Workmen's Compensation

L. B. SOLSBERRY*

The General Assembly on May 28, 1951, passed Amended Senate Bill No. 249 relating to Ohio Workmen's Compensation Insurance. The Bill was presented to the Governor on June 6, 1951, but was not signed or returned to the Senate, where it had originated, within ten days after having been so presented, and was filed in the Office of the Secretary of State on June 19, 1951. The effective date of the new Workmen's Compensation Insurance Law is, therefore, September 18, 1951.

This Bill made some significant changes in the Workmen's Compensation Insurance program in Ohio, but compared with past sessions of the Ohio Legislature, the law was not too materially altered by this General Assembly.

One of the most significant changes, and in keeping with the trend in all such types of social legislation, was the increasing of maximum benefits from $30.00 a week to $32.20 per week. Many people have asked the writer why the Legislature arrived at such an odd figure as $32.20 per week when the figure could have been $32.00, $32.50, or $33.00. The answer is simple. For the first time in the history of this law, the Legislature paid heed to the request of the Commission to formulate a figure that would be divisible by seven. This is necessary and a great boon to the Industrial Commission, since a claimant is paid for the number of days lost, and frequently awards must be made for partial weeks lost, broken down into days. Not since the maximum benefit was $21.00 per week, giving a $3.00 per day award, has the Commission been able to compute compensation benefits with whole figures.

Another important change in the Workmen's Compensation Insurance Law is the addition of a new occupational disease — berylliosis. The law defines this disease as being one "of the lungs caused by breathing beryllium in the form of dust or fumes producing characteristic changes in the lungs and demonstrated by x-ray examination or by autopsy."[1] Generally speaking, the necessary requirements and proof to establish a berylliosis claim substantially follow those requirements necessary to establish a claim for silicosis. The introduction of berylliosis as one of the recognized occupational diseases in Ohio naturally follows the growth in the use of this substance during the second World War. Beryllium is quite a light metal and is frequently used as an alloy. It is also used in the manufacture of x-ray tubes, cathode tubes, and fluorescent lamps.

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*Of the firm of Brownfield, Schwenker and Teaford; Member of the Ohio Bar.

[1] OHIO GEN. CODE § 1465-68a.

The writer anticipates that a great deal of controversy will result from the addition of this new occupational disease to our statutory schedule. There seems to be much conflict among the medical authorities as to the toxic nature of beryllium itself. It should be observed that the amendment to the law relates only to a disease of the lungs caused by breathing beryllium in the form of dust or fumes. The very fact that this new disease is included under our occupational disease schedule would seem to eliminate the possibility of its being considered an injury, which by law must be an event taking place at a reasonably certain time.

In all occupational disease claims the time limitation for filing has been increased from four to six months.[2]

It has long been the practice in Workmen's Compensation Insurance to deny benefits to an injured workman during a particular waiting period. For many years in Ohio no compensation has been paid for the first seven days of disability. The reason for such a provision in the Workmen's Compensation Law is obvious. However, in the case of a workman who is more seriously hurt, and who is forced to lose wages because of serious injuries, the rule denying benefits for the first seven days of disability creates a hardship without the consequent fulfillment of its purpose. This session of the Legislature has cured this defect in the law by allowing payment of compensation for the first week of total disability if the injured workman is totally disabled for a continuous period of five weeks or more. Compensation for the first week will still be withheld until after the end of the fifth week of total disability.[3]

Another significant increase in benefits is in the case of death. Whereas maximum death benefits were $8,000.00, they have now been increased to $9,000.00,[4] and funeral expenses have been increased from $300.00 to $400.00.[5]

For many years Workmen's Compensation Insurance in Ohio has been entirely monopolistic in that no private insurance company could directly or indirectly write or reinsure this type of insurance. The Legislature has now permitted one minor inroad, although perhaps a significant one, on this heretofore purely socialistic program. It is now possible for a self-insuring employer to insure with a private insurance carrier against catastrophe claims. The new law states that such a self-insuring employer may now insure "against all or part of such employer's loss in excess of at least fifty thousand dollars from any one disaster or event arising out of such employer's liability."[6]

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2 OHIO GEN. CODE § 1465-72b.
3 OHIO GEN. CODE § 1465-78.
4 OHIO GEN. CODE § 1465-82-4-(d).
5 OHIO GEN. CODE § 1465-89.
6 OHIO GEN. CODE § 1465-101(a) and (b).

Although this concession is made to the insurance companies, a later part of the same statute prohibits such companies from directly or indirectly representing an employer in the settlement, adjudication, determination, allowance or payment of claims. Under this same section the Industrial Commission may now enter into a contract of indemnity with any self-insuring employer, and may procure reinsurance of the liability of both the public and private funds.

There are undoubtedly many employers in Ohio who would be self-insurers had it not been for the fear of catastrophes. With the ability now to reinsure against this possibility, it is quite likely that many large, financially stable Ohio employers will make application to the Industrial Commission to become self-insurers.

To those who have long defended the advisability of a monopolistic State Fund, the presence of this new section is very irritating. They contend that the above provision is but the beginning, and that ultimately Ohio will allow private carriers back into the field. There may indeed be some basis for their contentions. In the previous session of the Legislature, considerable money was spent and a great deal of action was taken to again open the door in Ohio to the private carrier. Just recently the writer has noticed an influx of literature endeavoring to point out the alleged vices of a monopolistic fund as against the alleged virtues of insuring in private companies. He does not wish to take a position either way, and intends by these comments only to make observations without formulating conclusions.

Since 1917 the Industrial Commission has had the authority by statute under special circumstances to commute payments of compensation or benefits to one or more lump sum payments. Because of this authority the Commission has settled many hundreds of cases in each of which the claimant signs a full release in consideration of a certain sum of money then given.

An entirely new section has been incorporated in the Workmen's Compensation Law which reads as follows: "Before any final settlement agreement shall be approved by the commission, application therefor shall be made to the commission. Such application shall be signed by the claimant and shall clearly set forth the circumstances by reason of which the proposed settlement is deemed desirable and the nature of the controversy. Notice of the hearing of such application shall be given to the employee and his representative and the employer and his representative. Such application shall be heard by the members of the Commission or a majority thereof sitting en banc. No member of the Commission shall have power to delegate his authority to hear and determine the

matters raised by such application."[7]

Although many settlements have been concluded during the past few years, it should be noted that for the first time the word "settlement" is used in our law. Such a volume of these settlement cases has arisen during past years that two referees have been assigned full time to hear them. The practice has been for these referees to devote their entire time to the taking of testimony on such applications and then to confer with the Commissioners before forwarding an offer of settlement to the claimant or his attorney or representative. It should be noted that under this new section only the Commissioners sitting en banc can hear these cases. The statute also states that no member of the Commission can delegate his authority to hear and determine these matters.

This latter provision will throw a tremendous burden on the already overworked Commissioners. So great will be this burden that it is the belief of the writer that this new section in the law will have but little application.

Although applications for lump sum settlement will be as frequent as ever, the law in effect at the time of the injury will probably still be controlling. Since most cases do not come on for settlement until a few years after injury, it is entirely possible that the old procedure will be followed, except for a few cases, until the law can again be changed in the next general session of the Legislature.

Even in those cases that must be heard by the Commissioners or a majority thereof, there appears to be nothing in the law that will prevent the delegation to others for the purpose of obtaining preliminary information. It would seem possible that there could even be the equivalent of a pre-trial hearing by a referee specially delegated for that purpose, with a subsequent final hearing conducted by the Commissioners with all parties present, so as to satisfy the law.

Under these new amendments the Commission now has greater authority to regulate the practice before it. For example, a portion of Ohio General Code Section 1465-111 provides: "... and shall have authority to inquire into the amounts of fees charged employers or claimants by attorneys, agents, or representatives for services in matters before the industrial commission." A new provision now requires the Commission to notify the Ohio State Bar Association and local bar associations if the Commission suspends or reprimands any attorney practicing before it.

Section 1465-112 of the General Code attempts to eliminate the solicitation of claims. This section also is aimed at forging au-

[7] OHIO GEN. CODE § 1465-87a.

thorizations and the divulgence of information by employees of the Commission.

An entirely new section in this law creates a State Rehabilitation Center for the purpose of training, re-educating, and placing in productive employment physically handicapped persons who are capable of such rehabilitation.[8] It is the writer's belief that both management and labor will endorse this progressive step being taken to restore physically handicapped people to usefulness.

For the practicing attorney these changes in the Workmen's Compensation Insurance Law are not too significant. Care should be exercised to determine if a client is eligible for the new benefit rate, and those attorneys representing larger employers might well explore the possibility of self-insurance since catastrophes can now be reinsured. Basic rates of state risks have been materially increasing and self-insuring might effect large savings for certain employers.

[8] OHIO GEN. CODE § 1465-113.