurated that does not provide for a medical check-up as an acid test of the effectiveness of the work of the engineers.

The careful employer is also concerned with the fitness of the men whom he employs. So long as the human element remains in our industrial life, we will have some negligent employers, just as we will always have some careless workmen. Society penalizes these individuals by the passage of laws and by awarding compensation to those who have been injured as a consequence, but society certainly does not want the careful employer to suffer, for, if it does, it will have greatly reduced the inducement to be careful. In brief, the employer who has gone to great expense to maintain a safe plant does not want to employ a man whose health has been undermined while in some other employment but whose disability does not occur until some time later with the natural consequence that claim is brought against the employer for whom he was working at the time of disability rather than the employer who caused the disability. We do not believe, however, that when such an examination demonstrates that an individual may have some fibrosis present in his lungs that he should then be either deprived of his means of livelihood or should be placed at other work at a reduced income. We sympathize with the employees' objection to physical examination, when such examination results in their being cast out of employment. We simply point out here the value of a physical examination in connection with the elimination of dust hazards, and we assure our employees that some fair plan will be worked out whereby they will not be caused to suffer.

However well we may do our work, there are now, and in the future will be, some men who become disabled from Silicosis. The manner in

which these men are to be compensated presents a perplexing problem. Within the past two years, various interests have rushed in and secured legislation on the subject without giving sufficient thought to its formulation and in some cases have done more harm than good. In some instances they have failed utterly to make any provision for the creation of medical boards to determine the existence or extent of disability. In others, they have been content to provide for compensation without giving any thought to the question of accrued liability. Our problem is not solved if we simply succeed in passing the buck along to someone else. It is essentially a joint undertaking, and if the insurance companies are to be asked to assist, we must so phrase our laws that they can do so on a basis having some relation to fact and not to be asked to buy a pig in a poke. Some groups believe that no change should be made in the existing order; others are of the opinion that Silicosis should be made compensable in the same manner that traumatic injuries are now compensated under Workmen's Compensation Acts. There is no such thing as unanimity of opinion.

The question of whether Silicosis should be compensable or whether it should remain the subject of common law actions, in those States recognizing a common law cause of action for occupational disease, is squarely before us.

In England and many of her dominions which have had extensive experience with Silicosis and kindred diseases, the disabilities have been made compensable under Occupational Disease Acts. I think it will be agreed that under such acts, the vicious situation with which we are now faced, the filing of thousands of actions for damages by ambulance chasing lawyers would be largely, if not entirely, eliminated.

The shyster lawyer will foment litigation only so long as he will receive a substantial portion of the recovery. As soon as his fee becomes a negligible quantity, then, and then only, will his interest cease. Under many of the better drawn Compensation Acts, legal fees are strictly limited. The elimination of large legal fees is of real benefit to the employee. Under such a plan the injured man or his dependents are those who receive the benefits--not the lawyers and expert witnesses used in the prosecution of the case. This benefit, of course, is also shared by the employer.

Some consideration should also be given to the desirability of eliminating lay juries from cases of this kind. We are not here dealing with the type of injury which the layman can visualize and understand, such as a broken arm or a broken leg, but with a very complex lung condition which is not understood even by the medical profession generally. Much of the evidence in these cases consists in the testimony of medical experts. In many cases you will find a sharp conflict between the plaintiff's experts and those of the defendant. Their testimony will not only be conflicting but will be in such form and couched in such language as to be wholly unintelligible to the jury and often to the Court. That a jury can weigh such testimony and come to a correct conclusion is most improbable.

In compensation cases, on the other hand, the hearing is had before Commissioners or a Medical Board, who in time should become sufficiently familiar with the subject to enable them to arrive at a reasonably correct conclusion, whereas, in jury cases, each case is tried before a new jury who have no information on the subject whatever.

Curiously enough, if a juror were familiar with the subject, he probably would be disqualified to act.

The problem is not solved by simply including Silicosis as an accidental injury under existing Workmen's Compensation Acts or as an occupational disease under acts covering disability arising from this source. It is peculiar unto itself and should be the subject of special handling. Properly drawn compensation laws embracing Silicosis should recognize accrued liability on a basis that will not cripple industry and thus cause unemployment, should provide for periodic physical examinations in the interest of workers, should establish adequate medical boards for the determination of medical questions, should make provisions against stale claims, and should provide for assignment of partially disabled workers to more fitting jobs.

It should be borne in mind that in the interests of all concerned the burden of cost must be kept below that point which will cripple any industry, thereby crippling the community in which such industry is located because of the resulting unemployment.

Industry appreciates the fact that the medical aspect of the Silicosis problem is a very intricate one and that, unfortunately, few doctors are capable of making a correct diagnosis. Through ignorance and sensational publicity, the popular belief is rapidly growing that to inhale silica is to have Silicosis. The question of disability seems to be ignored entirely, whereas it is really the meat of the question.

I think it would be helpful if our medical experts could furnish us with some usable information as to the relationship between Silicosis and disability and give us some yardstick for measuring the extent of

disability where it exists. I may be asking the impossible, and it may require considerable research at no small expense to determine finally that it is impossible, but I do believe that it is worth both the time and the money. If we talked more about disability and less about Silicosis, we would be more accurately expressing our ideas.

There can be no question that the Silicosis problem should be and is our first concern. Its existence has again brought to our attention a situation which, we believe, has become so intermingled with the many ramifications of the dust problem that employers and employees should join in seeking to eliminate it. I refer to our mutual malady--the shyster lawyer and quack doctor, who have been with us always, but whom we hope we may some day exterminate.

Let there be no misunderstanding at this point. I do not mean to imply that there are not bona fide cases of Silicosis in which plaintiffs have been represented by lawyers of ability and integrity, but the great majority of cases which have come to my attention have been without merit. I might mention in passing that one old darky, eighty-four years old, sued a company for whom he had not worked for thirty-nine years, claiming that his life had been shortened by Silicosis. As a matter of fact, I have seen few men of his age in as fine physical condition. The incident in itself is humorous, but the picture it has helped to paint is far from funny. I wonder if we all realize how far reaching is the effect of racketeering lawyers. It might be well to pause for a moment and analyze the situation. In so doing, I will confine myself to facts which I have actually witnessed and not to conjecture.

When the present epidemic of litigation swept the country, many employers and most employees had never heard of Silicosis. The employee's

first contact with the disease was not ordinarily occasioned by illness or disability, but by an interview with some "runner" drumming up business for his lawyer boss. Generally speaking, it did not require very much persuading to convince large groups of able-bodied men with good jobs that they were afflicted with an insidious lurking disease and that to continue in their present employment meant hastening a premature death, the warrant for which had already been signed. The successful "runner" is a very glib individual. He dangles golden treasures before his prospective client in the form of promises of enormous verdicts. The upshot of the matter is that the employee signs a contract whereby he authorizes a so-called lawyer, whom he has never seen, to file a suit in his behalf, in return for which he agrees to pay one-half of whatever amount he may recover, and from his remaining share agrees to pay all of the costs incident to the litigation. I recall one instance quite vividly. A perfectly healthy individual, who had been on the same job for seventeen years, recovered a judgment of $6,500.00 of which he, himself, received only $1,500.00.

After the employee has signed his contract, he, of course, quits his job. Then the long wait begins. Comparatively few of these cases are tried and those that are may consume years before final disposition, during which time the man and his family have no means of support. Some cases <u>are</u> tried and some men who <u>should</u> recover, receive verdicts, but the lion's share does not go to the man but to his lawyer and expert witnesses. Many receive verdicts to which they are not entitled and, in so doing, share with their lawyers in taking bread and butter from a deserving brother.

In by far the majority of cases either insignificant settlements are made or nothing at all is done, but in <u>every</u> case the employee has traded

his means of livelihood for a mess of pottage and the employer has lost a valued workman. Therein lies a tragedy equally as great from a social viewpoint as the poor unfortunate who has Silicosis and one which is a hundred times more widespread. I have no recriminations for the employee who succumbs to the runner's promise of riches. He is easy prey and many times is convinced in his own mind that he is a condemned man and probably will go through life with that fear ever before him, whereas if the truth were known, he would have been a useful, happy citizen who would have lived his normal expectancy.

The silicotic is rare as compared to the legion of men who have been driven from their jobs by shysters, and while we are dealing with the Silicosis problem, let us not overlook the collateral social problem which has arisen and let us try to find some way of protecting our employees from the parasites I refer to.

To repeat and emphasize a thought previously expressed herein, a consideration of the many aspects of the Silicosis problem clearly indicates that the interests therein of employees, employers and the general public proceed along parallel lines. The employers of the country can be counted upon to cooperate and whole-heartedly work with the Labor Department, with the Public Health Service, with The Bureau of Mines, with other pertinent public authorities, and with labor itself, to reach a solution of this problem along sane, constructive and effective lines.

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