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WORKMEN'S COMPENSATION - LEAD POISONING CONTRACTED BY AN AUTOMOBILE MECHANIC NOT AN OCCUPATIONAL DISEASE - CANCER CONTRACTED BY BATTERY PLANT EMPLOYEE AN OCCUPATIONAL DISEASE

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WORKMEN'S COMPENSATION — LEAD POISONING CONTRACTED BY AN AUTOMOBILE MECHANIC NOT AN OCCUPATIONAL DISEASE — CANCER CONTRACTED BY BATTERY PLANT EMPLOYEE AN OCCUPATIONAL DISEASE — Plaintiff contracted lead poisoning through the gradual daily inhalation of poison-

ous fumes from a gasoline torch used in his occupation as an automobile mechanic. If the employer had provided another type of gasoline, it appeared that plaintiff's disability would have been avoided. *Held*, that under these circumstances lead poisoning was not an occupational disease, and plaintiff should be compensated under the Iowa Workmen's Compensation Law. *Black v. Creston Auto Co.*, (Iowa, 1938) 281 N. W. 189.

Through ten years of exposure to sulphuric acid fumes in defendant's battery plant, plaintiff developed a cancer in his mouth. *Held*, that this cancer was an occupational disease and plaintiff was not prevented, by the exclusive remedy under the Pennsylvania Workmen's Compensation Act, from maintaining this suit in tort. *Boal v. Electric Storage Battery Co.*, (C. C. A. 3d, 1938) 98 F. (2d) 815.

The workmen's compensation laws of most of the states have been held not to extend to occupational diseases.[1] The court in each of the above cases allowed recovery for what the average layman would consider an occupational disease; the former under the compensation act, the latter under the common law. The Iowa decision rested upon the fact that a disease, as excluded from the operation of its statute,[2] is deemed to have reference to an occupational disease,[3] which was defined as one "which is the usual incident or result of the particular employment in which the workman is engaged, as distinguished from one which is caused or brought about by the employer's failure in his duty to furnish him a safe place to work." [4] The "injury" suffered by the automobile mechanic was not one which was unavoidably incidental to the work in which he was engaged, and therefore was not an occupational disease. So interpreted, the Iowa Workmen's Compensation Act permitted recovery for lead poisoning in this instance.[5]

[1] 22 MINN. L. REV. 77 at 92 (1937); Beers, "Compensation for Occupational Diseases," 37 YALE L. J. 579 at 583 (1928), reprinted 7 TENN. L. REV. 19 (1928).

[2] The Iowa Workmen's Compensation Law, in defining the words "injury" or "personal injury" as compensable under the act, states that they shall not include a disease unless it shall result from the injury. Iowa Code (1935), § 1421 (5-c).

[3] Gay v. Hocking Coal Co., 184 Iowa 949, 169 N. W. 360 (1918); Dille v. Plainview Coal Co., 217 Iowa 827, 250 N. W. 607 (1933); Almquist v. Shenandoah Nurseries, 218 Iowa 724, 254 N. W. 35 (1934).

[4] Black v. Creston Auto Co., (Iowa, 1938) 281 N. W. 189 at 192. The court borrowed this definition from Gay v. Hocking Coal Co., 184 Iowa 949, 169 N. W. 360 (1918), which would not seem to be direct authority for the question involved in the principal case. For an Iowa precedent more exactly in point, see Dille v. Plainview Coal Co., 217 Iowa 827, 250 N. W. 607 (1933). And see 1 SCHNEIDER, WORKMEN'S COMPENSATION LAW, 2d ed., 644 (1932); Victory Sparkler & Specialty Co. v. Franck's, 147 Md. 368, 128 A. 635 (1925); Industrial Comm. v. Roth, 98 Ohio St. 34, 120 N. E. 172 (1918); Industrial Comm. v. Tolson, 37 Ohio App. 282, 174 N. E. 622 (1930); Industrial Comm. v. Ule, 97 Colo. 253, 48 P. (2d) 803 (1935).

[5] The Iowa court recognized that lead poisoning might be an occupational disease excluded from the operation of the statute when it distinguished Adams v. Acme White Lead & Color Works, 182 Mich. 157, 148 N. W. 485 (1914), from the instant case by saying that in the former lead poisoning might be expected to follow from the nature of the work.

The federal court, on the other hand, rejected the definition that was accepted by the Iowa judges [6] and permitted the plaintiff to maintain a tort action, against defendant's objection that plaintiff was not suffering from an occupational disease because cancer is not a disease known by common experience to result from plaintiff's occupation.[7] The federal court observed that occupational diseases were not compensable under the Workmen's Compensation Act of Pennsylvania,[8] and further noted that if plaintiff was entitled to recover under that statute, his remedy thereunder was exclusive and this action could not be upheld.[9] The interesting result of these two comparable cases was that in each instance the employee was not barred from recovery because the basis of his complaint was a disease. The federal decision permitted a common-law recovery because the employee *was* suffering from an occupational disease, and the Iowa court permitted the action to be brought under the Workmen's Compensation Law of that state because the plaintiff *was not* suffering from an occupational disease. Both the decisions are in accord with the modern trend to allow recovery for a disease incurred through employment, but the state decision conforms more closely to this trend by permitting compensation under the statute through a narrowing of the distinction between an "injury" or "accidental injury" in the popular sense, and a "disease" contracted due to conditions of employment.[10] The latter should be just as much entitled to compensation [11] as

[6] Boal v. Electric Storage Battery Co., (C. C. A. 3d, 1938) 98 F. (2d) 815 at 819.

[7] The court further stated that even if it accepted a definition of occupational disease such as given in the Iowa case "that would not settle the question as to whether or not the plaintiff's disease is compensable under the act. The Workmen's Compention Act of Pennsylvania provides for compensation 'for personal injury . . . by an accident.' [77 Pa. Stat. (Purdon, 1931), § 431.] Under the law of Pennsylvania the distinction is not between 'occupational diseases' and other diseases of gradual development but between diseases of gradual development and those caused or aggravated by some accident, the former not being compensable under the act." 98 F. (2d) at 819. And see 22 MINN. L. REV. 77 at 92 (1937); 20 CORN. L. Q. 392 at 394 (1935); Lerner v. Rump Bros., 241 N. Y. 153, 149 N. E. 334 (1925).

[8] The law to this effect has been changed in Pennsylvania by the Occupational Disease Compensation Act, Pub. Laws (1937), p. 2714, 77 Pa. Stat. (Purdon, 1938), § 1101 et seq.

[9] 77 Pa. Stat. (Purdon, 1931), § 481.

[10] Several states have passed special statutes to compensate for diseases. See 22 MINN. L. REV. 77 at 97 (1937) for a discussion of the various types of these legislative attempts to provide for compensation; 4 FORDHAM L. REV. 147 (1935); McNeely v. Carolina Asbestos Plant, 206 N. C. 568, 174 S. E. 509 (1934).

[11] "The distinction which is drawn in nearly all the acts between 'accidental' injuries and 'occupational diseases' is extremely unjust and illogical. The principal argument in favor of the workmen's compensation acts, heard on all hands, is that each industry should care for the human wrecks which it creates. The man who breathes lead fumes and contracts plumbism, or inhales marble or other dust from the air in the shop where he is working and is totally incapacitated from pneumoconiosis, is to a very much greater extent, the victim of the industry in which he is engaged, than is

the former. But until a change is made in this [12] and similar statues, the disease which cannot be explained out of the category of being both "occupational" and a "disease" is not compensable thereunder.

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the workman who falls downstairs in going from one floor to another in the shop and breaks both legs." BRADBURY, WORKMEN'S COMPENSATION, 3d ed., p. 7 (1917); quoted by Beers, "Compensation for Occupational Diseases," 37 YALE L. J. 579 at 581 (1928), reprinted 7 TENN. L. REV. 19 at 22 (1928).

[12] The Pennsylvania law has been changed. See note 8.