

THE EVOLUTION AND PRESENT STATUS OF WORKMEN'S
COMPENSATION INSURANCE IN TEXAS

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CHAPTER I

INTRODUCTION

Statement of the Problem

The problem of this study is to record the evolution and to determine the present status of workmen's compensation insurance in Texas.

Purpose of the Study

The history of workmen's compensation insurance began in Texas in 1911 along with the general movement in the United States to remedy a maladjustment of industrial society. The maladjustment lay in the faulty placement of the expense of industrial injury on employees, rather than as a cost of production to be borne by consumers.¹ Conclusions will be drawn from the information presented as to the present status of workmen's compensation insurance in Texas for the purpose of making recommendations for changes in the light of what is deemed necessary for the fulfillment of its intended purpose.

Scope of the Problem

In general, this thesis involves a study of workmen's compensation insurance in Texas from the first legislative

¹Karl E. Ashburn, Texas Workmen's Compensation Insurance Act and Its Administration, p. 14.

attempts at providing compensation for industrial injuries in 1911, to June, 1947. The specific scope of the problem includes a study of administrative authority, types and amounts of coverage, carriers, and claim payment and procedure. References to conditions in other states will be made only when such references are necessary for comparison to conditions in Texas.

Sources of the Data

Data for this study have been collected from the Annual Reports of the Board of Insurance Commissioners, Austin, Texas; The Biennial Reports of the Industrial Accident Board, Austin, Texas; personal interviews with officers of the Texas Employers' Insurance Association; and from other documentary sources, including published books and pamphlets of the United States Department of Labor, and digests of the insurance laws of Texas.

Treatment of the Data

The historical data will be assimilated to present a chronological history of the development of workmen's compensation insurance in Texas, but for the most part, the data will be presented to permit a topical development of the specific phases of the problem. Conclusions will be drawn as to the scope and status of administrative authority, the types and amounts of coverage, the financial requirements of insurance carriers, and claim payment and procedure. Finally,

recommendations for changes will be made where inadequacies of workmen's compensation insurance in Texas are discovered.

Survey of Related Studies

Karl E. Ashburn, Special Assistant State Auditor of Texas, made a study of workmen's compensation insurance in Texas in 1938. His study was aimed primarily at making recommendations for improvement of statutes providing compensation for workers injured in the course of their employment. In that respect, the findings of his study coincide with the purpose of this study, but his recommendations were drawn largely from opinions and hearsay and were not necessarily substantiated by facts. Even though the findings of the two studies are correlated very closely, his work is not considered a reliable criterion for evaluation of the workmen's compensation insurance laws in Texas because of the too general treatment of the problem.

The Bureau of Labor Statistics of the United States Department of Labor issued a report on experience under the different types of workmen's compensation laws in the United States and Canada in 1940. This study made a comparison of benefits to be derived, persons and employments covered, injuries and diseases covered, and claims administration in the various states and Canada. This report will be used as a reference whenever it is considered advisable and within the scope of this study to make comparisons between workmen's compensation in Texas and other states.

The Division of Labor Standards of the United States Department of Labor issued in 1946 a comparative study of workmen's compensation insurance in the different states that have provided for compensation of industrial injuries. The study made by the Division of Labor Standards is patterned after the study made in 1940 by the Bureau of Labor Statistics and offers more up-to-date information on the same specific phases of workmen's compensation in all the states.

CHAPTER II

EVOLUTION OF WORKMEN'S COMPENSATION INSURANCE IN TEXAS

Background of Workmen's Compensation

Society has always demanded goods which are sometimes produced at great hazard to the health and life of the workers concerned. The employer has of necessity been guided by the profit motive. When a machine becomes broken, obsolete, or worn out, it is discarded because it would be unprofitable to keep on using it. When a human worker is injured or sick, he too must be discarded because it would be unprofitable to keep on using him. It has seemed necessary in this highly industrialized, competitive society for the employer to sacrifice the human being in the interest of profitable production.¹

During the handicraft stage of industry which preceded the factory system, a close relationship existed between the master and the servant. Grounds for damages for personal work injuries could be found under the common law in the personal negligence of the master. Under the factory system of modern industrial society, the relationship between the employer and employee is impersonal, and the common law doctrine of

¹E. E. Cummins, The Labor Problem in the United States, p. 90.

negligence cannot hold the employer for damage for which he was not personally the cause through fault or negligence. The employer was further released from liability by the common law defenses of the doctrine of contributory negligence of the employee, the doctrine of contributory negligence on the part of a fellow employee, and the doctrine of the assumption of risk with employment.²

With these common law defenses for the employers, the injured workman in modern industrial society for many years was practically without relief from severe economic losses. This situation by which the defenses of the employers under the common law of negligence caused the burden of the accidents attributable only to the industry itself to fall most heavily on those least able to bear it represented a maladjustment in modern industrial society for which workmen's compensation was developed as a remedy. Workmen's Compensation thus provided a legal remedy to the situation, but workmen's compensation insurance was necessary as a way of financing the benefits provided by this remedy.³

Early remedial attempts in the United States were aimed at restricting or eliminating the common law defenses to which employers could resort in case of suit for damages. These laws

² American Academy of Political and Social Science, Industrial Safety, Vol. CXXIII (1926), edited by Richard H. Lansburgh, p. 206.

³ C. A. Kulp, Casualty Insurance, p. 63.

did not solve the problem, however, because a suit for damages still depended for success upon positive proof of personal fault or negligence on the part of the employer. Under this system, recovery was hopelessly inadequate and uncertain, and it was delayed, while the need was immediate.⁴

Interest in compensation legislation in other countries was manifested early in the United States, and numerous studies were made to determine the nature and effectiveness of this type of legislation. The first of these studies was made by John Graham Brooks, who was commissioned in 1891 by the United States Bureau of Labor to investigate the German social insurance system. In 1898 the Bureau of Labor Statistics of the State of Massachusetts made a similar study. During Theodore Roosevelt's administration other studies of the European systems and of the problem of industrial accidents in America were made by the United States Bureau of Labor. Also, beginning with Massachusetts in 1903, a number of state legislative commissions were appointed to gather industrial accident statistics, to study existing compensation laws, and to frame bills for introduction in the state legislatures. After 1905 organized labor began to exert its energies for the enactment of state compensation laws.⁵

Several state compensation laws were passed before 1911, but all these were declared unconstitutional. The chief defect

⁴Ashburn, op. cit., p. 15.

⁵Ibid.

was the compulsory nature of these early laws. The courts held a statute unconstitutional which made an employer liable for damages for work injuries when no negligence on his part was proved, as violating the due process clause of the federal constitution and of the state constitutions. The solution for this constitutional problem was found in constitutional amendments in some instances, but in the larger number of states the acts were made elective in form. The elective compensation statutes leave the employer to choose between common law liability without the three common law defenses and the compensation system.⁶

The first compensation law to become effective was that of Wisconsin, adopted and put into operation on May 3, 1911. Workmen's compensation in Texas resulted from a nation-wide movement which was necessary because of the decentralized American legislative system. The Texas Employers' Liability Act, as the law was originally called, became effective on September 1, 1913.⁷

Workmen's Compensation Insurance
Laws of Texas from 1911 to 1947

Thirty-Second Legislature, 1911.--The first Texas bills to embody the workmen's compensation principle were introduced in the Senate and the House during the regular session of the Thirty-Second Legislature in 1911. These bills were identical, and each provided for strict employers' liability with an

⁶Ibid., p. 16.

⁷Ibid.

alternative general system of accident insurance of employees by employers. The passage of either bill would have abolished any cause of action against employers where they complied with the requirements as to insuring employees. The House Bill was reported unfavorably from the committee, and although the Senate Bill received a favorable report from the committee, it died on the calendar. The only further action taken on the matter before adjournment was the appointment of a committee to study the problem of workmen's compensation before the next regular session of the Legislature in 1913.⁸

Thirty-Third Legislature, 1913.---The Thirty-Third Legislature convened January 14, 1913, and the workmen's compensation measure was introduced by Senator Collins on the third day of the session, January 16. Final passage of the Bill was on March 31, 1913, and it became effective September 1, 1913.⁹

The Texas Employers' Liability Act provided for a system of insurance to cover work accidents and left the provision of this insurance to the option of the employer. Employees of employers having fewer than five employees, farm laborers, domestic servants, and employees of railway companies were specifically excluded from coverage under this act.¹⁰ If an

⁸Ibid., p. 17.

⁹Texas Department of State, General and Special Laws of the State of Texas, Thirty-Third Legislature, 1913, p. 439.

¹⁰Ibid., p. 430.

employer whose employees were not specifically excluded from coverage elected to remain outside the coverage, he lost the three common law defenses, but it still remained a condition precedent to recovery for the employee to prove negligence on the part of the employer.¹¹

The Act provided for indemnity for total disability of sixty per cent of the average weekly wage and a minimum of five dollars and a maximum of fifteen dollars, for a maximum of three hundred weeks. A waiting period for benefits of one week was established, and benefits were payable to the injured worker beginning on the eighth day after injury.¹²

The Industrial Accident Board was created by this Act to hear claims and make awards to claimants. The Board was composed of three members--one employer, one employee, and one practicing attorney. Their terms of office were to be two, four, and six years respectively, with future appointments to be for six years. This Board was given no final authority, as either the claimant or the insurance company providing the workmen's compensation insurance could refuse to abide by the Board's decision and enter suit in court to have the Board's decision set aside.¹³

The Texas Employers' Insurance Association was created as a corporation for the purpose of writing the workmen's compensation insurance in Texas. The Board of Directors of the

¹¹Ibid., pp. 429, 430.

¹²Ibid., p. 430.

¹³Ibid., pp. 432-434.

Association was given the power to classify hazards, set premium rates, formulate policies and declare dividends to the stockholders of the Association, subject to the approval of the Commissioner of Insurance and Banking.¹⁴

The Texas Employers' Liability Act further provided that the employer could elect to insure his employees with any insurance company authorized to issue casualty insurance in the State of Texas. These companies at the time of the passage of the Act included stock companies, mutuals, and Lloyds Associations.¹⁵ The financial and legal requirements of the different types of carriers writing workmen's compensation insurance will be discussed in detail in Chapter III of this thesis.

Thirty-Fourth Legislature, 1915.--The Thirty-Fourth Legislature in 1915 added an amendment to the Texas Employers' Liability Act providing that reciprocal companies, or inter-insurance exchanges, could write workmen's compensation insurance in this state.¹⁶ The reciprocal companies operated through an attorney-in-fact, and the legal requirements of their operations will be discussed in Chapter III.

Thirty-Fifth Legislature, 1917.--The Thirty-Fifth Legislature added an amendment to the Texas Employers' Liability

¹⁴Ibid., pp. 435-436

¹⁵Ibid., p. 437

¹⁶Texas Department of State, General and Special Laws of the State of Texas, Thirty-Fourth Legislature, 1915, pp. 269-272.

Act providing that employers with three or more employees, who were not otherwise excluded, were eligible to provide workmen's compensation insurance for their employees. The title of the Texas Employers' Liability Act was changed to the Texas Workmen's Compensation Insurance Act, and employees were given the right to elect to refuse the insurance coverage if the employer offered to provide it. If an employee elected to refuse the coverage and notified his employer of that fact within five days after his hire or the provision of such insurance, he retained his right to sue his employer for damage arising from injury sustained in the course of his employment. However, upon the election of the employee to waive the insurance coverage, the employer retained his rights to the three defenses under the common law.¹⁷

Attorneys fees for representing a client before the Industrial Accident Board were limited to fifteen per cent of the first \$1,000 of the Board's award and ten per cent of any amount in excess of \$1,000.¹⁸

Compensation for total disability remained at sixty per cent of the average weekly wage, with a minimum of \$5 and a maximum of \$15, but the period of benefits was increased from the original 300 weeks to 401 weeks.¹⁹

¹⁷ Texas Department of State, General and Special Laws of the State of Texas, Thirty-Fifth Legislature, 1917, p. 270.

¹⁸ Ibid., p. 273.

¹⁹ Ibid., p. 274.

Thirty-Eighth Legislature, 1923.---An amendment to the Texas Workmen's Compensation Insurance Act was passed by the Thirty-Eighth Legislature which required the insurance carrier to provide medical treatment at its expense for the injured employee for four weeks following the injury, if such medical aid was considered necessary by the Industrial Accident Board.²⁰

This amendment also increased the minimum and maximum payment for injury to a minimum of seven dollars weekly and a maximum of twenty dollars weekly.²¹

The Board of Insurance Commissioners was given the exclusive power of classifying hazards, fixing premium rates, and prescribing policy forms for workmen's compensation insurance. The Casualty Insurance Commissioner was given the authority to require all employers to file records of their accident experience in all their work classifications with the office of the Casualty Insurance Commissioner. From the tabulated experience records and from studies made of rate-making techniques in other states, the Casualty Insurance Commissioner was required to furnish sufficient information to the Board of Insurance Commissioners to permit the Board to classify all hazards and set the premium rates.²² The Board of Insurance Commissioners was empowered to make close

²⁰ Texas Department of State, General and Special Laws of the State of Texas, Thirty-Eighth Legislature, 1923, p. 384.

²¹ Ibid., p. 385.

²² Ibid., p. 409.

examination of the financial condition of any insurance carrier before that carrier could declare dividends to its stockholders or policyholders.²³

Fortieth Legislature, 1927.--The Fortieth Legislature added an amendment to the Act which provided that if the work injury resulted in disability for a period of four weeks, compensation was payable from the date of the injury, or from the date upon which disability actually began. This amendment repealed the provision of the original Act which provided that compensation was payable from the eighth day following the injury or the date on which disability began, regardless of the length of the disability.²⁴

This amendment further provided that notice of the refusal to abide by the decision of the Industrial Accident Board must be filed with the Board within twenty days after the Board's final ruling, and that suit to have the Board's ruling set aside must be filed in court within twenty days after notice of such intention. Failure to file notice or suit within these specified times would make the award of the Board final.²⁵

The provision of workmen's compensation insurance for all employees was made compulsory for all motor bus companies operating in the State of Texas.²⁶

²³Ibid., p. 410.

²⁴Texas Department of State, General and Special Laws of the State of Texas, Fortieth Legislature, 1927, p. 84.

²⁵Ibid., p. 328.

²⁶Ibid., p. 405.

Forty-First Legislature, 1929.--The Forty-First Legislature provided for regulation of carriers writing workmen's compensation insurance in this state on the Lloyds plan.²⁷ These regulations will be discussed in detail in Chapter III of this thesis.

Forty-Second Legislature, 1931.--The Forty-Second Legislature added an amendment to the Act which made it possible for employers of farm, ranch, and domestic labor, and those having fewer than three employees to voluntarily come under the terms of the act. Their failure to do so did not remove their common law defenses in case of suit for damages.²⁸

Forty-Fourth Legislature, 1935.--The Forty-Fourth Legislature passed a law providing that a constitutional amendment giving the Legislature power to provide workmen's compensation insurance to state employees be submitted to the electors of the state for vote. The amendment specifically stated that the legislature was given the right to provide the insurance coverage to state employees, but that the state would not be required to pay the premiums for such insurance.²⁹ The amendment was voted on by the electors November 3, 1936, and was adopted by a vote of 558,611 to 237,563.³⁰

²⁷Texas Department of State, General and Special Laws of the State of Texas, Forty-First Legislature, 1929, p. 54.

²⁸Texas Department of State, General and Special Laws of the State of Texas, Forty-Second Legislature, 1931, p. 269.

²⁹Ibid., pp. 223, 224.

³⁰Civic Federation of Dallas, Texas Social Legislation, A Report Prepared by the Civic Federation of Dallas, Vol. III, p. 87.

Forty-Fifth Legislature, 1937.---A system of self-insurance was provided for the Texas State Highway Department whereby all employees of the Department would be covered by workmen's compensation insurance. Premiums for this self-insurance were to be paid from the appropriations for the Department and were not to exceed three and one-half per cent of the annual appropriation. This insurance system was to be administered by a director, an assistant director and adjuster, five safety instructors and field investigators, a statistician, and four stenographers. The director and the assistant director and adjuster were given authority to settle the cases and make awards, and the field men were to investigate the claims.³¹

Attorney's fees for representing an injured employee in court were limited to one third of the award made by the court, but if, in the opinion of the court, no benefit was derived by the employee from representation by the attorney, the attorney's fee should be limited to the fee allowable for representation before the Industrial Accident Board.³²

Forty-Sixth Legislature, 1939.---The Forty-Sixth Legislature added an amendment to the Act which raised the financial requirements of the reciprocal companies writing workmen's compensation insurance in Texas. This amendment raised the

³¹Texas Department of State, General and Special Laws of the State of Texas, Forty-Fifth Legislature, 1937, pp. 1352-1360.

³²Ibid., pp. 535, 536.

asset and deposit requirements of the reciprocal carriers and added a provision regulating liability to assessment of their subscribers.³³ These requirements will be discussed in Chapter III.

Forty-Seventh Legislature, 1941.--An amendment to the Act by the Forty-Seventh Legislature required insurance carriers writing workmen's compensation insurance to provide artificial appliances for injured workers when such appliances were considered necessary by the Industrial Accident Board. The injured worker was required to apply to the Industrial Accident Board for the appliances and to undergo an examination by a physician designated by the Board. If the physician's examination revealed that artificial appliances were necessary, the insurance carrier was required to provide the appliances. The maximum cost to be borne by the insurance carrier for the appliances was set at \$200.³⁴

Fiftieth Legislature, 1947.--The Fiftieth Legislature passed an amendment to the Act which set the maximum benefits payable under the Act at twenty-five dollars per week and the minimum benefits at nine dollars per week. This same amendment also limited special nursing services to a period of

³³ Texas Department of State, General and Special Laws of the State of Texas, Forty-Sixth Legislature, 1939, pp. 672-679.

³⁴ Texas Department of State, General and Special Laws of the State of Texas, Forty-Seventh Legislature, 1941, p. 654.

180 days from the date of injury. The bill became effective April 8, 1947.³⁵

An amendment was added to the Act providing for a Second Injury Fund, to be used to compensate an employee who has suffered a prior injury and who becomes permanently and totally incapacitated by reason of a subsequent injury. Under the Texas Workmen's Compensation Insurance Act, the insurance company pays for the second injury only, and this fund was created to compensate the injured employee for the combined effect of the two injuries. The fund is to be created by the payment to the Industrial Accident Board of \$1,500 in every case of the death of an employee that is covered under the Act where there is no surviving beneficiary. The total amount of the fund will be limited to \$100,000, and it will be administered by the Industrial Accident Board. The bill was made effective on April 17, 1947.³⁶

An amendment known as the Occupational Disease Bill was added to the Act for the purpose of compensating employees who suffer disability by reason of exposure to conditions in their employment that cause certain diseases. The specific coverage provided by this bill will be discussed in Chapter III. Any employee who becomes afflicted with any one of the diseases included in the schedule of coverage, by reason of his employ-

³⁵Fiftieth Legislature of Texas, H. B. 10, p. 1.

³⁶Fiftieth Legislature of Texas, H. B. 465, pp. 1, 2.

ment, will be compensated under the terms of the Texas Workmen's Compensation Insurance Act on the same basis that applies to injuries. The bill was so drawn that it will not become fully effective as to silicosis and asbestosis until four years from the effective date of the bill. During the first twelve months after the effective date of the bill, the benefits for these two diseases will be 20% of the maximum benefits otherwise payable. The benefits will be increased by 20% during each additional twelve months, and full benefits will be payable at the end of four years. The bill was made effective February 10, 1947.³⁷

³⁷ Fiftieth Legislature of Texas, S. B. 40, pp. 1, 2.

CHAPTER III

THE PRESENT STATUS OF WORKMEN'S COMPENSATION INSURANCE IN TEXAS

Administrative Authority

Board of Insurance Commissioners.--The general duties and powers of the Board of Insurance Commissioners were presented in Chapter II of this thesis. The Chairman of the Board is required by law to examine all stock and mutual companies and Lloyds associations once each two years, or more often if he deems an examination necessary.¹ The Texas Employers' Insurance Association is examined annually before the liability to assessment of its members is suspended. This liability to assessment is suspended when the Association has an admitted surplus of \$200,000.² Reciprocal companies may be examined at any time by the Board of Insurance Commissioners.³

In classifying hazards and establishing premium rates, the Board of Insurance Commissioners divides the premium dollar into fifty-eight cents pure premium and forty-two cents loading premium. Experience ratings for each type of work classification are based on the first three years of

¹Board of Insurance Commissioners of Texas, Insurance Laws of the State of Texas, 1937, pp. 12, 164.

²Ibid., p. 238.

³Ibid., p. 63.

the four-year period immediately preceding the year for which the rates are to be used. Rates are published 15 days before their effective date, and any insurance carrier not satisfied with the rates prescribed may ask for a hearing before the Board of Insurance Commissioners.⁴

The Life Insurance Commissioner, who is Chairman of the Board of Insurance Commissioners, has exclusive control over the licensing of new companies, approving of securities required by law, and cancelling licenses of insolvent companies.⁵

Industrial Accident Board.--The Industrial Accident Board acts in judicial, administrative, and clerical capacities. In its clerical work it is required to keep a record of all accidents reported, the amount of compensation paid, and numerous other reports concerning each claim. In such capacity it is also required to keep a record of all employers who carry workmen's compensation insurance, together with complete information concerning such insurance and the various insurance companies who issue such policies. In its administrative capacity, the Board supervises medical and hospital treatment in proper cases as well as the payment of compensation to the injured employee and to the beneficiaries in case of death of the employee. In its judicial capacity, the Board passes on compromise settlement agreements where the liability of the

⁴Personal interview with Smith Taylor, Chief Underwriter of the Texas Employers' Insurance Association, July 23, 1947.

⁵Ashburn, op. cit., p. 22.

insurance company is doubtful or the extent of the injury of the employee is uncertain or incapable of being satisfactorily established. In such cases, the Board may approve such agreement when convinced that the claimant is being paid the amount to which he is entitled. If not, the insurance company is requested to increase the amount of the agreement to the correct sum. This is often willingly done by the insurance company; otherwise, the claim will be set for hearing either in Austin or at some place near where the claimant resides. Where compensation is not voluntarily paid in the correct amount or where a settlement satisfactory to the Board is not made, the claim is set for hearing and after evidence is offered by both the claimant and the insurance company, a final award is issued. Either the insurance company or the injured employee may appeal the case to the courts if not satisfied with the Industrial Accident Board's award.⁶

The Board determines whether the proper compensation rate is being paid and also decides the amount of compensation to which the employee is entitled for time lost from work, or for the loss of a specific member of the body. The Board is also called upon to determine who are the proper beneficiaries in the case of death of the employee, and in all cases where medical or hospital treatment is needed, the Board authorizes such

⁶ Report of the Industrial Accident Board of Texas for the Fiscal Years Ending August 31, 1945, and August 31, 1946, p. 3.

treatment for the injured employee and may by the unanimous vote of the Board authorize a surgical operation when it is shown that such operation would be beneficial to the employee.⁷

Approval of compromise settlement agreements by the Board is not a matter of routine. In each case the contents of the Board's files are carefully examined by at least two members of the Board. The submission of evidence and certificates of reputable physicians are required as prerequisites to approval. In comparatively few of the cases heard before the Board are lawyers employed. Therefore, it becomes the duty of the Board to advise and instruct claimants how to make and present their claims for compensation. In every case it is necessary that the employer and the proper insurance company be correctly named, and that certain other legal requirements be met in order that the employee will not lose his case because he failed to comply with some special provision of the statutes if the case is appealed to the courts.⁸

One of the main purposes of the Workmen's Compensation Act is to provide that the injured employee shall have an opportunity to have his claim passed upon by the Board promptly in all cases where weekly compensation is not being paid. It is impossible to determine the exact number of claims

⁷ Ibid., p. 4.

⁸ Biennial Report of the Industrial Accident Board of Texas, 1934-1936, p. 5.

handled by the Board each year, as claims for compensation for injuries occurring in one fiscal year are often not filed until the following year, and some claims pending during one fiscal year are not finally disposed of until after the end of such year, especially where compensation is being paid.⁹

In passing upon contested claims and compromises, the members of the Industrial Accident Board must act. These duties cannot be delegated to nor performed by the employees of the Board. In some cases where awards have been made and insurance companies are paying compensation, the Board will be forced to grant new hearings because of the difficulty of determining the extent of injuries in all cases. The employee receiving compensation may contend that disability still exists, and the insurance company may contend that its liability has been discharged. In these cases of indeterminate awards, it becomes necessary for the Board to order a medical examination of the employee and hold another hearing if necessary to establish definitely the insurance company's additional liability.¹⁰

During recent years the Board has not had sufficient personnel to handle promptly the increased volume of claims which have come before the Board.¹¹ Table 1 shows the

⁹ Industrial Accident Board, 1945-6, op. cit., p. 5.

¹⁰ Industrial Accident Board, 1934-6, op. cit., p. 3.

¹¹ Industrial Accident Board, 1945-6, op. cit., p. 4.

growth in the volume of claims handled by the Board from 1916 to 1946. The Industrial Accident Board was created

TABLE 1

NUMBER OF AWARDS ENTERED, COMPROMISES APPROVED
AND TOTAL HEARINGS BY THE INDUSTRIAL
ACCIDENT BOARD, 1916-1946

Year	Contested Claims	Compromises	Total
1916	147	.....	147
1917	243	.....	243
1918	404	.....	404
1919***
1920	609	334	943
1921	811	431	1,242
1922	823	523	1,346
1923	891**
1924	1,054**
1925	1,460	1,728	3,208
1926	1,586	1,956	3,544
1927	1,856	2,348	4,204
1928	1,917	2,904	4,821
1929	1,926	3,289	5,215
1930	2,027	4,807	6,834
1931	2,713	5,318	8,031
1932	2,912	5,612	7,524
1933	2,477	5,772	8,249
1934	2,295	7,092	9,387
1935	2,794	8,814	11,608
1936	2,929	10,418	13,347
1937***
1938***
1939***
1940	4,416	9,643	14,159
1941***
1942	3,271	14,236	17,507
1943	2,998	16,992	19,990
1944	6,170	17,079	23,249
1945	3,766	16,985	20,751
1946	6,680	17,185	23,865

* Figures not available.

Sources: Reports of the Industrial Accident Board of Texas, 1916-1946.

in 1913 for the purpose of hearing claims and making awards, and three members of the Board could discharge the responsibilities of the Board at that time because of the limited number of compensation claims and formal hearings. However, from 1916 to 1946, the number of formal hearings and compromise settlement agreements handled annually by the Board increased from 147 to 23,865. It is inconceivable that such an increase in the number of claims to be handled should not be accompanied by an increase in personnel. However, a study of the records of the Board reveals that claims are handled and awards issued by the Board in less than half the time that such claims are finally settled when appealed to the courts.¹²

A study of the 200 cases heard by the Board during the period from September 5, 1939 to October 10, 1939, has shown that there was an average difference in time of 3 months and 6 days between the Board's action and final settlement by agreed judgment approved by the court. However, during this period there were 25 other cases heard by and appealed from the Board upon which no settlement had been reached after approximately a year's time. A similar study of 150 cases heard by the Board during the period from September 6, 1938 to October 11, 1938, showed that there was an average difference in time of 3 months and 10 days between the Board's action

¹² Report of the Industrial Accident Board of Texas for the Fiscal Years Ending August 31, 1942, August 31, 1943, and August 31, 1944, p. 4.

and final settlement by agreed judgment in court, with 41 cases still pending after a year's time.¹³

The Industrial Accident Board commented upon the situation in its biennial report September 1, 1932, to August 31, 1934:

During the year ending August 31, 1932, a total of 1,265 cases were appealed from the Industrial Accident Board. It was just slightly more than 43% of the contested cases passed on by the Board. Of the 1,265 cases appealed to the courts only 745 had been tried on January 1, 1933. The remaining 520, or 41%, are still pending in the courts. Of the above-mentioned 745, in which judgments were rendered, many were settled by agreed judgment immediately after they were appealed, and a number have now been appealed to the court of civil appeals. Practically every one of these settlements on agreed judgments could have been made before the Industrial Accident Board and court costs would have been eliminated and attorneys' fees decreased. The result would have been beneficial to the employers who paid premiums, and to the employees who were entitled to the compensation.¹⁴

Of the 6,680 contested cases heard before the Board during the fiscal year ending August 31, 1946, there were 3,805 cases appealed to court. These cases appealed to the courts represent 56.98 per cent of the contested claims heard by the Board.¹⁵

It has been generally recognized that courts are not properly equipped to render the type of service needed for workmen's compensation administration because of many correlated responsibilities involved. The National Conferences on Labor Legislation have repeatedly recommended administration by a

¹³Report of the Industrial Accident Board of Texas for the Fiscal Year Ending August 31, 1940, p. 4.

¹⁴Biennial Report of the Industrial Accident Board of Texas, 1934-1936, p. 3.

¹⁵Industrial Accident Board, 1945-6, op. cit., p. 9.

commission or board rather than by the courts. In states where the law is administered by a commission or board, the state agency usually has exclusive jurisdiction over the determination of facts, with appeals to the courts limited to questions of law.¹⁶ The Texas Workmen's Compensation Act allows complete freedom of appeal from the decision of the Industrial Accident Board upon both questions of fact and law, followed by a trial de novo in the lower courts with further opportunity for appeals to the higher courts.¹⁷

From every point of approach it is plain that constitutional rights to litigation, superimposed upon compensation administration, are a burden instead of an advantage to the claimant. On the other hand, it has been said that under present conditions it would be unwise to remove the restraint of judicial review unless there could be built up a personnel with an independence[✓] and a tenure comparable to that of the courts. But it is apparent that a judicial review of a portion of the cases handled by a compensation board is not a satisfactory remedy for an undesirable personnel situation. A cumbersome procedure intensifies instead of cures the evils in such a situation, while the chance for an appeal to the courts has sometimes diverted the attention of workers from more suitable remedies

¹⁶Division of Labor Standards, U. S. Department of Labor, State Workmen's Compensation Laws, p. 40.

¹⁷Bureau of Labor Statistics, U. S. Department of Labor, Problems of Workmen's Compensation Administration, p. 130.

for an intolerable situation. If an examination of the law shows that in any jurisdiction the constitution makes it necessary to superimpose litigation upon the service methods of settling compensation claims, it is of course possible to change constitutional provisions at points where they block socially desirable development.¹⁸

The whole theory and practice of court procedure is unsuited to the needs of indemnity for work injuries. Trial courts depend altogether upon the initiative of litigants, and to enforce his rights in a court of law, the claimant must hire a lawyer, procure witnesses, await a hearing, and have his case prosecuted. If he succeeds, it is only after a long delay and at a heavy cost in attorney's fees. In this State, if a case is carried to court, the attorney may contract for a fee equal to one third of the amount recovered. This does not include additional expenses incurred by the claimant for witness fees and other necessary incidental expenses of a trial, and herein lies the opportunity of a claim adjuster. The certainty of expense and delay and the many uncertainties of litigation are powerful deterrents to a hard-up claimant and will often induce him to sign a release of liability for a fraction of the statutory compensation to which he is entitled.¹⁹

¹⁸ Walter F. Dodd, Administration of Workmen's Compensation, p. 785.

¹⁹ Ashburn, op. cit., p. 53.

There can be no complete break with court methods in passing upon workmen's compensation claims as long as it is necessary for the compensation commissions to build up paper records of cases with a regard to the kind of evidence that may be required by the courts as a basis for sustaining the decisions made by the commissions. In their work, the commissioners in the states have been compelled to keep one eye upon the courts. This has warped the development of compensation administration in most of the states, giving the commissions a legalistic twist that has hampered their full development as social-service agencies.²⁰

The laws of twenty-six states definitely limit appeals to the courts to questions of law. These states are Alabama, Arizona, California, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, and Wisconsin.²¹ The Texas Workmen's Compensation Act still permits appeals to the courts on questions of fact or law despite the fact that this procedure causes undue delay, frequent financial loss, and untold hardship to befall the injured employee, even though the purpose of workmen's compensation is prompt and adequate payment for loss of income.

²⁰ Bureau of Labor Statistics, U. S. Department of Labor, op. cit., p. 125.

²¹ Ashburn, op. cit., p. 54.

Insurance Coverage

Compensation.--The present workmen's compensation laws in Texas provide for a weekly payment of sixty per cent of the employee's average weekly wage for loss of time from work due to injury or illness sustained in the course of employment. The minimum amount payable is nine dollars weekly and the maximum amount is twenty-five dollars weekly, regardless of the average weekly wage.²²

Periods of payments.--If disability lasts four weeks or longer, compensation is payable from the date of injury or the date on which disability actually began.²³ Special nursing services are limited to ninety-one days, and regular hospital services are limited to a period of 180 days from the date of injury or the date on which disability actually began.²⁴ For temporary or permanent total disability, compensation payments are limited to a maximum of 401 weeks.²⁵ For permanent partial disability, compensation payments are limited to 300 weeks for disabilities not listed in the schedule of specific partial disability coverage.²⁶ Payments to beneficiaries in death

²²Fiftieth Legislature, H. B. 10, op. cit., p. 1.

²³Texas Department of State, Fortieth Legislature, op. cit., p. 84.

²⁴Fiftieth Legislature, H. B. 10, op. cit., p. 1.

²⁵Texas Department of State, Thirty-Fifth Legislature, op. cit., p. 274.

²⁶Division of Labor Standards, U. S. Department of Labor, op. cit., p. 25.

cases are limited to 360 weeks, less any period of disability payments. The amount of compensation is determined on the same basis as loss of time compensation.²⁷

The Texas Workmen's Compensation Insurance Act provides for a definite period of compensation payments for the loss of specific members of the body. The number of weeks for the specific injuries is shown in Table 2. The principles upon

TABLE 2

NUMBER OF WEEKS FOR WHICH COMPENSATION
IS PAYABLE FOR LOSS OF OR LOSS OF USE
OF SPECIFIED MEMBER OF THE BODY

Member	Weeks
Thumb	60*
First finger.	45*
Second finger	30*
Third finger.	21*
Fourth finger	15*
Hand.	150
Arm	200
Great toe	30
Other toe	10
Foot.	125
Leg	200
One eye	100
Hearing both ears	150
One eye and one leg	350
One eye and one arm	350
One eye and one hand.	325
One eye and one foot.	300

*Additional 10 weeks for loss of metacarpal bone.

Source: Fiftieth Legislature of Texas,
S. B. 40, p. 3.

²⁷ Ibid., p. 17.

which this portion of the law is based are that it is to the advantage of the worker to know definitely what aid to depend upon after an injury. It was also supposed that the worker could adjust himself to his handicap and recover his place in industry within a given period of time. In some states, provisions are made for rehabilitation in the form of retraining, education, or placement and job guidance to help the injured person find suitable work before the period of compensation runs out.²⁸

In sixteen states and also under the United States act for compensating injuries to civil employees, life benefits are paid for permanent total disability. In eight states, additional compensation is paid where the permanently and totally disabled employee is married or has dependent children. The United States act for civil employees, and also the laws of Arizona, Hawaii and Nevada, provide additional payments for an attendant if one is required.²⁹ The present workmen's compensation laws of Texas do not provide for any of these additional payments. However, provision has been made for the payment for artificial appliances when the appliances are necessary.³⁰

The Fiftieth Legislature added an amendment to the Texas Workmen's Compensation Act intended to provide compensation to

²⁸ Ibid., p. 30.

²⁹ Ibid., p. 15.

³⁰ Texas Department of State, Forty-Seventh Legislature, op. cit., p. 854.

employees who suffer disability by reason of exposure to conditions in their employment causing certain diseases. The following diseases are covered:

Poisoning by:

Aluminum trioxide	Lead
Arsenic	Manganese
Benzol or its homologues and derivatives	Mercury
Beryllium	Methanol
Cadmium	Methyl chloride
Carbon bisulphide	Nitrous fumes
Carbon dioxide	Nitric acid
Carbon monoxide	Petroleum
Chlorine	Phosphorus
Cyanide	Selenium
Formaldehyde	Sulphuric acid
Halogenated hydrocarbons	Sulphur dioxide
Hydrochloric acid	Sulphur trioxide
Hydrofluoric acid	Thallium
Hydrogen sulphide	Thallium
	Zinc

Anthrax caused by handling wool, hair, bristles, and skins
 Blisters caused by repeated use of tools or appliances
 Synovitis, tenosynovitis, or bursitis
 Chrome ulceration
 Compressed air illness
 Dermatitis caused by oil, cutting compounds, lubricants,
 dust, liquids, fumes, gases, or vapors
 Diseased condition caused by exposure to x-rays
 Diseased condition of the eyes due to electric arc or welding
 Epitheliomatous cancer or ulceration of the skin caused by
 tar, pitch, bitumen, mineral oil, or paraffin
 Glanders caused by handling any equine animal
 Infectious or contagious diseases contracted in the course
 of employment in connection with a hospital or sanatorium
 Nystagmus incurred in underground work
 Asbestosis
 Silicosis

Any employee who becomes afflicted with any one of these specified diseases, by reason of his employment, will be compensated under the terms of the Workmen's Compensation Law, and on the same basis as applies to injuries.³¹

³¹ Fiftieth Legislature, S. B. 40, op. cit., pp. 1, 2.

Extent of coverage.--Employers who are eligible to provide workmen's compensation insurance for their employees in Texas may do so, or they may elect to remain outside the coverage without the three common law defenses in case of suit for personal damages. It was estimated by an official of the Texas Employers' Insurance Association that approximately ninety-nine per cent of the employers eligible to provide workmen's compensation insurance for their employees have provided the insurance coverage rather than leave themselves liable to suit for personal damages without the common law defenses.³² In 1940, there were 2,133,355 persons gainfully employed in Texas,³³ and the Industrial Accident Board estimated that there were 615,000 employees covered by workmen's compensation insurance.³⁴ Therefore, less than twenty-nine per cent of the gainfully employed workers were covered by workmen's compensation insurance for that year. More recent estimates of the extent of coverage have not been made by the Industrial Accident Board, but there have been no changes in the Texas laws since that time to expand the scope of persons and employments covered by workmen's compensation insurance. In all probability the percentage of employees covered has

³²Personal interview with Smith Taylor, Chief Underwriter of the Texas Employers' Insurance Association, July 28, 1947.

³³U. S. Bureau of the Census, Sixteenth Census of the United States: 1940, The Labor Force, Vol. III, p. 478.

³⁴Industrial Accident Board, 1940, op. cit., p. 1.

increased since 1940 due to the migration from excluded work classifications to industrial classifications. The absence of any statutory provisions for providing workmen's compensation coverage to civil employees of the State, with the exception of the Texas Highway Department, the specific exemption of farm and ranch laborers, domestic servants, and employees of employers having fewer than three employees appear to be the chief reasons for the limited number of employees covered by workmen's compensation insurance in Texas. In eleven states, workmen's compensation laws cover all public employees, and in twenty-one states coverage is provided for all public employees except elected officials and administrative officers.³⁵ Steps have been taken in other states to include farm laborers and domestic servants under compensation coverage. In six states, mechanized or power operations in farm work are covered, and in these same states, operations for gain that are not in the course of the farmers' own production routine are covered.³⁶ Connecticut, New Jersey, California, and New York laws provide coverage for domestic servants, and in California and New York a minimum number of work hours per week is prescribed to determine eligibility.³⁷ Nineteen states make no numerical exemptions from eligibility for coverage.³⁸

³⁵ Division of Labor Standards, U. S. Department of Labor, op. cit., p. 9.

³⁶ Ibid.

³⁷ Ibid., p. 10.

³⁸ Ibid., p. 6.

**Insurance Companies Writing Workmen's
Compensation Insurance in Texas**

Types of carriers.--The types of carriers that are permitted to write workmen's compensation insurance in Texas are stock companies, mutual companies, reciprocal organizations, Lloyds associations, and the Texas Employers' Insurance Association.

Insurance stock companies are organized and operated, not primarily for the benefit of their policyholders, but for the profit of their owners or stockholders.³⁹

Mutual insurance companies are corporations owned and operated by and for their policyholders. Every member of the company is a policyholder, and every policyholder is a member. Legally the administration of the company is in the hands of the members, but since insurance is a business based on expert knowledge and the application of a large body of technical and managerial skills, the mutual company is actually operated by the same kind of personnel as the stock insurance corporation. Like stock carriers, the mutual insurance companies writing casualty insurance collect premiums at the beginning of the policy period and not at the end. All savings belong to the policyholders, to be returned as dividends or placed in company surplus. Assessment mutuals, those that rely entirely or largely on collecting the cost of insurance protection

³⁹ Kulp, op. cit., p. 453.

after costs have been determined at the close of the policy period, do not write workmen's compensation insurance, because in the long-term casualty hazards the dangers of relying on a levy of all or substantially all of loss costs after the event are as great as for the life hazard.⁴⁰

The reciprocal exchange, or interinsurance exchange, is an aggregation of persons, firms or corporations, called subscribers, who, under a common name engage in the business of exchanging contracts of insurance through an attorney-in-fact having authority to obligate the subscribers jointly and severally. Contracts for insurance are issued only to members, and every member insures every other member at the same time that he himself is insured. The attorney-in-fact performs in general the functions of an insurance company management.⁴¹

A Lloyds association is an association of underwriters who accept risks by transfer. Liability of the individual underwriter is individual and not joint, and the amount of liability is specified in the power of attorney given to the attorney-in-fact.⁴²

The Texas Employers' Insurance Association is a corporation created by the Texas Legislature to write workmen's compensation insurance at cost. Dividends may be declared to the

⁴⁰Ibid., p. 456.

⁴¹Ibid., p. 460.

⁴²Texas Department of State, Forty-First Legislature, op. cit., p. 34.

subscribers when approved by the Board of Insurance Commissioners.⁴³

Legal requirements of carriers.--The primary purpose of supervision of insurance companies has become company solvency and fair treatment of the insuring public. Most of the regulation has to do with guarding company solvency from day to day and year to year and assuring equitable and honest treatment of policyholder and claimant.⁴⁴ Since insurance is necessary to secure the public ends for which compensation laws are enacted, since the cost of insurance must ultimately be paid by the public at large, and since insurance companies are agencies authorized by law for the carrying out of the legislative purpose, private insurers of compensation liability are rightly subjected to supervision in the public interest.⁴⁵

The laws of Texas provide for the regulation of capital, reserves, deposits, investments, and assessments of the five types of carriers writing workmen's compensation insurance in Texas. The regulations pertaining to financial structure of the different types of carriers are shown in Table 3. Regulation is aimed at solvency of the companies, and it is certain that insurance by private carriers will not serve the

⁴³Texas Department of State, Thirty-Second Legislature, op. cit., p. 436.

⁴⁴Kulp, op. cit., pp. 606, 617.

⁴⁵Ashburn, op. cit., p. 20.

TABLE 3

CAPITAL, DEPOSIT, RESERVE, INVESTMENT, AND ASSESSMENT
 REQUIREMENTS OF CARRIERS WRITING WORKMEN'S
 COMPENSATION INSURANCE IN TEXAS

Type of Carrier	Capital	Deposits
Stock Company	\$100,000	\$50,000
Mutual Company	\$ 50,000 in cash or invested assets	.....
Reciprocal Exchange	\$ 50,000 Surplus	\$25,000 if an individual; \$50,000 if a corporation
Lloyds Association	.....	\$60,000 guaranty fund*
Texas Employers' Insurance Association	.....	.....

*\$40,000 if organized prior to 1929.

Sources: Board of Insurance Commissioners of Texas,
Insurance Laws of Texas, 1937, 1943, 1945.

TABLE 3--Continued

Reserve	Investments	When Subscribers Are Liable to Assessment
50% of annual premium income	Stocks or bonds of Texas or U. S., or unincumbered real estate	.....
50% of annual premium income	Same as stock company	Admitted assets less than premium reserve liabilities and surplus
50% of annual premium income	Cash or convertible securities	Surplus less than \$200,000
50% of annual premium income	Same as stock companies, but investments must be at least one tenth of annual premium income	.....
Adequate to meet anticipated losses and carry all claims to maturity and policies to termi- nation	Any securities permitted to any other casualty company	Surplus less than \$200,000

ends of workmen's compensation unless these carriers are subjected to rigorous and far-reaching control.⁴⁶

Prior to 1939, the minimum financial requirements of the reciprocal carriers were far short of the requirements of the other types of carriers. The reciprocal companies were allowed to operate with an unearned premium reserve, or reinsurance reserve, as low as \$10,000, backed by assets of only \$10,000. Of the ten reciprocal companies writing workmen's compensation insurance in Texas in 1937, four were placed in the hands of receivers in 1938, with a total deficit of \$490,806.84.⁴⁷ This deficit of almost a half million dollars represented unpaid claims to injured workers and unearned premiums that the subscribers had paid for insurance protection in good faith. The employers who were left without insurance protection when these carriers failed were forced to buy another policy of workmen's compensation insurance to cover the same risk and for at least a portion of the same period of time for which the original policy was intended. The employers are also liable to assessment for the purpose of paying the outstanding claims when a reciprocal company becomes insolvent.⁴⁸

The Texas laws now require a bond or a deposit with the Board of Insurance Commissioners of \$25,000 if the attorney-in-fact is an individual, or \$50,000 if the attorney-in-fact

⁴⁶Ibid., p. 21.

⁴⁷Ibid., p. 27.

⁴⁸Ibid., p. 26.

is a corporation. Stock companies are required to make a deposit of \$50,000, and Lloyds associations must deposit a guaranty fund of \$60,000, or \$40,000 if licensed prior to 1929. Mutual companies are not required to make a deposit, but they are required to maintain cash and invested assets of at least \$50,000. The Texas Employers' Insurance Association is sound financially because it is in effect a private mutual company even though the salaries of its officers are paid by the State, and it is carefully examined annually by the Board of Insurance Commissioners.

Even though the financial structure of the weakest type of carrier writing workmen's compensation insurance in Texas has been greatly improved, the danger of a company's becoming insolvent has not been completely removed. There were many accidents reported during the war years for which claims were not filed due to high wages in war industries. It is believed that a large number of these claims will be filed when wages start going down.⁴⁹ This delayed filing of claims will introduce an error into premium rates and will make underwriting practices erroneous. These unanticipated losses and the resulting inadequacy of premium rates may endanger the solvency of carriers writing workmen's compensation insurance in Texas in the future.

⁴⁹ Industrial Accident Board, 1942, 1943, 1944,
op. cit., p. 2.

In addition to rigid financial control of insurance carriers, state funds have been provided by statutes in New Jersey, New York, North Carolina, Pennsylvania, Wisconsin, and Minnesota for the purpose of guaranteeing payment of awards against insolvent insurance companies.⁵⁰ Texas laws make no provision for meeting the obligations of an insolvent insurance company.

⁵⁰ Bureau of Labor Statistics, U. S. Department of Labor, op. cit., p. 22.

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

The problem of this study has been to record the evolution and determine the present status of workmen's compensation insurance in Texas.

The findings of this study have revealed that workmen's compensation insurance in Texas is elective to employers and employees, with the exception of all motor bus companies. If the employer elects to remain outside the coverage, he loses the three common law defenses in case of a personal suit for damages by an injured employee. If the employee elects to refuse the coverage offered by the employer, he may bring personal suit for damages for work injuries, but the employer retains the three common law defenses.

Farm and ranch laborers, domestic servants, railway employees, and employees of employers with fewer than three employees are exempt from the terms of the Workmen's Compensation Insurance Act in Texas. By constitutional amendment, the Texas Legislature was given authority to provide coverage for civil employees, but no coverage has as yet been provided for these employees, with the exception of the employees of the Texas Highway Department. It was estimated

in 1940 that less than twenty-nine per cent of the 2,138,355 gainfully employed workers in Texas were covered by workmen's compensation insurance.

The maximum fee that an attorney may charge for the representation of an injured worker before the Industrial Accident Board is fifteen per cent of the first \$1,000 award and ten per cent of the amount in excess of \$1,000, while an attorney may charge one third of the amount recovered from a suit in court. The court is charged with the difficult task of determining what benefits have accrued to the injured worker as a result of representation by the attorney.

The insurance carrier is required to provide medical treatment for the injured worker and may be required to pay for an operation if the Industrial Accident Board rules the operation necessary. Hospital services are limited to 180 days, and nurse service is limited to ninety-one days. The insurance company is required to furnish artificial appliances up to a cost of \$200 if the Industrial Accident Board rules that the appliances are necessary to promote the well-being of the injured employee.

Compensation for disability from occupational illness or injury is set at sixty per cent of the average weekly wage of the worker, but may not exceed twenty-five dollars a week nor be less than nine dollars a week. The insurance company is liable for any work injury that causes disability that lasts more than seven days. If disability lasts four weeks or longer,

compensation is payable from the date of injury or the date on which disability actually began. This provision of the law eliminates to a great extent the nuisance claims, but compensates the employee for the waiting period if a real and serious disability exists.

A second injury fund has been authorized for the purpose of compensating an injured employee for the combined effect of two or more injuries. The insurance carrier is liable only for an injury or illness that occurred during the coverage period, and the Industrial Accident Board is to use the fund to augment compensation paid by the insurance carrier to bring the total compensation paid by the carrier and the Board up to the amount to which the injured employee is entitled for the combined injuries. The fund is to be limited to \$100,000 and is to be created by payment of \$1,500 to the Industrial Accident Board by the insurance company in every death case of an insured worker where there is no surviving beneficiary.

Compensation is payable to a worker who has contracted a disease as a direct result of his employment. The compensation for diseases that are included in the schedule of coverage is payable at the same rates as for injuries sustained in the course of employment.

The Board of Insurance Commissioners classifies hazards, sets premium rates, and prescribes policy forms to be used by all insurance companies writing workmen's compensation insurance in Texas. No insurance company writing workmen's compensation

insurance may declare dividends without the approval of the Board. The Board is empowered by law to make periodic examinations of all carriers writing workmen's compensation insurance in Texas.

The laws of Texas prescribe maximum periods of benefits for permanent total disability, permanent partial disability, temporary total disability, and the loss of a member of the body. In sixteen states, life benefits are payable for permanent total disability, but benefits for permanent total disability are limited to a period of 401 weeks in Texas. In eight states, additional compensation is payable where the totally and permanently disabled employee is married or has dependent children.

Compensation is payable for 360 weeks to beneficiaries of employees who sustain injuries resulting in death, regardless of the number of persons who were dependent upon the deceased worker for support.

The Industrial Accident Board has no final authority in settling contested claims for workmen's compensation benefits. Appeals may be made from the decisions of the Board on questions of fact or law, with trial de novo in the lower courts and the right to appeal to the higher courts. The injured employee suffers a serious delay when cases are appealed to the courts, and twenty-six states limit appeals strictly to questions of law in recognition of the unsuitability of court procedure in

handling compensation claims. The Industrial Accident Board is seriously handicapped in rendering prompt and efficient service to claimants because of insufficient personnel to handle the large volume of claims presented to the Board.

Stock companies, mutual companies, Lloyds associations, reciprocal companies, and the Texas Employers' Insurance Association are authorized to write workmen's compensation insurance in Texas. The financial structure of these companies is regulated for the purpose of maintaining solvency, but there is no state fund to guarantee payment of the obligations of insolvent carriers.

Recommendations

Workmen's compensation legislation has been aimed primarily at providing speedy, adequate, and socially acceptable compensation for loss of income due to the hazards present in almost every type of employment. It has been the purpose of this thesis to determine to what extent this aim has been accomplished in Texas. In the interest of the complete attainment of the goal of workmen's compensation insurance in Texas, the following recommendations for improvement of the present system are offered:

- (1) That the definition of employee be changed to include farm and ranch laborers and domestic servants if they are employed regularly and work forty hours or more per week, and that provision be made for the inclusion of all civil employees

of the State within the workmen's compensation insurance coverage.

(2) That attorney's fees for representing an injured worker in court be based on the same rates as apply for representation before the Industrial Accident Board. It is thought that such a provision would eliminate appeals to the courts instigated by attorneys for their own personal gain rather than for the gain of the injured employee.

(3) That benefits for permanent total disability be paid for life or until the disabled employee derives support from some other source, and that an additional payment of five dollars per week be made for each person entirely dependent upon the injured employee for support.

(4) That benefits payable in death cases be enlarged to take into consideration the number of persons who were entirely dependent upon the deceased worker for support, and that benefits to dependent children be paid until they reach maturity or derive support from some other source, and that widows of deceased workers be paid benefits for life or until remarriage.

(5) That a fund of \$500,000 be created to pay the obligations of insolvent carriers, and that the fund be created by payment to the Board of Insurance Commissioners of one per cent of each workmen's compensation claim payment made by the insurance companies writing workmen's compensation insurance in Texas. Payments should be discontinued when the fund reaches \$500,000, and premium rates should be increased to

allow for this additional cost of insurance, if an increase is necessary.

(8) That the State Constitution be amended so that the Industrial Accident Board may be given final jurisdiction over the determination of facts in contested claims, and that appeals to the courts be limited to questions of law.

(7) That a study be made of workmen's compensation insurance systems in other states to compare the efficiency of private insurance with state-fund insurance. This study should not be limited to a determination of the costs of the two systems to their subscribers, but should include comparisons of the services rendered to the employees covered by the two systems of workmen's compensation insurance. The most important criterion for evaluating the two systems of insurance should be a combination of cost to subscribers and the services rendered to those for whom the services are intended.

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