OCCUPATIONAL DISEASE COVER IN NEW YORK

BY
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INTRODUCTION

It is well known to everyone who has any connection with the business of Workmen's Compensation Insurance in New York State that, effective September 1, 1935, the New York Workmen's Compensation Law was extended so as to provide compensation for all occupational diseases. Prior to that date most of the recognized occupational diseases had been compensated under a definite schedule of 27 paragraphs describing the several diseases and the processes in which they might be contracted. By the amendment of September 1st, a new paragraph 28 was added extending the Law to include "any and all occupational diseases" in "any and all employments enumerated" in the Law as hazardous employments. The only limitation on this extension of the Act is a provision that it does not "apply to any case of occupational disease in which the last injurious exposure to the hazards of the disease occurred prior to September first, nineteen hundred thirty-five."

MISCELLANEOUS OCCUPATIONAL DISEASES

By far the most important disease brought under the Act by this amendment is silicosis which, with other dust diseases of the respiratory tract, will be discussed later. In addition to such diseases, however, the effect of the amendment is to make possible numerous claims for compensation on account of diseases alleged to have been contracted in the claimant's employment and due to such employment. Only actual experience with the law in its present form and its administration will demonstrate whether compensation for such diseases will amount to a substantial part of the total cost. The lack of limitations under paragraph 28 and the absence of a definition of occupational disease to the effect that it shall be characteristic of the employment and peculiar and incident to the work of the employee leaves the precise extent of paragraph 28 in doubt and its scope

will therefore have to be developed gradually through decisions on individual claims arising under it. Under the circumstances, there is little or no sound basis for an evaluation of the cost of the miscellaneous diseases, but the consensus of opinion of the committees of the Compensation Insurance Rating Board which dealt with the question was that the increased cost would be about 1%. Accordingly in the last rate revision a general charge of 1% subject to a minimum of .01 and a maximum of .05 was added to the rate for each Manual classification. It should be noted that this charge was included in the rates which became effective July 1, 1935 although the law amendment was not effective until September 1, 1935. This was done to avoid the necessity of endorsing every policy with increased rates on September 1 after already having amended all rates as of July 1. It was justified by the fact that another amendment, establishing security funds, was retroactive in its effect, which more than offset the apparent overcharge on account of occupational diseases for the two month period. The 1% included in the rates is a general charge to cover the miscellaneous occupational diseases covered under paragraph 28 and was adopted and approved with the distinct understanding that classes with serious occupational disease exposure (especially on account of dust diseases) would be subject to additional charges after September 1.

Dust Disease Bill

As already stated, dust diseases come within the provisions of paragraph 28. However, it is well to set down the fact that at the same session of the Legislature another bill, applicable only to dust diseases incurred in certain enumerated occupations, was passed by both houses and sent to the Governor for approval. This bill was to take effect immediately upon signature. It defined dust diseases and separated them into two stages; provided a definite and limited scale of benefits for disability or death, as well as a change of employment benefit for employees suffering from dust disease in the first stage, but permitted such an employee to continue in his dusty occupation if he waived his right to full compensation and agreed to accept reduced benefits in the event of disability thereafter. It also would have estab-

lished a plan for the diagnosis and determination of disability of claimants by special medical examiners and review of their findings by expert consultants. In addition it would have required the annual medical examination of all employees in the enumerated occupations subject to a harmful dust hazard.

The possibility of approval of this bill by the Governor was viewed with considerable apprehension by casualty insurance companies and various plans of handling the situation were proposed and thoroughly discussed. It was held by some that the immediate liability imposed on the employer by this bill was uninsurable. Silicosis is a disease of slow development, usually requiring years of exposure to dusty conditions before a man is disabled. Nevertheless the employer would be made liable for the disability even though the exposure subsequent to the effective date of the bill was very small as compared with prior exposure and much too short in itself to cause silicosis. In effect, therefore, the bill was retroactive in its application, providing compensation for a condition largely due to events which had already taken place. Furthermore, the compulsory medical examination of all employees, by making affected men conscious of their condition, would tend to precipitate the filing of claims if it did not serve to destroy employee morale entirely. Although this accrued liability was regarded as uninsurable, it was recognized that under the policy contract and the law the insurance carrier was forced to assume it as well as all other liability under the Compensation Act. Consequently it was proposed to devise a method whereby the assured would agree to indemnify the carrier for payments on account of the accrued liability, guaranteeing such indemnification by depositing a sum equal to the estimated cost of probable claims as determined by medical examination of all exposed employees. Another plan suggested involved spreading the cost over industries involved without attempting to make each employer pay his precise cost. This plan contemplated requiring an initial deposit by the employer consisting of a single premium for each employee exposed to a dust hazard enumerated in the law. Initially this single premium was to be based on the average expectation of loss per employee exposed in the particular industry but it was to be adjusted to a limited degree after the actual condition of the men had been

determined by the official medical examination. Thus, an employer with a large proportion of employees affected would pay a high premium for his accrued liability while one whose employees had no evidence of silicosis would pay a relatively low premium although he would not be relieved of all premium payments on this account. Under any plan the possibility of risks shifting from one carrier to another raised additional problems, to solve which the formation of a pool, composed of all carriers, to insure the liability under the dust disease bill was suggested. This idea was discarded when it appeared that many carriers did not favor such action. Still another plan involved spreading the estimated cost of the accrued liability over a period of several years so that the burden imposed upon employers by the Law would not be so tremendous in the first year. It was felt, however, that this scheme might very well place an intolerable load upon the carriers in view of the possibility of employers going out of business, leaving the State or even transferring from one insurance carrier to another.

In view of the opposition to this bill a conference was called by Industrial Commissioner Andrews on May 13th, at which representatives of labor and industry as well as insurance companies were present. At this conference the viewpoint of the carriers was presented by Mr. Leon S. Senior, General Manager of the Compensation Insurance Rating Board, who expounded the main objections to the bill and presented a schedule of proposed insurance charges for the accrued liability as well as future liability. Samples of these charges follow:

Code No.	Classification	For Accrued Liability Per Capita	For Future Liability Per $100 of Payroll
1741	Silica Grinding	$1,250	10.00
1803	Stone Cutting or Polishing..	1,125	9.00
3081	Foundries—iron	500	4.00
4053	Potteries	375	3.00
4114	Glassware Mfg.	150	1.20

These rates and per capita charges were to be applied in addition to the basic rates covering accidental injuries and miscellaneous occupational diseases. The per capita charges include a 20% loading while the payroll rates include a standard 40%

loading. These charges and rates were based upon a study made by Associate Actuary Kormes of the Compensation Insurance Rating Board of the report of the Massachusetts Special Industrial Disease Commission, and a scale of relativity founded largely on the relativity for occupational disease rates under Paragraph One (b). They were never actually adopted by the Board.

Mr. Senior also pointed out that while shock losses during the first year under the bill would be very great and perhaps beyond the employer's capacity to pay, thus causing them to shut down in many cases with consequent increase in unemployment, nevertheless veto of the bill would also leave industry in an unenviable position because in the long run the costs under the "All Inclusive" Act which had already been signed would be even greater. He therefore urged rewriting the bill before the "All Inclusive" Act became law on September 1, making a number of recommendations toward producing a workable piece of legislation. It is now a matter of history that the bill was vetoed by the Governor shortly after this conference but that no action was taken to replace it prior to September 1.

Dust Diseases under September 1st Amendment

It is obvious that many of the objections raised against the dust disease bill apply with equal force against the "All Inclusive" bill which became law. It also is retroactive in its effect and imposes a heavy burden on employers because of past occurrences. The issue of accrued liability still exists. However, since the Law does not require official medical examinations of all employees and certification of disability where found, it is probable that claims under the existing law will not be abnormally precipitated but will arise only when an employee actually becomes unable to carry on at his usual work. For this reason, although numerous individuals still asserted that the accrued liability was uninsurable, it did not seem to be quite so acute a problem as under the dust disease bill. Once again various schemes of cover were discussed by the committees of the Board but they finally simmered down to two, which were finally adopted. One of these, officially known as Plan I, contemplates the assumption of practically the entire liability by the carrier.

The premium for dust disease cover is based on a flat rate per $100 of payroll applied in the regular way. However, in addition to this premium, the plan requires the employer to pay to the carrier $300 for each claim due to disability lasting four months or longer or death resulting from injury to the respiratory tract. This charge, by requiring the assured to contribute to the cost of each serious dust disease claim, is designed to deter employers from discharging employees and thus precipitating claims. While originally intended as an additional premium over and above that produced by the payroll rate, this claim charge is now definitely not a premium charge but rather salvage.

The other plan, designated as Plan II, was based on the assumption that on the average it takes about seven years exposure for disability from silicosis to develop and that the accrued liability in the twelve months immediately subsequent to September 1, 1935 would therefore represent six-sevenths of the cost of each claim. Since this accrued liability is held to be uninsurable, the plan provides that six-sevenths of the cost of each claim, but subject to a fixed limit, shall be borne by the employer while the remaining one-seventh as well as any excess of the six-sevenths above the limit is assumed by the carrier. For its portion of the liability the carrier charges a premium based upon a flat rate per $100 of payroll. In order to guarantee payment of his proportionate share the employer is required to pay in advance a deposit fund based on a stated amount per capita, which fund is held in trust by the carrier and adjusted on the basis of claims actually incurred. If it becomes inadequate to cover the employer's share of claims reported, an additional deposit may be required. Of course, under the policy, the carrier is liable for the entire amount; therefore, the assured's contribution to each claim is again in the nature of salvage. Under this plan, if an employer has no claims chargeable to a particular period, he will ultimately receive back the entire deposit fund. This plan contemplates further that during the twelve months beginning September 1, 1936, after the law has been in effect for one year, the employer's share will be five-sevenths and the carrier's two-sevenths, and so on each year until the entire liability is undertaken by the carrier. The payroll rate will increase and the per capita charge will decrease correspondingly.

Except in the case of risks where the raw materials, processes or products producing a dust hazard are not present, one or the other of these plans must be applied to every risk subject to any of a list of about 90 classifications which were selected by the Safety Engineering Committee of the Board as involving a serious dust hazard, as well as to the foundry portion of any risk, however classified. The special occupational disease rates for these classes vary under both plans in accordance with a scale of relativity in which the dust hazard of Silica Grinding is taken as the maximum, represented by a weight of 100 in the scale. The weights for other classifications where there is a lower concentration of dust or where the proportion of employees within the classification who are exposed to the dust hazard is smaller than in the case of silica grinding, are correspondingly lower. This scale of weights was adopted by the Safety Engineering Committee and, in the absence of any reliable or sufficient statistical data, rests in part on the similar scale of weights developed by the National Council some years ago and in part on the combined judgment and engineering experience of the members of that committee. In establishing the actual rates the scale of weights was applied to the rate for the foundry classifications, which were selected as being representative of dusty industries, the weight for which was placed at 40. In effect, therefore, the foundry rates determined the rate level for the entire list of classes.

Rate Levels

There was, of course, no reliable data available to serve as a basis for rates. Consequently, the Actuarial Committee was forced to rely to a considerable extent on assumptions and judgment. The rate for occupational disease common law liability for the foundry classes which had been adopted effective July 1, 1935 was $4.00, and it was felt that the cost under the Compensation Law would be considerably higher. In the discussion of the subject occupational disease rates for foundries as high as $12.00 were suggested but a rate of $8.00 coupled with the provision for a claim charge of $300, as already explained, was finally adopted as a basis. This rate may be considered to repre-

sent the dust disease cost in foundries on the assumption that on the average there will be the equivalent of one serious case per annum per 100 employees; that the average cost of such case will be $7,500 (approximately the average D. & P. T. value in New York); and that the average annual payroll per employee will be $1500, thus:

$$\frac{7500-300}{150{,}000} \times 100 = 4.80 \text{ pure premium, equivalent to the rate of } \$8.00.$$

When this proposal was submitted to the Governing Committee it was found unacceptable to some members, chiefly because it made no provision for accrued liability and the subject was accordingly referred back to the Actuarial Committee for further study, as a result of which Plan II, already described, was evolved. The rates and per capita charges under this plan for the basic class, foundries, were developed from the following assumptions:

Average period of development of disability from silicosis: 7 years.

Frequency: equivalent of 2 serious cases per annum per 100 employees.

Average cost per serious case: $7,400.

Average annual payroll for employee: $1,500.

On these assumptions the total cost per 100 employees per annum would be $14,800 of which six-sevenths, or $12,686 is to be borne by the employer. The per capita charge to establish the deposit fund which serves to guarantee the employer's contribution is therefore $\frac{\$12{,}686}{100}$ or $127. The remaining $2,114, to be borne by the carrier, produces a pure premium of $1.41, or a rate of $2.35 when loaded with the standard 40% for expenses. It is to be noted that no expense loading was put on the per capita charges because they were to serve simply as a deposit fund which ultimately would be returned in full if no claims arose. Furthermore, although the employer's contribution on any case was to be limited to $6,343, his share of the average value, no specific provision was made in the payroll rate for the excess above such limit. In other words, unless the claim frequency proved to be less than 2% the payroll rates would be inadequate.

Examples of the rates filed with the Insurance Department, based on the above foundry rates, follow:

Code No.	Classification	Plan I Rate	Plan II	
			Rate	Per Capita
1741	Silica Grinding	20.00	5.87	317
1803	Stone Cutting or Polishing..	18.00	5.29	285
3081	Foundries—iron	8.00	2.35	127
4053	Potteries	7.00	2.06	111
4114	Glassware Mfg.	3.00	.88	48

Action of Insurance Department

These rates were not approved by the Superintendent of Insurance, who did, however, approve a reduced scale of rates. In the first place the expense loading under Plan I was reduced from 40% to 20% on the ground that "the expenses that are not required in a fixed ratio to the premium should be adjusted to a comparable basis in both plans," and the loading should be based upon the proportion of the rate representing the hazard of future exposure. Second, it was held that since the plan provided for increasing the rates where the hazard was abnormal and since the proposed rate of $8.00 was assumed to represent the average, the basic rate would therefore be applied to risks where the hazard was less than normal and should consequently be reduced 20%. Third, the average value of a serious case was reduced to $7,250 from which was deducted the claim charge of $300. Taking these changes into consideration a basic rate of $4.63 for foundries under Plan I was approved, calculated as follows:

$$\frac{7250-300}{150{,}000} \times 100 \times .80 \times \frac{1}{.80} = 4.63$$

In connection with Plan II the Superintendent disapproved the assumption of a greater claim frequency than under Plan I and therefore reduced the per capita charges 50% to correspond to a frequency of one serious claim per 100 employees. The average cost per case, however, was left at $7,400 and not reduced to $7,250 as in the case of Plan I. The payroll rate of $2.35 for foundries was reduced 20% for the same reason that the Plan I rate was similarly reduced. That portion of the payroll rate which was due to the assumption of greater claim frequency was not disturbed but was approved on different grounds, namely, as

a proper loading to cover losses in excess of the amount upon which the assured contributes.

In connection with these changes the Superintendent stated that the adjustment in the expense loadings resulted in an allowance for acquisition and field supervision of 4% under Plan I and 10% under Plan II.

The application of the scale of weights for the various classifications involved to the rates and per capita charge for foundries as approved produced the specific occupational disease rates and per capita charges which became effective September 1, 1935.

Future Problems

The question of coverage for and rating of the occupational dust disease hazard is by no means solved at the present time. Objections that several of the rates are too high are being received from many employers. On the other hand, private carriers generally seem reluctant to carry risks having serious dust hazards at the approved rates. The possibilities of a form of schedule rating for foundries and other industries have not been sufficiently explored; and the relativity of rates for the several classifications will undoubtedly require considerable correction as reliable information becomes available. Above all will be the necessity of determining the true cost of covering this hazard as actual experience under the amended law develops.