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CASUALTY AND SURETY SECTION

Occupational Diseases

By CHARLES C. KIRK

Subject Now Looming Up With Growing Importance to All Interests Involved

Within the last few years there has arisen a new legal, and a new insurance question regarding occupational diseases, their nature and origin. The legal question is one of remedy. Is the right of action a common law right, or "under" the workmen's compensation act? Further, what, if any, occupational diseases are subject to the administration of the workmen's compensation act as it now exists, and if so, to what extent?

Much Solicitude Is Seen Among Insurance Carriers

These questions affect the terms and conditions of the now existing standard type of compensation policy. If all occupational diseases are "without" the policy, then the employer and employe are without the protection of such policy, and the liability by virtue of an occupational disease is against the employer.

These questions have caused considerable agitation among those insurance companies writing compensation insurance. In many instances they have led to drastic changes of the policy on the part of the companies, many of which have discontinued writing compensation where the nature of the business of the insured is such that an occupational risk may occur. Other companies have cancelled existing policies when requested by the insured to add riders covering occupational diseases to their then existing compensation policies.

The subject of occupational diseases in connection with workmen's compensation insurance is one of growing importance and is drawing the attention of thinkers to its scope. From the standpoint of the employer, the employe, the insurance carrier and the public at large the interest is increasing. So far as the liability of the employer for disease contracted by an employe in connection with his occupation, it is a comparatively new question but is growing in importance. Charles C. Kirk, a well known Chicago attorney who is maintaining his office in the Harris Trust building, is regarded as one of the authorities on the subject. He began delving into the various angles of occupational diseases three years ago when the legal relationship of employer, employe and insurance company in this subject became of importance in connection with his legal work. He has gone into the medical side profoundly. His contribution to this engrossing topic will receive rapt attention.

States Having Occupational Disease Statutes

Such action and cancellation, and the refusal to add riders, have left the employer without insurance coverage on either question. Where this has occurred, the employer has been compelled to seek some method of self insurance under the workmen's compensation act for insurance required thereunder, and likewise a method of protection by insurance in case of occupational disease risk. In the last named instance, this protection has not been found.

What is here said of Illinois and its laws regarding the workmen's compensation act, and likewise the occupational disease law, applies with equal force to all other states whose compensation laws are based upon the happening of an "accidental injury" and who have similar occupational disease acts or a similar factory act.

The following states have similar occupational disease laws:

Alabama	Louisiana
Alaska	Maine
Colorado	Michigan
Georgia	Montana
South Dakota	Vermont
Idaho	Nebraska
Indiana	New Mexico
Iowa	North Carolina
Kentucky	Rhode Island
Tennessee	Virginia

It will readily be seen that some of these are manufacturing states, while others are concerned with mining and the kindred industries.

Rider Is Needed on the Compensation Policy

The usual and standard form of compensation policy, particularly in Illinois, refers to various house and senate bills, which, upon careful reading definitely state that it is the intention of the legislature to cover those accidental injuries that might arise in the course of the employment from which the employer becomes liable to pay a fixed compensation. The policy contains definite language that the "accidental injury" or "injuries" be sustained by the person or persons employed by the assured, and in the course of his employment. Therefore the terms "accidental injury" and "injury" definitely eliminate from the terms and conditions of the policy an occupational disease. The coverage of an occupational disease in such policy can be had only by a definite and specific occupational disease rider clearly manifesting the intention to provide such coverage.

Occupational Diseases Within Workmen's Compensation Act

In 1923, the legislature of Illinois, because of the many lead and chemical poisoning cases, amended Section 2 of the occupational disease act by declaring lead and its by-products, paris green, or the manufacture of brass and the smelter of lead or zinc, to be especially dangerous to the life of employes and likewise, the process of manufacture or labor in which poisonous chemicals and minerals or other substances, are handled in harmful quantities or under harmful conditions, shall be subject to additional precautionary appliances and

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Credit Practice Causing Waste

Casualty Companies Seek Some Plan to Reduce Not-Taken Policies.

ADDING TO THE DEFICIT

Automatic Cancellation Method Has Been Suggested by Some of the Executives

NEW YORK, May 23.—The National Bureau of Casualty & Surety Underwriters will vote in June on the question of putting an automatic cancellation clause in all policies providing that where the premiums are not paid within 30 or 40 days, the policy will be automatically canceled. A number of companies are considering establishing this procedure individually if the National Bureau does not act as an organization.

NEW YORK, May 23.—Casualty executives are giving considerable thought these days to what plan can be put into effect that will reduce the credit practice especially with regard to compensation policies. Thousands of policies are sent out and then at the end of 60 days or later returned with a notation that they are not wanted. The holders refuse to pay any earned premium and thus the companies have had their contracts out exposed to loss and have not received a cent in recompense.

Imposition Is Unjustifiable

This imposition on companies especially in an unprofitable class like compensation is regarded as unjustifiable from many standpoints. In numerous cases agents and brokers send out policies ahead of time for approval hoping that they will be accepted. The assured decides he does not want them and returns them for flat cancellation. The expense of putting the item through the books in the first place and then the cancellation probably costs from $5 to $7.50. The companies and agents lose money merely on the expense item. A company is often caught with losses because an assured is certain to retain a policy and pay for it if he has a claim. As executives have discussed this question it has become more and more apparent that it is a waste that is growing and has become a real burden on companies. In these days when business is difficult to get and profits are reduced, head offices are studying means to conserve resources and reduce outlay.

Joint Committee at Work

The joint committee of the National Bureau of Casualty & Surety Underwriters and the agents that have been discussing the compensation program have had the matter under discussion and it may be possible to work out some plan that can be recommended in connection with the draft to be submitted to the insurance commissioners. Some com-

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OCCUPATIONAL DISEASE BIG PROBLEM

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methods of safeguard than previously provided. This amendment also made those industries, and occupational diseases arising therefrom, part of and subject to the workmen's compensation act in the administration of all claims of disease and the payment by way of compensation, and not common law.

Right of Common Law Action Is Not Changed

This amendment, and the occupational diseases that may arise in the industries that have to do with the manufacture of lead and its by-products, the manufacture of brass and the smelting of lead or zinc as well as the chemical poisons, does not change the right of a common law action, when an occupational disease arises in the same industry, and is contracted otherwise than in the direct manufacturing process of lead, brass, zinc or chemicals. This principle can be best illustrated by the decision of the supreme court in the case of the Belleville Enamel & Stamping Co. This company used lead and zinc in its factory in large and dangerous quantities. The plaintiff was employed as a "sand blaster." His duty had nothing to do with any foundry or moulding operation of the parts or sections of the stoves manufactured. Certain parts or sections of the stove were delivered to him, from which, by compressed air, the employe was required to remove the excess sand. It was the defendant's contention that the plaintiff should proceed under the workmen's compensation act instead of under the occupational disease act at common law, because such industry, under section 2, sub-division (b) of section 15 of the occupational disease act, became part of the workmen's compensation act, and that act gave exclusive jurisdiction to the industrial board. The court found that the plaintiff's injury was not the result of lead poisoning, but was an occupational disease known as silicosis, and regardless of the fact that the employe was engaged as stated, his duties were such that he did not become subject to nor did he contract lead poisoning.

Likewise in Kelly vs. St. Louis Smelting & Refining Co., 307 Ill., 367, the court states that such section 2 relates to certain lines of industry which are declared to be especially dangerous to the life of the employe. That section only purports to cover those employments which require the using of a variety of lead preparations in harmful quantities or under harmful conditions, and where brass is manufactured, and where lead or zinc is smeltered, and because of such specific statement, excludes all other intendments. It is therefore evident that there are many occupational diseases that may or could arise in the industries under Section 2 that cannot be termed a disease arising from lead, zinc, brass or chemical poisoning.

The Illinois supreme court, in the First National Bank vs. Wedron Silica Co., 351 Ill., 561, in passing upon and considering Sections 1 and 2 of the occupational disease act, states in reference to Section 2, that it was evident that the legislature intended to compel the employer under Section 2, to match the hazards and risks of those industries, mentioned in Section 2, with protection or precautionary measures of a higher degree and effectiveness than it required of those industries classified as not especially dangerous to life. The classification mentioned was further approved in Madison v. Wedron Silica Co., 352 Ill., 62.

In Kelly vs. St. Louis Smelting Co., 307 Ill., 372, in commenting upon Sections 1 and 2 of the occupatic ease act, the court says "there a occupational diseases which contracted which are covered tion 1 and are without the limits tion 2." The industries from v occupational disease may aris Section 1 are probably in the n hood of 300 to 350. They may b fied as to type of industry fror certain kinds of occupational may arise.

The general classification of tional diseases is as follows:

1. Diseases of the respiratory
2. Diseases of the circulation
3. Diseases of the urogenital
4. Diseases of the alimentary
5. Diseases of the skin.
6. Diseases of the nerves and
7. Diseases of the eye and ear
8. Diseases of the bones.
9. Diseases of the endocrinal
10. Diseases of nutrition.

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Credit Practice Causing W

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panies are already taking the the horns and are endeavoring action individually. The Zurich, ample, when it issues a policy endorsement sent out providing less the assured signs the endo and returns it within 20 days, th becomes void. Therefore the fre ance evil is reduced so far as it cerned to 20 days. That is quite When the Zurich sends out a p does not mean that the assured pelled to pay the premium. I cumbent on him, however, to sig willingness to accept it within

Some companies have worked automatic cancellation clause th expect to put into effect providi unless the payment is made wi days after the issuance of the p will be canceled automatically f payment of premium. The through this method has certain able to show a much better rec this point than many other con Credit has been carried too far surance companies and there is eral disposition to tighten up al the line. Last year the stock cor reported a ratio of 95.1 percent o and adjustment expenses. The reported gross premiums $10 in 1933 and premiums on not taken policies $728,327. The fo table taken from the 1933 statem of interest:

	Gross Premiums Written	Prem "Not Pol
Aetna Casualty .	$23,150,432	$3,4
Aetna Life	31,471,940	4,6
Columbia Cas. ..	4,461,134	6
Fidelity & Cas..	35,168,703	9,1
General Acci. ...	21,084,354	3,7
Globe, Ind.	24,869,231	4,2
Indem. of N. A..	17,477,618	2,1
London Guar. ..	11,917,178	1,2
Ocean Acci.	15,081,390	1,5
Phoenix Ind.	5,357,791	6
Travelers	49,587,325	7,0
Trav. Ind.	18,981,594	4,4
U. S. F. & G....	37,816,193	3,6

The Zurich plan may not be t or the most practical but it has fairly successfully for that co Under the plan that it follo Zurich does not put business books as live policies until the ances are obtained.

Hyde With London Guara

A. W. Hyde, who has been agent of the credit insurance depa of the National Surety in Detroi 1922, has been appointed genera of that department of the London antee & Accident, which took o National Surety's credit business

He has been engaged in this ized form of insurance business years, operating in New York Pennsylvania and Kentucky going to Detroit 20 years ago. opened offices in the National building.