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tutions or a loss caused by the purchase of a fraudulent security. This policy contains conditions and definitions like or similar to those already described.

My concluding thought is that I have asked more questions than I

have given answers. But, although I may regret that I am not in the happy position of being able to give all the answers I am at least performing my function of provoking the learned comments of you who are in attendance at this discussion.

## ROUND TABLE VI

### DUST DISEASE CASES—ESSENTIALS OF COMPENSABILITY—ELEMENTS OF DEFENSE

BY

THOMAS C. ANGERSTEIN

CHICAGO, ILLINOIS

We had the privilege and pleasure of discussing at the American Bar Association meeting in Boston in 1936, the defense of suits at law for damages in occupational disease cases--which might well have been called dust disease cases in that the occupational diseases generally alleged were pneumoconiosis, silicosis, silico-tuberculosis, and diseases of the lungs and respiratory system, due to the inhalation of dusts--usually silica dust.

There had been in Illinois the Occupational Diseases Act of 1911, which had been enacted at the same session of the legislature as was its first compensation act, which provided an action at law for damages, but it was not until 1933 that there were two decisions of the Supreme Court which affirmed judgments on jury verdicts for damages and which also held that statutory provisions were not unconstitutional on the grounds presented.<sup>1</sup> There had then followed a sudden and rapidly increasing "epidemic" of law-suits for damages. Some cases had been tried with large jury verdicts resulting, and many such cases were approaching trial. A situation was rapidly developing that might well have been destructive of industry and employment throughout the state in those depression years.

We had arrived at the conclusion that the statutory provisions of the

1911 act, as well as certain other statutory provisions, were unconstitutional on grounds other than those previously presented to the supreme court, and, also, that there was no common law right of action in Illinois for damages for injuries to the health, disabilities or death from alleged occupational diseases.

We became associated in the defense of certain cases that had been set for trial, and withdrew pleadings that had been filed, and then presented constitutional questions, and such cases became known as "test cases" and proceedings in all other pending cases in both state and federal courts were stayed by the courts until those test cases could finally be determined. It was held that the statutory provisions upon which such cases were based were unconstitutional, that there was no common law right of action for alleged occupational diseases in Illinois and that the federal courts would follow the rule declared by the Supreme Court of Illinois. As a result of those decisions all other pending suits were then dismissed.<sup>2</sup>

<sup>1</sup>See *Boshuizen v. Thompson & Taylor Co.*, 360 Ill. 160; *Parks v. Libby-Owens-Ford Glass Co.*, 360 Ill. 130; *Sylvester v. Buda Co.*, 281 Ill. App. 139; *McCreery v. Libby-Owens-Ford Glass Co.*, 363 Ill. 321, and *McGuire v. Sherwin-Williams Co.*, 87 F. (2d) 112; *Gestautz v. American Manganese Steel Co.*, 87 F. (2d) 1005; *Gestautz v. American Manganese*

<sup>2</sup>*First National Bank of Ottawa, Admr. v. Wedron Silica Co.*, 351 Ill. 560; *Madison v. Wedron Silica Co.*, 352 Ill. 60.

Incidentally, practically all plaintiffs returned to employment as soon as jobs were available.

In some other states, at that time, there was litigation for damages for alleged dust diseases, and the general subject and particularly the then recent Illinois decisions above referred to, were of very great general interest and importance and they were then extensively reviewed and discussed.

In some other states, at that time, compensation had been provided for occupational diseases either by amendment of compensation acts or by separate acts or because of compensation acts which provided compensation for injuries or personal injuries or death, irrespective of whether such injuries were accidentally sustained.

In Illinois, largely because of the litigation referred to, and the decisions that there was then no statutory or common law right of action for damages for alleged occupational diseases, representatives of employees and of employers agreed upon an occupational diseases bill which was enacted and which became effective October 1, 1936.

At the present time the states generally have provided compensation for injuries or disabilities or death due to occupational diseases and dust disease cases have become problems under compensation. The matter of suits at law for damages between employer and employee for alleged occupational diseases, just as in cases of accidental injuries or death, has become one largely of historical interest except that under certain federal acts, the federal government has maintained the old common law system of actions for damages, which has universally been condemned by all of the states as being economically, morally and legally unsound and detrimental to the public interest.

The statutory provisions of differ-

ent states for providing compensation for injuries or disabilities or death from occupational diseases may vary greatly but the fundamental and scientific facts as to dust disease cases, the essentials of compensability and elements of defense, are and should be of common and general importance and application. As we shall later see, however, the present relative importance of such cases also varies greatly in different states and in some states, depending upon conditions later considered, it is gratifying to know that they no longer are serious problems.

The providing of compensation for disabilities or death resulting from occupational diseases arising out of and in the course of the employment, whether by amendment of previously existing compensation acts to make them applicable to injuries or death without limitation to accidental injuries or death, or by enactment of occupational diseases acts as separate acts, or by construction of provisions in compensation acts providing compensation for injuries or death, has been essentially the extension to disabilities or death resulting from occupational diseases arising out of and in the course of the employment, of the rights, remedies and procedure that had been applicable under compensation acts to accidental injuries or death arising out of and in the course of the employment. The fundamental and beneficent principles and purposes of compensation for accidental injuries or death should be equally applicable to disabilities resulting from occupational diseases.

When all of the essential elements of compensability under whatever act involved are present, there is no question but that all reasonable and necessary medical services should be promptly provided and that compensation should be paid in full accordance with the provisions of the act, in order that there may be a full and immediate compliance with the beneficent purposes and provisions of the particular act.

In cases where compensation is claimed for disablement or death alleged to be due to dust diseases or other alleged occupational diseases, but in which all of the essentials of compensability are not present, then it becomes necessary to consider various elements of defense and there then obviously are elements of defense that are proper and upon which reliance should be placed.

The beneficent purposes of compensation for disabilities or death from occupational diseases are not achieved or realized, neither are the interests of employees generally best served, nor is the public welfare benefited by imposing upon the consuming public, which ultimately pays all compensation costs, the burden of expense attendant upon compensation for disabilities or death not proximately caused by occupational diseases but which are due to ordinary diseases of life. There have been many injustices to employees generally by erroneous views and erroneous decisions in dust disease cases and particularly in cases of alleged or actual silicosis. The general welfare is not benefited by the unwarranted distortion or extension of statutory provisions under the guise or cloak of so-called liberal construction either by industrial boards or commissions or by courts. If existing acts are unsatisfactory or insufficient, orderly procedure requires the remedy should be by legislative enactment. Therefore, the defense of claims not fairly within the scope or purview of the law under which they are brought, is of public interest and actually essential to the proper administration of the Occupational Diseases Act.

In the voluntary observance of statutory provisions by employers and employees or their representatives, and in the administration of such provisions by the commissions or courts, the cases that generally and particularly, at least for certain periods of time, have presented the greatest difficulties have been what are generally

termed "dust disease" cases. These are sometimes generally described as pneumoconioses and more particularly as silicosis and asbestosis, but principally silicosis cases.

In considering dust disease cases there are certain underlying facts and circumstances which actual practice and experience have proved to be fundamentally essential not only to a consideration of our subject but also to a proper solution of the problems of dust disease cases.

Inasmuch as occupational diseases acts are essentially the application of the principles and purposes, rights, remedies and procedure of compensation acts, which had been in operation in most states for many years prior to the enactment of occupational disease legislation, it might seem that there should be no particular difficulties or problems in operating under such acts or in their administration by commissions or courts, but in actual practice and operation they have involved many difficulties, not generally experienced under compensation acts.

Probably the outstanding reason for the principal difficulties or problems under occupational diseases acts—and particularly as to so-called dust disease cases—as contrasted with compensation acts has been that there was a general common knowledge as to accidental injuries or death by employers and employees and their representatives as well as by the medical and legal professions and also by those having to do with the administration of compensation acts, that did not exist as to occupational diseases generally and as to so-called dust disease cases in particular when such occupational disease cases first came under compensation. It may here be stated, for later explanation that the solution of the problems of occupational diseases and especially the so-called dust disease cases, is directly dependent upon an accurate knowledge regarding them.

The experience in various states

such as in Wisconsin and later in Illinois and in other states that have approached the problem fairly and intelligently, is conclusive proof of the foregoing statement.

There was as to accidental injuries or death, common law background and precedents, and compensation acts were essentially a substitution of new rights, remedies and procedure instead of the old common law system of suits for damages. An accidental injury was a definite occurrence at a definite time and place, and there generally was definite objective evidence. Disabilities and death from certain diseases were held to be compensable because they came within the definition of accident—such as anthrax, acute arsenical poisoning, typhoid, meningitis etc. Generally, however, occupational diseases such as lead poisoning, silicosis etc., develop over long periods of time and were not accidental injuries and were not compensable under compensation acts. Occupational diseases were strangers to common law and they were without common law background or precedents. Generally in any particular state at the time occupational diseases acts became effective or dust disease cases became serious problems, there was little actual knowledge regarding them by the medical and legal professions or by commissions and courts having to do with the administration of such acts.

In discussing the subject generally and without reference to the act in any particular state, without reference to the period of time such act may have been in operation and without reference to the general knowledge and experience of employers and employees and of the medical and legal professions and the administrative body in any particular state, there necessarily must be considered generally and principally the authoritative and established medical and scientific facts relative to dusts, their effect, if any, the diagnosis of dust diseases and the evaluating of dis-

abilities, if any. Individual viewpoints quite naturally are largely influenced by a number of factors including the provisions of the act of one's own state; upon the period of time such act has been in operation, upon the knowledge and experience with occupational diseases and of the authoritative literature regarding them by employers and employees and their representatives; the knowledge and experience of the medical and legal professions, and upon the knowledge and administration of the tribunal of the particular state charged with administering the law.

For illustration and without any reflection upon the accomplishments in any other state, with most of which we are not particularly familiar, in the State of Wisconsin and the State of Illinois, with which we are familiar, dust disease cases, the essentials of compensability and elements of defense, are no longer serious problems, and dust disease cases are definitely on the wane, although for a number of years they were very serious problems.

As perhaps best illustrating the misunderstandings of employers and employees, the difficulties and problems confronting the medical and legal professions and an industrial commission, when occupational dust disease cases first became compensable, and of the constructive procedure that may be followed to secure satisfactory understanding, administration and solution of the silicosis dust disease problem, we have often referred to "The Employability of the Silicotic" presented June 3, 1933, by Votta Wraetz, chairman of the Industrial Commission of Wisconsin, at the twenty-third annual meeting of Industrial Physicians and Surgeons, in Chicago.<sup>1</sup>

In Illinois, beginning October 1, 1936, when its present Occupational Diseases Act became effective, dust disease cases and particularly silico-

sis, the control of exposures, the diagnosis of silicosis and the evaluating of disability, if any, were essentially new subjects which were but little understood not only by employers and employees and their representatives and by the general public, but by state departments of labor, public health and factory inspection, and by the medical and legal professions, and by the Industrial Commission. There had, however, developed authoritative, scientific and medical literature regarding dust exposures, dust diseases, and particularly silicosis. The present Industrial Commission of Illinois under the chairmanship of Mr. B. Jay Knight, who is an able and experienced lawyer, has made an extensive study of the authoritative literature, and dust disease cases are no longer a particular problem. There may be medical testimony for illustration, that increased linear or peribronchial markings, or hilum shadows, etc., are diagnostic of silicosis and such testimony, coupled with subjective complaints to one unfamiliar with authoritative records, might be considered as sufficient basis for an award of permanent total disability, however, the Illinois Industrial Commission as presently constituted requires proof in accordance with established medical and scientific facts because the commission has made a careful study of the subject matter.

When speaking of dust disease cases, essentials of compensability, elements of defense, consideration is given only to the diseases of silicosis and asbestosis. The only dusts that may cause material fibrosis of the lungs and material impairment of respiratory function, occupational diseases and disablement, are silica dust and asbestos dust. What is termed "free silica dust" ( $\text{SiO}_2$ ) which is silica in its uncombined form as distinguished from silicates, is the only dust that can produce silicosis or any material lung fibrosis with the exception of asbestos dust, which is a magnesium silicate and which may pro-

duce a fibrosis that is characteristic only of asbestos dust and is not a silicosis. None of the inorganic dusts except lead, cadmium, beryllium, etc., which may have a toxic effect, causes any material fibrosis, impairment of respiratory function, disablement or occupational disease. Other dusts such as iron, coal, carbonophum, cement, gypsum etc., do not produce silicosis or any material lung fibrosis or pathology. The hardness or sharpness or so-called abrasiveness of dust particles that may get into the lungs do not cause any material fibrosis or disease or pathology or any increased susceptibility to pulmonary tuberculosis.

Experimentation over many years and under heavy exposures, periodic examinations and also post mortem examinations, have clearly established that such dusts as carborundum, silicon carbide, aluminum oxide, artificial abrasives extensively used in industry, iron and metal particles and even diamond dust, have not produced any significant lung tissue reaction or caused any increased susceptibility to tuberculosis. Likewise calcium carbonate, marble, gypsum, cement or tin oxide, and all dusts other than free silica and asbestos, have either been absorbent or inert, and have not produced material fibrosis, impairment of respiratory function, occupational disease or disablement, and, it cannot be said that pulmonary tuberculosis is ineffectual thereto.

The terms siderosis and anthracosis, etc., are frequently seen, but siderosis merely means iron particles in the lungs which are inert and is a benign pneumoconiosis, and, anthracosis merely means coal or carbon particles in the lung which are also inert, and is merely a pigmentation of the lungs. There may be silica dust in association with iron particles or silica dust in connection with coal dust, as in the anthracite fields, but then the correct terminology is "sidero-silicosis" or "anthracosilicosis" both of

<sup>1</sup> (July 1938) INDUSTRIAL MEDICINE

which are demonstrable on X-ray and which cause fibrosis, occupational disease and perhaps disability, but it is the silica dust and not the iron or the coal dust that produces the fibrosis and disease.

It is fundamentally essential that there be a correct and general understanding of the effects, if any, of various dusts upon the lungs and of X-ray manifestations or interpretations, and, that there be correct definition and classification as determined by the latest authoritative, scientific and medical investigations, reports and literature which are recognized as authoritative by those who have devoted many years to the problem. In evaluating X-ray findings and interpretations as related to disabilities, if any, due regard must be given to the results of actual experience in the general and periodic examinations over many years of large numbers of men in industries where there are silica and other dust exposures, as well as to incidental findings of chest X-rays, of men in such industries, taken for other purposes and not merely to the subjective complaints of the comparatively few men who have silicosis and dust disease cases pending, and whose testimony is given at hearings, and whose medical testimony is that of physicians who have examined for the purpose of such testimony after such cases were pending, and who associate subjective complaints then made with X-ray appearances but who have never had any actual experience in the general and periodic examinations and X-rays of the men in industry, or, who are not familiar with authoritative medical and scientific literature on those subjects.

The effect of various dusts upon the lungs and the X-ray appearances, if any, and the proper interpretation thereof have been authoritatively determined by many years of experimentation with silica and other dusts and by investigations of various industries including examinations of

men in such industries and by general and periodic examinations of men over many years in practically all of the so-called dusty trades. In many instances X-ray appearances have been checked with post mortem findings where death occurred from various causes. There has often been great difficulty and much confusion in the consideration and determination of dust disease cases because of lack of uniformity or common understanding of terms in some of the earlier literature and reports, and in the descriptions of X-ray appearances, and in the testimony of medical witnesses who, regardless of high qualifications as physicians and surgeons, have not made any special study of or had any special experience with dust disease cases.

The term "pneumoconiosis" has often been used as meaning an occupational disease or as descriptive of X-ray appearances and even as being synonymous with fibrosis or silicosis. Pneumoconiosis—literally, and as recently defined by Dr. O. A. Sander, whose definition has been accepted and quoted generally in recent literature, merely means "dust added to the lungs." Pneumoconiosis does not imply or signify any material fibrosis of the lungs or any impairment of respiratory function or any disease or pathological process, or any disease or disability. It is not synonymous with fibrosis or silicosis, with anthracosis, with anthracosilicosis or siderosilicosis or asbestosis. For illustration, anthracosis, a benign pneumoconiosis, is merely a term used by pathologists to designate a state of pigmentation without any material fibrosis, caused by coal or carbon, or other inert particles, or even by coal smoke etc., as found in the lungs of city dwellers. Siderosis, a benign pneumoconiosis is merely a term applied to the deposits of iron particles in the lungs, which are inert and harmless. It is found among arm-welders or grinders of iron castings, etc., where artificial abrasive grinding wheels are used.

Where coal mining is done in the anthracite regions where there is silica-bearing rock, and iron mining is done where there are material exposures to silica dust, fibrosis may develop, but the proper terms applicable in such cases are anthracosilicosis and siderosilicosis, because the fibrosis is due to the silica dust and not to iron or coal particles or dusts.

The problem of dust disease cases and particularly that of silicosis, in so far as essentials of compensability are concerned, is determined by administrative bodies, and, the elements of defense before administrative bodies in any particular state has been dependent very largely upon the general knowledge of the authoritative literature and the experience of the medical and legal professions and of the administrative bodies.

The problems of dust disease cases and particularly those of silicosis, including knowledge of the hazard and control of exposures, the definition and diagnosis of silicosis, the question of disablement, if any, where silicosis exists with and without infection, and the employability of silicotics, are subjects primarily for qualified and experienced medical men, pathologists, roentgenologists and industrial hygienists, who have devoted many years and even a lifetime to those particular fields, and who have studied and correlated the work and actual experience of others and who have contributed to and have knowledge of the authoritative, scientific, medical literature and reports. Actual practical experience in the general and periodic examinations of men in industries having silica and other dust exposures over a number of years, and knowledge of similar examinations and findings of others in similar industries, have been and are of very great general importance in evaluating disablement, if any, in establishing that silicotics are employable and in providing accurate and valuable information with reference to silicosis, its prognosis, and also as to the incidence of tuberculosis among workers

where exposures have been controlled within safety standards.

Reports of investigations of various industries by the United States Public Health Service and by the United States Department of Labor and Bureau of Mines; the reports of the National Silicosis Conference; reports of investigations of industries and investigations and experimental work by the Saranac Laboratories, and by Dr. Letroy V. Gaudner and his associates; investigations and reports of the various state commissions and state departments; the work and publications of Dr. A. L. Lanza, Dr. William S. McGann, Dr. Eugene G. Pendergless, Dr. Henry K. Poughast, Dr. O. A. Sander, Dr. L. E. Hamlin, Dr. Norbert Enzer, and other men of high qualification and extensive experience; have been of tremendous importance in providing authoritative information.

A bibliography of authoritative literature and reports, to which we are greatly indebted for our expressed opinions, is attached.

It should be stated that the general subject of occupational diseases is a continually expanding one because of the ever-continuing industrial progress and the development of new industries and processes. Continued studies and investigations and the carrying on of such important work as is being done by the Industrial Hygiene Foundation in discovering and evaluating industrial hazards, is of the greatest importance because the knowledge of hazards and the control of exposures is fundamentally essential to the solution of occupational diseases and in the proper application of compensation.

We shall now more specifically consider the essentials of compensability in such dust disease cases under the following headings:

#### (1) EXPOSURE TO THE HAZARDS OF THE DISEASE

There must be exposure to the hazard of incurring the occupational dis-

case in the employment of the employer sought to be charged with compensation. Some acts, as the Illinois act, specifically defines what shall constitute an exposure, but such exposure does not of itself impose a liability.

Silica is one of the most common and is the most abundant constituent of the minerals and rocks that make up the crust of the earth, and may be in the form of free silica or it may be combined as a silicate. Ordinary sand is a most common form of free silica, and quartz and other silica-bearing rock are further illustrations. There is no particular difficulty in determining in which occupation there may be exposure to silica dust. Silica particles must be of a size of from 1 to 10 microns in order to cause impairment of lung function. (A micron is 1/25,000 of an inch.) Safety standards, below which it is assumed that an employee may work a lifetime without incurring silicosis, have been stated as 5,000,000 particles of such silica dust per cubic foot of air at the working level. The formula, according to the technique described by U.S.P.H.S. in Report No. 1520, from Public Health Reports, March 18, 1932, was to multiply the percentage of free silica by the total particle dust count, and if the result was under 5 million, the condition may be considered permissible.

The measuring of dust exposures within such limits is of greatest importance to employers and employees, because under such limits the probabilities are that silicosis will never develop and any existing cases of simple silicosis probably will never progress to disablement. However, in a controlled case, as an element of defense, it is proved that the actual exposure was within such recognized safety limits or that the exposure did not even exceed that to which the public in any large city is exposed, does not as a matter of law constitute a defense when a court is reviewing an award for compensation, particularly

where there is other evidence to sustain the award.<sup>1</sup>

## (2) THE INCURRING OF THE ALLEGED DISEASE

The occupational disease must have been incurred or there must have been a material progression of an existing disease in the employment of the employer sought to be charged with compensation.

The diagnosis of silicosis and the determination of the weight to be given medical testimony as to X-ray appearances, have presented many problems in most states for at least a considerable period of time after occupational diseases became compensable and dust diseases cases were presented. The medical and legal professions and the administrative body were then generally without actual knowledge of and experience with the diagnosis of silicosis. There has been much confusion resulting from some of the earlier literature and reports, and because of the lack of common understanding of, or uniformity of descriptions of X-ray appearances. Increased linear or peri-bronchial markings and hilar shadows have often been diagnosed as silicosis. There have been descriptions of ante-primary or pre-nodular stages or appearances of silicosis. Such X-ray appearances are not diagnostic of or pathognomonic of silicosis, and may be caused by many other conditions, and are generally within the classification of "Healthy Chest and Annexa." Even though they may have been caused by silica dust they are not diagnostic of silicosis, and certainly they do not constitute a basis for any disability. The authoritative

<sup>1</sup> See Hathorn-Walker Refractories Co. v. Tunks, 39 N.E. (2d) 791, (Ind.), Hathorn-Walker Refractories Co. v. Herman, 51 N.E. (2d) 398 (Ind.); Inland Steel Co. v. Volours, 77 N.E. (2d) 126, (Ind.); National Malleable & Steel Castings Co. v. Industrial Comm., 377 Ill. 160.

definitions of silicosis include characteristic X-ray appearances of discrete nodulations or shadows not exceeding 6 mm in diameter, tending to uniformity in size, density and bilateral distribution, and without such X-ray appearances, a clinical diagnosis of silicosis may not be made. It is entirely clear from the late and most authoritative reports that a clinical diagnosis of silicosis can be made only where there is such characteristic X-ray appearances; that a diagnosis of so-called ante-primary or pre-nodular silicosis cannot be made from an X-ray and that such increased markings, previously referred to, cannot establish a diagnosis of silicosis.

## (3) EVALUATING THE DISABILITY RESULTING, IF ANY

There must be a disablement as a result of silicosis incurred, or a material increase of pre-existing silicosis to disablement in the employment of the employer sought to be charged with compensation.

In order for a case of silicosis to be compensable, there must also be a compensable disablement, or death, resulting therefrom. Some acts, such as that of Illinois and of Indiana, specifically define disablement in substance, as an event of becoming disabled from earning full wages at the work in which the employee was engaged, or equal wages in other suitable employment. There has generally been during the early years of the operation of any act, a great deal of misunderstanding as to the effect—from the standpoint of present or future disablement of a diagnosable silicosis, which is properly termed a simple silicosis, that is, not complicated by infection, and as to the employability of those having simple silicosis, that has resulted in many injustices to employees and in many unjust awards.

Many employees have been rejected from employment or refused employment after pre-employment

X-ray examinations, and many employers having only a simple silicosis after twenty or more years of employment at a skilled trade and at a high rate of wage, have quit such employment on the advice of physicians who had had no particular experience with, or knowledge of silicosis.

There has been much confusion resulting from early reports and literature and from previous lack of common understanding of and uniformity of description of X-ray appearances. There have been descriptions of ante-primary and of pre-nodular stages of silicosis and also of so-called first, second and third degree silicosis, which were never satisfactory from the standpoint of evaluating any disablement.

It is well to state and to understand that the earlier investigations of many industries and of the so-called dusty trades, were made when the silicosis hazard was but little understood by employers and employees and even by state departments and the medical profession, and silica exposures had not been controlled within safety standards; that many employees examined had worked for years subject to tremendous exposures of silica dust, and the health conditions and the incidence and development of silicosis were such as had resulted from such exposures. There had been a view that anyone with any degree or stage of silicosis was doomed; that silicosis was progressive even after termination of exposure and that at least 75 per cent of those having silicosis later died of silico-tuberculosis.

There have now been for a number of years, in some states at least, many industries that have controlled silica exposures well within safety limits, and there have been periodic examinations over a number of years, of men generally in such industries, and the findings and results and conclusions have differed greatly from the earlier investigations.

It has now been definitely estab-

ished by periodic examinations of men generally in industries and by other investigations that simple silicosis, diagnosable by characteristic X-ray findings, without infection, does not generally produce any physical conditions observable upon physical examination, and seldom produces any material disablement. In investigations made in the United States, seldom has silicosis without pulmonary infection been found to produce any serious disability.

A classification of simple silicosis as being not materially disabling, and of silicosis complicated by infection, commonly called pulmonary tuberculosis, which may be and generally is disabling, has been recommended.

The dust disease of asbestosis cannot be considered within the limits of this article and reference is made to the bibliography for information relative to asbestosis.

The disease is caused only by the inhalation of asbestos dust and there are characteristic X-ray appearances essential to diagnosis. It may be here stated that as of the present time the available evidence or information at least tends to establish that pulmonary tuberculosis is not an incident of asbestosis, and also that, while the hazard of incurring silicosis is increased by the fineness of the silica dust, the reverse seems to be the situation with reference to asbestos dust, in that the finer the particles of asbestos dust, the less harmful they appear to be.

#### ELEMENTS OF DEFENSE

The elements of defense, if any, in any particular case, may well be determined from a consideration of whether or not the essentials of compensability are present. Where any or all of the essentials of compensability are not present, then the elements of defense are clearly indicated. Whether such essentials are present are questions of fact. The defense should present the best available evi-

dence to assist the administrative body to a proper determination of the issues. The evidence to be presented in any particular case, in any particular state must obviously be governed by conditions within that state such as the period of time the act has been in operation, the general knowledge and experience of the administrative body, the knowledge of the authoritative literature on the subject, the character of testimony that has been heard in previous cases, and the character of testimony that may be available.

We conclude in again re-stating in substance, that knowledge of the hazard of silicosis, or of other diseases, and of the control of exposures within established safety standards; knowledge as to the proper diagnosis of silicosis and of evaluating the effect of silicosis and of the employability of silicotics have invariably been of great importance in the solution of the silicosis problem. With the control of exposures within safety limits, new cases of silicosis have not developed and in many of those having silicosis there has not been progression to disablement, and there has been no greater incidence of pulmonary tuberculosis than among the general public. After there has been an understanding of the proper diagnosis of silicosis and there has been an elimination of erroneous diagnoses and with the recognition of the fact that those having only a simple silicosis after years of exposure, are employable, there are no longer unjust rejections from employment, and the filing of claims and the awarding of compensation, except where the essentials of compensability are in fact present, cease to be a serious problem.

#### BIBLIOGRAPHY

ETIOLOGY OF PNEUMOCOCONIOSIS, by Dr. LeRoy U. Gardner, *J. of Am. Med. Assn.*, Nov. 19, 1938.

A MINERALOGIC STUDY OF SILICOSIS, by R. S. Emmons and Ray Wilcox, covering experimental work at the University of Wisconsin.

CHEMICAL AND PATHOLOGIC STUDY OF PNEUMOCOCONIOSIS, by Drs. Henry Sweeney, Julius D. Porsche and Jesse Douglas.

REPORT ON SECOND SYMPOSIUM ON SILICOSIS, Saranac Lake, June 3, 1935.

STUDY ON THE INDUSTRIAL DUST PROBLEM, DUST INHALATION AND ITS RELATION TO INDUSTRIAL TUBERCULOSIS, Publication by the U. S. Pub. Health Service.

THE HEALTH OF WORKERS IN INDUSTRIAL TRADES—II EXPOSURE TO SILICA DUST, Pub. Health Bull. No. 187, by U. S. Public Health Service.

THE EMPLOYABILITY OF THE SILICOTIC, by Voyta Wnabetz, Chairman of the Wisconsin Industrial Commission, (July 1938) *Industrial Medicine*.

NATIONAL SILICOSIS CONFERENCE REPORT ON MEDICAL CONTROL, Bull. No. 21, Part 1, U. S. Dept. of Labor.

NATIONAL SILICOSIS CONFERENCE REPORT, Bull. No. 21, Part 3, "A Practical Discussion of the Silicosis Problem"—O. A. Sander, M.D. (p. 47).

INDUSTRY, TUBERCULOSIS, SILICOSIS—COMPENSATION, Prepared by Committee on Tuberculosis in Industry of the National Tuberculosis Assn. and American Trudeau Society, LeRoy U. Gardner, M.D., Editor, published by the National Tuberculosis Assn. 1945.

THE RESPIRATORY HAZARDS OF ELECTRIC ARC WELDING, by O. A. Sander, M.D., in *Industry, Tuberculosis, Silicosis—Compensation*.

REVIEW OF SILICOSIS FOR THE INDUSTRIAL HYGIENIST AND MEDICAL PRACTITIONER, by Dr. L. E. Hamlin, Medical Director American Brake Shoe Company, in *Industry, Tuberculosis, Silicosis—Compensation*.

BENIGN PNEUMOCOCONIOSIS DUE TO METAL FUMES AND DUST, by Dr. O. A. Sander, in *Am. J. of Roent-*

genology and Radium Therapy, Vol. LVIII, No. 3, Sept. 1947.

BENIGN PNEUMOCOCONIOSIS, by Eugene P. Pendergrass, M.D., and Simon S. Leopold, M.D., in *J. of Am. Med. Assn.* Vol. 127, No. 12.

OCCUPATIONAL MEDICINE AND INDUSTRIAL HYGIENE, by Dr. Rutherford T. Johnson, 1948.

BENIGN PNEUMOCOCONIOSIS DUE TO TIN OXIDE, by Eugene P. Pendergrass and Arthur W. Pryde, *J. of Industrial Toxicology*, Vol. 30, No. 2, March, 1948.

INDUSTRY, TUBERCULOSIS, SILICOSIS—COMPENSATION, DIAGNOSIS AND PROGNOSIS, by Dr. LeRoy U. Gardner, *PATHOLOGICAL ANATOMY*, by Dr. LeRoy U. Gardner, Saranac Lake Symposium Report.

THE ETIOLOGY OF SILICOSIS, by Donald C. Cummings, Saranac Lake Symposium Report.

RESPIRATORY IRRITANTS—DUSTS, FUMES AND GASES, by Dr. LeRoy U. Gardner, *Tuberculosis in Industry*.

HEALTH OF ARC WELDERS IN STEEL SHIP CONSTRUCTION, Report by U. S. Pub. Health Service, 1944.

FOURTH SARANAC LABORATORY SYMPOSIUM ON SILICOSIS, TUBERCULOSIS IN INDUSTRY, and, BIBLIOGRAPHY CITED.

CLINICAL PICTURE X-RAY FINDING OF SILICOSIS IN THE LUNGS, INDUSTRY, by O. A. Sander, M.D., Fourth Saranac Laboratory Symposium on Silicosis, 1941.

THE PATHOLOGY AND ROENTGENOGRAPHIC MANIFESTATIONS OF PNEUMOCOCONIOSIS, by Dr. LeRoy U. Gardner, *J. of Am. Med. Assn.* Vol. 114, No. 7.

REVIEW OF LITERATURE ON EFFECTS OF BREATHING DUSTS, WITH SPECIAL REFERENCE TO SILICOSIS, U. S. Dept. of Interior, Bureau of Mines, Bull. No. 400.

REVIEW OF LITERATURE ON DUSTS, U. S. Dept. of the Interior, Bureau of Mines, Bull. 478, 1950.

SOFT COAL MINERS' HEALTH AND WORKING ENVIRONMENT, Pub. Health

Bull. No. 270, by U. S. Pub. Health Service 1911

SILICOSIS. A BENIGN PNEUMONIOSIS DUE TO THE INHALATION OF DUST. Part I, by L. E. Hanchin, M.D., Medical Director, and H. E. Weber, Chief Industrial Hygienist, American Brake Shoe Co. Part II. AN EXPERIMENTAL STUDY OF THE PULMONARY REACTION FOLLOWING THE INHALATION OF DUST GENERATED BY FOUNDRY CLEANING ROOM OPERATIONS, by Arthur J. Vorwald, M.D.; Philip C. Pratt, M.D.; Thomas M. Duncan; Anthony B. Delahant, and Doland A. Bailey, Sarnac Laboratory of the Trudeau Foundation, Sarnac Lake, N. Y.

(ON ASBESTOSIS)

A STUDY OF ASBESTOSIS IN THE ASBESTOS TEXTILE INDUSTRY, Report by U. S. Pub. Health Service, Bull. No. 241.

SILICOSIS AND ASBESTOSIS, by A. J. Lanza, M.D.

OCCUPATIONAL MEDICINE AND INDUSTRIAL HYGIENE, by Dr. Ruthertford T. Johnstone, FRS.

ANNUAL REPORT TRUDEAU SANATORIUM, TRUDEAU FOUNDATION--1948.

TUBERCULOSIS IN INDUSTRY, RESPIRATORY IRRITANTS, DUSTS, FUMES AND GASES, by L. R. V. U. Gardner, M.D. NATIONAL SILICOSIS CONFERENCE REPORT ON MEDICAL CONTROL, Bull. 21, Part I.

## ROUND TABLE VI

### THE EVALUATION AND ADJUSTMENT OF PERSONAL INJURY CLAIMS: A COMMENTARY

by

CHARLES N. SERGEANT  
NEW YORK CITY

The underlying principles of claim evaluation, if not consciously realized, are applied subconsciously by most attorneys and claim men. The basic factors require no elaboration. They are (1) liability, (2) the nature and extent of the injuries, (3) special damages, (4) the ability to prove or disprove liability.

Actually, however, the ultimate evaluation is determined by numerous other factors, objective and subjective. The basic factors are substantially influenced by the collateral ones, unrelated to the merits of the claim, and, except for fixing the maximum evaluation, play a minor role in the final adjustment. Perhaps, we are reluctant to recognize the existence of such collateral considerations, and the legitimacy of some must be seriously challenged.

The incidental and subordinate elements, affecting the evaluation of a claim, are (1) the method of adjustment, (2) the character, reputation, social and financial position of the claimant, policyholder and the witnesses, and the nature and characteristics of the community in which the parties reside and those of the place of trial, (3) the experience, knowledge, ability and the emotional make-up of the claim adjuster, (4) the status of the claim, whether in litigation or not, (5) the aptitude, knowledge, reputation, social and financial position of the respective legal representatives, (6) the capability and attitude of the judicial tribunal, (7) the

relation of the local defense counsel to the policyholder and to the insurance company. The importance of such influences will vary with a particular claim and an excessive stress upon one or more, or the failure to recognize their operative affection, will lead to error and mistake.

The method of adjustment cannot be separated from the evaluation of a claim, for the former frequently determines the latter. There are many approaches to the disposition of a claim. Each claim department executive usually has his own distinctive system and style which may vary with the claimant, the attorney and the claim itself, depending upon his astuteness or capacity to realize the effectiveness of one method over the other. However, the more well-known, if not the most successful, adjusters have a uniform approach which has become a habit and does not yield to the necessities of changing circumstances. The constancy may prove advantageous to the company when the results are viewed collectively, but not if each claim is examined individually.

Some of the characteristic approaches may be typified as follows:

- (1) The application of the principles of comparative negligence. This involves a determination of the maximum evaluation, apportioned in accordance with the extent of legal liability.