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at all times, not even the writer of this article. We must pay the price of safety and the price is high, in money, in loss of individual freedom of action, in self discipline.

The International Association of Insurance Counsel has a special interest in this problem, since its members are not only lawyers, with a real concern for the public interest, but their work on behalf of their insurance clients brings them into daily touch with the victims of auto accidents. No one appreciates better than they do the damage to the human body that can result from the collision of two speeding cars, or the economic loss and human suffering that are the inevitable consequences of such a crash. It was only natural, therefore, that we should see in this situation an opportunity to render a real public service by joining the forces which will attempt to apply the indicated remedies and give to them the benefit of our experience and training.

The campaign for highway safety will be waged by many of the best known organizations in the United States. Two groups, set up primarily for this purpose, are the Presidents' Committee for Safety and the National Conference on Street and Highway Safety. Others with a direct interest are the National Safety Council, the American Automobile Association and its affiliated local clubs and the National Automobile Chamber of Commerce. Almost every group with an interest in community welfare is more or less active, including the Chamber of Commerce of the United States and the local Chambers of Commerce, the American Legion, the Parent-Teachers Association and all of the service organizations, such as Rotary, Kiwanis and Lions. With them are the newspapers and magazines. Last of all, the elected officials of city, county and state are preaching the need for action.

Recognizing that the Bar has a substantial interest, a complete session of the Insurance Section of the American Bar Association was given to this subject at the Boston meeting. At its conclusion, the Automobile Insurance Law Committee was directed to devote its energies to the problem during the coming year.

The Committee on Safety of our Association, appointed by President Chrestman, consists of Ambrose B. Kelly, Chairman; C. Donald Swartz, Douglas Hudson, C. F. Merrill and William O. Reeder. It is planned to supplement this group with state committees who will be expected to take an active part in safety work in their respective states. Up to the present, very little has been done except making contact with the other organizations in an effort to determine the manner in which our efforts can be most effective. It is hoped that the new Committee on Safety will have its work organized and well under way within a few weeks.

Dust Diseases as a Legislative Problem

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MUCH has been written and said during the last few years about the occupational diseases which result from the inhalation of silica dust and asbestos dust. There has already been some legislation with respect to them, mostly of an unsatisfactory type and new legislation is imminent in a number of states. It is important that it be conceived wisely and that it be just and fair to Labor, Industry, Insurance and the Public, for all are parties in interest.

It is generally agreed that the inhalation of silica dust or asbestos dust over a long period of time will produce a fibrotic condition of the lungs known respectively as silicosis or asbestosis. Silicosis and asbestosis are not new diseases. Silicosis probably existed in the Stone Age of Civilization. These diseases, however, have been recognized in this country only in recent years as presenting a major social and industrial problem.

These diseases are peculiar and distinguishable from all other situations in industry affecting the health and well-being of the worker in that the worker becomes disabled only after a prolonged and continuous exposure to the dust in concentrated form. The best medical opinion is that the average exposure preceding disablement in most industries is upwards of ten years. Dr. R. R. Sayers and Dr. E.

R. Jones of the United States Public Health Service in a bulletin entitled "Silicosis and Similar Dust Diseases" state that "in the absence of infection silicosis is a slowly progressing disease and develops at such a late date that the individual affected may not become disabled during his ordinary working life."

Most states are committed to the principle that industry should bear the cost of industrial accidents through the workmen's compensation plan. Some states have likewise accepted the principle that the well defined occupational diseases other than dust diseases fall in the same category as industrial accidents and should be treated in the same way from a compensation point of view. In a few states the compensation laws do not distinguish between accidental injuries and injuries resulting from diseases of this type and in these states disablement and death resulting from silicosis and asbestosis are, of course, compensable. In three states there are special provisions for compensation for dust diseases with certain limitations. In many of the states, however, which do not now take silicosis and asbestosis into account there is acute necessity for providing some plan of relief for the unfortunate victims of these diseases. It is important that any such plan be commensurate with the responsibility of the employer and the ability of industry to pay. The purpose of this article is to outline in a brief way a plan by which justice can be done to the unfortunate victims and at the same time avoid crushing industry and harming all those dependent upon industry.

The first consideration in any such plan is what to do with the so-called "accrued liability." There are thousands of workers in the United States who have been exposed to silica dust or asbestos dust over a long period of time in the service of one or more employers, who are still at work and still able to work. Some of these workmen will become disabled at some time in the future. If the last employer under some new legislation is suddenly to be made responsible for all the sins of the past including exposures to dust, that were not only lawful but not even under compensation laws, obviously the burden on industry is going to be well nigh intolerable. If the employer is not so to be made responsible, what is to be done with the disabled workers or those who have a condition not presently disabling but likely to become so at any time? I respectfully submit that this is a social problem with very definite public aspects, rather than an industrial problem and should be dealt with as such.

We recently witnessed a most unfortunate experiment with an attempt to place the entire load of "accrued liability" on industry. The State of New York in 1935 amended its compensation law so as to make it all-inclusive with respect to occupational diseases. This meant that, upon the effective date of the law, every employer who employed men subject to breathing either silica or asbestos dust, and the compensation insurer of every such employer, became responsible for the disability or death of every such worker for full and unlimited compensation benefits for the full period of disability, which of course meant to the end of the worker's life, and thereafter for death benefits to his wife or other dependents if it could be established that death resulted from the disease. The result was disastrous—both to industry and to labor. Industry found it impossible to secure workmen's compensation coverage where a silicosis or asbestosis hazard existed, or if it was procurable the cost of insurance was so great that as a practical proposition it was impossible for the employer to buy it. The law provided that the employer must either furnish evidence of financial responsibility himself or carry workmen's compensation insurance. Many employers were, therefore, forced to close up their shop with the resulting unemployment of thousands of workmen. Some employers moved from that state to other states with more favorable laws, leaving the workmen without work and causing the communities to lose such basic industries, possibly permanently. It was soon recognized by labor as well as by industry, and also by the Industrial Commissioner who had sponsored the law, that such a situation could not continue. Within less than a year the all-inclusive occupational disease provision was amended insofar as it applied to dust-diseases by a legislative act which had been agreed upon by Labor, Industry and the Industrial Commissioner representing the public, and a new and more practical method substituted.

This new plan which is now being followed in New York is the plan which is recommended for adoption in other states insofar as it applies to "accrued liability." It provides for a graduated increasing maximum of benefits on the following basis. The maximum total of compensation benefits if disablement occurs, or, if there has been no claim for dis-

ablement, if death occurs in the first calendar month in which the law became effective, $500. If disablement, or, if there has been n prior claim for disablement and death occurs during the second calendar month in which the law is effective, the maximum total is $550. The maximum total benefits are increased on the basis of $50 each month until a limit is reached of $3,000. This is fixed as the top limit of benefits for disablement and death combined and is reached about four years after the effective date of the act. In states having an expressed maximum in their laws for death benefits, it probably would be better to provide for monthly increase in benefits up to an amount equivalent to the limit provided for such disablement or death. It is important that the top limit be the limit of the combined benefits for disablement and death for unlike accidental injury situations the disablement preceding death resulting from silicosis or asbestosis may extend over a period of many years. In such a case, if disability and death be paid for separately and each with the maximum expressed in the law, the burden of accrued liabilities will be well nigh twice as great.

The advantages of this graduated plan would seem to be obvious. It will result in the honest claimant who becomes disabled following the effective date of the law receiving some small sum, even though his exposure after the law became effective has been so short as to be negligible as a causative factor. On the other hand it will not penalize the last employer unduly for exposure prior to the effective date of the law to which he may have contributed in but small measure. But more importantly it has in New York proven a deterrent to a person who has had a substantial period of exposure to dust prior to the enactment of the law from presenting claim the instant the law became effective unless he has a legitimate and proper disability. Under this law men who could work have been able to get work and have remained at work.

Exposure following the passage of the law will be compensated for in a manner which is related to the period of exposure under the law, in a reasonably fair and just way. It is fair to assume that the graduated increase in benefits measures the employer's liability for increase of exposure under the new law.

Compensation for occupational diseases of all sorts, and particularly silicosis and asbestosis, present a variety of problems which are not involved in providing compensation for accidental injuries. It is accordingly inconsistent and impractical to attempt to cover compensation for occupational diseases in a law set up primarily to cover compensation for accidental injuries. An occupational disease compensation law should parallel the compensation law in many respects but there are, likewise, many situations which must be treated separately and differently. For instance, most workmen's compensation laws which provide compensation for accidental injuries grant certain presumptions in favor of claimants. These presumptions cannot properly be applied to occupational disease and particularly to the dust diseases. Accidents are generally definite and specific as to time, place and manner of happening; occupational diseases are not. In the case of death from accidental injuries most compensation laws provide that dependency is to be determined as of the date of death, while in death cases resulting from dust diseases such provisions are unfair to the employer inasmuch as disablement is usually prolonged and the claimant's domestic situation may change during disablement. There are many advantages, likewise, in permitting insurance coverage separate and distinct from the insurance coverage required under the compensation law applying to accidental injuries. For example: An employer may wish to be a self-insurer with respect to one and carry insurance with respect to the other.

In dust disease situations there should likewise be some provision made for responsibility on the part of the employer at the time of the last injurious exposure for all of the compensation due. Any other plan leads to confusion inasmuch as it is impractical to establish any method of pro-rating responsibility between successive employers. The insurance company carrying the risk at the time of the last injurious exposure should also be solely responsible. It can well be imagined what vexations and insolvable problems would arise if the attempt were made to apportion liability against insurers according to the extent of their policy coverage.

Silicosis and asbestosis should be carefully and accurately defined in the following manner: "Whenever used in this law 'silicosis' shall mean a characteristic, fibrotic condition of the lungs caused by the inhalation of silica dust; and 'asbestosis' shall mean a characteristic, fibrotic condition of the lungs caused by the inhalation of asbestos dust."

Any law covering occupational diseases

should be as definite and specific as possible. The employer should be apprised of his liability to compensate for diseases by language that is reasonably understandable. For this reason vague and all inclusive language should be avoided. The most satisfactory way of including diseases within the coverage of the law is to set forth in a schedule those specific diseases that are deemed to be occupational. Some of the laws also set forth in parallel columns the processes or exposures from which such diseases are presumed to arise. Failure to fix reasonable limitations on the number of diseases covered may result in the law becoming a general life and health insurance law for workers at the expense of the employer. Such was never the intent, and such a burden would be intolerable and uninsurable.

A proper law should provide that an employer shall not be liable for any compensation for any occupational disease unless such disease shall be due to the nature of the employment in which the hazards of such disease are actually present and are characteristic thereof, and peculiar to the trade, occupation, process or employment, and is actually incurred in his employment, and, unless disablement or death results (in cases of silicosis or asbestosis) within three years after the last injurious exposure to such disease in such employment, or, within one year in the case of any other occupational disease.

It should further provide, in the case of death, even where such death follows a peroid of continuous disability in which compensation has been paid or awarded, or a timely claim therefor made, that no death benefits shall be allowed unless death shall have resulted within seven years. Manifestly some reasonable limit must be made for asserting a liability for a condition due to disease alleged to have been the direct result of the employment.

There should be some provision for reduction of compensation benefits where disability or death is due to silicosis or asbestosis complicated by tuberculosis of the lungs or with any other disease.

Proper limitation of medical benefits is essential in the cases of silicosis and asbestosis uncomplicated with tuberculosis. The weight of medical opinion is that such treatment is unavailing in such cases. The likelihood of long continuing disability in such cases suggests the possiblity of useless medical expense that may greatly exceed the total of compensation benefits. In the New York Act to which reference has been made, a limitation is provided of medical benefits in cases of simple silicosis to ninety days, with a permissive additional ninety days upon order of the board. This presumably would only be made upon some showing that such further treatment will be beneficial. In other diseases, however, medical benefits should be the same as are provided by law, for disability following accidental injury.

As an alternative to the graduated limited benefits referred to, some provision might be made for the continuance in industry of workmen suffering from non-disabling uncomplicated silicosis or asbestosis through waiver of full compensation benefits in the event that disability ultimately results. This plan does not eliminate entirely the payment of compensation in such cases where disability results, but merely provides for the reduction of benefits. Thus it may be possible for the employer to continue workmen in employment who are working in trades involving the silicosis or asbestosis hazard even though showing some physiological evidence of the disease but not necessarily disabled thereby. Such, of course, is desirable in the case of skilled workers, and it may prevent hardship to a worker who might otherwise be removed from employment.

The waiver plan, while embodying some helpful principles, does not appear to offer a completely satisfactory solution to the silicosis and asbestosis burden of accrued liabilities. It is of doubtful value as a factor for reduction of costs, and it has within its provisions possibilities of abuse that may be hurtful. Experience under this plan is as yet insufficient to warrant conclusions.

One of the big problems in silicosis and asbestosis is proper diagnosis. It is respectfully submitted that lay compensation tribunals are incapable of properly weighing such medical evidence as is usually submitted in connection with silicosis or asbestosis claims. It is desirable, therefore, that a medical board of a non-political nature consisting of specially qualified doctors be provided, with full authority to determine all medical questions not only in connection with silicosis and asbestosis claims, but in connection with all occupational disease claims.

In conclusion it may be properly suggested that the real remedy is prevention. The compensation of disabled employees is at best only an attempt to make partial reparation for a

misfortune which probably could be eliminated in its entirety through proper control of the causes. This can best be accomplished in any state by a properly manned bureau of industrial hygiene established for the sole purpose of studying ways and means of control and prevention. Such a bureau should probably be set up in the state health department rather than in the department charged with the administration of the compensation law. It is essential, of course, that there be close cooperation in such a bureau and the administrative department. Some plan for the establishment of such an industrial hygiene bureau should be tied in with any plan providing for compensation.

Footnote: Mr. Caverly is a member of the Advisory Committee on Occupational Disease of the Association of Casualty and Surety Executives. This Committee has been studying the dust disease problem for the past four years and as a result of this study has prepared for distribution a publication entitled "Suggestions for Provisions for Workmen's Compensation Plan for Occupational Diseases." This publication may be obtained by addressing the Association of Casualty and Surety Executives, located at No. 1 Park Avenue, New York City, New York.

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