MAJORITY AND MINORITY REPORTS TO THE GOVERNOR AND COUNCIL

OF THE

RECESS COMMITTEE 88th LEGISLATURE

ON

Compensation for Occupational Diseases

AND

Act Recommended By The Majority

Transmitted by the Governor to the 89th Legislature and ordered printed by the House of Representatives.

STATE OF MAINE

EIGHTY-EIGHTH LEGISLATURE

Recess Committee On Compensation For Occupational Diseases

APPOINTED UNDER

Chapter 132, Resolves of 1937

REPORTS TO THE GOVERNOR AND COUNCIL JANUARY 1, 1939

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Committee

Majority Report

STATE OF MAINE

Eighty-eighth Legislature

RECESS COMMITTEE ON OCCUPATIONAL DISEASES

To the Honorable Governor and Council:

In accordance with chapter 132 of the Resolves of 1937, senators Cook, Worthen and Maliar; representatives Philbrick, Elliot and Varney; and three non-members of the legislature—Messrs. Carroll (representing employers); Burgess (representing labor), and Robinson—were duly appointed as a recess committee on compensation for occupational diseases.

By that resolve the committee was directed to

> "Consider and investigate the necessity and desirability of legislation designed to compensate employees of Maine industries for injuries known as occupational diseases;"

and to

> "Consider and study similar laws existing in other states and determine in so far as possible the results therefrom."

The resolve further specifies that

> "Said committee shall, on or before January 1, 1939, make a written report to the governor and council, which report shall be transmitted to the clerk of the house of representatives upon the organization of the 89th legislature, and shall include such recommendations for legislation as the committee may adopt, with a draft of such legislation as may be suggested."

On October 28, 1937, soon after its appointment, the committee met for organization at the State House. Mr. Robinson was chosen chairman, and Representative Philbrick, secretary. Sub-committees were named to inquire into the occupational disease compensation systems in other states, and to investigate the need, cost and form of such legislation in Maine.

INDUSTRIAL SURVEY

At a meeting of the committee held at the State House on February 17, 1938, representatives of the state department of health and of the United States Public Health Service were present at the invitation of the committee.

Through correspondence with the recess committee on occupational diseases appointed in 1935 in the state of Maryland, the committee had learned that the excellent Maryland report recommending occupational disease legislation in that state was based in part on a survey of the industries of that state carried out by the United States Public Health Service in cooperation with the Maryland departments of health and labor and the Industrial Accident Commission. The committee's suggestion that a similar survey be made in Maine met with a cordial response from both federal and state officials.

The work on this survey, started at once and carried on during the spring and summer of 1938 by representatives of the state department of health in cooperation with the United States Public Health Service, resulted in a report to this committee which should be of great value to the legislature. That report is appended herewith. It speaks for itself. A summary of it at this point would be nugatory. We have studied the conclusions in that report as the legislature will. Comment on the suggestions on prevention in that report are outside the scope of this committee, but from the facts, figures and conclusions there stated as to the exposure to industrial diseases to which Maine employes are subject, the committee can have no doubt but that occupational hazards which must necessarily cause occupational diseases, exist to a great extent in Maine.

PUBLIC HEARING

On October 31, 1938, the committee held a public hearing in the senate chamber, notice of which was duly advertised in the press. Representatives of labor, of industry and of insurance companies were present. The consensus of opinion expressed was in favor of an occupational disease law for Maine. In that respect the hearing coincided with the hearings held by the Maryland committee above referred to, the stenographic report of which was made available to this committee.

Valuable suggestions were made as to the scope and form of occupational disease legislation. The stenographic transcript of the hearing is annexed to this report, and repays careful reading.

THE COMMITTEE'S RECOMMENDATION

In addition to the testimony at the hearing and the industrial report, the committee has studied the literature on the subject of occupational diseases and data obtained from other states having occupational disease laws, and has conferred and corresponded with many persons who have made a study of the subject. Cordial assistance has been given the committee by the chairman of the Industrial Accident Commission of Maine; by the Maine insurance commissioner; by the National Council on Compensation Insurance (New York), which computes and recommends insurance rates under workmen's compensation acts, and by many other persons.

The committee has arrived at the conclusion that an occupational disease compensation act is needed in Maine and that the time is ripe for this state to follow the lead of the many other states which within the last half dozen years have adopted in one form or another a system of compensation for occupational diseases.

COMMON LAW COMPENSATION FOR INDUSTRIAL MISHAPS

Occupational diseases have probably existed since human beings added mining, manufacturing and commerce to the simple fishing, hunting and agriculture of the barbarian. Compensation for occupational diseases is, however, a recent development.

A century ago the workman in an industrial plant must look out for himself. If his health failed or an accident came, the loss was his, save in certain specific cases where the workman could reimburse himself from his employer for a casualty at a given time or place. If by applying certain technical rules of law the workman could fix the blame on the employer, he could collect for the injury. But from the time of the English court's decision in *Priestley v. Fowler*, 3 M. & W. Rep. 1 (1838) the law protected the em-

ployer with many safeguards; e. g., the fellow servant rule; the doctrine of assumption of risk; the doctrine of contributory negligence. The employe's right came to be a good deal of a will-of-the-wisp.

As the industrial system of the 19th century expanded, two definite lines of attack on the problem of industrial mishaps were put forward—prevention and compensation.

PREVENTION

Prevention of ill hap to the industrial worker is, of course, the ideal to seek. No normal person would prefer pay for an injury to freedom from the injury. Such compensation is a small segment of the workman's circle.

Every inquiry into industrial suffering leads at once to this problem of prevention. This committee cannot but be keen for every effort which will minimize mishaps to the workers in industry.

Prevention rather than pay was the note struck by many of the speakers at the committee's hearing. The eager desire of the state health department to aid in reducing industrial suffering was the inspiration to that department's willingness to undertake the survey already referred to. The efficiency of our state labor department in its safety bureau, for many years administered by the safety engineer of the Associated Industries of Maine who spoke at the hearing, indicates the same point of view.

Earnestly sympathizing with the problem of prevention, however, this committee feels that it should not go outside the scope of its duties to make recommendations on the subject. Intertwined with the discussions of occupational diseases by experts on the subject and included in the reports of committees appointed in other states, are usually to be found recommendations for industrial safeguards to be applied through the state's industrial accident commission, its department of health, or its department of labor. In states which have more complex industrial conditions than Maine, bureaus with definite duties have been set up, usually in the state department of health; sometimes in the state labor department; occasionally (as in Wisconsin) under the oversight of the industrial commission. Some-

thing of the sort may be necessary in Maine, supplementing our present laws. But that is not the problem which has been referred to this committee.

The province of this committee is important, but circumscribed.

COMPENSATION BY THE COMMUNITY

Compensation to the injured worker other than by a suit in damages has taken two roads: one leading to the community; the other to the industry.

The burden of industrial accident and disease falls ultimately on the community if it is not assumed by the workman or his employer. If the injured man cannot collect from the employer, and his own funds give out, charity or the public treasury must pay the bill.

How far this burden should be voluntarily taken up by the community to the exoneration of either employe or employer is a serious problem. A system whereby the community voluntarily takes care of the ill health and suffering of any class of its citizens by the payment of health benefits irrespective of employment, is the ultimate limit toward which many federal and state measures recently enacted seem to tend.

Any such community solution of the problem is quite outside the province of this committee. We are concerned merely with the proposition of placing on industry a certain portion of the expense.

COMPENSATION BY THE INDUSTRY FOR ACCIDENTS

In the case of accidents this burden has now for several decades been imposed on industry by workmen's compensation acts in Maine, and in most of the states of the country. Under these acts, technical rules to fix the blame are abandoned. When an industry is "under the act" the worker who meets with an accident from his work is recompensed by the industry, even though his own carelessness be the cause. Pressure is brought to bear in various ways under varying statutes to bring worker and employer "within

the act." In Maine those employments which stay out are penalized in any common law proceedings that may be brought by their injured workers. The employers in such cases lose the common law defenses to which they would otherwise be entitled.

The system is simple, and it works. The chain of causation between accident and disability is usually plain. Controversy is at a minimum, concerned more with the details than the substance of the claim.

COMPENSATION BY THE INDUSTRY FOR INDUSTRIAL DISEASES

To extend this compensation procedure beyond the case of the worker who has met with a sudden casualty at his work is the object of occupational disease statutes. It seems logical. Disease like accident causes suffering. Disease like accident may have a casual connection with the man's job. Disease may even be a result of an accident; that is, may come from a single cause at a single moment of time. Our Maine court has ruled that typhoid fever (*Brodin's case*, 124 Me. 162), and skin infection (*Bearor's case*, 135 Me. 225), may be caused by accident, and thus be compensable under our present law. The workman need only show that he has a disease which originates at a single moment of time from a definite infection to which he was exposed in his work.

But such instances do not touch the case of disease acquired by a series of exposures, and do not cover poisoning from repeated doses. It is just as logical that the workman so diseased or poisoned because of his job should be compensated as that the workman who cuts his finger or imbibes a typhoid germ should be able to rely on his employer to make him financially whole. If industry pays for the one, why not the other? In both cases industry has hurt him, and in both cases industry unlike the workman can set aside reserve funds to meet the contingency.

OBJECTIONS

Several kinds of objection are raised to this logical suggestion:

(1) The conservative hesitation to take a new step.

This objection can be brushed aside by noting the success with which the step has been taken in many other states.

(2) The possible expense. This is certainly a proper point for consideration. We all know only too well that there are many desirable things which we cannot afford.

(3) The difficulty of proof. Sickness comes insidiously and from many causes—blame is difficult to assess. Age, inheritance, exposure when off the job—all these elements complicate the case. Accident comes quickly and visibly—the facts are usually clear.

But this difficulty of proof is greater in theory than in fact. Occupational disease laws are now so generally in force that this argument against them is becoming obsolete.

(4) The difficulty of delimiting an extension of the workmen's compensation act which sets out to cover occupational diseases. This is the most formidable difficulty which occupational disease statutes must overcome. Everyone concedes that upon industry should not be placed the burden of insuring the worker's health. Colds are the most common affliction of the human race; cause more lost time than any other physical ill. Colds may originate on the job and because of the job. Industry would be flattened out if it were called on to compensate every worker who gets a cold on the job. But how can we compensate for lead poisoning and not for pneumonia?

WHAT IS AN "OCCUPATIONAL DISEASE"?

The clue to the answer, the dividing line between compensable and uncompensable sickness is the word "occupational" in the phrase "occupational diseases," which has come to be the term used in extending workmen's compensation acts beyond accidents.

To be "occupational" the ill from which the workman is suffering must be traceable not merely to his occupation, but also to *a series of exposures peculiar to that particular industry*. This concept is now recognized as valid by substantially all the advocates of occupational disease compensation. Indeed, the emphasis on these two points—a series of exposures, and a peculiarity in the industry—has had the effect that when these two items exist then a work-

man may be compensated even though his suffering is not from a condition commonly known as a "disease." "Occupational" is more important than "disease."

What is a "disease"? Certainly it is an abnormal condition. Further than that, the ordinary man usually thinks of it as some *persistent* malfunctioning of the system. The condition of a sick painter, sick with "lead poisoning" from the white lead to which he has been constantly exposed, is a disease. His organs degenerate under the effect of the exposure, and his suffering is long continued. Physical ills may equally be brought about by continual exposures to other occupational poisons: e. g., arsenic and petroleum products—which disable without "disease." Occupational disease statutes benefit the one sufferer as well as the other.

STATUTES WHICH DO NOT SPECIFY THE OCCUPATIONAL DISEASES COVERED

Historically occupational disease laws have developed by extending workmen's compensation acts. In respect to coverage two general courses have been followed.

The first course developed out of the decisions of the Massachusetts Supreme Court in *Hurle's case,* 217 Mass. 223 (1914); *Johnson's case,* 104 N. E. 735 (1919); *Sullivan's case,* 265 Mass. 497 (1929), and other cases. In these Massachusetts cases the Massachusetts court interpreted the workmen's compensation act of that commonwealth to include occupational diseases. That act, unlike the act in Maine, provides compensation generally for "personal injury" and not specially for "personal injury *by accident.*"

Connecticut followed the lead of Massachusetts, and a few other states took the cue: e. g., Cal., Mo., (limited application), and N. D.

But other states have not stopped at this simple point. The Wisconsin statute going a step further enlarged its definition of "injury" to include "mental or physical harm to an employe caused by accident *or disease.*"

Most of the states which followed the lead of Massachusetts in extending coverage by general expression to occupational diseases without any schedule of the diseases covered, define the term more or less definitely—Conn., Ill., Ind., and N. Y. (general item at the end of a schedule).

The Indiana law of 1937 like the Illinois act of the previous year on which it is based, sets up an elaborate definition. Indiana and Illinois are the only states in this category whose occupational disease statutes are of recent enactment. Connecticut got along without a definition for a while, but inserted a statutory definition of occupational diseases to meet the problem caused by a somewhat overliberal interpretation by the court of the general coverage for "injuries."

All these definitions have the purpose of making clear that the term "occupational diseases" connotes the idea of a disease characteristic of and peculiar to the employment, and exclude the ordinary diseases of life to which the general public is exposed outside of the employment. Some of these statutes take the definition from the expressions of judges in decisions of the courts of those states.

THE SCHEDULE PLAN

To meet the difficulties inherent in the difference between suffering as the result of a long exposure and suffering as the result of a single accident; to head off misapprehension on the part of workers and employers as to just what is covered; and to safeguard employers against high rates of insurance to cover unknown risks, the device which has been adopted in many states is the schedule plan of occupational disease coverage.

The states in this category limit their occupational disease coverage by setting up a specification of the diseases covered, usually in addition to a general definition of occupational disease. This group includes Del., Ky., (limited), Mich., Minn., Neb. (limited), N. J., N. C., Ohio, Pa., R. I., Wash., W. Va. (limited).

Five of these states passed occupational disease laws last year.

COMPARISON OF THE TWO FORMS OF STATUTE

The difference of opinion between the advocates of general and of schedule coverage is keen. It is one of the two aspects of occupational disease legislation which seems to have been discussed more than anything else, the other

being the dust disease problem. At the hearing which this committee held at the State House the principal issue in controversy was between these two systems. Employers and committees reporting on occupational disease legislation, and experts on occupational disease, generally have favored schedule coverage. These persons have been apprehensive that an unlimited general coverage will lead to expense and dissatisfaction. Notwithstanding such limitation of the general definition of occupational diseases as may be incorporated in the statute, the fear is expressed that employes will suppose that ills to which all flesh are heir may nevertheless be compensated, will even seek compensation for common colds, and will be disappointed when they find that they are out of luck in this respect. Claims have been filed under the non-schedule Illinois act for such ills as rheumatic fever, arthritis, rheumatic heart, dysentery, varicose veins, flat feet, cerebral hemorrhage from overwork, nerve disorder. Although disallowed, such claims entail cost and expense to all parties and disappointment to the worker, and there is always the possibility that an over-sympathetic administrator may cause confusion and set a dangerous precedent by granting such a claim.

It is also feared by those who favor schedules that the insurance premiums for general coverage will be higher because of the very uncertainty as to what is covered and the possibility that industrial commissions and the courts will extend protection beyond the proper limit. While the recently decided *Goldberg* case was pending in New York under a general coverage provision, the advocates of schedule coverage had a case in point. There an employe who fell on the street tried to establish that her fall was due to an occupational disease; viz.—a weakness of her legs caused by exposure to an electric heating unit in the cashier's booth where she worked. The New York Court of Appeals denied the claim early this year in its decision reported in *276 N. Y. 313.* The court set out a definition of occupational diseases which included the principle that the disease must be peculiar to and characteristic of the particular industry.

But the danger of a contrary decision under similar circumstances in other states has alarmed the employers. We have already noted that a statutory amendment to cure

such a situation was necessary some years ago in Connecticut.

There can be no doubt that difficult questions of fact as well as of law arise under all occupational disease statutes. The schedule plan obviates some of these questions. Under it if the sufferer has a certain scheduled disease he may not need to show that it is peculiar to and characteristic of the industry in which he was exposed to the hazard. Under a non-schedule act the sufferer has the burden of proving his disease to be occupational in nature—an issue which may develop into a fight between expensive experts, unless the precedent as to that particular disease has already been set in some previous case. Here is where the advocates of schedule coverage fear that under a non-schedule act attorneys for employes will gamble on a chance to recover compensation for their clients and "rackets" will be the result.

It has been suggested that a gradual taking on of the burden of expense is advisable in any new occupational disease statute; and that the schedule plan gives a state an opportunity to feel its way along toward an eventually broad coverage with the least expense to industry in the meantime. Coverage can always be extended; it can with difficulty be limited.

It is obvious that any occupational disease law should avoid as far as possible an immediate increase of expense on employers to the point where they will be driven either to close up their industry or to drop entirely out of the workmen's compensation act, and take their chances at common law.

Whether an employer is liable at common law to an employe who catches an occupational disease is a question which has been much controverted in other states. We do not know what the courts of Maine would say on that issue. The effort to establish such a common law liability has been successful in some states. Such a decision brought the enactment of the North Carolina law. The fear of it has been one of the incentives for occupational disease legislation.

It is of course true that when there is common law liability for occupational disease, the employer who stays out

of the law in a state having an occupational disease statute is not as much affected by the loss of common law defenses in an action brought against him as he would be in an action for an accident. In the nature of things the act of a fellow-servant or the negligence of the sufferer cannot contribute to his disease as it may to an accident. The non-assenting occupational disease employer would as a practical matter only lose the defense of assumption of risk.

The danger that an employer in Maine may be liable in an unlimited amount for damages to a workman who gets lead poisoning because of the conditions of his work, is however very real. To avoid it, employers as well as employes need occupational disease legislation for some of the very reasons which impelled the adoption long ago of workmen's compensation acts for accidents. Without such a statute industry may be hamstrung by the knife of the common law.

On the other hand, if there is no such common law liability, the employer can safely stay out of the occupational disease law.

The effect of putting too high an increase of insurance premiums on the employer to meet the occupational disease coverage under an occupational disease law, would certainly be to cause him to take that course. If there is no common law liability for occupational diseases, his employes would be worse off than they are now. They would still lack occupational disease protection, and might also lack accident coverage under the workmen's compensation act.

To bring all employers in line under an occupational disease law would require changing the form of our workmen's compensation act from voluntary to compulsory. This would throw open the question of the constitutionality of the act, and would cause doubt and uncertainty until the change had been approved by the court. The best way to bring them within the law is to keep the expense at a minimum.

Legislation tending toward the prevention of occupational diseases would indeed solve part of the problem, but that, as we have said, is outside the scope of this committee.

There is no doubt but that the schedule plan is the present fashion. Disinterested experts advise it and employers

usually want it. The issue between the two forms of occupational disease statute has arisen in heavily industrial states where the legislatures have felt that the expense of occupational disease coverage should be eased on to the shoulders of employers to prevent such a dislocation in industry as happened in New York a year or two ago when a general coverage item was unexpectedly added to a schedule of occupational diseases.

On the other hand, the opposition to the schedule plan has stemmed from labor, and has been backed up by the influence of the federal department of labor. The representative of that department who spoke at this committee's hearing was cogent in his arguments against the schedule plan. The strong point in his argument is that the injustice to the occupational disease sufferer whose disease by inadvertence or lack of information is omitted from the act, more than counter-balances the possible danger that commissions and courts will over-liberalize the law. The advocates of the schedule plan concede that it leaves open the possibility of the omission of items which should be covered. This concession it seems to us kills for Maine the merits of their plan. They say that this objection is overbalanced by the advantages of the schedule plan, and that the objection is but temporary because another legislature can always add new items. Some of the schedule states put the duty of recommending such new items on medical boards or industrial commissions. Others attempt to invest administrative boards with the power to add new items. Such a power would be unconstitutional in this state. It seems to us that the difficulty in Maine is insuperable. The objection to schedule coverage which the advocates of that system concede sticks up like a sore thumb.

It seems to the majority of this committee that the schedule plan is a complicated attempt to head off evils which in Maine at least would be more fanciful than real. The list of diseases and hazards in some of these schedules is truly appalling. Often there are thirty or forty separate items set out in double columns by disease and by occupation. Some of these lists might well be simplified and combined to reduce the total, but as they stand the schedules are weird.

Bulletin 582 of the United States department of labor

lists hundreds of occupational hazards leading to occupational diseases, and other hundreds of industries in which these hazards may occur. To attempt to classify these by statute seems to the majority of this committee to be an arrant absurdity. However necessary it may be to attempt to do this in more complex industrial states, we do not need to try to do it in Maine.

The advocates of the schedule plan concede that its ultimate aim is to make compensable all diseases properly occupational. They accuse their opponents of desiring to set up health insurance in the guise of occupational disease coverage. Their real reason for opposing a general phraseology appears to be a distrust of the administrative and judicial personnel which will have the enforcing of the law, but they are honestly apprehensive that expensive litigation and disappointment to all parties concerned will follow from a non-schedule plan.

WE RECOMMEND A DEFINITION OF OCCUPATIONAL DISEASE WITHOUT SPECIFICATIONS

This committee has confidence in our courts and our Industrial Accident Commission, as well as in the commonsense of our employers and employes. We are willing to give the advocates of both systems full credit for sincerity, and we discount their criticisms of each other's motives. But convinced as we are that Maine should have an occupational disease law, we see no reason for postponing its general application. We therefore suggest that Maine should go the limit at once and enact a general statement of occupational disease coverage.

In this respect we have a definition ready for us in the decision of our Law Court in *Dillingham's case*, 127, Me. 245. There in refusing compensation as for an "accident" to an employe who was suffering with anthrax—the court defined his occupational disease in words which form the basis of the definition in the statute which we submit herewith.

We have omitted a redundant clause, and have added the expression "pathological condition" to make clear that occupational poisoning though not strictly a "disease" is covered under the general definition, as it is under the

schedule acts. Though the phrase "occupational diseases" has come to have a significance broader than the literal meaning of the words, clarity requires that the phrase should say what it means.

And clarity is what all parties seek. Controversy breeds from uncertainty and controversy leads to litigation with attendant expense, delay, disappointment and rancor.

Merely omitting the words "by accident" in our present act, throwing on the courts the duty of defining an "occupational disease" would be as objectionable as the schedule plan. Only Massachusetts of all the states sticks consistently to that course, and Massachusetts is having its troubles with its occupational disease compensation system at this very time. We choose the middle ground: to define the term substantially as our court has already defined it, but to leave to Industrial Commission and courts the scheduling of the application of the term to specific instances.

All the members of the committee signing this report appreciate the force of the arguments in favor of the schedule plan. Some of these members of the committee would prefer to have that plan adopted. These members favoring the schedule plan yield, however, on this point to the view prevailing among those members of the committee who are in favor of some form of occupational disease legislation and join in the report.

DUST DISEASES

The other problem which causes the most difficulty in occupational disease discussions is the problem of the dust diseases. Silicosis is the typical dust disease, but there are several other forms; e. g., asbestosis. For the purpose of this report we prefer the simple term "dust diseases." By this term we refer to all the pulmonary diseases called generally by the doctors pneumoconioses.

Long exposure to fine dust in the air develops in some persons a fibrous condition of the lungs and air passages. This is progressive as long as the exposure continues. In many cases it reaches the point where the sufferer is disabled from further work, and death may ensue because of his susceptibility to respiratory diseases such as tuberculosis.

To compensate for disability from the ordinary occupational disease is fairly simple. Compressed air illness is a case in point. It may originate suddenly—by "accident." Even where the onset is gradual—so that the sufferer has an occupational disease as distinguished from an accident —the suffering is immediate, the diagnosis is certain, the treatment is specific, and effective. Casual relation between exposure and suffering is as plain as in most accident cases. The cause once removed and a cure effected, the disease does not recur.

But dust diseases develop over a period of years, often exist in an arrested and even harmless state for long periods of time; and may result in disability long after the exposure has ceased. Diagnosis is difficult, treatment ineffective. The origin of the disease in a certain employment may be difficult to prove. The sufferer may contract the disease on one job and only suffer from it long afterwards on another job. Changing the occupation may hold up the progress of the disease, but it is ultimately incurable. It may start up and recur even after it has been once arrested. Disability and death ensue from complications such as tuberculosis rather than from the dust disease itself.

Lurid articles on the dangers of dust disease in certain industries, and wholesale discharge of employes where the insurance rate has been increased to cover a suspected dust disease hazard, have tended to focus attention on the dust diseases. Employers and legislatures have been scared at the impending cloud of dust disease payments.

This fear of dust diseases has been one of the deterrents to the adopting of occupational disease laws in several states. Largely because of this fear, our neighbor, New Hampshire, has declined to take on the occupational disease law which was recommended to the legislature of 1937. Several states have excluded dust diseases from their occupational disease statutes, and all the states which have recently set up occupational disease laws have made special provisions regarding the dust diseases.

The national silicosis conference of 1936-7 under the auspices of the federal department of labor, reported, however, that there is less disabling silicosis than was previously believed to exist. The conference estimated that 2% of

workers are exposed—half of them seriously—but only 1/5 of 1% of the workers have any silicosis, and only 5% of the small number encounter disability from it. Nevertheless that conference like all the experts and committees who have studied the subject of occupational diseases, recommended that special provisions for dust diseases should appear in every occupational disease law. The legal subcommittee recommended: (Bulletin 13, Div. of Lab. Standards, U. S. Dept. of Labor)—

1. Legislation providing compensation for occupational dust diseases.

2. Preventive legislation; i. e., a division of industrial hygiene in each state with definite duties and powers (which the report specified in some detail).

3 (a). Periodic medical examinations, and (b) autopsies. (The labor representation dissented from recommendation 3 (a) unless adequate provision be made for the protection of elderly and partly incapacitated workers.)

4. A medical board of trained experts appointed by the governor with supervision of examinations and autopsies.

5. Apportionment of the dust disease burden during the early years of the compensation statute.

6. Definite dust disease provisions in the statute.

7. Compulsory compensation.

8. Limitations for filing claims longer in time than in accident cases.

9. Provisions during the early years of the act limiting its application to persons exposed while employed within the state.

10. Penalties for wilful false statements, none for incorrect statements by employes as to previous medical history.

11. Special provisions as to (a) lapse of time between exposure and death, and (b) deduction of compensation payments from death benefits.

12. Compulsory insurance of all risks.

13. State and federal legislation for prevention.

It will be seen from the annotations to the statute which we are submitting with this report that we have had in mind the suggestions listed above.

Public addresses at Kansas City in 1937 by Hon. Peter Angsten of the Illinois Industrial Accident Commission, and by Hon. J. Dewey Dorsett of the North Carolina Industrial Commission (former president of the Association of Accident Boards and Commissions); and at York Harbor, Maine, in 1937, by Hon. Harry A. Nelson of the Wisconsin Industrial Commission, are exceedingly significant in their account of actual administrative conditions under occupational disease laws in those states.

Mr. Angsten indicates that Illinois is finding no insuperable difficulties in the administration of its new act, which as we have seen is a non-schedule act applying to dust diseases. Mr. Dorsett, however, who is administering a schedule act, says that "the 'run of the mine' occupational disease in our state is not a problem at all. But with silicosis or asbestosis you have a horse of another color." He says that North Carolina uses successfully the same procedure in occupational diseases as in accident cases, but he concedes that the snags are found in the dust disease cases. It has been intimated that in some states the claiming of disability for dust diseases has reached the proportions of a "racket" to the great concern of employers, and honest labor, but neither of these administrators appear to have encountered that problem in their states.

Wisconsin was one of the earliest states to have an occupational disease statute, and as we have seen followed the Massachusetts procedure in extending general coverage without a schedule. The Wisconsin law in 1919 simply extended the workmen's compensation act to include all other injuries including occupational diseases. The courts had to determine the date corresponding to the "date of accident" in the workmen's compensation act, and determine which of successive insurance carriers must carry the risk. The legislature has now added some special provisions as to dust diseases, and has modified the court rulings on some of the other details of administration. Mr. Nelson says that in seventeen years, since occupational diseases came

under compensation, payment for occupational diseases have been 2½% of all payments, 95% of the occupational disease payments being for dust diseases. He believes, however, that because of the business depression this latter amount was larger than it will be in the future. Additional factors which are ceasing to operate are accrued liability, and over-liberal settlements due to lack of knowledge and "hysteria on the part of employers, insurance carriers and the industrial commissions."

Mr. Nelson says that his commission has found no difficulty in administering the occupational disease features of the compensation system under the same procedure as the accident features, and seems to find no special difficulties with the dust diseases. He places much credit for the satisfactory situation in Wisconsin first in the wisdom of the legislature in giving the industrial commission jurisdiction and power as to investigation and prevention of hazards; and second in the high character of the administrative personnel.

These three states with dust disease compensation therefore seem to give us no basis for a fear of dust disease complications from an occupational disease law in Maine.

That the fear of dust disease compensation exists in our state is, however, shown by the fact that since the committee's hearing the members of the committee have received a large number of letters from representatives of industries in the state where dust hazards may exist, urging that no occupational disease law should be adopted in this state which would include a dust disease coverage.

The committee can but feel that as far as Maine is concerned the fear of dust diseases is more or less of a bugaboo. If we are going to have an occupational disease statute it ought not to exclude a class of diseases plainly occupational. The diseases should be included, but efforts made to safeguard the employers and ease the load. It should be borne in mind that many persons have dust diseases who are not incapacitated and never will be incapacitated. The human system can tolerate a great deal of dust as it can infections and poisons. We doubt if the fears of a dust disease "racket" will be justified by any developments in this state, and we are confident that the expense to the employer will not be prohibitive.

GRADUATING THE COST IN THE FIRST YEARS OF THE LAW

We believe that on Maine employers should not be put the cost of pensioning employes who have acquired dust diseases in other states. Indeed the whole weight of accrued dust disease conditions, even in the case of Maine employes, should not be thrown at once on Maine employers. The North Carolina statute did this to North Carolina employers, but most occupational disease laws have either graduated the cost (at least of dust diseases) during the early years of the occupational disease system, or have provided in part the same result through a system of waivers.

To raise the cost of insurance to the point of paying in full this accrued liability would either put the industries out of business, or cause them to drop out of the act and take a chance that their common law liability would be an easier load than the insurance premiums for occupational disease coverage. This possibility we have discussed above in another connection.

On the other hand, those employes with incipient dust diseases who can now get nothing, should be entitled to some benefit under our new law.

LIMITATIONS ON COMPENSATION

The committee, having included dust diseases under the general coverage which we recommend, but recognizing that these diseases form a special problem, has, in the law submitted herewith, tried to safeguard the interests of all concerned.

We suggest that to entitle the sufferer to compensation, exposure to any occupational disease must have been at least in part in this state; viz.—two years out of a minimum of five years' exposure.

Further, the committee has extended to all occupational diseases certain provisions which are usual in dust disease statutes, and particularly applicable to dust diseases. Compensation is to date from disability, but disability must occur within three years from the date when exposure ceases. The period, therefore, within which a sufferer from dust disease who has left his employment can claim compensation, is limited.

Moreover, provisions for partial compensation on change of occupation due to exposure to an industrial disease hazard, have been added in our proposed act, on the model of the North Carolina and Wisconsin acts. In North Carolina—a schedule state—and in Wisconsin—a general coverage state, these provisions are applicable only to dust diseases, and that is where such a provision is principally needed.

The most important protection we have given to employer is the inclusion in the proposed law of certain maxima applicable during the early years of the act. In Maine, as it has been in many states, this should be a brake against a sudden increase of expense to the employer, while the employes are at the same time better off than they now are.

The provision for apportioning the suffering between an occupational disease, and other ailments complicated therewith, is also a safeguard to the employer.

The committee therefore hopes that the cost of carrying compensation for dust diseases will not be grievous if a system of industrial compensation is adopted in this state which includes dust diseases; and that our employers will find that they can afford to assume the cost.

OTHER SPECIAL STATUTORY PROVISIONS

Several other points require special attention in drawing occupational disease legislation. Some of these were mentioned by the attorney for the Associated Industries of Maine at the hearing on October 31, and they appear also in the report of the national silicosis conference summarized above.

1. The selection of a date corresponding to the "date of the accident" from which compensation is reckoned in the workmen's compensation act, and by which the period for notices and filing claims is dated.

2. A provision for expert medical data. Medical problems are inherent in occupational disease cases. Occupational disease statutes usually set up medical boards to pass on these technical questions, sometimes making their decisions final on questions of fact.

3. A provision for waivers by employes suffering from incipient occupational diseases.

4. A provision for medical examinations of employes.

5. A special provision for partial compensation for temporary or partial disability from occupational diseases.

6. A provision for reduced compensation in case of mere acceleration or aggravation of other diseases or infirmities.

7. Limitation of medical benefits in dust diseases.

8. Selection of the employer liable when there has been an exposure in successive employments.

Each of these problems we have covered in the proposed act which we submit. The annotations thereto comment on the statutes and procedure elsewhere.

COST TO THE EMPLOYER

What will occupational disease compensation cost in increased premiums on the employers' insurance policies? This is a question on which the committee has endeavored particularly to get accurate information. It is an unsatisfactory or missing element in the reports of most of the previous committees on the subject. This may well be because the whole subject of occupational disease coverage is so new that few accurate figures have been compiled.

Mr. Zimmer of the federal department of labor has filed with the committee a list of rates under the North Carolina occupational disease law. He quotes the insurance commissioner of North Carolina as follows:

> "There is a one cent loading over all premiums up to 50 cents and a two cent load on all premiums in excess of 50 cents, and this applies whether the occupational disease element is present or not. In addition the enclosed table furnishes the specific load attached to the industries peculiarly susceptible to the hazard."

Mr. Zimmer's memorandum continues:

> "Under the North Carolina rate schedules therefore $3.00 per $100 payroll is the highest charge for occupational disease coverage in any industry. Examination of the rate schedule shows that this maximum rate is applied only in the industries known to have definite

silicosis hazards, such as mining, foundries, stone cutting and polishing, slate milling, etc.

"The schedule shows that in lumbering and logging the occupational disease cost in North Carolina is two cents per $100 payroll."

At the suggestion of the Maine insurance commissioner we consulted the National Council of Compensation Insurance at New York, which fixes the insurance rates on compensation risks for a group comprising most of the insurance companies in the country. The representatives of the council have been very courteous in giving us information.

From the data on the subject furnished to us by Clarence W. Hobbs, Esq., their attorney, we append excerpts for the information of the legislature.

The state of Washington puts on the employe himself a part of the expense of occupational disease coverage. This unique expedient has not been seriously advocated elsewhere.

A general statement was made at the hearing to the effect that the cost of schedule coverage is lower than the cost of all-inclusive coverage. Such figures as we have been able to obtain seem to make this doubtful. It seems to be difficult to compare rates in various states because of the differing provisions of the various statutes. Whether the statute is an all-inclusive or schedule statute is only part of the story. The statutes have differing limits and varying qualifications.

For instance, our proposed statute has a "staggered" maximum during the early years of the statute's effectiveness, applicable to all occupational diseases. Some states have such a provision regarding dust diseases, and some have no such provision at all. Maximum compensation, limits payable for medical and nursing care, and other similar items enter into the rate of premium which the insurance companies would charge to cover the risk.

Moreover, all occupational disease rates as yet are based not on actual experience, but on estimates. Occupational disease statutes have not been in existence long enough for a basis of experience to be built up.

It seems to be fairly clear from the data submitted herewith that all Maine industry, whether or not subject to an

occupational hazard, will under an occupational disease statute, have an increased premium rate of two cents per one hundred dollars of payroll.

The industries subject to occupational hazards which may lead to occupational diseases will also be charged additional rates depending on an analysis of the proposed statute. Whatever rates are set up are subject to reduction as later experience justifies. Occupational disease legislation will certainly increase safety first measures and thus reduce the amount paid for compensation as time goes on. This will better the insurance rates.

From the study of the great amount of legislation which has been written on the subject of occupational diseases in the last few years, the committee is convinced that the alarming expense which was at first anticipated will not be incurred. Notwithstanding the depression, which may well have set unemployed workmen to checking their physical condition for injuries which in good times they might disregard, the actual number of occupational disease cases filed and subject to compensation in states having occupational disease laws, has proved less than was expected. As business conditions better and safety first measures are put into effect, the number of cases should decline in proportion to the number of employes.

EXTRA-HAZARDOUS RISKS

To obtain insurance in extra-hazardous occupations is sometimes difficult. At any premium rate which the employer can afford to pay insurance companies may not want to assume the risk. Some states solve the problem with a general state fund. Another committee will report their recommendations to this legislature on that subject. One state (Penn.) has set up a special fund partly contributory and partly from tax moneys, for building up a reserve for certain occupational disease coverage. Still other states have an arrangement for pooling and assigning extra-hazardous risks among the various insurance companies. We feel that the time is not ripe for making any suggestion on this matter. If our feeling is correct that occupational disease coverage will not greatly burden industry in Maine, it may be that the difficulty will never be reached.

CONCLUSION

We are confident that the experience of other states indicates that with a tradition of competency in Maine's Industrial Accident Commission, such as we have been building up, industry will have nothing to fear from an occupational disease statute, and Maine employes will obtain something to which they are logically and humanly entitled.

We therefore recommend the adoption of an occupational disease law for the state of Maine, along the lines of the law which we have drafted and append hereto as a suggestion for the legislature.

We submit herewith the stenographic transcript of the hearing held by the committee at the state house on October 31, 1938; the survey report on Maine industries made at the instance of this committee by the state department of health in cooperation with the United States Public Health Service; and data regarding prospective rates of premium for occupational disease coverage.

January 1, 1938.

Respectfully submitted,

CLEMENT F. ROBINSON, *Chairman*
DONALD W. PHILBRICK, *Secretary*
SANGER M. COOK
FRANK E. MALIAR
GEORGE D. VARNEY
CLARENCE R. BURGESS

ACT RECOMMENDED BY MAJORITY OF COMMITTEE

AN ACT Extending the Workmen's Compensation Act to Cover Occupational Diseases

MEM: Checked with the "suggestions" drafted in 1937 by the Association of Casualty & Surety Executives, and called herein the "model law"; with the successful North Carolina act of 1935 which has since been generally used as a basis for occupational disease legislation in other states; and with a summary of all occupational disease statutes prepared (1938) by the Air Hygiene Foundation of America.

R. S. c. 55, amended. Chapter fifty-five of the revised statutes of Maine, known as the Workmen's Compensation Act is hereby amended by the addition of the following sections:

MEM: See designation of W. C. Act in c. 55, sec. 1.

Sec. 57. Title of law. The following sections of this chapter shall be known and may be cited and referred to as "the occupational disease law;" the phrase "this law" as used in said sections refers thereto.

Sec. 58. Application of this law. Except as otherwise specifically provided herein, incapacity to work or death of an employe, arising out of and in the course of the employment, and resulting from an occupational disease as hereinafter defined, shall be treated as the happening of a personal injury by accident arising out of and in the course of the employment, within the meaning of the Workmen's Compensation Act, and all the provisions of that act shall apply to occupational diseases; provided, however, that this law shall apply only to cases in which the last exposure to an occupational disease in an occupation subject to the hazards of such disease occurred in this state and subsequent to the date when this law takes effect; and provided further that in the case of pulmonary dust diseases there shall have been an exposure to dust hazards in an industry in this state for at least two years within a period of five years prior to the last exposure.

MEM: Sec. 8 of the Maine Workmen's Compensation Act: "If an employe * * * receives a personal injury by accident arising out of and in the course of his employment * * * he shall be paid compensation * * *."

Sec. 10. Compensation is for "incapacity to work," and begins on "the eighth day of incapacity." Occupational disease statutes in other states lack clarity in using also the terms "disability," "disablement."

North Carolina Act: "disablement or death * * * from an occupational disease described" (in list in its next section) "shall be treated as the happening of an injury by accident" within the Workmen's Compensation Act, and that act "shall apply in all such cases except as hereinafter otherwise provided."

An insurance company representative has suggested: "Disability * * * or death * * * from an occupational disease or condition" (as listed in schedule) "shall be treated as the happening of a personal injury by accident * * * and * * * this act shall apply * * *."

The "model law" provides that "where an employe * * * suffers from an occupational disease" (as listed) "and is thereby disabled * * * or dies * * * compensation as provided in the Workmen's Compensation Act as if such disablement or death were an injury by accident * * *."

Elaborate definitions of occupational diseases are found in most of the statutes, either with or without a schedule. Mass. and Wis. leave the definition for court interpretation. Conn. once did, but subsequently inserted a statutory definition. Dust diseases are excluded from some of the statutes—e. g., Del., Minn., Neb., and R. I.

The proviso is from the North Carolina Act. Penn. has a similar provision. Ill. and Ind. limit it to sixty days. For full compensation Ohio makes it five years' exposure to a dust disease hazard in the state, ninety days' exposure in other occupational disease cases; shorter exposure reduces the compensation. Wash. makes it three years for all diseases; Wis. ninety days for dust diseases.

Sec. 59. Definition of occupational disease. "Occupational disease" shall mean a disease or pathological condition normally peculiar to and gradually caused by hazards of the occupation in which the injured employe was regularly engaged at the time when he last became injuriously exposed to such hazards.

MEM: This definition is from the opinion of the Maine Supreme Court in Dillingham's case, 127 Me. 245, with addition of "pathological condition" to cover certain cases of slow poisoning, etc., which are occupational, but not technically diseases; and with a redundant clause omitted.

Some members of the committee recommend that the words "comprised in the following list" be added after the words "pathological condition," and that the above definition be supplemented with a list of the occupational diseases to be covered by this law. The majority of the existing occupational disease laws, including most of the recent enactments, schedule the diseases.

Sec. 60. False reports. No compensation shall be payable for an occupational disease if the employe, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represents himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of such disease.

MEM: This is from the "model law." The Del. Inc., Ky., Mich., Minn., N. Y., Ohio and R. I., acts have such a provision. North Carolina has a similar provision limited to certain dust diseases. The R. I. act makes "fraud" a criminal offense.

Sec. 61. Aggravation of occupational disease. Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where incapacity or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the incapacity or death as such occupational disease, as a causative factor, bears to all the causes of such incapacity or death, such reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.

MEM: From the "model law." North Carolina has a special provision cutting maximum compensation by

one-sixth where a dust disease is complicated with tuberculosis. Cal. and Conn. have provisions similar to the above.

Sec. 62. Date from which compensation is computed; employer liable. The date when an employe becomes incapacitated by an occupational disease from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, shall be taken as the date of the injury equivalent to the date of accident under the Workmen's Compensation Act. Where compensation is payable for an occupational disease, the employer in whose employment the employe was last injuriously exposed to the hazards of such disease, and the insurance carrier, if any, on the risk when such employe was last so exposed under such employer, shall be liable therefor; the amount of the compensation shall be based upon the average wages of the employe when last so exposed under such employer, and the notice of injury and claim for compensation, as hereinafter required, shall be given and made to such employer; provided, however, that the only employer and insurance carrier liable shall be the last employer in whose employment the employe was last injuriously exposed to the hazards of the disease during a period of sixty (60) days or more, and the insurance carrier, if any, on the risk when the employe was last so exposed under such employer.

MEM: The first sentence sets up the date of incapacity as the date most consistent with the Maine Workmen's Compensation Act's date of accident, since compensation under the Workmen's Compensation Act is measured from date of incapacity. The use in the North Carolina act, and the model law of "disablement" and "disability" is confusing, and seems to be due to a fear that dust diseases require special legislation.

The next sentence, except the proviso, follows the North Carolina act and the "model law." The sixty-day proviso is from the Ill. and Ind. acts. In the "model law" and the North Carolina act it is limited to dust diseases—sixty days in the model law, two years in the North Carolina act.

Most states hold only the last employer liable. A few states attempt an apportionment between successive employers.

Sec. 63. Notice of injury; filing of claim. The provisions of sections 19 and 32 of the Workmen's Compensation Act with reference to giving of notice, making claim, and filing petitions, shall apply to cases under this law except that in cases under this law the date of incapacity as defined in sec. 62 of this law shall be taken as equivalent to the date of accident in said sections 19 and 32, and the notice under sec. 19 shall include the employe's name and address, the nature of the occupational disease, the date of incapacity, the name of the employer in whose employment the employe was last injuriously exposed for a period of sixty days to the hazards of the disease, and the date when employment with such employer ceased. Provided, however, that after compensation payments for an occupational disease have been legally discontinued, claim for further compensation for such occupational disease not due to further exposure to an occupational hazard tending to cause such disease, shall be barred if not made within ten years after the last previous payment.

> MEM: This section redrafts secs. 19 and 32 of the Maine Workmen's Compensation Act to make them applicable to occupational disease cases. The date here set conforms to the "date of disablement" set in the Ill., Ind., and Ohio acts. In Mass., Mich., Minn., Mo., Neb., N. Y., N. D., Pa., R. I., Wis., and Wash., date "of injury" is the date fixed. The Conn. and the North Carolina acts fix on the employe the duty of notifying after the "first distinct manifestation of an occupational disease"; the Del., Ky., N. J., and W. Va. after "last exposure." This, it seems to us, is unfair to the employe.

The proviso is from the North Carolina act.

Sec. 64. Partial incapacity. Compensation shall not be payable for partial incapacity due to occupational diseases except as follows: where an employe, though not totally incapacitated, is found by the Industrial Accident Commission to be affected by an occupational disease, and it is also found by the Industrial Accident Commission that such employe would be benefitted by changing to another employment, and that such disease with such employe has progressed to such a degree as to make it hazardous for him to continue in his employment, he shall be entitled to

compensation for partial incapacity from the eighth day following the date of ceasing work in the hazardous employment, until he obtains, or there is available to him, employment in some occupation in which there are no hazards from such occupational disease; and thereafter to compensation equal to two-thirds the difference between his average weekly wages, earnings, or salary, before such ceasing to work, and the weekly wages, earnings or salary which he is able to earn thereafter, but not more than eighteen dollars ($18) a week; and in no case shall the period covered by such compensation be greater than three hundred (300) weeks from the eighth day following such date of removal.

MEM: This is from the North Carolina Act, there limited to dust diseases and accompanied with complicate provisions for working out the procedure for change of employment, and with the last sentence in different form. Other compensation for partial incapacity from dust diseases appears to be excluded by implication from the North Carolina Act. The North Carolina act puts a maximum limit on the amount of compensation that can be paid under this procedure.

The Wisconsin act also has a provision for compensation for partial incapacity from a dust disease pending a change of employment.

W. Va. classifies three stages of dust diseases and adjusts compensation so that full compensation is only allowed in the third stage.

Under the "model law" incapacity from a dust disease must be at least thirty-three and one-third per cent.

Several states wholly exclude partial compensation for dust diseases—e. g., N. Y., Ohio, Pa., Mich.

Sec. 65. Compensation limits. Compensation for partial or total incapacity or death from occupational diseases shall be payable only in the following manner and amounts: if such incapacity or death occurs during the first calendar month in which this law becomes effective, total compensation shall not exceed five hundred dollars ($500); if during the second calendar month, not exceeding five hundred fifty dollars ($550). Thereafter the total compensation payable for such incapacity or death shall increase at the rate of fifty dollars ($50) each calendar month. Such pro-

gressive increase in limits shall continue until the limit fixed in the Workmen's Compensation Act is reached. Compensation shall not be payable for incapacity by reason of occupational diseases unless such incapacity results within three (3) years after the last injurious exposure to such disease in the employment, and shall not be payable for death, unless death follows continuous disability from such disease, commencing within the period above limited, for which compensation is payable, and results within seven years after such last exposure.

MEM: The provision for "staggering" the maximum load *in dust diseases* during the first years of an occupational disease law is being generally favored since first adopted in New York, subsequent to the North Carolina act which does not have it. Such provisions are found in the Acts of Mich., Ohio, Penna., and W. Va.

The last sentence is from the North Carolina, and the "model law" there applicable, however, only to dust diseases. A similar limitation on compensation for disability—usually one year when applicable to all diseases, and two or three years in the case of dust diseases—is found in most of the acts. The seven year death limit seems to be found only in North Carolina. In Indiana it is one year from incapacity; in Penn. five years.

Sec. 66. Dust diseases; medical benefits. In the event of incapacity from a dust disease, the employer shall provide reasonable medical treatment; but liability for such treatment shall not precede the date of incapacity, nor extend beyond ninety (90) days from the date of incapacity; provided, however, the Industrial Accident Commission may upon cause shown direct a continuance of such treatment for a further period of not more than ninety (90) days.

MEM: The North Carolina Act limits medical benefits in dust diseases to three hundred thirty-four dollars a year for a period of three years. The foregoing is from the "model law."

See also sec. 64 above.

Sec. 67. Waiver. Where an employe, though not actually incapacitated, is found to be affected by an occupational disease, he may, subject to the approval of the In-

dustrial Accident Commission, be permitted to waive in writing full compensation for any aggravation of his condition that may result from his continuing in his hazardous occupation. In the event of total incapacity or death as a result of such disease, after such a waiver, compensation shall nevertheless be payable, but in no case, whether for incapacity or death or both, for longer than one hundred (100) weeks or to exceed eighteen hundred dollars ($1800) in the aggregate. A waiver so permitted shall remain effective for the trade, occupation, process or employment for which executed, notwithstanding a change or changes of employer. The Industrial Accident Commission shall make reasonable rules and regulations relative to the form, execution, filing or registration and public inspection of waivers or records thereof.

> MEM: This is from the "model law" where it is limited to dust diseases. The North Carolina Act has a similar provision with reference to occupational diseases as an alternative to change of occupation. (See sec. 64 above). The Ill. and Ind. occupational disease acts also have waiver provisions as to dust diseases. There is a waiver provision in sec. 23 of the Maine Workmen's Compensation Act, but it is little used.

Sec. 68. Impartial medical advice. On request of a party or on its own motion the Commission may in occupational disease cases appoint one or more competent and impartial physicians, their reasonable fees and expenses to be fixed and paid by the Commission. These appointees shall examine the employe and inspect the industrial conditions under which he has worked in order to determine the nature, extent, and probable duration of his occupational disease, the likelihood of its origin in the industry, and the date of incapacity. The provisions of sec. 21 of the Workmen's Compensation Act shall apply to the filing and subsequent proceedings on their report.

If claim is made for death from an occupational disease, an autopsy may be ordered by the Commission under the supervision of such impartial appointees. All proceedings for or payments of compensation to any claimant refusing to permit such autopsy when ordered shall be and remain suspended upon and during the continuance of such refusal.

MEM: This is an extension of sec. 21 of the Maine Workmen's Compensation Act in substitution for the elaborate provisions in the "model law," the North Carolina Act, and acts in some other states, for a permanent medical board with advisory (and in some cases—e. g., Mass. and Mich.—final) authority in occupational disease cases.

Most occupational disease Acts have an autopsy provision—e. g., Ill. (dust diseases), Indiana, Ohio (dust diseases), North Carolina, Penna., N. J., W. Va. (dust diseases), Wis.

Several states have general provisions for compulsory physical examination of employes at the instance of an employer—e. g., Ill., New Mexico and Wisconsin. On the other hand the N. Y. Act declares a policy against physical examinations as a pre-requisite to employment, though it does not prohibit such examinations. The Penn. and Wis. Acts penalize employers who discharge employes as the result of such an examination.

Maine has such a provision for compulsory examination applicable to compressed air workers (P. L. 1931, c. 164). Several other states have a similar provision for such workers or for workers exposed to lead poisoning. (La., Mo., Ohio, N. J., N. Y., Pa.), or to dust diseases (N. C.)

Minority Report

To the Honorable Governor and Council:

It has been the privilege and pleasure of the undersigned members of the Recess Committee on Compensation for Occupational Diseases to consider and investigate the necessity and desirability of legislation designed to compensate employees in Maine industries for injuries known as occupational diseases, as well as to consider and study such laws in effect in other states.

We have the honor of reporting our findings and conclusions herewith.

We have attended meetings, a public hearing on the subject, reviewed literature, talked with interested parties and have studied the proposed Report of the majority of our associates on the Committee. With this we cannot agree; hence this Report in which we set forth our reasons for such a disagreement.

OCCUPATIONAL DISEASE SURVEY

At the request of the Recess Committee of which we have the honor of being members, representatives of the State Department of Health and the United States Public Health Service were asked to conduct a survey that our Committee might enjoy technical data concerning occupational disease conditions throughout industrial Maine and thus better weigh the need for legislation.

The survey was undertaken by representatives of our State Department of Health in collaboration with experts from the U. S. Public Health Service, the latter instructing, guiding and otherwise having to do with the procedure and drafting of conclusions.

The Committee asked for facts, figures and proof that conditions *did* or *did not* warrant action of a legislative nature. The Committee got a voluminous report in which no quantitative estimations were recorded, and in which the meaningless expression "exposed to" was used to report on the presence of injurious substances.

In no instance did the survey report indicate the exact amount of harmful substances present. In no instance did the survey findings establish concentrations below which damage to health would not result and no where in the survey report is any mention made that the whole world is "exposed to" organic and inorganic dusts, volatile solvents, mineral dusts, alkaline compounds, gasses, infections, oils, fats and waxes in the course of their daily life.

The Committee asked for factual material that it might be guided in its conclusions and it got a plea for an industrial hygiene laboratory to be set up in the State Department of Health, plus some meaningless findings, devoid of the essential figures indicating "how much" and "for how long."

No differentiation is made between insidious diseases such as silicosis or anthrax, and such relatively minor afflictions such as dermatoses (skin eruptions) resulting from peculiar sensitivity to carrots, birch sap and certain soaps, oils, solvents or waxes.

PREVALENCE OF OCCUPATIONAL DISEASES

It is our contention that the Industrial Disease Survey is valueless as an indicator of conditions and that the Recess Committee has no technical data to support a claim of need for corrective legislation, as a result.

In further support of this contention, we learn that an analysis of all compensable and non-compensable accidents reported to the Industrial Accident Commission in 1928 revealed that but .07% of all injuries reported had "poisonous substances" as a cause (the lowest of all causes listed), and the injuries so classified represented but .09% of all lost time by accident in industry that year.

Furthermore, an investigation of reports of occupational disease cases to the Industrial Accident Commission during 1937, and including all queries and incidental references to occupational diseases as well as established cases, revealed that only 47 such references were on file.

Reference to the Vital Statistics Report for 1937, as compiled by the State Department of Health, acquainted us with the startling fact that but *two* deaths resulted from

industrial poisons, vapors or other toxic substances. One of these we know to have been a merchant, with no history of ever having been in a manufacturing establishment.

Physicians are compelled by law to report all cases of or deaths from occupational disease to the Commissioner of Labor and Industry together with full particulars. In seven years no such reports were received, this fact affording a good idea of the magnitude of the problem.

In our opinion the foregoing material measures the problem to find it incidental as compared to other and major causes of death and disablement in industry. It would seem more sensible to legislate in favor of better elevators, safer electrical installations or against fire hazards; far more fatalities and crippling injuries result from these sources.

Claims that "occupational hazards which must necessarily cause occupational disease exist to a vast extent in Maine" cannot be substantiated by any evidence brought before the Committee to date.

THE ATTITUDE AND POLICY OF INDUSTRY

Those who claim that industry is in favor of legislation as proposed by the majority of the Recess Committee to Study Occupational Disease Legislation are in error. Industry is in favor of paying for damage to the health of workers when such damage results from an occupational disease established as peculiar to an occupation and listed as part of the law, and when such damage or death has been proven to have arisen out of and in the course of employment.

Industry is *not in favor* of a law such as will encourage expensive litigation, drive industry out of business or out of the state, or establish a health and life insurance plan at its expense. Nor does industry favor a law under which all the ills and ailments to which the human is heir can be connected with an occupation to make a claim for damages likely to succeed.

Industry accepts its responsibility in the matter of bona fide cases of occupational disease, but sees no need for a complex law, provocative of litigation, contrary to the best

practice elsewhere and costly of administration. To use a cannon to kill a sparrow smacks of waste, the cost of such waste falling upon the manufacturer in particular and on the public in general.

We join with industry in asserting that prevention is better than compensation for loss of health. We maintain that the actual, bona fide cases of occupational disease are few in number. We know that the Commissioner of Labor and Industry has ample, sweeping power under the Statute to order corrections and improvements of any nature his safety advisers may see fit to recommend. The law specifies that physicians shall report any ailment or disease contracted as a result of a person's occupation or employment, such reports going to the Commissioner of Labor and Industry together with complete information.

Therefore, in view of the above, we would recommend that greater emphasis be placed on prevention by a utilization of existing law, plus some simple, inexpensive and yet satisfactory means of compensating such bona fide cases of occupational disease as may present themselves henceforth.

EFFECT ON INDUSTRY

We are of the opinion that the granite industry in Maine, now staggering under its many trials and burdens, will collapse or leave the state in the event this law is enacted.

We are assured that other industries such as foundries, paint manufacturing establishments, shoe and paper makers, shipbuilding and tanning, chemical and certain processes in other establishments, on which this state depends for payrolls, will be hard hit.

Every industry will be called upon to bear some part of the burden which in Rhode Island amounted to a 35% increase of compensation rates with the most costly of all occupational diseases (silicosis) eliminated from the law.

Remembering that attention has been directed to the relatively few cases of death and disablement reported annually, we would respectfully call your attention to the April, 1936, number of "Industrial Medicine" in which an article by a well-known authority records the costs of occupational disease legislation elsewhere.

The rates quoted do not apply to countries beyond the

seas or to areas of extraordinary hazard, rather to neighboring states with similar problems, labor and degree of exposure; namely, Massachusetts and New York.

We quote "However, in the meantime, various carriers requested and received approval of a $10 rate for many risks. Later, because of wage reductions, a $12 rate was approved for a period beginning June, 1932. But only one company would write the insurance at such rate, and it discontinued November 1, 1932, because of unwillingness of its reinsurer to continue.

"Thereupon, as a result of conferences between the Insurance Commissioner and actuaries representing the Rating and Inspection Bureau and leading carriers, in November, 1932, it was recommended to establish a rate for this classification of $5 per $100 payroll, with a 'Supplementary Occupational Disease' rate of $300 per employee per year ($25 per month for any employee on the payroll during all or any portion of any calendar month). This rate was not approved until over a year later, to take effect December 1, 1933. In the meantime, *insurance of risks in this classification was almost entirely suspended.*

"The $300 per capita rate was based on the fact that the experience under Classification 1803 for the policy years 1926 to 1930 inclusive disclosed a total of 92 pneumoconiosis cases, with an incurred loss of $288,075, the average claim cost being $3,131. It was estimated that many employees then in the industry would within the next 10-year period develop the disease, making it necessary to collect over that period the sum of $3,000 per man. Hence the necessity for the supplementary occupational disease rate of $300 per year or $25 per month of employment exposure. . . .

"While these rating provisions were developing, the payrolls in the stone cutting industry in Massachusetts were shrinking, as per the following table (furnished by the Massachusetts Rating and Inspection Bureau):

Policy Year	Payroll
1929	$3,033,200
1930	2,657,600
1931	2,046,100
1932	786,800
1933	421,400

"Of the payroll for 1933, $342,248, being 81%, was represented by one large risk which is not insured. These figures indicate that the cost of occupational disease coverage is either causing unemployment or causing men to continue at work without compensation insurance protection, or both."

An estimation of the effect of the Occupational Disease Law in New York State can be had by a study of the following excerpts, concluding an article in "Industrial Medicine":

"High though these rates may seem, their adequacy, under the present New York law, is generally doubted, with the consequence that the private insurance carriers are rejecting many risks, whereas the State Fund (which is not bound by manual rates) is exacting yet higher charges, especially for risks rejected by the companies.

"As a consequence of these very high rates, and the inability of some industries to get any kind of insurance at a price that permits continuance of operations, many establishments are laying off workmen and either closing down or sending their hazardous work out of the state, and an insistent demand has arisen for drastic amendment of the law in so far as it relates to silicosis and other dust diseases. It is probable, therefore, that the 1936 session of the legislature may see important changes in the law and consequently in the insurance rates."

A picture of the situation confronting the Massachusetts Legislature may be had by considering the following material taken from the latest number of the magazine "Industry":

"At present employers in the Quincy granite industry have been unable to carry compensation insurance because of the alleged prohibitive premium charges. It has been suggested to the commission that the maximum benefits under the Act be reduced to three thousand dollars, the contention being that the rates would be correspondingly lowered to approximately six and one-half per cent per one hundred dollars of the payroll. . .

"There is another proposal in the field of silicosis and other occupational dust diseases receiving serious consid-

eration. It is patterned after the New York and Illinois laws, and proposes a separation of this form of occupational disease from the other provisions of the Act. With certain changes it has the approval of foundrymen generally. . . .

"Strong opposition to an out-and-out compulsory law has developed because many employers, taking their chances at common law, have been caring for their injured employees in various ways, paying all the benefits required in the Compensation Act and in many instances more, giving the injured workers every attention, thereby maintaining fine employer-employee relations, and at the same time saving money but not at the expense of the injured worker."

It is evident from the foregoing material that a condition approaching the chaotic has been produced in neighboring states by unwise and perhaps unnecessary occupational disease legislation.

It is apparent that industry is throwing itself on the mercy of common law rather than to attempt to buy the protection compensation insurance affords. It is true that industries have been closed down or have been forced to send hazardous work out of state by reason of penalties imposed by such legislation as will be recommended for Maine.

When Maine's relatively insignificant problem in respect to occupational diseases is weighed against the foregoing examples of penalties to be expected, you will better appreciate our position in this matter.

Briefly, such legislation as will be proposed will precipitate litigation, contribute to dissatisfaction, lower efficiency, seriously effect the present harmonious employee-employer relations, provide a weapon for the disgruntled, discharged or poorly-advised worker, and make industry responsible for a health and life insurance scheme.

It will demand that industry and the state provide highly-skilled, costly experts to defend itself or arrive at the facts as the case may be, and will probably result in the matter of occupational disease compensation becoming a "racket" as has been true elsewhere.

In support of the above statement we have had it proven to our satisfaction that certain lawyers in a Western state

were disbarred for "manufacturing" cases; it is a matter of common knowledge that more occupational disease claims are filed from cities and centers of population than from areas where the most extreme exposures are known to exist.

An outstandingly serious result is worthy of consideration. That is the competitive disadvantage such a law will impose upon many of our industries. All are aware of the exodus of northern industry to the southern states. Nearly everyone is familiar with the inducements offered by such states in the form of low taxes, reduced labor costs and, particularly, a freedom from the burdens of social legislation such as this.

We feel certain that Georgia, South Carolina, Tennessee and neighboring states will welcome the passage of this legislation and will take full advantage of it. A map prepared by the U. S. Department of Labor shows that in 1937 no state south of Virginia, with the exception of North Carolina, had any sort of occupational disease coverage. Georgia is a principal competitor for our paving block business, dozens of new paper mills are established in that area, while the textile exodus is history.

The slightest increase of manufacturing costs is sufficient to convert the slight profits of this day to losses. Industries cannot operate for long at a loss. Even a few cents increase per ton, pound or dozen on freight rates, insurance, wages and the like, are too frequently fatal to an industry with the result that the thriving community of today with its light relief load becomes the desolate scene of unemployment, state aid, and bankruptcy tomorrow.

These and many other penalties, when weighed against the doubtful benefits of such legislation make us declare against it as written for the consideration of the 89th Legislature. To blind our eyes to these economic and social disadvantages could be likened to our going on record as favoring the "Robbing of Peter to pay Paul."

It is to be expected that a great number of our mills will desert the Workmen's Compensation Act in the event this occupational disease legislation is enacted, driven from the protection of the the Compensation Act by the high rates certain to be imposed. Evidence has been offered in proof

of the fact that the granite manufacturers in Quincy, Mass. have chosen the dangers of a suit at common law rather than to undertake the payment of extraordinary and prohibitive insurance premiums.

Over two hundred firms in Maine already have become non-assenting under our Workmen's Compensation Act. What do you suppose the total will be if this occupational disease legislation doubles and trebles the premium, as it will most certainly do in some instances?

It is our opinion that we should learn and profit from the bitter experiences of neighboring states.

EFFECT ON LABOR

At the Recess Committee's public hearing a well-known and experienced labor leader, once a legislative agent for the A. F. of L. in this state, sounded a note of warning that might well be heeded by all concerned.

Brushing aside the emotional appeals for the protection of the worker, this man predicted that industry would introduce physical examinations (as is their right) both as a pre-requisite to employment, and as a routine procedure in regard to those already employed.

It is evident to us that the spokesman was right. Industry cannot be blamed for defending its welfare, its purse and in some cases its very being against the costly litigation and payments certain to be occasioned by the enactment of such an occupational disease law. In some cases the writing of insurance protection is contingent upon it.

Physical examinations will reveal a variety of ailments, most having a vital bearing upon such occupational disease cases as may develop. Such examinations will reveal many physical conditions of an unfavorable nature and many workers, particularly those of middle age and over, will be penalized through no fault of their own, and through no fault of the employer. The occupational disease must shoulder the blame.

When such persons, by reason of heart trouble, failing eye-sight, kidney disorders, diabetes, respiratory ailments and allergies (or exaggerated sensitivities) to certain substances (caustics, fruits, wood dust, mixed dusts, birch and

hemlock sap, waxes, oils, fats, solvents, etc.,) have their afflictions recorded it will mean that the 89th Legislature, by enactment of a wide-open occupational disease law, has been guilty of throwing many of these unfortunates on the relief rolls.

Relief is and will continue to be a burden to the government of this State and its taxpayers. The demands of relief agencies have presented the 89th Legislature with its most distressing and formidable problem. We do not feel we should be in favor of contributing to such a problem.

It should be understood that the industries of this state have not availed themselves of the privilege to demand physical examination heretofore and it is to their credit. We have reason to believe that they are opposed to it and to this proposed law because it will no doubt force such a procedure in many instances as a measure of self-defense.

Throughout industry are hundreds of workers having a peculiar sensitivity to certain substances and compounds, exactly as there are hundreds of persons outside industry possessed of a peculiar allergy to strawberries, shell fish and poison ivy.

Today every effort is made to protect these workers against skin eruptions (dermatoses) by giving them work in areas where exposure does not exist or by permitting them to work under medical supervision and by the employment of various protective devices such as gloves and ointments.

With the occupational disease law in effect it is very doubtful if this class of employee will be welcome. Thus a hardship is worked on those, who through no fault of theirs, are denied work by reason of law. A complete waiver of rights under the Compensation Act would be necessary as the law stands today and we do not favor waivers.

The heaviest blow will fall on workers in the granite and quarry industry and on those engaged in stone-crushing, foundry work and processes where chemicals are used. It is probable that there will be no work for stone-cutters, should this proposed legislation become law. One stone-cutting establishment worked but 42 days in 1938 as against better than 40 weeks in good years. The competition from

the South, particularly Georgia, has made terrific inroads into that business.

Evidence has been given from the pages of the magazine "Industrial Medicine" that hazardous work has been sent out of New York State. It follows that nearby New Hampshire will reap a harvest from our stone-cutting plants, shoe factories dependent on benzol cements, and spraying operations, to mention only a few.

We cannot see the advantage of this piece of legislation when it tends to increase the operating charges, affords the South definite competitive advantages, promises to flood relief rolls with the unfit, offers New Hampshire a share of our business and guarantees to abolish an entire industry and penalize the rest.

TYPES OF COVERAGE

There are two types of coverage afforded by occupational disease acts now in effect throughout the country, one being known as "schedule" and the other as "non-schedule" or "blanket" coverage.

Schedule coverage lists in the law those several and specific occupational diseases for which compensation shall be paid, provided they arise out of and in the course of employment and as a result of a certain occupation, task or exposure. It is as sensible as the schedule of losses for which one is indemnified in event of fire; as sound a practice as the setting forth of requirements and penalties in a contract.

Non-schedule or "blanket" coverage kicks the door wide open to any and all fancied or real ailments that are traceable in imagination, in theory or in fact to an occupation. It establishes a pension fund, a life and health insurance scheme at the expense of industry. It asks the industry to give labor a blank check.

Proof of the foregoing contentions may be had in the following excerpts from recent publications. The "Goldberg Case," so-called, completely bears out our claim of indefinite liabilities under an all-inclusive (non-schedule) law.

"Shirley Goldberg was employed to sell tickets in a moving picture theatre. Her booth was on the sidewalk. It

was heated in cold weather by a small electric heater, operated from a switch in the booth. She contracted what she described as blotches or a rash on her legs. The blotches or rash she claimed were due to the alternate heating and chilling of her legs when she switched on or off the heater. They did not constitute a disability. However, on complaint to her employer, she was told to see her doctor. While on her way to see her doctor, on her own time, she slipped on the sidewalk and fell, fracturing an ankle. Although the day was cold and she testified there was ice and snow on the sidewalk, the claimant alleged that she fell solely due to weakness resulting from these blotches, and the Industrial Board so found; and found that the cause of the fall was an occupational disease, characteristic of and peculiar to her employment.

"The Court of Appeals, in an opinion that bristles with logic and sound sense, struck this free-for-all system from the language of the New York Act. They unanimously refused to concede that this was an occupational disease. To make every disease that arose out of and in the course of employment compensable as an occupational disease, they said, would be to make the compensation law 'the equivalent of life and health insurance.' "

Employers responsible for payments under the proposed act object to blanket coverage, for it is a practically assured fact that under this law every disease, whether the result of home or public contact, could be carried to the place of employment and assessed to the employer.

Pneumonia, bronchitis, rheumatic fever, eye infections, and intestinal complaints and many others could result in claims and must be fought. To those who claim the foregoing is far-fetched let us refer to the experience in Illinois under the blanket type of coverage where claims were filed for undulant fever (communicated by milk), tularemia (rabbit disease), rheumatic fever, arthritis, theumatic heart, heart disease, amoebic dysentery, varicose veins, flat feet, athlete's foot, cerebral hemorrhage and nerve disorders.

We feel that the reasonable, intelligent and sane way for the State of Maine to proceed in this matter would be to prescribe the greatest reasonable requirements for indus-

trial hygiene and to provide compensation only for those conditions that arise from specifically-named diseases that are *truly occupational, characteristic of and peculiar to* the processes and substances to which the worker is engaged and exposed.

Ill health is a deviation from the normal. But what is "normal"? How great a deviation is "abnormal"? Controversy is bred by uncertainty of language and controversy leads to litigation. It also breeds rancor, which in turn contributes to inefficiencies.

Under non-schedule coverage, manufacturers can expect to pay for occupational diseases occasioned by workers twisting their bodies at the hips! For the decision of a New York Court awarded damages to a man who gathered small amounts of a molten glass on a tool and swung about to deposit it in a mold. The Court held that the continuous gathering and lifting of the glass involved a constant twisting and straining of the body, resulting in a hernia, which is a disease.

We do not believe that Maine wants any such coverage here.

North Carolina has an occupational disease law, and it has been looked upon by some members of the Recess Committee with considerable regard. Commissioner J. Dewey Dorsett of that State, in a Special Report to the Legal Sub-Committee of the Commission on Economics, Legal and Insurance Phases of the Silicosis Problem, National Silicosis Conference, says in part:

"The most potent and effective measure for dealing with all occupational diseases, and more especially silicosis and kindred dust diseases, is prevention."

"I am a partisan of the schedule coverage. Any all-inclusive plan or even a scheduled plan not carefully developed is apt to provide such a blanket coverage of diseases generally as to make such an act tantamount to health, old age and life insurance. Schedules can be enlarged from time to time for new occupational diseases previously unknown. Therefore, labor cannot be injured by the *schedule* plan of coverage."

It is our belief that schedule coverage (the listing of

specific occupational diseases for which compensation shall be paid) is the sane, definite and sensible way to charge industry with its liability and responsibility in the matter of occupational diseases.

The fact that two-thirds of all occupational disease legislation is so written substantiates our opinion, together with the fact that non-schedule plans are changing to schedule in some instances.

Let it be distinctly understood that industry and ourselves entertain no distrust of our courts or the Industrial Accident Commission. Nor are we lacking in faith in their fairness and sincerity. No State has been better served.

All must admit, however, that a consideration of industrial accident cases is relatively easy as compared to the difficulty of judging the complexities of occupational disease cases with the attendant expert medical testimony, the difficulty of proof, complicating factors of age, inheritance, environment and off-the-job exposures.

The employer is at a distinct disadvantage in many instances, because the Industrial Accident Commission cannot have knowledge of a man's personal habits, home surrounding and off-time activities. All will grant that an alcoholic is prone to many disorders and that alcohol aggravates many incipient cases of occupational disease. A minor affliction of the throat or lungs could well be aggravated by a drenching while returning from the movies to produce a major ailment.

When we realize that workers are usually in our industrial plants but forty-four hours a week and exposed elsewhere for the remaining one hundred twenty-four hours, it is evident that occupational disease claims are not as easy to decide upon as are cases of trauma. When we call attention to the ease with which disease germs enter the system, without visible trauma and without the time and place being known, and when we consider that but forty-four hours of every one hundred sixty-eight each week are spent in manufacturing establishments, we picture the controversies to be expected.

It is our opinion that it is unfair to expect the members of the Industrial Accident Commission to define "occupa-

tional disease" when technical experts, industrial doctors, official commissions and learned societies have not yet been able to afford the country a definition of occupational disease which is satisfactory to all. This unfairness is eliminated by the inclusion of a list of diseases in the law, and the task of the Industrial Accident Commission made easier.

COST TO STATE

The Legal Sub-Committee of the National Silicosis Conference made some recommendations in the Report recently published. Among other recommendations we find that all states are urged to set up:

1. A Division of Industrial Hygiene.
2. Periodic medical examinations and autopsies.
3. A *medical board* of trained experts.

It is evident that the above services will be expensive, yet essential to the success of occupational disease legislation in the event it comes. Add to the above the cost of equipment, suitable space, travelling expenses, and one huge item of cost to the State is apparent.

About $1,800,000 is now paid annually in compensation premiums in Maine. This money leaves the State each year, and not all of it returns. Increase the amount by 35% and another direct loss is evident.

The cost of relief is well known to you. The burden occasioned by it is a heavy one. With legislation such as this threatening to draw a knife across the throat of industry, we may expect a substantial number of those now employed to appear for aid. This will mean that the relief costs will reflect the degree of damage done to those who are now self-supporting.

The loss of industries is certain and we feel sure that new industries considering Maine as a site, will not fail to take cognizance of this formidable obstacle to successful, profitable operation.

Firms having plants in Maine and other places as well will, of course, route their work to their plants in states having more favorable conditions by reason of lowered production cost.

CONCLUSIONS

We are confident that the occupational disease problem in Maine is a minor one as compared to other problems in the accident prevention field. The records of the Vital Statistics Bureau, the Department of Labor and Industry, and the Industrial Accident Commission indicate that Maine is practically free from occupational diseases, a survey of an entire year, and over 17,000 accident reports showing but 0.07% of all cases being attributable to "poisonous substances."

It has been determined to our satisfaction that the Industrial Health Survey conducted by the State Department of Health in collaboration with the United States Public Health Service was of no value to the Recess Committee of which we are members, the report contributing to a regrettable, harmful misunderstanding without furnishing the information desired.

It is our opinion, substantiated by abundant evidence, that an occupational disease law as recommended by the majority of the Committee will drive industry from Maine, afford Maine's competitors distinct and considerable advantages, and will completely disrupt the smooth functioning of the Industrial Accident Commission.

We are convinced that the interests of labor are not well served by such legislation, and that definite hardships to labor will result by reason of physical examinations, increased production costs and the substitution of mechanical processes to replace manual methods now in effect.

We are convinced that the Commissioner of Labor and Industry can and will correct all instances of injurious exposure brought to his attention, employing the accident prevention facilities afforded him, and the tremendous powers accorded him by law.

There is no doubt that the costs of compensation insurance will mount to ridiculous proportions. Nor is there any doubt that the near-chaotic conditions that have existed and now prevail elsewhere will result, to plague us here.

We are certain that the state must supply ample and very costly facilities and personnel to make such legislation function with any degree of satisfaction.

We are confident that the non-schedule type of coverage is vicious, unreasonable and not in accord with the majority of occupational disease acts elsewhere. It calls upon industry for a blank check and does not afford the employer a warning as to conditions he must guard against or name that for which he is expected to pay.

If occupational disease legislation must come, let it list in the law those diseases known to be peculiar to certain occupations and characteristic thereof.

We are certain that the few advantages afforded by such a law could be enjoyed without recourse to such a dangerous, punishing statute, and we believe that benefits to the few will be completely outweighed by the penalties imposed on the many.

We are guided by experience elsewhere in our conclusion that a deluge of claims for real or fancied injuries to health will result from the passage of such legislation and that Maine manufacturers will be called upon in some instances to pay for ailments incurred in whole or part in other plants, states and countries.

We are certain that such claims cannot be substantiated by evidence of a technical nature, the exposures having occurred over long periods of time, or in the past, and without technical evidence to support contentions, pro or con.

We subscribe to and recommend for your consideration Henry D. Sayer's comments in "The Trend of Occupational Disease Legislation":

"In the interest of all workers, the young and the old, the perfect and the imperfect, let us not embark upon legislative policies that can lead only to enlarging the field of unemployment, and to closing the door of industrial opportunity to those skilled and faithful workers who, having passed the meridian of life, are subject to those natural infirmities and ills of the flesh to which all men, in time, must bow."

We therefore recommend that the occupational disease legislation as proposed by the majority of the Recess Committee To Study Occupational Diseases *not be adopted,* and we further recommend that the search be continued that

means may be found whereby all interests may be protected without the imposition of crushing penalties on any group or groups.

Respectfully submitted,

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