able to do is not substantial and gainful, you may continue to receive benefits. Of course, should your condition improve so that it becomes no longer disabling, your benefits would be stopped (after a 3-month adjustment period) even though your trial work period might not be over.

A disabled widow, disabled dependent widower, or disabled surviving divorced wife is not eligible for a trial work period. If she or he begins to do substantial gainful work, benefits will stop 3 months after the work begins.

IF YOU AGAIN BECOME DISABLED

If you become disabled a second time within 5 years after your disabled worker's benefits were stopped because you returned to work or recovered (within 7 years if you are a disabled widow, disabled dependent widower, or disabled surviving divorced wife), your benefits can begin with the first full month in which you are disabled. Another 6-month waiting period is not required. You are not eligible for a trial work period.

1972
EDITION

Workmen's Compensation Rights

MICHIGAN AFL-CIO

WILLIAM C. MARSHALL
President

WALTER CAMPBELL
Secretary-Treasurer

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1034 No. Washington Avenue
Lansing, Michigan 48906
485-4348

PURPOSE OF THE ACT

The objectives of the Michigan Workmen's Compensation Law is to provide the following benefits for workers who have an injury or illness that arose out of and in the course of their employment:

(1) Assured, prompt, and reasonable income benefits, and medical care.

(2) Income benefits to their dependents.

(3) Vocational and Medical Rehabilitation, when needed.

This handbook is an analysis of the Michigan Workmen's Compensation Law, administrative rulings and court decisions on Workmen's Compensation.

The text material was prepared by the Michigan AFL-CIO.

If your right to compensation has been denied by your employer do not accept his decision as final until you have secured competent advice.

This booklet has been reviewed for legal content by the firm of Rothe, Marston, Mazey, Sachs, O'Connell, Nunn & Freid, P.C.

FOREWORD

There is no greater tragedy than a wage earner injuring himself on the job and then being unable to support himself or family.

The labor policy is first, to have adequate safety to prevent injuries; second, to provide compensation for the economic loss suffered by the injured worker and his family; and third, provide rehabilitation and medical care to restore the injured worker to his old job or a new job of comparable earnings.

The purpose of this handbook is to provide information for local unions and members about Michigan's Workmen's Compensation Law. Each Workmen's Compensation case is different. Therefore, injured workers should seek competent advice before signing any agreement regarding their injury. Local unions as well as the Michigan AFL-CIO can often give advice.

After many years of government by an unrepresentative majority in the Legislature, the Supreme Court ordered re-apportionment and an election on a one-man, one-vote basis. As a result, the people elected a Democratic majority in both the House and the Senate in the November 1964 election, and it was this majority which brought about the most sweeping improvements in the history of the Workmen's Compensation Act.

We must always remember that the benefits which working people derive under this and other laws are related directly to political action and our votes on election day. We must continually strive to send our friends to Lansing to ensure that the rights of working people are protected. This can only be accomplished through hard work and an informed electorate who exercise their responsibility at the polls.

William C. Marshall, President

Walter Campbell, Secretary-Treasurer

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ADMINISTRATION

The Michigan Bureau of Workmen's Compensation is headed by a Director, appointed by the Governor, who has complete authority and responsibility over all administrative functions. The Director has designated two full time assistants who will manage the offices in Lansing and Detroit. An office in Escanaba in the Upper Peninsula serves the people of that area.

It is important that the people charged with the administration of this law be informed of any violation or deception practiced by employer or insurance company agents. We urge our members, therefore, to inform the Director or his assistants of any violations such as the following:

When they are refused workmen's compensation to which they are entitled;

When they are refused medical rights;

When they are not provided proper medical care;

When unethical agents perpetrate fraud by distorted statements;

When pressure is applied to settle and redeem their cases;

When they are refused copies of medical reports, etc.

Send your complaint to any one of these persons:

Ernest C. Fackler, Director
Corr Building
Lansing, Michigan
(517) 373-3480

Jack Miron
Chief Deputy Director
Corr Building
Lansing, Michigan
(517) 373-3481

Ervin Vahratian
Deputy Director
8th Floor, Griswold Building
Detroit, Michigan 48226
(313) 222-1805

Louis Gregory
Hearing Referee
State Office Building
Escanaba, Michigan 49829
(906) 786-2081

EMPLOYERS COVERED BY ACT

A. All private employers, who regularly employ 3 or more employees at one time.

B. All private employers, who regularly employ one or more employees for 35 or more hours per week, for a period of 13 weeks or longer during the preceding 52 weeks.

C. All public employers, except federal.

WHAT INJURIES ARE COMPENSABLE?

1. Workers may collect benefits for disabilities caused by personal injuries or illnesses arising out of and in the course of their employment, which cause a wage loss.

2. Every employee going to or from his work, while on the premises where his work is to be performed and within a reasonable time before and after his working hours, shall be presumed to be in the course of his employment. Premises includes a company parking lot; therefore, a worker injured on a company parking lot can, in many cases, receive compensation.

3. Personal injuries are defined to include occupational diseases. A worker may collect benefits when disabled by an occupational disease, such as lead poisoning, even though it takes months for the disease to develop.

4. A pre-existing physical condition which becomes disabling by injury at work is also compensable.

WHAT TO DO WHEN YOU ARE HURT

A. REPORT ALL INJURIES

1. Report injury (accident or occupational disease) to your foreman immediately.

   a) FAILURE TO REPORT THE ACCIDENT OR INJURY WITHIN 3 MONTHS MAY FORFEIT YOUR RIGHT TO COMPENSATION.

b) FAILURE TO REPORT AN OCCUPATIONAL DISEASE WITHIN 120 DAYS OF ACTUAL KNOWLEDGE OF SUCH DISEASE MAY ALSO FORFEIT FUTURE RIGHTS.

2. Report to plant first aid and request medical treatment. Give description of how injury occurred.

3. Do not sign any written statement, as the law does not require it.

4. Do not sign any papers in blank. Show any papers offered to you to your Union Steward or Officer before signing them.

5. Report to local union's Workmen's Compensation Committee or proper representative.

6. Obtain and keep names and addresses of all witnesses.

7. KNOW YOUR RIGHTS! Do not accept your employer's decision as to whether you are entitled to compensation. CONSULT YOUR UNION.

B. DEMAND YOUR BENEFITS

1. Demand medical attention if needed from your employer. If your employer refuses or neglects to provide medical attention when requested, go to a doctor of your own choice. Save all bills, contact your local union, and file a claim with the Workmen's Compensation Bureau for reimbursement.

2. Make a claim for Workmen's Compensation to the company when time is lost from work due to an injury. This claim can be made to the foreman or immediate supervisor, factory doctor or compensation department of the company. **Keep a record of the date of the claim and to whom it was made.**

3. If the compensation is not paid within three weeks, then consult your local's Compensation Commitee, or proper representative.

4. **Always insist on Workmen's Compensation if you are hurt at work.**

(a) If you are entitled to compensation within 6 months of the date of injury, you must make a claim WITHIN THAT 6-MONTH PERIOD.

(b) If you have compensable lost time subsequent to 6 months from the date of injury you must make your claim WITHIN 3 MONTHS OF THE TIME ACTUAL DISABILITY TAKES PLACE.

(c) In all cases you must make a claim for compensation within 3 years of the DATE OF INJURY OR FUTURE RIGHTS ARE FORFEITED.

TO WHAT ARE YOU ENTITLED?

A. MEDICAL CARE AND REHABILITATION

1. You are entitled to receive from your employer adequate and proper medical attention as long as needed. As long as needed means for the rest of your life. Thus if you need medical care 10 or 15 years from now because of the injury, you are entitled to that care.

2. Should the employer refuse further medical treatment a written request should be made to the "Bureau." After a review by the "Bureau," if such request is justified, further medical care can be ordered without regard to cost or limit of time, or date of injury.

3. Medical care includes medical, surgical and hospital services and medicine and the employer must also supply dental services, crutches, artificial appliances, such as limbs, eyes, teeth, eye glasses, hearing apparatus and other appliances as may be necessary.

4. The worker must accept the doctor and medical services provided by the employer at the time of the injury. However, after 60 days from the beginning of such medical care the employee may treat with a physician of his own choice by giving to the employer the name of the physician

and his intention to treat with said physician. If the employer or insurance carrier can show good cause why the employee should not be allowed to continue treatment with the named physician of the employee's choice, the department, after a hearing, may order the employee to discontinue such treatment.

5. Failure of an injured worker to submit to a medical examination at the request of the employer suspends his right to compensation. His right may be forfeited until such time as he complies with the request.

6. When a worker submits to a medical examination made at the request of the employer following a reported injury, the worker or his attorney have a right to get exact copies of the examination reports.

   The law provides that the employee or his attorney shall be furnished within 15 days from the date of the request therefore, a complete and correct copy of the report of every such physical examination performed by the physician making the examination on behalf of the employer or insurance company.

   It is important that the worker's right to these reports be enforced. These reports will advise him of the seriousness of his injury, its relationship to rights under the law and in many cases will contain recommendations for a specific type of treatment which will lessen the possibility of future permanent disability.

7. **Medical care also includes medical and vocational rehabilitation services.** An employee who has suffered an injury covered by the Workmen's Compensation Act is entitled to prompt medical rehabilitation services. When as a result of the injury he is unable to perform work for which he has previous training or experience he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to useful employment. The Bureau is authorized to order the services at the expense of the employer if they are not voluntarily offered. If there is

unjustifiable refusal to accept these services ordered by the Bureau, benefits can be forfeited or reduced for each week of the period of refusal.

B. DISABILITY COMPENSATION PAYMENTS:

1. When you have total disability, partial disability, an amputation (specific loss), or industrial loss of use, you are entitled to receive a weekly benefit of ⅔ of your **average weekly wages** BUT NOT MORE THAN THE FOLLOWING PAYMENT SCHEDULE.

NOTE: HOW TO COMPUTE YOUR AVERAGE WEEKLY WAGE

The average weekly wage established at the time of the injury and shown on your copy of form No. 100 controls your immediate and future benefit amount: BE SURE THAT IT IS CORRECT.

The proper method of computing your average weekly wage is to use your earnings in the 13 week period prior to the date of injury:

(a) In **each** of those weeks, overtime, shift premium, and cost of living payment, if applicable, must be included in gross wage income for the week.

(b) In **any** of the 13 weeks **not less than 40 times the hourly rate** can be used in this computation.

(c) The total wages established by the above rules are then divided by 13 and that result is the proper "average weekly wage."

(d) If fringe benefits such as medical insurance, holiday pay, vacation pay, life insurance, etc. should cease while you are receiving weekly compensation, the value of these fringe benefits should be added to your average weekly wage.

2. **THE FOLLOWING BENEFIT RATES APPLY ONLY TO THOSE CASES WHERE THE DATE OF INJURY IS ON OR AFTER SEPTEMBER 1, 1965. IF YOU WERE INJURED BEFORE THAT DATE, YOUR BENEFITS ARE LIMITED TO THE RATES IN EFFECT AT THE DATE OF YOUR INJURY.**

January 1, 1972		January 1, 1973	
*Dependents	Maximum	*Dependents	Maximum
0	$84.00	0	$93.00
1	89.00	1	98.00
2	95.00	2	104.00
3	101.00	3	110.00
4	107.00	4	116.00
5	113.00	5	122.00

*In all cases the wife is considered a dependent, as are all the children under the age of 16 living with the parent at the time of injury. In all other cases, questions of dependency shall be determined in accordance with the fact, as the fact may be at time of injury. An increase in benefit payments must be made for any increase in conclusive dependents during the period of injury, i.e., a new wife or newborn children.

3. The children of a woman who is injured in employment are considered as **her** dependents in establishing her weekly compensation benefit rate. This is true even though the husband may claim them for tax purposes.

4. When an employee who is receiving weekly payments or is entitled to weekly payments reaches the age of 65, the weekly payments for each year following his 65th birthday shall be reduced 5% of the weekly payment paid or payable at age 65, but not to less than 50% of the weekly benefit paid or payable at age 65 so that on his 75th birthday the weekly payments shall have been reduced by 50%; after which there shall be no further reduction for the duration of the employee's life. In no case shall weekly payments be reduced below the minimum weekly benefits as provided in the act.

5. TOTAL DISABILITY: (Except as in 7 on page 12.)

   (a) You are considered totally disabled when you are unable to earn any wages as a result of your injury.

   (b) Compensation benefits begin on the 8th day of disability. If you are disabled for 2 weeks or longer, you are paid for the first week.

   (c) Payments for disability can be claimed for as long as the disability exists.

6. PARTIAL DISABILITY:

(a) If your disability permits you to return to some kind of work, either lighter or different than what you were doing at the time of the accident, but prevents you from earning as much wages as you were earning at the time of the accident, as shown on your copy of **Form No. 100,** you are entitled to **partial compensation.**

(i) If you are an unskilled worker, you are entitled to ⅔ of the difference between the weekly wages you were earning at the time of the injury and the weekly wages that you are able to earn thereafter.

(ii) If you are a skilled worker, and do not return to the skilled trades group, then, you are entitled to the full difference in pay.

(c) IN EITHER OF THE ABOVE CASES, THE MAXIMUM PARTIAL COMPENSATION PAYABLE IN ANY WEEK IS LIMITED TO THE PAYMENT SCHEDULE ON PAGE 10.

7. **TOTAL AND PERMANENT DISABILITY MEANS:**

a) Total and permanent loss of sight of both eyes.

b) Loss of both legs or both feet at or above the ankle.

c) Loss of both arms or both hands at or above the wrist.

d) Loss of any two of the members or faculties enumerated in a, b or c.

e) Permanent and complete paralysis of both legs or both arms or of one leg and one arm.

f) Incurable insanity or imbecility.

g) Permanent and total loss of industrial use of both legs or both hands or both arms or one leg and one arm; for the purpose of this subsection (7) such permanency to be determined not less than 30 days before the expiration of 500 weeks from the date of injury.

A person who is permanently and totally disabled as defined above, is entitled to compensation for 800 weeks.

At the end of 800 weeks, the question of total and permanent disability is reviewed by the Workmen's Compensation Department. If the facts at that time support a finding of continued total and permanent disability, payments are continued. Any person who is presently receiving payments for total and permanent disability also gets an automatic adjustment in rate to the current weekly benefit levels.

Whenever an employee who has not attained his 25th birthday is injured so that he is entitled to compensation as permanently and totally disabled as defined in the act, if it be established that the injured employee was of such age and experience when injured that, under natural conditions, his wages, or position would be expected to increase, that fact, subject to the statutory minimum and maximum weekly payments, may be considered by the department in determining his weekly payments.

SECOND INJURY FUND:

An injured worker can obtain new employment and then may receive a separate additional injury. For example, a worker who has lost one eye may receive an injury in a new place of employment and lose the other eye. He then is entitled to compensation for permanent and total disability. The new employer pays for the cost of one eye. The difference comes from the "second injury fund." This fund is financed by a special tax based on compensation benefits paid by employers.

This is a somewhat gruesome description of what happens, but the result is that employers are not penalized for hiring injured workers and injured workers suffering a second injury can receive full legal benefits.

Since the details of each case vary, each individual who suffers a second injury should check with his local union and the Workmen's Compensation Bureau before accepting a final settlement.

VOCATIONALLY HANDICAPPED PROGRAM:

New provisions of the Workmen's Compensation law are designed specifically to aid individuals with heart, back and epileptic conditions to gain employment. The concept of the program is to limit the liability of individual employers by spreading the cost over all employers

after a certain time period has elapsed. This program in no way reduces or limits the rights of employees to collect benefits under the law. If you have a heart, back or epileptic condition, and are unemployed, you should take advantage of this program by complying with the following procedures:

1. The law requires that a disabled individual with a back, heart or epileptic condition apply to an office of the Vocational Rehabilitation Services for a Handicapped Worker's Certificate. VRS gives you a certificate after you cooperate by providing medical information (obtained by examination from your treating physician), at no cost to the applicant.
2. You can then take this Certificate to any prospective employer; if he hires you, he completes his part of the Certificate and returns it to the Vocational Rehabilitation Service Office. VRS will then send a copy of the Certificate to the Workmen's Compensation Bureau. It is important that your potential employer receive his Certificate before he hires you.
3. If you do have a subsequent injury, the employer or his insurance company will be limited to only 104 weeks of benefits and will collect a reimbursement from the Second Injury Fund for any additional benefits which are paid to you.

Any questions you may have can be answered by the Bureau of Workmen's Compensation or a local office of the Vocational Rehabilitation Service.

8. SPECIFIC LOSS AND INDUSTRIAL LOSS OF USE BENEFITS:

a) In case of loss of members of the body by amputation, the Michigan Workmen's Compensation Law specifically outlines the number of compensable weeks to which the claimant is entitled for each type of loss.

b) The Michigan Supreme Court has also ruled that an injured worker shall receive the same benefits for the **loss of the industrial use of a member of the body,** just as in the case where there is an amputation.

For example, a worker who has a stiff hand as a result of injury and cannot use it in his work will receive the same benefits as though the hand were amputated.

c) **The Michigan law provides that the person with such a specific loss will receive: The same weekly benefit rate as paid for total disability according to the following schedule:**

Thumb: 2/3 of average weekly wages for 65 weeks.

Index Finger: 2/3 of average weekly wages for 38 weeks.

Second Finger: 2/3 of average weekly wages for 33 weeks.

Third Finger: 2/3 of average weekly wages for 22 weeks.

Little Finger: 2/3 of average weekly wages for 16 weeks.

Great Toe: 2/3 of average weekly wages for 33 weeks.

Other Toe: 2/3 of average weekly wages for 11 weeks.

***Loss at the first joint equals ½ of the above. Loss of more than the first joint shall be considered entire loss.

* * *

Hand: 2/3 of average weekly wages for 215 weeks.

Arm: 2/3 of average weekly wages for 269 weeks.

***Amputation between the elbow and wrist 6 or more inches below the elbow shall be considered a hand; above this point an arm.

* * *

Foot: 2/3 of average weekly wages for 162 weeks.

Leg: 2/3 of average weekly wages for 215 weeks.

***An amputation between the knee and foot, 7 or more inches below the tibial table (plateau) shall be considered a foot, above that point a leg.

Eye: Loss of an eye or loss of 80% of vision of an eye, 2/3 of average weekly wages for 162 weeks.

* * *

d) The date of the loss of the industrial use or of the amputation is the date from which benefits shall be paid.

e) The full corresponding schedule of weeks for each type of specific loss—whether loss of the industrial use or actual amputation—must be paid even if the employee returns to work before the stipulated number of weeks will have expired.

f) In the event of the loss of a second member while compensation is being paid for the previous loss, payment for the second claim will be made according to the above schedule and will commence at the **conclusion** of the first claim payments.

g) If you are disabled as a result of the amputation or loss of industrial use beyond the specific loss period, you are then entitled to receive general disability benefits until such time as you are returned to work at wages at least equal to those you were earning at the time of the injury.

9. DEATH BENEFITS:

a) If death results from an industrial injury or occupational disease, the employer must pay the medical costs of the last sickness and in addition, burial expenses not to exceed $1500.00.

b) The employer must also pay to the total dependents of the employee a weekly payment equal to 2/3 of his average weekly wages, SUBJECT TO THE FOLLOWING MAXIMUMS:

January 1, 1972		January 1, 1973	
***Dependents**	**Maximum**	***Dependents**	**Maximum**
1	$84.00	1	$93.00
2	89.00	2	98.00
3	95.00	3	104.00
4	101.00	4	110.00
5 or more	107.00	5 or more	116.00

c) Dependents: The following persons are conclusively presumed to be totally dependent for support upon a deceased worker:

(i) A wife living with the husband at the time of his death or living apart for justifiable reasons.

(ii) Children under 16 (or over such age if physically or mentally incapacitated from earning a living) living with parent at time of death.

(iii) Children by former marriage under the age of 16 (or over such age if physically or mentally incapacitated) living apart because of desertion by the deceased worker.

In all other cases dependency either total or partial is determined by the Department on the basis of proofs submitted.

d) These payments shall run for 500 weeks unless terminated by remarriage of the widow, coming of age of minor children (21 years) or death of dependents.

e) Upon remarriage of a dependent wife receiving compensation, she will receive a maximum lump sum payment of $500.00 and further compensation will be paid only to other remaining dependents for the 500 week period. At the expiration of the 500 week period if any dependent is less than 21 years of age the department is permitted to order further payments to the age of 21.

LUMP SUM ADVANCE AND REDEMPTION SETTLEMENT

When you can show the Workmen's Compensation Bureau that you need the money and will make good use of it, they may allow you to draw your compensation in one sum. This may be done by two methods:

(1) "Lump Sum Advance Payments," or (2) "Redemption of Liability."

1. A Lump Sum Advance Payment is pre-payment of all or part of the present value of the employer's established liability for compensation.

The Workmen's Compensation Bureau may order such a Lump Sum Advance Payment on your request even if your employer objects to such payment.

2. A Redemption of Liability is a **final settlement of your compensation claim** by payment of a single sum to you by your employer.

   A redemption is possible only when your employer and you agree on its terms and only after it is approved by the Workmen's Compensation Bureau.

No agreement to redeem liability should be entered into except in cases where the extent of disability and the prospect of recovery are positively established and a settlement is insisted upon by the injured employee. **It must be kept in mind that a disabling injury entitles you to Workmen's Compensation for as long as the disability continues and there is a wage loss.**

Whenever these type payments are made the employer has a right to a discount of 5% of the amount. Get competent advice before accepting any settlement. Always check with your Union.

OCCUPATIONAL DISEASES

1. You are entitled to compensation if your disability is a result of an occupational disease or if a pre-existing condition is aggravated by your work. An occupational disease is one that is aggravated by or grows out of the job conditions such as dust, chemicals, fumes, etc.

2. Some of the more prevalent diseases in this category are lead poisoning, carbon monoxide poisoning, contact dermatitis, tenosynovitis, bursitis, silicosis, pneumoconiosis, etc.

3. Often it is difficult to determine without proper medical examination as to which diseases developed out of or were aggravated by the job. We therefore urge our members in such cases particularly to receive competent advice to protect their rights.

4. The disability of an employee resulting from such disease or disablement is considered as the happening of a personal injury under the Act. A report of such injury must be made to the employer within 120 days of disablement or within 120 days of the time the worker has actual knowledge that he has an occupational disease.

Claim must be made within the same time limits as for any personal injury.

HERNIAS

1. Hernia (ordinarily called rupture) cases are especially numerous in industry. Because the regulations applying to hernia are generally misunderstood, they are discussed here in detail.

2. Two types of hernia occur most often: (a) one that results from a single incident or accident and is almost immediately visible and the other (b) that results from continued and repeated strain. Both types are compensable.

3. When the hernia results from slipping, falling, a blow to the abdomen, or by other accidental means a report and claim should be made at once whether or not it is immediately disabling.

4. When the hernia results in the course of routine duties without a history of a specific accident, it is considered an occupational disease hernia. The law provides that for this type of hernia to be compensable "it must be clearly recent in origin and result from a strain arising out of and in the course of employment and promptly reported to the employer." It is necessary only to make a showing that work done over a period of time was of such nature that could produce a hernia and that it was reported as soon as the worker had knowledge of the condition. The compensation claim is processed as though the personal injury was incurred on the date the worker had knowledge of the condition.

5. A pre-existing hernia that becomes disabling is also compensable if disability is caused by injury or strain at work.

THIRD PARTY LIABILITY

Under **certain circumstances** a worker can sue at common law a "third party" for injuries and disability. The law specifically states that "fellow employees and the respective employer" are not included in the term "third party" and therefore cannot be sued. Any other person or agency responsible for the injury are within the term. Situations which may establish third party responsibility are such as a worker injured in the plant by an outside

truck, a new machine which is clearly defective, hazards created by outside contractors, etc. In each case the accident should be investigated to determine whether the facts support a common law action.

In any of these cases, the worker should seek competent advice in order to determine whether negligence of a third party can be established in the regular courts and **whether the recovery would be likely to exceed the benefits payable under the Workmen's Compensation Act.**

MISCELLANEOUS INFORMATION

1. MANY CONTRACTS PROVIDE WHEN A WORKER RECEIVES WORKMEN'S COMPENSATION HE ALSO HAS A RIGHT TO COLLECT FROM HIS GROUP SICK AND ACCIDENT INSURANCE, THE DIFFERENCE BETWEEN THE WORKMEN'S COMPENSATION PAYMENT AND HIS GROUP INSURANCE WEEKLY RATE. UNDER THESE CONTRACTS THIS DIFFERENCE CAN BE COLLECTED IN MANY CASES FOR AS LONG AS 52 WEEKS.

CHECK YOUR CONTRACT AND MAKE SURE THAT YOU MAKE CLAIM FOR THIS DIFFERENCE WHEN YOU HAVE SUCH RIGHT. REMEMBER, THESE PAYMENTS ARE NOT MADE AUTOMATICALLY; YOU MUST MAKE A CLAIM.

2. Under the present law, disfigurement without loss of wages is not compensable.

3. A worker in covered employment is limited to recovery for injuries under the Workmen's Compensation Act and cannot sue his employer in a Court of law. (See third party cases, Page 18.)

4. The law provides that any minor under 18 years of age who is illegally employed at the time of the accident shall receive twice the amount of compensation ordinarily paid.

5. There is no obligation under the Workmen's Compensation Law on the part of the employer to rehire or keep in employment a worker who has been injured. The worker must look to his Union to protect his right to a job.

6. At any time an employer refuses to return a worker to his job following an injury or lays him off while he has a disability the compensation claim should be re-opened immediately.

7. A worker should never accept a group or hospitalization insurance if his injury is one for which Workmen's Compensation benefits are payable.

HOW TO COLLECT

1. If your employer refuses to pay you compensation or furnish medical treatment when you are entitled to it, you should file a claim with the Workmen's Compensation Bureau.

2. You may obtain printed forms to use in filing your claim, called "Notice and Application for Hearing and Adjustment of Claim," by writing to the Workmen's Compensation Bureau, Lansing, Michigan 48913, the Michigan Workmen's Compensation Bureau on the 8th Floor of the Griswold Building in Detroit, or to the State Office Building, Escanaba, Michigan.

3. After you file a claim, your case is set for hearing before a Hearing Referee of the Workmen's Compensation Bureau in an area near to where you were injured. Hearings for the Detroit area are held in the Griswold Building, Detroit, Michigan 48226, and in the Upper Peninsula at the State Office Building in Escanaba, Michigan.

4. You must appear at the hearing. You may represent yourself or be represented by any attorney. Your witnesses, if any, should also appear. If possible get your own doctor to examine you and testify in your behalf.

5. A worker may need the help of an attorney if his employer forces him to use the procedural remedies of the Compensation Bureau. This work is very technical and an injured worker who needs legal service should go to a lawyer who specializes in this work. **A worker should check with his proper union official for the names of qualified Workmen's Compensation lawyers.**

6. After the Hearing Referee has made an award and you receive a copy of it, an appeal may be made by either party within fifteen (15) days. This appeal may be filed in either the Detroit or Lansing office of the Workmen's Compensation Appeal Board.

7. The decision of the Appeal Board may be finally appealed to the State Supreme Court.

WHERE TO GET HELP

AFL-CIO members can receive information from their local unions, Internationals, or the Michigan AFL-CIO, 1034 North Washington Ave., Lansing, Michigan 48906, Telephone 485-4348.

POLITICAL ACTION PAYS

The many substantial improvements in the Michigan Workmen's Compensation Law are the result of an effective political action program which brought about reapportionment and the election of a more representative Legislature.

The Democratic majority in the Legislature of 1965 enacted the most sweeping improvements in this law since the Act was adopted in 1912.

Equal representation has resulted in more equitable treatment and consideration of Michigan's injured workers and their families: let's keep it that way.

"SAFETY PAYS MORE THAN COMPENSATION!"

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MICHIGAN AFL-CIO

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ADVOCATING THE RIGHTS OF THE INJURED*

Benjamin Marcus†

WHEN workmen's compensation was first introduced a half century ago, it was felt necessary to cushion the shock in a number of ways. One of these was the idea of a bargain, an exchange, in which the worker, to obtain the new remedy based on liability without fault, gave up his existing remedy, the right to a tort action against his employer for a negligent injury.[1] It is time that the terms of that bargain be re-examined.

The continuing inadequacies of workmen's compensation make clear that the workman has never really received all that he supposedly bargained for. Compensation payments continue to bear little relationship to the actual need of the injured and his family. Coverage as to types of employment, injury and disease, while extended during the years, is not yet sufficiently inclusive.[2] And, notwithstanding the fact that workmen's compensation was a great step forward and has been improved in many respects over its fifty years, its present status does not encourage the view that it will ever constitute a complete and adequate answer to the problem of industrial injuries. This suggests that we should now consider the possibility of retaining compensation, while supplementing it with other remedies.

This has already happened in England, whose laws and poli-

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1 See generally PROSSER, TORTS 382-83 (2d ed. 1955); Somers, *Myth and Reality in Workmen's Compensation*, U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. No. 192, at 18, 23-26, in INTERNATIONAL ASSOCIATION OF INDUSTRIAL ACCIDENT BOARDS AND COMMISSIONS PROCEEDINGS (1953). [Proceedings of this Association will be cited hereinafter as IAIABC PROCEEDINGS.]

2 CHEIT, INJURY AND RECOVERY IN THE COURSE OF EMPLOYMENT 4-5 (1961); SOMERS & SOMERS, WORKMEN'S COMPENSATION, particularly *Coverage and Benefits* 38-92 (1954) [hereinafter cited as SOMERS]; Skolnik, *New Benchmarks in Workmen's Compensation*, 25 SOCIAL SECURITY BULL. No. 6, at 3-18 (1962), in particular: "From the available data, it appears likely that workmen's compensation is leaving unmet, on the average, more than three-fifths of the total wage loss in temporary disability cases. For work injuries that result in death or permanent disability, the proportion of the wage loss compensation is even less, partly because the compensation is more likely to be subject to statutory maximums on duration of benefits or on aggregate payments." *Id.* at 10. See also U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. No. 212, STATE WORKMEN'S COMPENSATION LAWS: A COMPARISON OF MAJOR PROVISIONS WITH RECOMMENDED STANDARDS (1961).

cies have always strongly influenced us in this field.[3] Our original remedy of tort liability was adopted from the English common law, as were the defects which ultimately led to its abandonment as a remedial device for injured workmen. Our original workmen's compensation acts, though they drew their inspiration partly from the earlier German model, were largely patterned on the English statutory provisions. Should we now follow the English by restoring the right to sue in tort, as an additional remedy, while at the same time retaining compensation? We may shed some light on this by looking at the role of advocacy and of the advocate as it has developed in our own system.

I. EARLY LEGAL PROTECTION OF INDUSTRY AND THE DEVELOPMENT OF A WORKMEN'S COMPENSATION SYSTEM

When the problem of industrial injuries arose in the first half of the nineteenth century, the first reaction of both the English and the American courts was to protect industry through the development of what came to be called the employers' "common-law defenses," specifically, contributory negligence, assumption of risk, and the fellow-servant doctrine. Partly because of this and other forms of legal encouragement, industrial development proceeded rapidly, but at the cost of a tremendous toll in uncompensated human suffering on the part of productive workers and their families and dependents.

By the late nineteenth and the early twentieth centuries, the sheer inhumanity of this system had reached such proportions that it could no longer be borne, especially since it was obvious that industry was no longer so feeble and immature as to require such subsidies, if indeed it ever had been. Reform was demanded with increasing insistence, and it eventually had to come.[4] It proceeded in two stages. The first was the adoption of employers' liability acts, which retained the fault principle of the common law, but modified the employers' common-law defenses.[5] The second, workmen's compensation, abandoned the fault principle and treated

3 For an excellent exposition of the English experience with workmen's compensation, see SOMER 299-308. See also VESTER & CARTWRIGHT, INDUSTRIAL INJURIES (1961) (2 vols.).

4 See DODD, ADMINISTRATION OF WORKMEN'S COMPENSATION 19-26 (1936); HARPER & JAMES, TORTS xlii-xliii (1956); RIESENFELD & MAXWELL, MODERN SOCIAL LEGISLATION 137-38 (1950).

5 See 1 LARSON, WORKMEN'S COMPENSATION 29-32 (1952).

employment-connected disability, like the breakdown of the machines themselves, as part of the costs of production which ought to be borne by the enterprise—and ultimately by the consumers of its products.[6] To make sure that the enterprise would be able to meet this cost, some of the laws required employers to insure against it, or to qualify as self-insurers.

The new system of workmen's compensation was shaped in many ways by the reaction against the defects of the system which it displaced. The common law had failed to handle the problem. The obvious requirements of humaneness toward the injured workman and his family had been frustrated by technical and often artificial legal doctrines. The expense of litigation had been a hardship on the injured worker and often a deterrent against his seeking any relief. The inability of the common-law tort action to produce any relief (except in the form of a possible compromise settlement) until a judgment had been reached, after months or years of delay, made it altogether ill-suited to meet the injured workman's immediate need, which was for the prompt receipt of money to make up for a sudden loss of income accompanied almost immediately by medical expenses. This put the injured employee or his dependents under considerable pressure to accept an unfavorable and unfair compromise settlement, merely because it was the only way in which immediate cash needs could be met.

The new workmen's compensation system, it was hoped, would cure each of these defects. It would be simple and commonsense in its provisions, devoid of legalisms. It would provide relief which, though not generous, would be certain and immediate.[7] And it was hoped that, through such devices as injury schedules and benefits fixed by statute, it could be made largely automatic, so that there would be few occasions for adversary proceedings and little need for the intervention of lawyers.

Some of these hopes were realized, or partially realized, but others were in considerable degree disappointed. The promptness

[6] The old slogan, "The cost of the product should bear the blood of the workmen," succinctly describes the underlying philosophy of workmen's compensation. See PROSSER, *op. cit. supra* note 1, at 383.

[7] See 1 LARSON, *op. cit. supra* note 5, at 4-6, particularly: "The ultimate social philosophy behind compensation liability is belief in the wisdom of providing, in the most efficient, most dignified and most certain form, financial and medical benefits for the victims of work-connected injuries which an enlightened community would feel obliged to provide in any case in some less satisfactory form, and of allocating the burden of these payments to the most appropriate source of payment, the consumer of the product." *Id.* at 5.

of initial payments provided a striking contrast to the old system. And, while relief did not prove to be certain, it was, of course, available in a much higher proportion of cases than formerly. But the adversary element inhered in the new system as it had in the old. And the chief result of the effort to eliminate lawyers, in the early years, was simply to eliminate lawyers on one side, but not on the other.[8]

II. EFFECTS OF UNILATERAL ADVOCACY

As an industry of insurance carriers grew up to underwrite the new risk, an expert, specialized, full-time defendants' bar grew up with it to defend the legal interests of such carriers and to oppose compensation claims. The first two decades of workmen's compensation were thus largely a period of unilateral advocacy, the results of which were, of course, one-sided, as might have been expected.[9]

The effect was to weaken the new system and to incorporate into it many elements of the old system that it was designed to replace. There was a tendency to inject into the administrative hearing, designed to be informal, common-law rules of evidence and procedure.[10] Restrictive definitions of "employee" were sometimes imported into the new statutes in disregard of the fact that such constructions had originated in cases dealing with the employer's liability to third persons for the torts of those working for him, and thus rested on considerations entirely irrelevant to the

8 See DODD, *op. cit. supra* note 4, at 23-26. See also Marcus, *NACCA Bar Association*, U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. NO. 213, at 196-98, in IAIABC PROCEEDINGS (1959).

9 See ROBSON, JUSTICE AND ADMINISTRATIVE LAW 211 (1951), particularly: "Money, time and professional skill were squandered for more than half a century in a scandalously wasteful manner in settling these claims. The fundamental reason was that, instead of a claim for compensation being determined on the grounds of public interest, it was opposed and obstructed at every stage by the adverse interest of the employer or his insurance company. The resources of numerous legal and medical practitioners were devoted to resisting the payment of compensation to an injured workman or the dependents of one who had been killed, regardless of the human and social issues involved. . . .

"These were the considerations which led me to conclude in 1942, that 'the system of workmen's compensation as it now exists is indefensible, and such it will remain until the adverse interest of the employer or his insurance company or mutual trade association is removed, and the determination of the claim carried out by an administrative tribunal or commission having regard only to the public interest in the injured man or his dependents.'" *Id.* at 211-12.

10 See DODD, *op. cit. supra* note 4, at 225-26, 232-33; ROSS, *The Applicability of Common Law Rules of Evidence in Proceedings Before Workmen's Compensation Commission*, 36 HARV. L. REV. 263 (1923). See also 2 LARSON, *op. cit. supra* note 5, at 287-88, 296-97.

proper scope of compensation coverage.[11] Also, doctrines regarding "scope of employment," similarly developed in vicarious liability cases, were read into the statutory language "arising out of and in the course of" employment. Among these were the "going and coming rule"[12] and the rules as to deviations from the strict work pattern.[13] In applying the concept of accidental injury to the problem of injuries produced by stress and strain, the courts tended to exclude cases where the stress was "normal to the job,"[14] thus producing, in the workmen's compensation context, something very like the old doctrine of assumption of risk. And part of the old defense of contributory negligence was, in substance, reinstated by calling it "willful and intentional misconduct," including therein deviations from safety rules.[15]

Another result of unilateral advocacy was the one-sided role of medical testimony. Since in most states the employer selected the doctor (especially during the early history of workmen's compensation), and since his testimony was crucial in most compensation disputes, it is not surprising that doctors likely to be sympathetic to the employer's point of view on such questions tended to be chosen. Nor is it surprising that doctors were sometimes selected more for their agility on the witness stand than for their skill in healing injuries. And even doctors selected purely for professional competency may have had a tendency, not at all unnatural, to see things from the point of view of the side which was paying their fees and from which they hoped future fees would be forthcoming. When all these factors were added to what seems to be the inherent conservatism of the medical profession, it is no wonder that the doctor as a witness tended to become, not an impartial expert, but a medical advocate for the defense.[16]

11 See 1 LARSON, *op. cit. supra* note 5, at 623-25, 630-31.

12 *Id.* at 195-96.

13 See, *e.g.*, Wither's Case, 252 Mass. 415, 147 N.E. 831 (1925).

14 See, *e.g.*, DeLille v. Holton-Seelye Co., 334 Mo. 464, 66 S.W.2d 834 (1933).

15 See 1 LARSON, *op. cit. supra* note 5, at 474-80.

16 See BREND, TRAUMATIC MENTAL DISORDERS IN COURTS OF LAW 63 (1938); ROBSON, *op. cit. supra* note 9, at 210-12; 2 WILSON & LEVY, WORKMEN'S COMPENSATION 185, 193, 280-83, 289 (1941), especially: "The doctor on the other side is generally the representative of an insurance company and is fully alive to the fact that his interest and those of the company are identical." BREND, *op. cit. supra*, at 63-64. See also DODD, *op. cit. supra* note 4, stating: "It was found that there was an extremely high correlation between the opinions of the insurers' physicians and the conclusion best adapted to limiting the compensation claim. . . ." *Id.* at 460-61. "The specialists to whom an insurance company sends its claimants may be able in their field and capable of rendering a high type of professional service, but if too great a proportion of their findings are favorable to the

The role of unilateral advocacy was not limited to claim proceedings. It also tended to mold the attitudes of the system's administrators. Some of these were chosen from the personnel of industry or of the insurance carriers. Others retired from administrative posts to positions with industry or insurance companies, thus stimulating an "identity of interest." The administration of workmen's compensation tended to remain weak for a variety of reasons: political appointments and control, frequent changes of personnel, underpaid and overworked staffs, inadequate budgets. And weak administration was all the more vulnerable to the pressures and influence implicit in unilateral advocacy.[17]

In the legislative field, the one-sidedness of the pressures exerted was perhaps even more marked. An instance has been cited in which a proposed amendment to a compensation law was summarily tabled in an unnamed southern state because it did not have the approval of the manufacturers' association.[18] This is representative of the general, but not invariable, rule that amendments to workmen's compensation laws have not received legislative approval unless they had the sanction of the spokesmen for employers and insurance carriers. In some jurisdictions this sanction was obtained as a result of bargaining between organized labor and management. Unfortunately the plight of the injured worker has often had, for organized labor, a low rating at the bargaining table, although sometimes useful as a counter in obtaining concessions from management in regard to other types of fringe benefits. In contrast, the presentation of the employers' and carriers' point of view has been vigorous, well-organized and effective. It has repeatedly been backed by the threat that industry would flee the state in search of a cheaper environment if a single

claimants these specialists will no longer receive the patronage of the insurance companies. . . . The reports . . . afford convincing proof that insurance company practice in the chief industrial centers of each jurisdiction studied is, on the whole, restricted to a relatively small group of doctors whose written reports and findings and verbal testimony favor their employers, the insurance companies, with monotonous regularity. The conclusion is inescapable that most of these doctors are selected or retained for their legal ability in defeating employees' claims rather than for their medical skill in healing their injuries." *Id.* at 491.

17 SOMERS 143-48; Reid, *President's Address*, U.S. BUREAU OF LABOR STANDARDS, DEP'T OF LABOR, BULL. NO. 192, at 4, in IAIABC PROCEEDINGS (1956), stating in pertinent part: "It is of course more often true than not that State boards and commissions and staff are not insulated from great pressures, political, economic, and other, brought to bear upon them in the carrying out of their duties." *Id.* at 12. See also DODD, *op. cit. supra* note 4, at 798-803.

18 SOMERS 145.

additional straw was added to its burden. During the first two decades of workmen's compensation, this effort was seldom balanced by any comparably effective effort on the other side. Accordingly, amendment to legislation in the compensation field was largely the creation of the employers.[19]

III. ROLE OF THE PLAINTIFFS' BAR

Why was the defendants' bar substantially unchallenged in its complete possession of the field for so long? There were many reasons. Compensation work was so novel and specialized in its methods and (despite early hopes to the contrary) so complex and technical that the skill and experience of the lawyer in general practice were not readily transferable to this field.[20] Yet the practice was not, from the claimants' side, sufficiently lucrative to attract its own corps of specialists as readily as other highly technical fields, such as tax law, have been able to do. Furthermore, representing the rich and powerful has always tended to give lawyers greater professional prestige, as well as greater emoluments.

Yet there was a crying need to be met, and in time this was accomplished. In the depression years of the 1930's a plaintiffs' bar sprang into existence. In part this occurred because the rising tide of claims had reached a point at which a claimant's lawyer, notwithstanding the smallness of individual fees, could make a living through sheer volume of business—though of course a better living was still to be had by working the other side of the street. In part it occurred also because some lawyers, influenced by the social idealism of the time, were attracted by the idea of becoming defenders of the underdog, devoting their professional careers to the

19 In the early 1940's, the writer was on the legal staff of one of the largest unions in the country. Until then there was little, if any, organized activity or interest by labor unions in behalf of the injured employee. A reading of the reports of the workmen's compensation study commissions of the various states, which reports led to the enactment of compensation laws, indicate little participation by labor in such formulation, and even opposition to the enactment of such laws. The writer stimulated the organization of workmen's compensation departments and committees for international unions and local unions, all of which led to the establishment, about six years ago, of a workmen's compensation department at the AFL-CIO headquarters in Washington, D.C.

The statements in this article are based not only upon the writer's experience, but upon information received from many other attorneys representing labor unions throughout the country, many of whom have drafted proposed legislation, appeared before legislative committees and have participated in negotiations with management.

20 DAWSON, THE DEVELOPMENT OF WORKMEN'S COMPENSATION CLAIMS ADMINISTRATION IN THE UNITED STATES AND CANADA 3 (IAIABC 1951), stating that "workmen's compensation is now considered the most difficult specialty in the entire field of labor legislation."