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Workmen's Compensation in Massachusetts.

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WORKMEN'S COMPENSATION IN MASSACHUSETTS
by
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INTRODUCTION

It is the purpose of this thesis to explain the workings of the present Massachusetts compensation act and to point out its notable features and its inadequacies. The development of the concept of workmen's compensation is discussed in chapter one through the use of an historical approach. This approach takes the reader from medieval times to the present day and shows how the concept of workmen's compensation evolved, and how the Mass. compensation act has changed to the present time. Chapter one explains the growth of the liability of the employer in general for injuries to his workers, the legal technicalities (common law defenses) found by employers to protect themselves in suits for damages, the workings of the employer's liability concept and the common law defenses in compensation cases against the workers in Massachusetts, the need for a workmen's compensation act in Massachusetts, and the first law with some amendments to the present time.

Chapter two describes the present Massachusetts compensation act from the point of view of two aspects- coverage and benefits.

Chapters three, four and five consider several other aspects of the compensation act, including the "merit plan" as a method of furthering the objectives of the act, the state fund- private insurance question as it is related to the act, and the more important practices and procedures under the act in their relation to the injured worker and the employer.
latter topic involves a description of the rights of the injured worker in relation to the Industrial Accident Board and the Courts.

Finally, chapter six contains an evaluation of the compensation act with reference to its adequacy of coverage and benefits, its protection of the employer as well as the employee, and its relative effectiveness, both as a method of compensating injured workers and as a means of reducing Industrial accidents.

The following paragraphs will show why, in my opinion, the topic of workmen's compensation is important.

The Bureau of Labor Statistics has estimated, for the years approximating 1940, that work injuries have cost workers and employers something over two billion dollars a year. The Bureau has also estimated that 16,000 - 18,000 die of work injuries every year and in addition, there are around 1,800 permanent total disabilities, 100,000 permanent partial disabilities, and over 2,000,000 temporary disabilities in the nation. The industrial problem of work injuries is of major importance in modern industrial life; and workmen's compensation, therefore, plays a paramount role both as a method of compensating injured workers and as a means of reducing the number of industrial accidents.

Massachusetts is by no means an exception to the forces which bring industrial accidents. With about three per cent of the total gainfully employed workers in the United States in 1940, Massachusetts' industrial injuries amounted to the
following rough percentages of the total injuries: temporary total - 2%, permanent partial - 1%, permanent total - .1%, and deaths - 1.2%.

Obviously, there are vast differences in the types of industrial plants among the states, and there are wide variations in state laws governing safety conditions in industries. Taking these and other factors into consideration the industrial accidents in Massachusetts do not seem to be as great as for the rest of the country. However, there are a great number of accidents regardless of the proportion to the national data. Since Massachusetts is not an exception to the rule, it is safe to say that the problem of industrial accidents in this state is of as much importance as much of a problem to Massachusetts as the injuries are a concern to the nation.

The partial solution to the problem in Massachusetts — workmen's compensation — is, therefore, a major interest to legislators, employers, and employees.
CHAPTER I

BACKGROUND

Workmen's compensation is a type of social insurance which provides medical care and partial wage compensation for wage earners or their dependents for economic losses caused by industrial injuries or diseases. Under workmen's compensation laws, the injury or disease must arise out of or be received during the course of employment.

The principle began in Germany (1883-1884) and spread to other parts of the world. It is an outgrowth of the historical development of employer's liability and the evolution of negligence law. In order to understand why the workmen's compensation laws have been used in recent years in the United States and Massachusetts in particular, it seems desirable to mention the high points of the evolution of the law of negligence; for it is this law which fostered employer's liability insurance, the use of the common law defenses, and other practices which eventually required that some action be taken, in this case—workmen's compensation laws.

The law of negligence has been at least three centuries in building. Its beginning is lost in the obscurity of feudalism, in which the master, as the owner, virtually of the body of his servant, answered upon the field of arms to those outside his household who were injured by the wrong of his
servants or henchmen. Under the feudal regime there was, of course, no recognition of any right of the servant against the master for the latter's negligence. A feudal master in his own household, like a king, could do no wrong.

The Statute of Westminster II (1285), allowing the chancellor to grant a new form of action for injury to persons or property, marks perhaps, the first recorded recognition of a legal remedy for negligence. In Common's Report (1695-1740) is found the first collection of negligence cases.

Blackstone refers only briefly to the master's liability to third persons for servant's negligence and does not even mention the idea of a master being liable to his employee for his own negligence. Thus he says:

"If a servant by his negligence does any damage to a stranger, the master shall answer for his neglect; if a smith's servant lames a horse while he is shoeing him, an action lies against the master and not against the servant, but in these cases the damages must be done while he is actually employed in the master's service, otherwise, the servant shall answer for his own misbehavior. Upon this principle, by the common law, if a servant kept his master's fire negligently, so that his neighbor's house was burned down thereby, an action lay against the master." 2

There is a great difference between the cases cited above and negligence law at the turn of the twentieth century, for the same author states that if a fire occurs in the master's house through the negligence of any servant, such


2 Ibid., p.585.
servant shall forfeit one-hundred pounds to be distributed among the sufferers, and in default of payment shall be committed to some workhouse and thereby kept at hard labor for eighteen months.

Somewhat later the earliest recorded attempt is made by an English judge to formulate the law of negligence. After an exhaustive analysis of the Roman Law, Lord Holt, in the celebrated case of Coggs vs. Barnard in the year 1704 defined three degrees of negligence, viz: gross, ordinary, and slight, varying in proportion of the degree of care assumed by the person charged with negligence in the act or occupation involved.

The growth of the spirit of individual responsibility soon led the English judges to lay down a broad rule of duty which has since been the basis of the law of negligence, and which, after modifications, is crystallized in a modern definition as follows:

Negligence, constituting a cause of civil action, is such omission by a responsible person, to use that degree of care, diligence, and skill which it was his legal duty to use for the protection of another person from injury as, in a natural and continued sequence, causes unintended damage to the latter. 3

The early cases recognized the liability of the master only to the public or to third persons. The great mass of law from which has been evolved the employer's liability to his own servants for his negligence or for the negligence of one of his own representatives is the product of the present century.

The master's duty so elaborately presented in the employer's liability acts of the states in many state constitutions, with its intricate modifications, is the product of the present generation.

Following old world history, therefore, we may look upon the evolution of the law of the master's or employer's liability as an ever-growing tendency of the times, due doubtless in large measure to the changes in the social and industrial condition of the working classes.

The changes in the negligence law, have been gradual. From time to time new rules and tests have been adopted adding to the liability of the employer through negligence. In the middle of the nineteenth century, the condition reached a point where the responsibilities of the employer became so burdensome that he was obliged to look about him for some means of protection in addition to the exercise of ordinary care and foresight in the actual conduct of his work.

In protecting his interests, the employer often took out employer's liability insurance. Under this, he was given some protection against the expanding scope of his liability for negligence. But in addition to the insurance, the employer also found other devices to protect himself in suits for negligence. These were the three common law defenses - contributory negligence, in which the employee was held responsible for the accident, assumption of risk, which stated that an employee was free to contract and assumed all the risks when he signed the contract, and the fellow servant doctrine,
which allowed the employer to escape if a fellow servant could be proved to have been responsible for the accident.

These three defenses and other common law theories greatly increased the employer's protection, but weighed so heavily against the worker that the hands of the courts were tied as far as compensating injured workers was concerned. It has been estimated that prior to workmen's compensation, the workers and their dependents lost about 30% of their cases. A 1920 case also placed non-compensable injuries at 80%—less than 20% who were before provided for under the old common law actions founded upon negligence. In another case in 1918, Sampson said:

"More than one-half of all such suits so instituted were lost by the injured employee and a very considerable per cent of the remainder resulted in little material help to him." 6

Again in 1917 one court decision read in part:

In support of this legislation (workmen's compensation) it is said that the whole common law doctrine of employer's liability for negligence with its defense of contributory negligence, fellow servant negligence, and assumption of risk, is based on fictions and is inapplicable to modern conditions of employment. 7

During the first decade of this century the law of

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6 Phil Hollenbach Co. vs. Hollenbach, 181 Ky. 262, 204 S.W. 152 (1918).

employer's liability for negligence with its defense of contributory negligence, fellow servant negligence, and assumption of risk, was assailed more and more vigorously as a method of compensation in this country as it had been years before by Joseph Chamberlain and others in England. It was quite properly alleged that the doctrine of fellow service was unjust when as a rule, the worker had no choice of his associates at work and it was too much to ask him to surrender his job to avoid risk. It was unfair to leave the victim or his dependents without recourse in the majority of cases. It was unfair to require the plaintiff to assume the burden of proof. Finally the system was regarded as unjust in that it imperiled the job of the victim when seeking compensation for loss due to temporary disability or permanent partial disability. Naturally, the victim of an ordinary accident usually brought no suit; very generally he accepted the offer of settlement made by the employer or his insurance carrier or went without compensation.

Thus we see the evolution of the employer's liability law of negligence in general. Its importance here lies in the fact that Massachusetts recognized the inadequacies of the system as a method of compensating workers for injuries and was one of the first states in the United States to attempt a solution.

In Massachusetts, interested citizens, legislators, and the labor unions recognized the inadequacy of the theory of employer's liability and attempted to do something about it.
Prior to the passage of the Massachusetts Workmen's Compensation Act in 1911, numerous hearings were held. Generally, the information given at these hearings, which would substantiate the need for a workmen's compensation law, is lacking. The reason for this is that the testimony was not recorded. However, there were several meetings held between the legislators and interested parties in 1907, the testimony of which is available. The hearings were on bills relating to modifying the employer's liability act of 1887 or substituting for it, a workmen's compensation law.

The arguments in favor of modifying the liability act were based on several topics. One of these was the date given showing the number of industrial accidents. It was brought out that linemen have a very dangerous job and that a large proportion of the men meet either violent death or are permanently disabled in the course of their work.8 One spokesman said that fifty per cent of the linemen met violent death. The reasons given for the large number of accidents was that power companies were using higher and higher voltages, the danger from falls was great, and even slight shocks might cause a man to fall and be crippled or killed.

Another stand which the opposition to the employer's liability took was on the grounds that it was difficult for


9 Ibid., p. 235.
an employee to get redress in case he was injured because the matter was turned over to the insurance company which fought the case and kept the issue in the courts.

The common law defenses were also proved to be inadequate in the light of existing employment conditions. The argument ran as follows: There is no workman who is a free contractor. Under our system of industry today, every man takes the job that is offered, and if it is a job for $2.00 a day, and a family is at home and he is out of work one week, he is under compulsion to take that job. He can't make a bargain with the employer. It is the legislators duty to rectify the injustice by which a man is forced to do dangerous work under compulsion and without insurance, by providing some sort of compensation in case of accident.

Other arguments presented at the hearings were that only fellow workers could be witnesses and if they testified against the employer, they would jeopardize their jobs, the bill would reduce accidents, it would increase the need for insurance, the fellow servant doctrine is illogical since every industry has its hazards, and finally since the employer paid the

10 Ibid., p. 240.
11 Ibid., p. 246.
12 Ibid., pp. 257, 258.
14 Transcript of Hearing on Bills Relating to Employer's Liability as above, October 22, 1907, p. 196.
courts and lawyers' fees anyway, why not let him pay an insurance premium and let the worker get the benefits of the expense.

Since it was claimed that a new standard of liability was needed and the legislators agreed, the Massachusetts legislature proposed that the workmen's compensation theory be adopted. This theory which was adopted stated that liability depended not on negligence, not on fault, but on the relation of the injury to the employment, or more specifically, on the injury "arising out of and in the course of employment". In the future, liability was not to be hampered by the prior narrow common law theories.

Horovitz explains the newly adopted theory by writing:

"When mechanical machinery broke down, whether due to the negligence of the employer or his workers, the cost of repairs fell upon the employer; and in the future when human machinery broke down and in any reasonable way could be attributed to the employment, part of the cost at least was to be placed on the employer." 16 (This includes Mass. as well as the Nation). 17

Several cases may be cited which reflect the new attitude adopted by the Mass legislature. They are not from the Mass. courts but show the type of thinking which prevailed in the country at the time (and shortly after 1912), and reflect the thought of the Mass. legislators when they proposed that the new theory be adopted. One said that the payment "should be

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15 Ibid., pp. 154, 155.
17 My own parentheses.
charged to and absorbed by the business." 18 Another at a later date reinforced the sentiment stating "that upon just and scientific considerations such injuries should be regarded as a charge upon the business upon which the employees are enaged." 19 Again in 1925 a section of another decision read as follows:

"Where machinery is destroyed or injured in industry it is a part of the burden of industry to supply or repair such machinery. Why should the same theory not apply as far as practicable, where human machinery is injured in carrying out the work? There is economic loss in both cases. 20

These comments, then reflect the attitude of the Mass. legislators and the concept of the proposed workmen's compensation.

In summary, then, we have seen how the liability of the master or employer has expanded in general. We have noted the inadequacies of the system as a method of compensating injured workers. And we have seen the effects of the theory of employer's liability with its common law defenses in Mass. and the need that was claimed of a compensation law.

The following sections are concerned with the original act in Mass. with particular attention being paid to the coverage, benefits, and adequacy. The amendments have been listed for observation in the appendix and include all such amendments up to the year 1949.

18 Phil Hollenbach Co. vs. Hollenbach, 181 Ky. 262 (1918).
19 Industrial Commission of Ohio vs. Weilandt, 102 Ohio St. 1, 130 N.E. 38 (1921).
20 Kansas City Fibre Box Co. vs. Cornell, 5 F. 2d 398, 43, A.L.R. 478 (cir. 1925).
The first compensation law in Mass. in 1911 was to become effective on July 1, 1912. Since its passage, numerous amendments have been passed. It is the purpose of this section to comment on the law as it was first enacted and to point out amendments which bring the act up to the present state. For a more detailed analysis of the amendments, taken by subjects, the reader is referred to the appendix.

Under the terms of the original act an employee was every person in the service of another under any contract of hire, express or implied, oral or written, excepting masters of and seamen on vessels engaged in interstate or foreign commerce. The stated exceptions were the following: three of less persons, persons employed as domestic servants and farm laborers, persons employed by telephone companies subject to the federal communications act, and persons other than laborers, workmen and mechanics employed by religious charitable or educational institutions. These exceptions to the term "employee" were not excluded from the act, but rather the act was made elective to them. The major amendment concerning the coverage in the law, came in 1943 and changed the exceptions to include:

"Persons employed by an express company, sleeping car company or carrier..., and persons employed by telephone companies subject to the federal communications act and excepting one whose employment is not in the usual course of the trade, business, profession or occupation of his employer..."

and the provisions of the chapter to remain elective were
changed as to employers of the following:

"persons employing six or less, or persons employed as domestic servants and farm laborers...". 21

The term "employer" said only in the text of the law that an "employer" shall include the legal representative of a deceased employer. In 1943 the present text was substituted reading:

"Employer", an individual, partnership, association, corporation or other legal entity, including the legal representatives of a deceased employer, or the receiver or trustee of an individual, partnership, association, or corporation or other legal entity, employing employees subject to this chapter." 22

According to the original act and a new subparagraph put in during 1941, a "personal injury" includes infectious or contagious diseases if the nature of the employment is such that the hazard of contracting such diseases by an employee is inherent in the employment.

The heart of the compensation law is the scale of benefits. For death benefits the original enactment read:

"If death results from the injury, the association shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to one-half his average weekly wages, but not more than ten dollars no less than four dollars a week, for a period of three hundred weeks from the date of the injury. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury the association shall pay such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual

21 St. 1943, chapter 529.

22 St. 1943, chapter 529.
earnings of the deceased at the time of his injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury."

Numerous amendments have been passed on the subject of death benefits. The reader is referred to the appendix for a description. The amendments have brought the act to its present state concerning death benefits. To summarize the amendments we can say that if death results the widow or widower gets fifteen dollars a week plus five dollars a week for every dependent child. The total weekly payment for all concerned must not exceed 150 a week nor exceed seventy-five hundred dollars nor continue more than four hundred weeks.

Of course, if the persons are remarried the benefits stop except for the children as before. The changes we can see, have been to raise the weekly payment, total payment and time period.

In the case of permanent total incapacity to work, the original act gave a weekly compensation equal to one-half the average weekly wages, but not more than ten dollars nor less than four dollars a week; and in no case did the amount exceed more than three thousand dollars or the time five hundred weeks. After many amendments in 1914, 1927, 1935, 1945, 1946, and 1947, the present law reads as follows:

While the incapacity for work resulting from the injury is total, the insurer shall pay the injured employee a weekly compensation equal to two thirds of his average weekly wages, but not more than twenty-
five dollars nor less than eighteen dollars a week unless the weekly wages of the injured employee are less than ten dollars where the number of normal working hours of the injured employee in a week are fifteen or more; provided, that the amount does not exceed ten thousand dollars.

while the incapacity for work resulting from the injury was partial, the first enactment gave a weekly compensation equal to one-half the difference between the average weekly wage before the injury and the average weekly wage which the person was able to earn after, but not more than ten dollars a week; and in no case to exceed three hundred weeks. The present law gives more, as follows:

while the incapacity for work resulting from the injury is partial, the insurer shall pay the injured employee a weekly compensation equal to the entire difference between his average weekly wage he is able to earn thereafter, but not more than twenty-five dollars a week; and the amount of such compensation shall not be more than ten thousand dollars.

These then are the provisions of the original act accompanied by the results of many amendments. This discussion has been limited to definitions, the coverage, and the benefits. There have been other amendments which are listed in the appendix. They have not been included in this section because the changes they brought were minor and in other cases the amendments concerned the public administration aspects of the law with which this paper is not concerned.

The following sections of the thesis are devoted to a study of the present law (we have worked up to that state now) with its application, adequacy and other related aspects.
CHAPTER II
THE PRESENT LAW
COVERAGE

All gainfully employed persons and gainfully employed minors are covered by the present compensation act with a few exceptions. Those who are not covered by the act fall into two categories - ineligible and excluded. The ineligible are those gainfully employed who are covered by federal statute, those covered by the admiralty and maritime laws of the country, and finally employers. The term "ineligible" is used to mean that under no circumstances would these gainfully employed be considered subject to the act. The term "excluded" means that the act as it stands does not attempt to include certain workers. However, employers employing these employees may come under the act if they wish, but if they refuse to come under the act, no penalties are provided. Those who come under the "excluded" category are agricultural workers, domestics and casual workers. It also includes employees of the state, county and town governments.

In the excluded category, the employer of such workers or servants has the option of coming under the act, but in any case the employer is still entitled to use the three common law defenses in actions of the employees to recover damages, whether he is under the act or not.

The per cent of those who could be covered by state law
(i.e.- excluding employers and federal workers who are absolutely ineligible under any circumstances), who are actually covered is about 92%, and of those who are covered by the law (92%), about 98% are insured. The following chart may aid the reader in understanding the preceding figures.

<table>
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<tr>
<th>Total Potentially Eligible *</th>
<th>Actually Covered</th>
<th>Percentage of covered also insured</th>
</tr>
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<tbody>
<tr>
<td>100%</td>
<td>92%</td>
<td>98%</td>
</tr>
</tbody>
</table>

* Subtract employers and federal workers from total state labor force. Remainder could conceivably be under act.

The last paragraph in effect means that 8% of the workers in the state who could be covered, are not included in the act. The 8% is composed of agricultural workers, domestics and casual workers. Actually the coverage of the potentially eligible is good. Considering that farmers would make up 1.2% of the potentially eligible list, we can note that the remaining small percentage excluded (about 5%) must necessarily be domestic workers and casuals.

Over the years since the passage of the compensation act in 1911, several attempts have been made to analyze the scope of the coverage in the various states. Carl Hookstadt was one of the first to do this. In 1917 and in 1920 he tried to estimate the number of workers covered by each of the

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compensation laws. He based his computations on the federal census of occupations of 1920. The first step was to subtract from the gainful workers in each state those employed in interstate rail transportation or by the federal government; in the first case because they were not covered by state laws; and in the second instance because they were already covered by federal statute. He then deducted in Massachusetts, employers and independent workers. The remainder were assumed to be coverable (i.e. - they were employees and were not covered by any other law and should be covered by the Mass. compensation act.).

His results for Massachusetts were as follows: There were 1,498,000 gainfully employed workers. He estimated, by subtracting federal government workers and the employers, the coverable employees at 1,109,000 which was 74.1% of the gainful workers in the state. Then by taking account of the employees excluded by the state law (153,000), which he figured to be 10.2% of the gainfully employed workers, he estimated that the per cent of coverable employees actually covered was 87.8%, and the per cent excluded was 12.2%.

Hookstadt made no effort to conceal the difficulties involved in the analysis. His whole book was an apology for the statistical difficulties. He pointed out the lack of adequate figures, good compilations and agreement

2 Ibid., p. 24
between classifications enumerated in the law and in the census, and the inadequacy of the industrial groupings of occupations in the census.

Again in 1933 another attempt was made by Harry Weiss to estimate the number of persons covered. This computation was not as thorough as Hookstadt's and was, in fact, a rough computation on a national basis.

Several changes in the method of calculation were employed. The gainful workers data include employees of railways and of the federal government, but exclude unpaid family workers. The self-employed were segregated by subtracting the members of over forty classes which include persons predominantly independent in employment status. The volume of employment was also taken into account.

Another attempt was also made by Reede, using the 1940 census. The following chart compares the figures compiled by Hookstadt, Weiss and Reede.

<table>
<thead>
<tr>
<th>Date</th>
<th>Covered</th>
<th>Percent</th>
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<tr>
<td>Jan. 1, 1915</td>
<td>1,098</td>
<td>87.1</td>
</tr>
<tr>
<td>Jan. 1, 1920</td>
<td>1,343</td>
<td>90.3</td>
</tr>
<tr>
<td>Apr. 1, 1930</td>
<td>1,273</td>
<td>90.6</td>
</tr>
<tr>
<td>Apr. 1, 1940</td>
<td>1,180</td>
<td>92.7</td>
</tr>
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* 000 omitted

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3 Harry Weiss, "Development of Workmen's Compensation," (unpublished Doctor's dissertation, Ohio State University, 1933),
Reede in his book "Adequacy of Workmen's Compensation", presents a chart showing the application of workmen's compensation in Massachusetts arrived at from indications of the industrial census for 1940. The census showed that for March 1940, the total labor force was 1,244,000; with 328,000 unemployed; 232,000 ineligible employees; 1,284,000 eligible employees; and 94,000 excluded employees. The per cent of eligible employees excluded because of occupation is as follows: hired farm workers, 1.2%; domestics, 4.5%; and casual workers, 1.2%.

A further method of estimating coverage is to determine the percentage of those insured to the number who could come under the compensation act. Today the law is compulsory for all included employments, whereas until 1943, the Mass. law was elective, i.e. applying to all included employments in which employers and employees have chosen to accept the act, but subjecting them to constraints unless they do so. The employer signified election by taking out compensation insurance. His payrolls were subject to audit by the insurance carrier and total audited payroll figures were released periodically by the Massachusetts Rating and Inspection Bureau. Reede says:

"The census indicated that 1,272,000 workers were under the act in 1930. For the year 1930, 1,183,000 workers appear to have been insured. Insurance is not required of local government units which then employed about 75,000 eligible persons. The bulk of these workers

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4 Reede, op. cit., p. 26
although covered, were probably not insured. If we add 50,000 uninsured workers to 1,183,000 private employees insured, we get an approximate actual coverage of 1,235,000. A few thousand individuals were also covered on a per capita basis. This difference between applicable and actual coverage--apparently 2%--is inconsiderable."

Thus we see that in terms of coverage of the act and in terms of insurance for those covered, the act has been effective. If we were to dig deeply into interpretation of the act, we would find that there are many varied, legalistic technicalities which show who is covered by the act and who is not covered, in special circumstances. In this connection the act defines an employee as:

"every person in the service of another under any contract of hire, express or implied, oral or written, excepting masters of and seamen on vessels engaged in interstate or foreign commerce, and excepting one whose employment is not in the usual course of the trade, business, profession or occupation of his employer, but not excepting a person conclusively presumed to be an employee under section twenty-six of this chapter."

The two terms with which legal interpretation concerns itself are "employee and" in the usual course of the trade..."

In order to more specifically define the term "employee", several cases may be cited which show the scope of the law according to court interpretation, and the persons to whom compensation may and may not be given in the case of accident. The protection of the statute is not limited to employees who are in good health. It includes all employees mentioned in the statute who are in the service of the employer under "a contract of hire".

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5 Idid. p. 22
6 Cusick's Case 260 Mass. 421, 157 N.E. 596.
It was settled that minors are included in the word "person" in the definition of employees. Holding stock or office in a corporation is not necessarily inconsistent with being an employee, as the work is defined in the statute. However, assuming that the claimant was an employee of a corporation of which he was the president, and that his remuneration was not included in the payroll on which the premium was based, his injury was not covered by the policy. Again in Armby vs. Boston, etc., Railroad, it was held an employee of a railroad engaged in intrastate and interstate commerce was within the definition of an "employee" under the act. One may be a servant though far away from the master, or so much more skilled than the master that actual direction and control would be folly for it is the right to control rather than the exercise of it that is the test in determining whether or not the servant is an employee.

Some exceptions to "employee" exclude many persons. It was settled that the act did not apply to cases within the federal judicial power extending to "all cases of admiralty and maritime jurisdiction".

7 Pierce's Case, 257 Mass. 206, 166 N.E. 636, 637
8 Emery's Case, 271 Mass. 46, 170 N.E. 239.
9 Cashman's Case, 230 Mass. 600, 120 N.E. 72.
10 Armby vs. Boston, etc., Railroad, 276 Mass. 418.
11 McDermott's Case, 283 Mass. 74, 186 N.E. 231.
12 Lauzon's Case, 302 Mass. 294, 19 N.E. 51.
However, if the injury is received in the course of employment of local character, which concerns only local matters, and has but an incidental relation to navigation and maritime commerce, then the state law such as that of Mass. may be applied, since in such circumstances its application will not work material prejudice to the general maritime law. Thus employees injured while engaged in repairing ocean-going vessels in dry dock for repairs, where the dock is moored to piers in navigable waters, are not entitled to recover because admiralty jurisdiction excludes the act with reference to such injuries.

The second term mentioned above, by which employees are excluded from compensation in special instances is "in the usual course of trade....". In view of this section, although the employee may be in the employment of the insured, he is not entitled to compensation under the compensation act if at the time of injury he was not engaged in the usual course of trade, business or occupation of the employer. Thus, one employed to do all kinds of farm work, who was injured while operating a saw used in sawing wood of the father of his employer's foreman at the father's home two miles distant from the employer's farm, may be found not to have been engaged in the usual course of the trade, business, or occupation of the employer, and therefore not to be entitled to compensation under the act.

13 O'Hara's Case, 248 Mass. 31, 142 N.E. 844.
14 Van Deusen's Case, 253 Mass. 420, 149 N.E. 125.
And an employee of a corporation, employing "truckmen... garagemen, drivers, chauffeurs.... stablemen, blacksmiths... in operating " barges, scows...lighters...and stevedoring", is not in the usual course of the trade or business of his employer while engaged in painting the house of its president, and if injured while so doing, is not entitled to compensation under the act.

The Massachusetts compensation act has a notable feature which is lacking in general in many other state compensation laws. This is the inclusion of the word "injury" in place of the more narrow word "accident". From the point of view of coverage the difference is quite clear. Whereas the term "accident" refers to industrial mishaps only, the word "injury" has a broader implication and has been used in the Mass. act to mean an accident or occupational disease arising out of or occurring during the course of employment. In this way Mass. has been rather progressive in recognizing that occupational diseases such as silicosis, lead poisoning, and other diseases do, in fact, arise out of the employment and should be compensated as other injuries coming under the narrow term "industrial accident".

In summary then, we have seen the coverage of the act in several ways: by the number of persons covered, by the percentages of the gainfully employed, in terms of those...

covered by insurance, in terms of the legal interpretation of the words "employees" and "in the usual course of trade."
and finally from the point of view of the inclusion of occupational diseases. From all these points of view, the intent of the act as to the coverage, seems to have been fulfilled in great measure.

16

BENEFITS

The benefits given under the compensation act are classed in four categories, the basis being the type of injury received in the accident. The four classes are death benefits, benefits for permanent total disability, benefits for permanent partial disability, and benefits for temporary total disabilities. The adjectives preceding the word disability are often confusing and more often must be defined in terms of the occupation of the injured worker. For example, the loss of an arm would be classed as a permanent total disability in all cases. The loss of one or two fingers might be considered a total permanent disability from the point of view of a pianist, but only a permanent partial disability from the point of view of a supervisor who was not required to use his hands. Temporary total disabilities are those injuries which incapacitate the employee to the extent that he is unable to

16 Adapted from the Mass. Compensation Act as amended to 1948.
work for a certain period of time, after which the disability will have disappeared and the employee is capable of working again with no impairment to his earning power. Thus a broken leg, might temporarily incapacitate the worker, but as soon as it is healed, he will be able to return to his job, usually without any ill-effects of the injury. The payments vary for each of these categories in the following manner.

For death benefits the maximum time limit set on the payment of benefits to the beneficiaries is 400 weeks (less the period of disability payments, if any). After the 400 weeks have been exhausted, payments will continue to children under 18 years of age. The limit set on the payments per week is $15.00 plus $5.00 a week for each child under 18 years of age (or over 18 years of age if physically or mentally incapacitated from earning). In addition to the time limit of 400 weeks, there is also a total maximum payment stipulated in dollars. In this case it is $7,600. However, as was the case with the time limit, children under 18 continue to receive payments irregardless of the fact that the monetary maximum may have been reached. Additional safeguards are provided to the widow's income. Payments over and above the monetary and time limits continue to a child over 18 who is physically or mentally incapacitated and to a dependent widow during periods in which such child or widow is not in fact self-supporting.

In the case of a permanent total disability, the maximum amount payable each week is limited by the average
weekly salary of the employee. The payment must not exceed 66 2/3 of the average weekly salary. No time limit has been set on the period in which compensation may be paid. However, after aggregate payments have reached $10,000, compensation is paid at the rate of 50% of the average weekly wage for life. These provisions seem quite adequate until one finds that the maximum weekly payment has a maximum limit of $25 and a minimum of $18, plus $2.50 for each dependent with the total benefits limited to the amount of the weekly wage. Moreover, the minimum weekly compensation is further modified by the clause which states that the minimum will be $18 "or the wage if less".

In the case of a permanent partial disability, the payments are equal to the entire wage loss, but not to exceed $25 a week. $2.50 is given for each total dependent as long as the aggregate weekly payment does not exceed the weekly wage. Payments continue all during the period of disability. In the case of loss of members, payments in addition to all other compensation are authorized of $10 weekly for specified periods ranging from 12 to 300 weeks. Finally, the total maximum payments must not exceed $10,000.

For a temporary total disability, benefits are set by the law to be equal to a maximum of 66 2/3 of the weekly wage, during the period of disability. The minimum set is $18 per week (or the actual wage if less--but the minimum shall not be less than $10 a week if employees number of normal working hours are 15 or more a week). The maximum weekly benefit is set at $25 with $2.50 added for each total dependent. However, the
aggregate payment must not exceed the average weekly wage. The total maximum payment allowed is $10,000.

In addition to the compensation paid, which is based on the weekly wage, payments are allowed for a specified period of weeks for loss of members. In the following schedule the allowance is $10 per week. For other injuries the payments are determined by the commission with a maximum weekly benefit of $18 and a minimum of $9 or the actual wage if less.

Schedule of Number of Weeks of Additional Payments

May be Made*

<table>
<thead>
<tr>
<th>Loss of member</th>
<th>weeks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arm (at shoulder)</td>
<td>50</td>
</tr>
<tr>
<td>Hand, left</td>
<td>50</td>
</tr>
<tr>
<td>Hand right</td>
<td>75</td>
</tr>
<tr>
<td>Thumb</td>
<td>12</td>
</tr>
<tr>
<td>Index Finger</td>
<td>12</td>
</tr>
<tr>
<td>Middle Finger</td>
<td>12</td>
</tr>
<tr>
<td>Ring Finger</td>
<td>12</td>
</tr>
<tr>
<td>Little Finger</td>
<td>12</td>
</tr>
<tr>
<td>Leg (at hip)</td>
<td>50</td>
</tr>
<tr>
<td>Feet, one</td>
<td>50</td>
</tr>
<tr>
<td>Great toe</td>
<td>12</td>
</tr>
<tr>
<td>Other toe</td>
<td>12</td>
</tr>
<tr>
<td>Sight of one eye</td>
<td>50</td>
</tr>
</tbody>
</table>

* Effective as of 1949

Besides the benefits based on the weekly wage and the additional payments for loss of a member, the compensation act provides for medical benefits. The act states that medical aid must be furnished without limit of time or amount and the employer is required to furnish artificial limbs and
other appliances.

As in all the state compensation laws, the employee is required to wait for a stated period of time before he receives any compensation. In this case the period is seven days. However, medical and hospital care is provided immediately. If the disability lasts two weeks or longer, compensation is paid for the waiting period. The waiting period has been included in the law, so that the commission will not be swamped with all the minor injuries which occur from day to day.

The benefit scale has been called the heart of the compensation law. Upon its adequacy rests the injured worker's chance for decent maintenance during helplessness and the protection of his dependent family from destitution or a lowered standard of living.

The low benefit scale first adopted by Mass. and other devices for reducing costs resulted from compromise between conflicting interests rather than from the application of rational principles to the benefit provisions. Subsequent changes have come in part through alteration of one item or another regardless of its relation to the statute as a whole.

This present examination gives attention to a feature that has caused particular hardship to workers or their dependents.

Basing the compensation on the wage--making the benefits a percentage of the average wage does justice to all concerned but the provisions setting a maximum and minimum weekly payment is of little value and, as a matter of fact, can work great
hardship on the injured worker. In a period when wages are high and the cost of living has risen, a maximum weekly benefit of $25 is not sufficient to meet the needs of a worker usually employed at $50 or $60 a week. For the period of illness, he is required to use savings (if he has any) or lower his standard of living. In the reverse situation, when wages may be low, the worker will more than likely be compensated nearer the minimum level of benefits (using 66 2/3 of the wage) or at the rate of his wage if it is less than the minimum compensation set by the law. In either case, setting upper and lower limits on the weekly monetary compensation works hardships on the injured worker and his dependents.
CHAPTER III

PRACTICES AND PROCEDURES UNDER THE LAW

When the act went into effect on July 1, 1912, it was the intention of the Legislature to take the cases of injured workingmen whose employers had elected to procure compensation policies, out of the usual courts of common law. Thereafter, every such case was to be heard by a lay tribunal or administrative board known as the Department of Industrial Accidents.

As we noted before the courts, as early as 1912 had been overburdened with cases. The need of a specialized body of men, handling only injured workmen's cases, was apparent. It was the feeling of the Legislature that this new administrative tribunal should not be composed entirely of lawyers and hence no requirement was made as to legal training.

When the act first went into effect, the hearings were to be held before a so-called "arbitration committee" consisting of a member of the board and two other persons, one selected by the insurer and the other by the claimant. This system was found to be too cumbersome. Too often the selected arbitrators were unable to agree and in the last analysis, it was the single member of the board who made the decision. Hence, in June of 1917, the arbitration committee was abolished, and the single member left as the sole judge of the facts and law, in the first instance.
From the single member there is an appeal to a reviewing board; thence by certification the case may reach the Superior Court, from whose decree there may be an appeal to the Supreme Judicial Court of the Commonwealth. If a federal question is involved, the case may be removed from the latter court to the Supreme Court of the United States.

The Industrial Accident Board now consists of seven members appointed by the governor with the advice of his council. The members are appointed for a term of five years; but where the appointment follows an unexpired term of a previous member, the appointment is for the period of the unexpired term only. While, upon the expiration of a term, the governor has the right to designate an entirely new member, in actual practice, reappointments have been the rule during the last ten years or more. The result has been that the important work of this specialized body has been taken out of the realm of politics and the Commonwealth has benefited by the retention of experienced commissioners.

There is no requirement that any or all of the members be members of the bar. By statute, six of the members must be males and one a female.

The Industrial Accident Board has only one permanent office and that is in Boston. As there are only seven members,


it is necessary for the members to travel to the particular
town or city where hearings are to be held.

A large number of hearings are held in Boston as it is
the main industrial center of the Commonwealth, but as injuries
are occurring in all parts of the state, and as it is more
convenient for the member to travel than for the masses of
injured workmen and their witnesses from distant parts of the
state, hearings are regularly held in such cities as Springfield,
Worcester, Pittsfield, Fall River, New Bedford, Salem, and
Haverhill, as well as in many other towns. This procedure
closely follows that of the itinerant justices of former times;
and though the member is not strictly a judicial officer, he is
the only official who passes upon the injured workman's case
in the first instance. Employees are no longer entitled to
jury trials; the common law courts are closed to them in the
first instance, and replaced by these itinerant commissioners
who, by training and experience, have proven well qualified
for the work.

In most cases the industrial injuries are compensated for
by agreement. The insurer and the employee enter into agreement
under which compensation is paid weekly to the employee and
the necessary papers are sent to the board showing that the
insurer had complied with the legal requirements. In short,
where the insurer pays compensation voluntarily, the board act

3 General Laws, chapter 152, s. 8.
only in a supervisory capacity and no hearings are held. But where there is a dispute as to initial liability or as to the continuance of incapacity, then the board decides the issue if either party requests a hearing.

The losing party may appeal from the single member to the reviewing board as of right. He only has to file a written request for a review. The losing party has a right to appeal not only on questions of law but on questions of fact.

As was stated before, one of the purposes of the act was to take workmen's compensation cases out of the courts and to put them into the hands of an administrative tribunal known as the Department of Industrial Accidents or better known as the Industrial Accident Board. This relieved the Superior Court of some of its congestion and at the same time made it impossible for an injured workman to start his action for compensation anywhere except before the Industrial Accident Board. The Industrial Accident Board consists of all seven members. In many matters these seven members act as a board and not individually. Thus, the board makes rules, passes upon lump sums, medical questions and attorney's fees.

When, however, the board sits upon reviews claimed from decisions of single members, it acts as a reviewing board. The designation of the reviewing board is left to the chairman, who has authority to appoint a single reviewing board of any five members he selects or, in his discretion, the chairman may limit the reviewing board to three members, in which case he may appoint two reviewing boards of three members each. While the
word "board" is used interchangeably to designate both the reviewing board and the department of Industrial Accidents, there is the distinction noted above.

The reviewing board is a secondary tribunal, a sort of court of appeal which hears appeals called "reviews" from decisions made in the first instance by the single member. Its existence is wholly a matter of statute. Section 10 of the Act provides:

"If a claim for review is filed under section 8, the reviewing board shall hear the parties, and may hear evidence in regard to pertinent matters and may revise the decision in whole or in part, or may refer the matter back to the member for further findings of fact, and shall file its decision with the records of the proceedings and notify the parties. No party shall as of right be entitled to a second hearing upon questions of fact."

The powers of the review board are tremendous. It is a board of appeal and yet its powers are not limited as is a court of appeal, simply to the review of questions of law. The reviewing board reviews not only the law but the facts and even without seeing the witnesses, it may revise the facts, enter a decision diametrically opposite to that of the single member, and its decision entirely supersedes that of the single member. 4

In addition to other powers, the reviewing board possesses an unusual power with regard to awarding compensation. Ordinarily on questions of fact, the board's finding of fact must be based on some evidence in the record; but with regard to partial compensation the reviewing board is entitled to make

4 Fountaine's Case, 246 Mass. 513, 516, 517.
an award on the theory that the employee has an earning capacity less than his original weekly wage and is entitled to use its own judgment and knowledge in determining that earning capacity. In short, a finding by the board that the employee has an earning capacity of a certain number of dollars a week will stand even though there is no evidence in the record indicating the extent of the earning capacity. Similarly, if the single member gives the employee partial compensation on the theory of a large earning capacity, the board on the same record has the right to reduce the earning capacity and increase the amount of partial compensation, without any evidence on the question of the actual earning capacity.

In the event the loser wants to appeal the decision of the reviewing board, he may take his case to the Superior Court. The majority of cases heard before the reviewing board never reach the Superior Court. The parties generally abide by the decision of the board.

"It is the duty of that court to take such action and make such a decree as the law requires on the facts found by the board. It is for the Superior Court to determine what order or decree ought to be made on the facts found. It has jurisdiction over the case in the same way and to the same extent as it has, for example, in a suit in equity, where the facts have been found by a master." 7

The court must follow the law; and if following the law

5 Walsh's Case, 227 Mass. 341.
7 Brown's Case, 228, Mass. 31, 32.
requires the court to come to a different conclusion than
that reached by the board, the court must reverse the board
on penalty of being reversed itself if it fails to act.
While the judge of the Superior Court is bound by the findings
of fact made by the board, he must, nevertheless, correctly
apply the law to the facts found. The action of the Superior
Court must not be a mere perfunctory registration of approval
of the conclusions of the law reached by the board. The
Superior Court judge must not act as a mere rubber stamp

While the Superior Court may revise the board's
conclusions of law, it is entirely without power to review the
findings of fact made by the board, where the facts have any
basis in the reported evidence; not mattering how slight the basis.
While the reviewing board may revise the single member's
decision both as to the law and the facts, the Superior Court
must accept the reviewing board's findings of fact as final.
This, in effect, gives the reviewing board far greater power
in a compensation case than the Superior Court; but this
undoubtedly was the intention of the Legislature. If the
Superior Court attempts to reverse the board's decision on
a question of fact, the decree of the Superior Court will be

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8 Gillard's Case, 244 Mass. 47.
9 Keohane's Case, 232 Mass. 487.
11 Sponatski's Case, 220 Mass. 526.
12 Fountaine's Case, 246 Mass. 513.
reversed by the Supreme Judicial Court. 13

Appeals from the Superior Court on questions of law go
directly to the Supreme Judicial Court. A single justice
of the Supreme Judicial Court, however, is given express
authority in the compensation act in matters of suspending
or modifying the decree of the Superior Court. In compensation
matters the full court is without power to revise the findings
of fact, but is charged with the duty of reviewing the law.
Strictly, it is the decree of the Superior Court from which
the appeal is taken, and the question before the full court
is whether the decree was a proper one. In deciding whether
it is a proper one the court necessarily passes upon the
question of whether the decree is in accordance with the law.
On questions of law, therefore, the Supreme Judicial Court is
the final arbiter, except in cases where appeals to the
Supreme Court of the United States are permissible. Appeals
from the highest court to the highest federal court are
limited to cases involving federal questions, including
questions of maritime and admiralty law, as a general rule.
The extent to which parties may appeal from state courts to
the United States Supreme Court is a matter of constitutional
law.

Thus we see the manner in which an injured worker may
make appeal after appeal to win his case. The compensation law

13 Brady's Case, 256 Mass. 267; Thurman's Case, 259 Mass. 222.
of the state has made ample provision to do justice to all persons coming under the act, so that no one can doubt that one is still entitled to all the benefits of the legal procedure of the state. The only possible cause for complaint lies in the fact that the reviewing board may change the facts as noted by the single member, and in connection with this rule— the Superior Court and the Supreme Judicial Court must abide by the matters of fact as established by the Industrial Accident Board.
CHAPTER IV

THE STATE FUND-PRIVATE INSURANCE ISSUE

The state fund-private insurance carrier question relating to workmen's compensation is basically a matter of differences of opinion concerning the desirability of having the state operate an insurance fund for the compensation act, or allowing private insurance companies to carry the risk. The following pages are devoted to the expression of both points of view. Eventually the problem of a state fund vs. the private companies resolves itself into a question of whether or not a state fund should be exclusive or competitive—i.e., operated by the state only to the exclusion of private concerns or conducted side by side with the private carriers. In Mass. as in the other states the problem has aroused bitter words on each side. However, in my opinion the following pages prove conclusively that 1) the state should carry the insurance, and 2) the state fund or system should be exclusive.

The first consideration is whether or not the state should engage in the field of insurance. The proponents of a state fund argue on the grounds that compensation insurance is compulsory and secondly that it is of a collective character.

In the first instance the insurance rates must be paid
because the insurance is made compulsory by law. The justification for commissions and profits on the insurance, as the price paid for the needed function of distribution of the insurance does not hold in the case of workmen's compensation. The fact is stressed that there is a growing conviction that no one ought to be permitted to make money out of the necessity of the employer and the misfortune of the employee. The money which employers are forced to give for the protection of the employees should not be subject to any toll of commissions or profits.

In the second case, the insurance is designed to serve a social purpose. Life insurance, for example, is a purely individual matter. The same individual pays the premium and gets the benefit for himself, or for his family. In the case of workmen's compensation insurance, the benefit accrues not to the person who pays the premium but to others. The premiums paid by the employers are distributed to injured employees and their dependents; the benefits of this insurance accrues not to the individual insurer but to the community at large. These two considerations seem to justify the need for a state operated insurance fund.

But as the discussion progresses we find that the issue which seems of the most importance in this matter of insurance is whether or not the fund should be competitive or exclusive, i.e.- working side by side with casualty companies or carrying on an insurance business to the exclusion of private concerns. This matter is argued on the grounds of monetary costs and the
peculiar problems which arise in a competitive system.

The argument runs somewhat as follows. The high
cost of insurance is due in large part to the expenses of
acquisition, renewal and collection of premiums. Under an
exclusive state fund in which the employer would be obliged
to insure his employee, the costs of acquisition, renewal,
collection of premiums, and investment of funds are almost
eliminated. The premiums would be assessed and collected in
the same way as taxes. To prove that state funds cost less
to operate than competitive funds, one consulting actuary of
New York City made an official investigation of the state
insurance funds for workmen’s compensation in three states
Ohio, Pennsylvania, and New York. In Ohio the fund was
exclusive, while in Pennsylvania and New York commercial
companies were permitted to compete against the state funds.
Now great the economies of the state funds were found to be,
as contrasted with the commercial companies (whose commissions
to agents alone amounted to 17 1/2 % of the premiums collected)
were shown from the following chart he compiled after his
investigation.

<table>
<thead>
<tr>
<th>Ratio of Management Expense to Premiums</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Stock Companies.................. 35-40%</td>
</tr>
<tr>
<td>Penna. State Fund............................. 9%</td>
</tr>
<tr>
<td>New York State Fund........................... 6.2%</td>
</tr>
<tr>
<td>Ohio State Fund (exclusive).................. 1.6%</td>
</tr>
</tbody>
</table>


The conclusions he drew were that a competitive state fund could operate at less cost than a private insurance company and that the exclusive state fund showed the lowest cost of any system.

At another time a manager of the New York State Fund said that out of every dollar of a stock company premium 40% approximately must go for expenses, leaving 60% available for losses. Of the state fund premium, less than 10% on a dollar is needed for expenses, leaving 90% available for losses. On this basis, it costs the stock companies about 65% to distribute a dollar in compensation, while it costs the state fund about 10% to pay one dollar in benefits.

In addition to the difference in costs between an exclusive and competitive state fund, certain problems are usually discussed which seem to point out the desirability of an exclusive fund. From an administrative standpoint a competitive state fund is not much different from a private insurance company. Under an exclusive state fund system the commission does things. There are no technicalities to nurse, no interminable squabbles, no long delays waiting for the insurance company to report on a case, no wasting of the commission's time in long drawn out hearings. The commission simply ascertains the facts from reports and investigations.

2 Spencer Baldwin, argument before the Senate Judiciary Committee, New York State Federation of Labor, 1918.

3 Ibid., p. 11.
and then awards compensation. In a competitive state the commission, instead of doing things sees to it that somebody else does the work. The commission supervises, follows up and checks up the insurance carriers who are supposed to make the payments. It takes almost as much time and costs as much money and requires as many employees to do the follow-up work if it be done adequately, as it does to do the work originally.

Under the exclusive state fund, rates can be increased or decreased to meet contingencies as they arise and nobody is seriously affected. Again, under the competitive plan you have a dual system of administration.

Naturally there is much opposition to those who propose a state fund whether it be competitive or exclusive. On the question of whether or not the insurance should be administered by the state since the insurance is a social need, the opponents say that those who attack private insurance companies on the question of compensation insurance are taking only the first step in a movement likely "to result in the confiscation of all kinds of insurance and of all other businesses operated for pecuniary gain, and finally the erection of a communistic government". They agree that compensation insurance plays a very necessary part in the solution of an admittedly sociological problem, but they stress that it is even more important that the people at large be fed, clothed and housed.

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State-managed insurance is attacked on several grounds:

1. A universal defect of state-managed insurance is that it never results in a proper differentiation of insurance rates in proportion to hazards.

2. A flat rate for each trade is not the only evil to be feared. Under state administration it is political influence and not cost that will fix the premium for many trades.

3. Under state-managed insurance generally the allowance or claims and the adjustment of awards are left absolutely to the discretion of a few political officials. Experience everywhere indicates that this condition results in extreme laxity in guarding the funds against malingering, fraudulent impositions and exaggerations, and in a tendency on the part of the officials to misuse their powers.

4. It is not sound public policy that the same officials who fix rates and administer the funds should also decide claims and determine awards against such funds.

5. State management of the insurance also militates against liberality because it tends to break the direct relations between the employer and his injured worker.

6. State-managed insurance, by breaking the direct relation between employers and their injured workmen, leads to the expensive consequence that where a workman suffers serious partial incapacity by injury, instead of being retained by his employer at a lighter task and at lower wages and then compensated for the reduction in wages only, the workman is frequently cast out altogether and becomes an idle pensioner.
on the insurance fund.

On the point of reduced cost the opponents of a state fund have a rather sound argument. One person estimated the costs that made up the stock company overhead leading of 40% and found that the only cost not found in a state fund consisted of the 17 1/2% for commissions and acquisition. His conclusions can be summarized in the following chart:

<table>
<thead>
<tr>
<th>Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commissions and acquisition costs</td>
<td>17 1/2</td>
</tr>
<tr>
<td>Taxes</td>
<td>2 1/2</td>
</tr>
<tr>
<td>Claim settlements and adjustments</td>
<td>7 1/2</td>
</tr>
<tr>
<td>Home office expenses</td>
<td>8</td>
</tr>
<tr>
<td>Payroll audits</td>
<td>2</td>
</tr>
<tr>
<td>Safety inspections</td>
<td>2 1/2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>40%</strong></td>
</tr>
</tbody>
</table>

He found that the 7 1/2 per cent for claim settlements is customarily carried by the state funds as part of the pure premium, being considered part of the losses or cost of settlements. This leaves 12 1/2 per cent of the total premium for home office expense, payroll audits and safety inspections. He found that under the state fund, part of its work is done by other state departments and is not charged to the fund. This is how the state funds arrive at their expense ratios of from 3 1/2 - 8 per cent.

The 2 1/2 per cent for taxes, of course, does not go to the company, nor does the 17 1/2 per cent acquisition cost. He found that the foreign funds of average efficiency required

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5 From address by William K. Schneider, delivered to Joint Convention of the International Assoc. of Casualty Agents, September 30, 1920.
as administration expense of approximately 20% of the earned premium.

Assuming therefore, for the sake of the argument, that the same monetary expenditures under state fund and stock company insurance produce the same efficiency in administration, there remains but one item of expense in which the state fund is more economical than the stock company, and that is the 17 1/2 per cent item of acquisition cost. The insurance companies consider this differential justified by the nature and extent of the services which their local agents render the insured as well as in connection with writing his business.

In summary, then, we have seen both sides of the argument for a state fund. We have seen that the major arguments are based on cost and the social aspects of the insurance. The discussion just completed, seems to me to justify the desirability of an exclusive state fund to administer the insurance side of the workmen's compensation act.
Chapter V

The Merit Rating

It is the purpose of this section to show how premium rates are established for individual firms, why the merit principle started and what it is, and finally to explain the role of the merit plan in furthering at least one objective of workmen's compensation, i.e., the reduction of the number of and the severity of industrial accidents.

Premiums paid by the employer under the compensation act to insure his employees for accidents, injuries and occupational diseases are calculated by taking a unit of exposure to risk multiplying that unit by the rate, and then multiplying the product so obtained by the number of units of exposure.

The theoretical exposure is the number of men working during a year reduced to the equivalent of the number of men working a standard number of working days during a year at a standard number of hours per working day. The practical exposure, and the one used, is the payroll of those men for a year. If we can approximate the yearly wage of a man working a whole year, the number of men working a whole year can be obtained by dividing the total yearly payroll by the average yearly wage of one man.

The practical exposure, being the yearly payroll of an employer, a practical unit of exposure must be adopted and
this is $100 of payroll. The ratio of the benefits paid
injured workmen or their dependents to the number of
one-hundred-dollar units of payroll is the basis of workmen's
compensation rates and is called the "pure premium".

As accidents vary in the frequency and seriousness among
employers in different lines of business, it would be unfair
to determine "pure premium" for all payrolls of all classifi-
cations of employers combined. A generally recognized standard
list of industrial classifications, about 1500, has been made
and rates for each of these classifications have been
determined.

In order to determine as dependable pure premiums as
possible it becomes necessary to secure the largest possible
experience upon individual industrial classifications.

After all of this appraisal has been combined and reduced
to a common level by means of appropriate factors the medical
and indemnity benefits, paid and outstanding, for the
individual manual classifications are divided by the number
of $100 units in the payroll exposure for those classifications,
thus producing a basic pure premium for each classification.

The premium is then adjusted for the state law and the
accident frequency of the state.

It is obvious that to charge the basic rate provided for
in the manual for each risk within a given classification does
not promote the ends of justice. Equity demands that
differentiation should be made between rates for employers
who have modern plants and for other employers in the same class
whose shops are of an inferior type. In order to justly discriminate in the rating of risks varying as to conditions with respect to safety, "merit rating" systems have been used, with the object of providing an individual rate for each risk, such individual rate depending upon the physical and moral conditions in the plant. Two systems are in use for the purpose—"schedule rating" and "experience rating".

Schedule rating may be defined as a method of rating whereby it is intended to promote greater equity in the distribution of insurance cost by providing an individual rate for each risk based on the physical character of the risk. The practice of rating each risk individually upon merit—establishing a rate higher than average for the inferior plant and a rate lower than average for the superior plant—is of important value as an economic force in accident prevention work.

The second system of merit rating is "experience rating". By experience rating is meant a system of merit rating whereby the loss experience for a given risk during a given period is subject to detailed analysis and, as a result of appraisal the class or basic rate is modified in accordance with experience of the individual risk.

The results of this "merit system" has been for industry classifications to work together in reducing accidents through organizations such as the National Safety Council and industry associations. Codes have been adopted and safety devices have been installed throughout industries. In addition,
firms within industry classifications have endeavored to reduce accidents in their own plants by installing safety devices recommended by the codes and by the insurance carriers. Both industries and individual firms have worked on accident prevention as a means of reducing the cost of insuring employees against accidents. So we see that through merit plan, by allowing lower rates for those firms that have safety devices and are relatively safer places to work, the incentive is given to promote accident prevention to secure lower insurance costs. And accident prevention has been usually on a voluntary basis since the passage of the act making workmen’s compensation in Mass. compulsory for employers employing 4 or more persons.

Without any comment on whether or not the merit plan has actually reduced accidents in Massachusetts, I would like to include two charts to be used in conjunction with one another, which show that since the compensation act there has been a definite reduction the in number of industrial accidents. The reduction, no doubt has been due to many other influences besides the merit principle. However, there is no doubt in any person’s mind that the merit plan has at least fostered some accident prevention work which in turn has made the reduction in accidents possible. The following chart and the chart on the next page point out several things.

THE GAINFULLY EMPLOYED IN MASS.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>1910</td>
<td>1,531,062</td>
</tr>
<tr>
<td>1920</td>
<td>1,726,316</td>
</tr>
<tr>
<td>1930</td>
<td>1,540,680</td>
</tr>
<tr>
<td>1940</td>
<td>1,280,585</td>
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</table>

* Taken from the Census of the U.S. for 1940.
### Number and Classes of Industrial Accidents

*Since the Workmen's Compensation Law*

<table>
<thead>
<tr>
<th>Year</th>
<th>Fatal</th>
<th>Perm. Total</th>
<th>Perm. Partial</th>
<th>Temp. Total</th>
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<tr>
<td>1913</td>
<td>512</td>
<td>20</td>
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<td>50,765</td>
</tr>
<tr>
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<td>384</td>
<td>25</td>
<td>938</td>
<td>48,425</td>
</tr>
<tr>
<td>1915</td>
<td>463</td>
<td>17</td>
<td>1,353</td>
<td>66,347</td>
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<tr>
<td>1916</td>
<td>492</td>
<td>21</td>
<td>1,684</td>
<td>76,603</td>
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<td>1917</td>
<td>438</td>
<td>17</td>
<td>2,177</td>
<td>74,873</td>
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<td>1918</td>
<td>356</td>
<td>7</td>
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<td>65,127</td>
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<td>1919</td>
<td>376</td>
<td>6</td>
<td>1,611</td>
<td>63,491</td>
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<tr>
<td>1920</td>
<td>296</td>
<td>6</td>
<td>1,371</td>
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<td>306</td>
<td>4</td>
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<td>48,569</td>
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<tr>
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<td>330</td>
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<td>1,437</td>
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<td>336</td>
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<td>308</td>
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<td>1,156</td>
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<td>1935</td>
<td>224</td>
<td>11</td>
<td>925</td>
<td>33,163</td>
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<tr>
<td>1936</td>
<td>232</td>
<td>12</td>
<td>1,047</td>
<td>37,169</td>
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<tr>
<td>1937</td>
<td>207</td>
<td>16</td>
<td>965</td>
<td>32,272</td>
</tr>
<tr>
<td>1938</td>
<td>---</td>
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<td>---</td>
</tr>
<tr>
<td>1939</td>
<td>190</td>
<td>19</td>
<td>984</td>
<td>36,958</td>
</tr>
<tr>
<td>1940</td>
<td>191</td>
<td>21</td>
<td>1,036</td>
<td>38,065</td>
</tr>
</tbody>
</table>

* Taken from the Annual Reports of the Department of Industrial Accidents, Mass. (tabulatable injuries)

**Note:** Reports for 1938 and the years before are fiscal years running from July 1 to June 30. Beginning in 1939 reports have been Jan. to Dec.
From 1920 to 1940 the number of persons gainfully employed dropped about 26%. However, the decrease in fatal accidents was almost 36%, while the permanent partial accidents were reduced by 25% and the temporary total figures dropped over 26%. With the exception of the permanent partial accident decrease, the number of accidents decrease for the period by a greater percentage than the corresponding drop in the number gainfully employed.

From 1920 to 1930 the number gainfully employed in Mass. dropped about 11%. The decrease in fatal and temporary total accidents was not quite as great, being 4.7% and 5% respectively. However, there was a definite decrease in the number of permanent partial accidents during the period of about 25%—far above the decrease in the gainfully employed. A good statistical check would probably show that for the total number of accidents taken as a whole, the decrease in their numbers made a greater percentage than the same loss of gainfully employed.

For the period 1930 to 1940 all classes of industrial accidents decreased at a greater rate than the number of gainfully employed. A careful glance at the charts will show that the gainfully employed dropped about 17% during the period, but the decreases in the accidents were: fatal, 32%, temporary total, 22%, and permanent partial, a small fraction over 17%. During this 10 year period, then, there was a definite greater decrease in accidents as compared with the decline in the number of gainfully employed in the state.
Hence, we can say with some assurance that in the overall picture, industrial accidents have decreased, when we consider the working population. In many particular instances the decrease has not been apparent, and in other cases there has been no decrease, but the total picture reveals that accidents have decreased by a greater percentage than the decrease in percentage of the number of gainfully employed.

We noted before what the effect of a merit plan might have in reducing accidents through the incentive it gives to accident prevention work. We saw that accident prevention work has been carried on since the introduction of the act. And we have seen the reduction in the number of accidents. Obviously there are other factors, such as the migration of industries from the state, the variations in the types of industries in the state for the periods mentioned and other factors not so apparent. We cannot conclude that the merit principle has been responsible for the reduction in the number of accidents, but can speculate that the merit plan through the incentive it gives to reduce accidents, has been of some help in reducing injuries. The merit plan has a tendency to foster accident prevention work.
CHAPTER VI
CONCLUSIONS

The Massachusetts Workmen's Compensation Act of 1912 is a result of the evolution of the law of negligence. It was adopted by the legislators because it was claimed that the common law theories were not practical or applicable to modern conditions of employment.

The growth of negligence law brought with it the three common law defenses which proved to be extremely effective as a means of avoiding the need for compensating injured employees. Workers and their dependents lost about 80% of their cases prior to the introduction of the compensation law. The whole common law doctrine of employer's liability for negligence with its defense of contributory negligence, fellow servant negligence, and assumption of risk, was based on fictions and was inapplicable to twentieth century conditions of employment. Before hearings of the Mass. legislature both sides of the argument for and against a compensation act were presented. The legislators favored the proponents of a compensation law. The arguments which made the legislature decide to enact such a law were numerous. The doctrine of assumption of risk was assailed on the grounds that an employee if forced many times to take work which he might otherwise not take it more jobs were available, and it was an injustice by which a man is forced to do dangerous work under compulsion and without insurance. The fellow servant doctrine was cast
on the grounds that the employee had no choice of his fellow worker—the employer did the hiring, and the doctrine of contributory negligence was shown to be unsound in view of the fact that every industry has its risks. Since the common law defenses were proven in the eyes of the representatives to be of little value morally or legally, and since the figures were available showing how many workers lost their compensation cases, the need for a compensation law in Mass. seemed evident.

The compensation law, intended to include as many gainfully employed workers as possible, has been effective in this respect. From the point of view of the number of eligible employees covered, the act is almost completely adequate. Excluding employers who are not covered by any compensation act, and federal employees who are covered by federal statute, the remainder are assumed to be coverable, i.e.—should be covered. As the law applies now, about 92.7% of these eligible are covered, while about 98% of these last are also insured. Actually the coverage is good because the remainder includes farm workers, domestics, and casual workers. Considering that farm workers make up only 1.2%, the remainder must necessarily be domestics and casuals who are very difficult to include in the act because of their occupations and the tremendous amount of paper work that must be done to keep them on the books.

By the use of the term "injury", the board has been able to include in compensation cases all injuries of an occupational character such as silicosis or lead poisoning. Thus, all
occupational diseases in addition to pure industrial accidents are covered by the act.

The heart of the act—the scale of benefits—is not entirely up to standards of effectiveness. In many points the provisions for compensation are inadequate. In the case of death benefits the provisions are liberal enough except with respect to the maximum payments per week. Instead of a limit of a specified number of dollars, limits should be set at the 3/4 of the average weekly wage so as not to embarrass the dependents or cause them to lower their standard of living in the event of the death of the breadwinner. For permanent total disability the maximum weekly payment is set at 3/4 of the weekly wage by not to exceed $25 a week. In view of the rise and fall of prices and wages a monetary weekly limit seems undesirable for in a period of prosperity, the worker does not receive 3/4 of his weekly salary in many cases if his salary is high. He may only receive 30-50% of the wage. On the other hand, in a depression he may receive even less than the minimum if his wage is less than the minimum. Some scheme should be arranged to have benefits on a sliding scale to coincide with a rise or fall in wages, say 3/4 of the weekly wage no matter what the wage might be. The other types of injuries are compensated in the same manner as those mentioned above and the same faults may be applied to them.

One notable feature of the compensation law is the fact that medical bills are paid for without limit of time or amount.

With reference to the merit rating, we saw that there
has been a decrease in the number of industrial accidents, and that the migration of industries from the state has not accounted in whole for the decrease in accidents. We noted what the effects of the merit plan might be in reducing accidents and have concluded that the merit principle has been an aid, at least in part, through the incentive it gives to accident prevention work, in reducing industrial accidents. The conclusion we came to was that the merit plan has a peculiar advantage in that it gives an incentive to foster accident prevention work and safety campaigns.

Whether or not the state should engage in the business of insuring workers under the compensation act, resolves itself into many questions. The differences in cost, the fact that the insurance is compulsory, the fact that the insurance is a social problem, and the thought that no company should make a profit on the necessity of the employer and the misery of the employee, are convincing arguments enough to outweigh the arguments presented by the insurance companies. My conclusion is that the state should operate an insurance fund for the compensation act and the fund should be exclusive.

The practices and procedures under the compensation act have been inserted to show to what extent the employer and the employee have been protected under the law. All sorts of appeals are necessary from time to time, and in this case due allowance has been made for such necessities. We learned that a very large percentage of the compensation cases never go beyond the Industrial Accident Board. This is an indication
that the board has been fair to both sides in most cases and there is no need for further litigation. The intent of the act to take the compensation cases out of the courts, then, has been fulfilled.

In final summary or conclusion I would say that the Massachusetts compensation act has worked well and to the advantage of all concerned. With the exception stated referring to the benefits the law has fulfilled its intent as far as is possible. Any further changes would have to be in the benefit scale.
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APPENDIX
AMENDMENTS TO ORIGINAL ACT

Definitions

"Average weekly wages", the earnings of the injured employee during the period of twelve calendar months immediately preceding the date of injury, divided by fifty-two; but if the injured employee lost more than two weeks' time during such period, the earnings for the remainder of such twelve calendar months shall be divided by the number of weeks remaining after the time so lost has been deducted. Where by reason of the shortness of the time during which the employee has been in the employment of his employer or the nature or terms of the employment, it is impracticable to compute the average weekly wages, as above defined, regard may be had to the average weekly amount which, during the twelve months previous to the injury, was being earned by a person in the same grade employed in the same class of employment in the same district.

St. 1935, c. 332, par. 1, added two sentences:
In case the injured employee is employed in the concurrent service of more than one insured employer or self-insurer his total earnings from the several insured employers and self-insurers shall be considered in determining his average weekly wages. Weeks in which the employee received less than five dollars in wages shall be considered time lost and shall be excluded in determining the average weekly wages; provided, however, that this exclusion shall not apply to employees whose normal working hours in the service of the employer are less than fifteen hours each week.

St. 1943, c. 529, par. 1, inserted words "or self-insurer" and "and self-insurers."

Employee, shall include every person in the service of another under any contract of hire, express or implied, oral or written, except one whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be paid.

St. 1913, c. 568, par. 1, excepted "masters of and seamen on vessels engaged in interstate or foreign commerce."
St. 1914, c. 708, par 13, struck out reference to "casual" employment.

St. 1935, c. 406, added "but not excepting a person conclusively presumed to be an employee under section twenty-six of this chapter."

St. 1943, c. 529, par. 3, changed exceptions to include "persons employed by an express company, sleeping car company or carrier subject to Part I or Part II of the Interstate Commerce Act, and persons employed by telephone companies subject to the federal communications act and excepting one whose employment is not in the usual course of the trade, business, profession or occupation of his employer", and the provisions of the chapter to remain elective as to employers of the following: persons employing six or less, or persons employed as domestic servants and farm laborers, members of an employer's family dwelling in his household, and persons other than laborers, workmen and mechanics employed by religious, charitable or educational institutions.

St. 1945, c. 369, substituted a new section striking from exceptions "persons employed by an express company, sleeping car company or carrier subject to Part I or Part II of the Interstate Commerce Act", excepting only "masters of and seamen on vessels engaged in interstate or foreign commerce but only so far as the laws of the United States provide for compensation or, for liability for their injury or death, and a person whose employment is not in the usual course of the trade, business, profession or occupation of his employer." The provisions of the act were made elective to those employers set out in the present text.

St. 1947, c. 215, added to exceptions "persons employed to participate in organized professional athletics."

"Employer", shall include the legal representative of a deceased employer.

St. 1931, c. 426, perfecting statute, substituted "includes" for "shall include".

St. 1943, c. 529, substituted the present text reading: "Employer, an individual, partnership, association, corporation, or other legal entity, including the legal representatives of a deceased employer, or the receiver or trustee of an individual, partnership, association, or corporation or other legal entity, employing employees subject to this chapter."

"Insured" or "Insured person", an employer who has provided by insurance for the payment to his employees for the compensation
provided for by this chapter".

St. 1931, c. 426, par. 251, added "by an insurer."

St. 1943, c. 529, par. 2, added "or is a self-insurer under subsection 2(a) or 2(b) of section twenty-five A."

The present text with the modifications now reads:

"Insured" or "insured person", an employer who has provided by insurance the payment to his employees by an insurer of the compensation provided for by this chapter, or is a self-insurer under subsection 2(a) or 2(b) of section twenty-five A.

"Insurer, any insurance company which has insured the compensation payable by an employer under this chapter."

St. 1931, c. 426, par. 252 substituted the present text:

"Insurer, any insurance company authorized so to do which has contracted with an employer to pay the compensation provided for by this chapter."

Personal injury as worded in the original act was changed in 1941.

St. 1941, c. 437, new paragraph reads: "Personal injury" includes infectious or contagious diseases if the nature of the employment is such that the hazard of contracting such diseases by an employee is inherent in the employment."

Several amendments in the form of new sections have been added from time to time as follows:

St. 1913, c. 613, par. 4, The department shall make all necessary inspections and investigations relating to causes of injuries for which compensation may be claimed, and for this purpose any member or employee thereof may at any time enter places of employment when being used for business purposes. It shall also have the powers and duties set forth in this chapter.

St. 1946, c. 366, par. 3, added a new section: "Every act, in amendment of this chapter, in effect on the effective date of this section or thereafter becoming effective which increases the amount or amounts of compensation payable to an injured employee or his dependents shall, for the purposes of this chapter, be deemed to be substantive in character and shall apply only to personal injuries occurring on and after the effective date of such act, unless otherwise expressly provided. Every act, in amendment of this chapter, in effect on the effective date of this section or thereafter becoming effective which is not deemed to be substantive in character within the meaning of this section shall be
deemed to be procedural or remedial only, in character, and shall have application to personal injuries irrespective of the date of their occurrence, unless otherwise expressly provided."

The department shall, as early as is consistent with full and accurate preparation, make an annual report covering the preceding calendar year.

St. 1914, c. 656, par. 1, provided for number of copies to be printed.

St. 1918, c. 231, par. 1, related to contents.

St. 1921, c. 462, par. 7, provided "The department shall make an annual report."

St. 1939, c. 83, inserted additional phrases now in the above text.

Benefits

If an employee who has not given notice of his claim of common law rights of action under section twenty-four, or who has given such notice and has waived the same, receives a personal injury arising out of and in the course of his employment, or arising out of an ordinary risk of the street while actually engaged, with his employer's authorization, in the business affairs or undertakings of his employer, and whether within or without the commonwealth, he shall be paid compensation by the insurer or self-insurer, as hereinafter provided; provided that as to an injury occurring without the commonwealth he has not given notice of his claim of rights of action under the laws of the jurisdiction wherein such injury occurs or has given such notice and has waived it. For the purposes of this section any person, while operating or using a motor or other vehicle, whether or not belonging to his employer, with his employer's general authorization or approval, in the performance of work in connection with the business affairs or undertakings of his employer, and whether within or without the commonwealth, and any person who, while engaged in the usual course of his trade, business profession or occupation, is ordered by an employer, or by a person exercising superintendence on behalf of such employer, to perform work which is not in the usual course of such work, trade, business, profession or occupation, and while so performing such work, receives a personal injury shall be conclusively presumed to be an employee, and if an employee while acting in the course of his employment receives injury resulting from frostbite, heat exhaustion or sunstroke, without having voluntarily assumed increased peril not contemplated by his contract of employment, or is injured
by reason of the physical activities of fellow employees in which he does not participate, whether or not such activities are associated with the employment, such injury shall be conclusively presumed to have arisen out of the employment.

If an employee is injured by reason of such physical activities of fellow employees and the department finds that such activities are traceable solely and directly to a physical or mental condition resulting from the service of any of such fellow employees in the armed forces of the United States, the entire amount of compensation that may be found due shall be paid by the state treasurer, upon order of the department, from the fund established by section sixty-five N. There shall by no appeal by the commonwealth from such an order of the department.

St. 1911, c. 751, par. 1, original enactment.

St. 1927, c. 309, par. 3, 14, making ordinary risks of the streets compensable except for injuries occurring outside the commonwealth became effective August 24.

St. 1930, c. 205, added conclusive presumption of employment in injuries received while using a motor or other vehicle, with employer's authorization or approval, in the performance of work in connection with the business affairs or undertakings of the employer, whether within or without the commonwealth.

St. 1931, c. 170, included in conclusive presumption clause any person injured when ordered to do work not in the usual course of his injured employer's trade, business, profession or occupation.

St. 1937, c. 370, added injuries from frost bite, sun stroke and physical activities of fellow servants.

St. 1943, c. 302, added "heat exhaustion."

St. 1943, c. 529, made perfecting changes, substituting "employer" for "insured person" and "or self-insurer" for words "if employer is an insured person at the time of the injury" and also inserting the word "work" before "trade."

St. 1945, c. 623, added the second paragraph.

If the employee is injured by reason of his serious and wilful misconduct, he shall not receive compensation.

St. 1935, c. 331, added "but this provision shall not bar compensation to his dependents if the injury results in death."
If the employee is injured by reason of the serious and willful misconduct of an employer or of any person regularly intrusted with and exercising the powers of superintendence, the amounts of compensation hereinafter provided shall be doubled. In case the employer is insured he shall repay to the insurer the extra compensation paid to the employee. If a claim is made under this section, and the employer is insured, the employer may appear and defend against such claim only. The employment of any minor known to be such, in violation of any provision of sections sixty to seventy-four, inclusive, or of section one hundred and four of chapter one hundred and forty-nine shall constitute serious and willful misconduct under this section.

St. 1913, c. 571, par. 1, added provision relative to right to defend against such action only.

St. 1934, c. 292, par. 2, inserted last sentence relating to employment of minors.

St. 1943, c. 529, par. 9, substituted present text above making changes in language only relative to status of an employer as "insured" or "self-insured".

No compensation shall be paid for any injury which does not incapacitate the employee for a period of at least fourteen days from earning full wages, but if incapacity extends beyond such period, compensation shall begin on the fifteenth day after the injury.

St. 1916, c. 60, reduced the waiting period to ten days payments to begin on the eleventh day after the injury where incapacity extended beyond this period. It provided that compensation be not discounted except with the written assent of the employee, or approval of the department of a member thereof; provided, however, that such compensation be paid in accordance with the partial incapacity provisions where the employee in fact earned wages at any time after the original agreement was filed.

St. 1923, c. 163, provided that, in order to be entitled to compensation, employee be incapacitated for at least seven (instead of ten) days, compensation to begin on the eighth day after the injury where incapacity extended beyond this period.

St. 1924, c. 207, provided for the payment of compensation from the day of injury where incapacity extended beyond a period of four weeks.

St. 1927, c. 309, par. 4, added provision that, except under section thirty-five, no compensation be paid for any period for which wages are earned.
St. 1935, c. 372, added the provision that the approval of the department or a member thereof to discontinuance of compensation be granted only "after an impartial examination or after a personal interview with the employee by a member or employee of the department or after failure of the employee to report for or submit to such examination or interview after reasonable notice by the department."

It inserted the words "or decision" in the last sentence.

St. 1937, c. 382, provided for the payment of compensation from the day of injury "if incapacity extends for a period of two weeks or more."

The original enactment provided that the insurer furnish reasonable medical and hospital services and medicines when needed during the first two weeks after injury only.

St. 1914, c. 708, par. 1, added provisions for furnishing of medical and hospital services by insurer in cases of delayed incapacity and in unusual cases in the discretion of the Board; for payment "where, in case of emergency or for other justifiable cause a physician other than the one provided by the insurer is called in to treat the injured employee"; and for approval "only if the Board finds there was such justifiable cause and that the charge for the service is reasonable."

St. 1917, c. 168, gave employee right to select physician other than one provided by insurer; and provided for approval "only if the Board finds that the employee was so treated by such physician or that there was such emergency or justifiable cause, and in all cases, that the services were adequate and reasonable and the charges reasonable."

St. 1920, c. 324, added provision permitting department to order insurer to fit employee, at its expense, with artificial limb, eye or other mechanical appliance which will promote his "restoration to industry."

St. 1927, c. 309, provided for payment by insurer of medical bills beyond the first two weeks in cases requiring "specialized or surgical treatment" together with expenses necessarily incidental to such service.

St. 1936, c. 184, substituted new section, inserting in the mechanical appliance clause, the words "or continue him in". Certain portions, including "if the employee is not immediately incapacitated thereby" and "or where in case of emergency or for other justifiable cause a physician other than the one provided by the insurer is called in to treat the injured employee", were struck out so text read as follows:

"During the first two weeks after the injury, and in
unusual cases or cases requiring specialized or surgical treatment, in the discretion of the department, for a longer period, the insurer shall furnish adequate and reasonable medical and hospital services, and medicines if needed, together with the expenses necessarily incidental to such services. The employee may select a physician other than the one provided by the insurer; and in case he shall be treated by a physician of his own selection, the reasonable cost of the physician's services shall be paid by the insurer, subject to the approval of the department. Such approval shall be granted only if the department finds that such services were necessary and the charges thereof were reasonable. In any case where the department is of the opinion that the fitting of the employee with an artificial eye, limb, or other mechanical appliance, will promote his restoration to or continue him in industry, it may order that he be provided with such an artificial eye, limb, or appliance, at the expense of the insurer."

"St. 1943, c. 159, restored the provision that the reasonable cost of physician's services be paid by insurer, subject to approval of department, "where in case of emergency or for other justifiable cause a physician other than the one provided by the insurer is called in to treat the injured employee", or that there was such emergency or justifiable cause, and in all cases that the services were adequate and reasonable and the charges reasonable."

"St. 1946, c. 233, Struck out in the first sentence time limitation on medical and hospital services for which insurer is liable in cases of injuries occurring on or after July 22."

"St. 1948, c. 159, added last sentence of present text: "The provisions of this section shall be applicable so long as such services are necessary, notwithstanding the fact that maximum compensation under other sections of this chapter may have been received by the injured employee."

"For death benefits the original enactment read: "If death results from the injury, the association shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to one-half his average weekly wages, but not more than ten dollars not less than four dollars a week, for a period of three hundred weeks from the date of the injury. If the employee leaves dependents only partially dependent upon his earnings for support at the time of his injury, the association shall pay such dependents a weekly compensation equal to the same proportion of the weekly payments for the benefits of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the
deceased at the time of his injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the latest of such payments, but shall not continue more than three hundred weeks from the date of the injury."

St. 1914, c. 708, par. 2, increased the sum payable from one-half to "sixty-six and two thirds per cent of the average weekly wages, but not more than ten dollars nor less than four dollars a week, for a period of five hundred weeks from the date of the injury; but in no case shall the amount be more than four thousand dollars"; and in the last sentence of the section substituted "five hundred weeks" for three hundred weeks.

St. 1943, c. 366, increased the weekly compensation payable to total dependents, while St. 1943, c. 400, increased the minimum and maximum amounts payable weekly in "all other cases of total dependency", added a provision in regard to payment of a minimum amount to a partial dependent who is next of kin of the deceased employee, and limited the total payment in partial dependency to four thousand dollars.

St. 1945, c. 572, added a clause limiting weekly payment to fifteen dollars in case of an individual child without a surviving parent, and the words "or widower" and "or husband", and increased dependency (weekly and total) benefits to the present amounts.

In all cases the insurer shall pay the reasonable expense of burial, not exceeding three hundred dollars (present).

St. 1911, c. 751, read: "If the employee leaves not any dependents, the association shall pay the reasonable expenses of his last sickness and burial which shall not exceed two hundred dollars."

St. 1917, c. 269, reduced amount to one hundred dollars and added second sentence reading: "If the employee leaves dependents such sum shall be part of the compensation payable and shall to that extent diminish the period of payment."

St. 1922, c. 368, increased amount to one hundred and fifty dollars.

St. 1939, c. 61, substituted present wording, eliminating entirely second sentence inserted by St. 1917, c. 269.

St. 1941, c. 405, increased amount to two hundred dollars.

St. 1948, c. 155, increased amount to three hundred dollars.
For total disabilities, the original act read:
"While the incapacity for work resulting from the injury is total, the association shall pay the injured employee a weekly compensation equal to one-half his average weekly wages, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks nor the amount more than three thousand dollars."

St. 1914, c. 708, changed the weekly compensation from one-half to two thirds of the employee's average weekly wages and increased the total amount payable to four thousand dollars.

St. 1917, c. 249, increased the maximum weekly compensation to fourteen dollars.

St. 1918, c. 113 increased the minimum weekly compensation to five dollars.

St. 1919, c. 197, increased the maximum weekly compensation to sixteen dollars and the minimum weekly compensation to seven dollars.

St. 1927, c. 309, increased the maximum weekly compensation to eighteen dollars and the minimum to nine dollars, "except that the weekly compensation of the injured employee shall be equal to his average weekly wages in case such wages are less than nine dollars", and the period covered by such compensation shall not be greater than five hundred weeks nor the amount more than forty-five hundred dollars.

St. 1935, c. 332, inserted the phrase "but in no case less than seven dollars a week where the number of normal working hours of the injured employee in a week are fifteen or more.

St. 1941, c. 624, increased the maximum weekly compensation to twenty dollars and the minimum to eleven dollars, with the exception that the payment be equal to the average weekly wage where the latter was less than eleven dollars.

St. 1945, c. 717, substituted a new section increasing the maximum weekly payment to twenty-two dollars, the minimum weekly payment to fifteen dollars, and the total amount payable to seventy-five hundred dollars. It struck out the phrase, "but in no case less than seven dollars a week where the number of working hours of the injured employee in a week are fifteen or more", and the limitation on the number of weeks for which compensation is payable.

St. 1946, c. 321, increased to the present amounts the minimum and maximum weekly payments and the total payable
in cases of injuries occurring on or after effective date.

St. 1947, c. 665, restored the provision for minimum rate where the number of normal working hours in a week are fifteen or more.

In the case of a permanent total disability the original act read as follows:

At any time before or after an injured employee has received the maximum compensation to which he is or may be entitled under sections thirty-four and thirty-five, or either of them, such employee and the insurer may agree or, on application for a hearing by either party, a member or, on review, the board may find that the disability suffered by the injured employee is total and permanent. After such an agreement or finding, during the continuance or such total and permanent disability, the insurer shall make or continue to make payments to the injured employee under section thirty-four so long as compensation is payable under said section, and thereafter during such continuance shall pay to the injured employee a weekly compensation equal to one-half his average weekly wages, but not more than eighteen dollars a week nor less than nine dollars a week, except that the weekly compensation of the injured employee shall be equal to his average weekly wages in case such wages are less than nine dollars; but in no case shall such compensation be less than seven dollars a week where the normal working hours of the injured employee were fifteen hours or more a week. In any hearing or investigation under this chapter, loss of both hands, or both feet, or both legs, or both eyes, or injury to the skull resulting in incurable imbecility or insanity or injury to the spine resulting in permanent and complete paralysis of both legs, both arms shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases permanent total disability shall be determined in accordance with the facts, and proof thereof shall be by weight of the evidence. If an employee who has been agreed or found to be totally and permanently disabled earns wages at any time thereafter, payments of compensation may be suspended in the manner provided by section twenty-nine. If such wages are earned before the injured employee has received the maximum compensation to which he is or may be entitled as aforesaid, such employee during the period of suspension, may, if otherwise entitled thereto, receive payments under section thirty-five; but if such wages are earned after he has received such maximum, no payments shall be made during such period."

St. 1943, c. 276, increased the maximum weekly payment to twenty dollars and the minimum to eleven dollars.

St. 1945, c. 717, substituted new section increasing the
maximum weekly compensation to twenty-five dollars and the minimum to fifteen dollars, striking out the provisions for a minimum rate of compensation where the normal working hours were fifteen or more, rate of compensation where average weekly wages were less than the minimum, the manner of determination of permanent total disability and suspension of payments, and the definition of what should constitute such disability in the absence of proof to the contrary. It added the last paragraph which contains a new provision for the assessment of costs, including reasonable counsel fees and witness fees of physicians.

St. 1946, c. 321, increased the maximum and minimum weekly payments to the present amounts.

For partial incapacity for work the original act read:

While the incapacity for work resulting from the injury is partial, the association shall pay the injured employee a weekly compensation equal to one-half the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

St. 1914, c. 708, changed the rate of weekly compensation from one-half to two-thirds, increased the compensation period from three hundred weeks to five hundred weeks and increased the maximum from three thousand dollars to four thousand dollars.

St. 1919, c. 205, increased the maximum weekly compensation from ten dollars to sixteen dollars, striking out the limitations as to the period during which such partial incapacity compensation shall be paid, and provided that the amount of such compensation be not more than four thousand dollars.

St. 1927, c. 309, increased the maximum weekly compensation to eighteen dollars and the total amount payable to forty-five hundred dollars.

St. 1943, c. 239, increased weekly maximum to twenty dollars.

St. 1945, c. 717, increased weekly compensation to an amount "equal to the entire difference between his average weekly wage before the injury and the average weekly wage he is able to earn thereafter, but not more than twenty-two dollars a week", and the total amount payable to seventy-five hundred dollars.

St. 1946, c. 321, increased weekly maximum to twenty-five
dollars and total amount payable to ten thousand dollars in cases of personal injuries occurring on or after the effective date.

Miscellaneous Provisions

Section 66 reads at present: "In an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:
1. The the employee was negligent;
2. The the injury was caused by the negligence of a fellow employee;
3. That the employee had assumed voluntarily or contractually the risk of the injury;
4. That the employee's injury did not result from negligence, or other fault of the employer, if such injury arose out of and in the course of employment.

St. 1943, c. 529, added the fourth defense and the words "voluntarily or contractually" to third defense.

Section 68 reads: "Chapter one hundred and fifty-three and sections two and five A of chapter two hundred and twenty-nine shall not apply to employees of an insured person or a self-insurer, not to laborers, workmen or mechanics employed by the commonwealth or any county, city, town or district subject to sections sixty-nine to seventy-five, who are entitled to the benefits provided by said sections, while this chapter is applicable.

St. 1917, c. 807, provided for payment of compensation to laborers, workmen and mechanics.

St. 1943, c. 529, added words "or a self-insurer" and "the commonwealth or" and substituted phrase "who are entitled to the benefits provided by said sections, while this chapter is applicable thereto" for "while this chapter is in effect".
ABSTRACT

WORKMEN'S COMPENSATION IN MASSACHUSETTS

Workmen's Compensation is a type of social insurance which provides medical care and partial wage compensation for wage earners or their dependents for economic losses caused by industrial injuries or diseases arising out of, or received during the course of employment.

Massachusetts is no exception to the rule that industrial injuries are of major importance in our present day economy. Therefore, the purpose of the thesis is to explain the workings of the Massachusetts Workmen's Compensation Act.

The principle began in Germany about 1883 and spread to other parts of the world. The present compensation act is a result of the evolution of the employer's liability for negligence. The history of negligence law shows that in the middle of the 19th century, employers were so burdened by the concept that they sought ways and means of lessening its effect on them. The methods they used consisted of employer's liability insurance and the common law defenses of contributory negligence, fellow servant negligence, and the assumption of risk. The common law defenses worked great hardship on injured workers. The general effects were: to lessen the number of injuries compensated, and to lower the amount of compensation. It has been estimated that about 80% of the cases were lost by the workers, while many settled outside the court for small lump sum payments. There was
a definite need for a workmen's compensation law, then, one which would utilize a new concept— that work injuries are a cost of production and should be paid for in the same manner as broken machinery is paid for.

The Mass. Compensation Act was passed in 1911 and became effective in July, 1912. There have been amendments to the law since its passage which continue into 1948. This thesis deals with the present law and reviews the original act only to show specific and important changes.

At present the coverage is good. About 92% of those who could be covered are actually under the act. Those excluded, who could conceivably be incorporated into the law, are farm laborers, domestics and casuals. Farm laborers account for only 1.2% of the total eligibles— so we can say that the coverage is good. In addition to the coverage— about 96% of the covered are also insured.

The benefits of the law have been changed from time to time. In general the benefit scale states that workers may be compensated at 3/4 of the average weekly wage, but not more than $25 a week. Provisions are also made for children and widows. Maximum dollar limits are sometimes set on total payments and at other times the limit refers to a given number of weeks of payment. For medical care, benefits are unlimited in time or amount. My criticism of the benefit system is that there should not be a maximum weekly dollar limit on payments. Rather, the payments should be allowed to remain
at 3/4 of the weekly salary. Under the present system the worker suffers financially both in prosperity and in depression.

Chapter III, describing the practices and procedures under the compensation law, makes it obvious that the rights of both the employer and the employee are fully considered. Neither has lost his legal right of appeal through the courts.

The Industrial Accident Board has taken over all the functions previously performed by the common law courts and it is only in a few instances that compensation cases are appealed beyond the board. This last statement is an indication of the fairness and effectiveness of the board and the ability of its officers.

From time to time the question has arisen concerning a state operated fund to provide the insurance for the compensation act. In the last analysis the problem resolves itself into the question of whether or not the state fund should be exclusive, i.e. operated to the exclusion of private insurance carriers.

The proponents favoring an exclusive state fund argue on the grounds of economy. An investigation of the costs of compensation insurance by stock companies, competitive state funds, and an exclusive state fund, revealed that the exclusive state fund cost only 1.6% of the premiums while the competitive funds ranged from 6.2% to 9%, and the cost to commercial stock companies ranged from 35-40%.

In addition to other arguments the proponents claim that
no one should be allowed profits and commissions on the
necessity of the employer and the suffering of the worker.

The opponents oppose the state fund on numerous grounds. One statement claims that it is only one step closer to communism. Other arguments are that benefits are left to the discretion of a few political officials; it is not sound public policy to leave the same officials who determine benefits to tax the employer; state-managed insurance breaks the relationship between employer and employee; and finally the only cost which is not common to the state fund is the commission and acquisition costs, but these are upheld by the services rendered by the agents and the writing of the business.

In conclusion, only one system seems desirable and that is the exclusive state fund.

The merit rating is a system used by insurance carriers whereby employers with more modern plants are allowed a lower insurance rate. This system gives the incentive to employers to reduce the number of industrial injuries in order to obtain lower costs of the premiums.

The conclusions reached in the thesis have been: 1) the old theory of common law defenses is inapplicable to modern conditions of employment; 2) there was a definite need in Mass. for a workmen's compensation act; 3) the coverage of the act is good, but the benefits need revision such that the compensation paid will always be equal to 3/4 of the average weekly pay; 4) the merit rating is a highly desirable system
of computing insurance premiums under the act, for it gives an incentive to reduce accidents through safety work; 5) the state should operate an exclusive state fund; 6) the practices and procedures under the act are such that all the legal rights of appeal are maintained unimpaired for both the employer and the employee.