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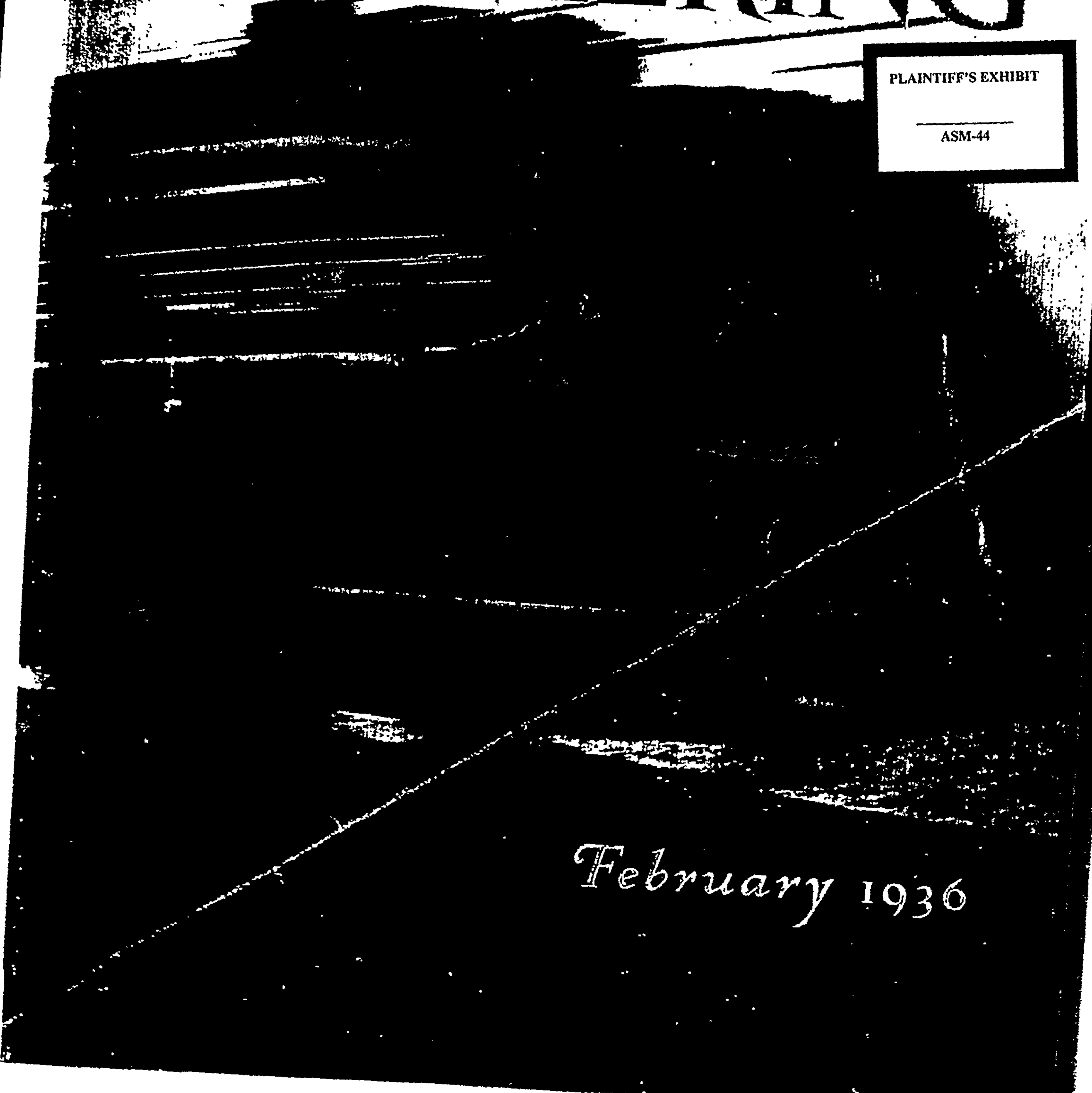

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OCCUPATIONAL DISEASES

Additional Responsibility Legislation Places On Industry

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NOT many years ago legislators and industrialists responded to the new doctrine of compensation for industrial accidents without regard to fault as a causative factor. So familiar has this compensation principle become that it is virtually unanimously accepted by employers, and this idea that was so revolutionary only a short twenty years ago is now an accepted rule of industry. Its burdens have not been lessened as time has passed. On the contrary, compensation costs have steadily mounted. But industry long since learned to absorb those costs and to assume those burdens, even though frequently at the cost of great hardship.

Entirely aside from the monetary benefits to injured workers and the dependents of deceased employees, the two great outstanding benefits to workers through the compensation system are (1) the reduction of accident frequency brought about by the promulgation of safety standards and by good engineering, and (2) the reduction of accident severity, by the requirement for prompt medical and surgical care at the expense of the employer. These are the positive sides of compensation for accidents, and employers may well take pride in the accomplishments of industry, of medicine, and of engineering in these lines.

RECENT LEGISLATION ON OCCUPATIONAL DISEASES WIDESPREAD

Just as twenty years ago there was the insistent demand for compensation for accidental injuries, so now there is an ever growing demand for legislation for compensation for industrial diseases. This is no new thing to us here in New York. We have had an occupational-disease statute since 1920. Three or four other states have rather full occupational-disease laws, while some others have laws of somewhat limited application But in the greater number of states, no provisions have been adopted for compensation for occupational diseases.

The essence of the idea of compensation for occupational diseases is that disability or death from a truly occupational disease is just as much the responsibility of industry as is such a condition resulting from industrial accident.

With this principle it is hard to disagree. Few there are who will say that the workman who suffers a disability, who is deprived of the means of a livelihood through a disease or sickness that came upon him only because of his exposure in his work to the deleterious effects of some poison or some chemical, some dusts, gases, or fumes, is not equally entitled to compensation with his brother whose disability came on him by reason of an accident. In principle both seem alike.

So prevalent is this idea that in the legislatures of 18 states bills were introduced last winter newly providing for occupational diseases or for enlarging the existing laws. In a number of states provision was made for the appointment of interim legislative committees to study and report on the subject of occupational-disease legislation at the next sessions. Undoubtedly, another year will see legislative attempts in many more states. In great part these efforts were not successful, but a renewal of them is inevitable.

Employers will have to prepare to meet the added burden of such laws. Just as in time the cost of compensation for accidents was absorbed, so too will the cost of compensation for diseases in time be absorbed if right principles prevail and if the effort is not made under the guise of compensation to charge employers with general health and life insurance of their workers

But it is not certain that correct principles will always be observed. The temptation is great to give to the oppressed and distressed—out of the other man's funds! To be the public almoner of industry's money must be a comforting thought to some public officials—especially at election time.

NECESSARY TO SAFEGUARD AGAINST ACCRUED LIABILITY

We must, therefore, be vigilantly on guard to demand in all such legislative efforts a recognition of sound principles and policies, and insist that such laws do not throttle the industry itself. It is essential that we insist on at least two safeguards: (1) To guard against the already accrued liability, and (2) to make certain that compensation shall be payable only for diseases that are truly occupational.

What is meant by the term accrued liability is illustrated by what has recently happened in New York. The New York state law is what is known as a schedule law, that is, the law itself contains a list of diseases or poisonings with a parallel column listing the occupations or processes in which such conditions usually occur. Thus, to use a common illustration, lead poisoning is listed as a disease, and is compensable when incurred by a worker engaged in any work that causes him to use or be exposed to lead. This, it will readily be seen, is truly an occupational disease, readily recognizable as such, and is a definite pathological entity. Seldom is the disease found except among lead workers, painters, and the like.

The schedule in the New York act had been enlarged from time to time until it included practically all known occupational diseases with the exception of lung diseases attributable to dust. It is generally conceded that these dust diseases call for special provisions of law and for different procedures The effort to provide such special provisions proved abortive, and when the legislature passed a general all-inclusive provision to cover in broad terms "any and all occupational diseases," it swept in under the law all dust diseases along with the rest.

SOME OCCUPATIONAL DISEASES ARE OF SLOW DEVELOPMENT

Now by the very nature of these diseases they are of slow, progressive development. Silicosis, or a fibrous condition of the lungs resulting from the inhalation of silica dust, requires a minimum of five years of exposure to produce disability, and many authorities assert that the progression to disability takes from ten to fifteen years In all these diseases, there comes a time when regular work is not possible This is called in the

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law disagreement. The moment the wide-open law went on the statute books, it created a liability for many years of exposure that had already taken place among thousands of workers. Industry found itself faced with the problem of paying for conditions that arose at a time when the law imposed no special duty on the employer to pay for the condition or to take effective measures to prevent the disease.

While industry cannot assume safely such a burden, neither can insurance be asked to take it on. Payment for losses that accrued prior to the insurance contract is not in any sense insurance. Insurance is the assumption of liability for a contingency or for a fortuitous future happening.

The result of the new law in New York has been disastrous. Premium rates were set at prohibitive figures. Where dust exposures existed supplementary rates were added to the regular already high compensation rates. These supplemental rates ranged from the lowest at something more than a dollar per hundred dollars of payroll up to as high as twelve and thirteen dollars a hundred. The total compensation cost, therefore, for many industries has risen to more than twenty dollars. When this is compared to the comparatively low compensation cost in states where such liabilities have not been imposed on industry, it will be readily appreciated how difficult it is for New York industries to survive under competition. Since September 1, 1935, the effective date of the new law, many plants have utterly closed down, some have gone on part time, others are contracting out to plants in other states that part of their operations which are involved in dust, and with it all, the worker may be said to be the sufferer through unemployment.

Any attempt anywhere to impose on employers by law a burden of responsibility for diseases of past contraction will lead inevitably to such a muddled situation as exists in New York today.

COMPENSATION SHOULD BE CONFINED TO TRULY OCCUPATIONAL DISEASES

The second principle is that compensation shall be provided only for diseases truly occupational. The term "occupational disease" is in common use, yet it has no fixed definition nor definite limitations. The effort is sometimes made to define it as a "disease that arises out of and in the course of employment." Such a definition is thoroughly unsatisfactory. This terminology has been used probably because it has ample precedent in the field of accident compensation, but the conditions surrounding accidents and those surrounding disease are so radically different that the same terms will not do.

Shall we say that heart disease, tuberculosis, pneumonia, pleurisy, head colds, and all the multitude of human ills shall be deemed occupational when they occur among workers and it is claimed that some act or incident of the employment caused or contributed to the disease? If so, it means nothing less than general health and life insurance for workers at the employer's expense. This is not a burden that industry should or could bear.

An occupational disease is not a disease of ordinary life, but a disease "characteristic of and peculiar to" the occupation. When speaking of disease, these words are far more definite than is the phrase "arising out and in the course of" employment. They should be used wherever it is impossible to have a schedule or listing of diseases.

This qualification has received the approval of the State Industrial Board in New York. As yet there has not been sufficient time for a case to arise under it and be passed on by the courts, but it is greatly to be hoped that the courts will follow this view of occupational diseases.

There is another, and to engineers a very important, consideration in favor of the schedule method of covering occupational diseases, rather than the general all-inclusive method, and that is prevention. Prevention is the key to the occupational-disease situation. Just as the engineers took up the challenge in the field of industrial safety when accident-compensation laws came into operation, and have done a magnificent job, so they will have to take over an intensive study of the means and methods of prevention of disease. They have learned that good results are obtained only when they can concentrate on some special problem or on some phase of a problem.

How better can the engineer concentrate on occupational-disease prevention than to start out with a named list of diseases set forth in the law? It is often necessary to appeal to employers or management to take certain steps in throwing up safeguards, and these cost money. If the engineer is dealing with a definite schedule of diseases he looks for the conditions in a plant from which those diseases may arise. He can tell management that if lead is used workers must be safeguarded from it. That is elementary. But without the law suggesting it, how many would think to guard against chrome ulceration, or adequately safeguard workers coming in contact with or using methyl chloride, or any of the other many conditions included in the occupational-disease schedule?

SAFEGUARD AGAINST EVERYTHING

It may be suggested: Safeguard against everything. However, no matter what attempts are made, no matter how willing the employer to go along with the plans, under any blanket plan some dangerous conditions will certainly be overlooked.

And from the standpoint of bringing to the employer the necessity of spending money in disease prevention, it is hard going to convince him that he has a disease hazard warranting the expenditure of large sums unless the law gives the clue to the diseases to be guarded against. Only by the slow laborious process of picking up diseases as they occur and are made compensable over a period probably of years will we get effective prevention work, unless the scientific knowledge of diseases and industrial processes now possessed by public authorities in the field of industrial hygiene is made available to industry through writing it into the statute.

That new burdens are being imposed on employers by recent legislation or are impending in the demand for new legislation must be recognized. There will be no turning back in the field, any more than there will be turning back in the field of compensation for accidents. If, however, we are wise, we will give heed to the lessons we have learned out of an abundant experience in accident compensation. The same motivating factors will be present in this new field; the same liberality, the same generosity with the employer's moneys. The cure for all the workers' ills will be attempted through these laws. Vagueness and lack of definition but play into the hands of the overliberal.

We should insistently demand that occupational-disease legislation be intelligent, certain in terms, and properly safeguarded against already incurred liabilities. Let the employer's responsibility be expressed in understandable terms and with a scrupulous regard for the ability of industry to carry the increased load. And above all insist that the law be so worded as to make effective prevention work possible. By so doing, and only by so doing, will industrial justice be done and effective steps taken to carry industry's part in the field of the true occupational disease.