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COMMENTS

TRAUMATIC NEUROSIS AND SUICIDE IN WORKMEN'S COMPENSATION CASES

INTRODUCTION

"Nebulous" and "controversial" are two of the most oft-quoted terms used by physicians and lawyers when describing traumatic neurosis. Actually the phrase traumatic neurosis is confusing for it connotes to the reader that the trauma (injury) is the cause for the neurosis (mental disorder dependent on unconscious mental causes) when usually it is only a precipitating or aggravating factor. The problems confronting the physician, lawyer or court when dealing with a traumatic neurosis case are complex. These problems can be summarized as follows: (1) to what extent is the individual's pre-existing neurosis or neurotic potential responsible for his present condition; (2) to what extent is the trauma responsible for the post-traumatic neurosis; (3) should the desire for financial compensation which prolongs the neurosis be compensable; (4) if the neurosis is kept active by brooding, marital difficulties and improper medical handling, is it still possible to consider the neurosis as one arising out of the injury; and (5) since symptoms are mainly subjective, how can one determine malingering, especially in cases (which is most often the case) where the trauma is mild and the resulting neurosis severe so as to lead the courts and Commissions to view the claim with ridicule, disbelief or outrage and thereby conclude that the claimant is not entitled to compensation.

The purpose of this study is to properly delineate, in the light of today's workmen's compensation acts, neurosis following trauma and its proper compensability in the following two situations: (1) where the claimant cannot return to work and (2) when he commits suicide; and further to make specific suggestions as to how workmen's compensation acts should be improved through legislative action.

1 Davidson, Forensic Psychiatry (1952). Davidson suggests some of the following criteria to differentiate between a malingering and a post-traumatic neurotic: (1) a malingering claims inability to work but retains his capacity for play; (2) faithfulness in following doctor's orders indicate a neurotic; (3) eagerness for re-examination is more suggestive of the neurotic; and (4) if the content of much of claimant's thinking revolves about the accident, he is most likely not a malingering.

A. Neurosis

Neurosis is a form of maladjustment in which a patient, despite the fact that he is orientated to the external world, uses complaints or symptoms of a physical nature to express psychological needs which arise from conflicts that are hidden from the conscious aspect of the mind. While symptoms of the neurosis are for the most part subjective, there may be objective physical manifestations as well.

A neurotic symptom is for the ego a new painful experience. The ego's reaction to new painful experiences depends on its strength and development. A very weak ego may be passively overwhelmed, the unexpected painful experiences producing a traumatic effect. In contrast, a mature ego reacting in accordance with the principles of reality is able to acknowledge the existence of painful experiences. By means of such recognition, it can thereafter avoid or respond adequately to these experiences, rendering unavoidable pain harmless or even as useful as possible.

A certain amount of neurotic conflict and pathogenic defense can be sustained by everyone without an actual neurotic breakdown. Every person has a certain amount of warded off instinctual energies which are kept from being discharged by defensive forces and which try to break through, nevertheless. As long as a certain stability prevails between the repressed impulses striving for discharge and the defensive forces preventing this discharge, the person may suffer from a certain impoverishment of his personality but otherwise remain well. Experiences that precipitate neurosis always represent alterations in the earlier relative equilibrium between warded-off impulses and warding off forces. Therefore, it is to be observed that the more energy a person spends in latent defensive conflicts, the greater is his disposition to fall ill when a precipitating stimulus disturbs his mental equilibrium. Of course the severity of the

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3 The material used in the Medical section has been taken from the following books: NOYES, MODERN CLINICAL PSYCHIATRY (1953); WECHSLER, A TEXTBOOK OF CLINICAL NEUROLOGY (1952); ALVAREZ, THE NEUROSIS (1951); HENDERSON AND GILLESPIE, A TEXTBOOK OF PSYCHIATRY (1950); FENICHEL, THE PSYCHOANalytic Theory of Neurosis (1943).

4 The psychotic on the other hand has utterly failed to adjust to society and has broken completely with the world around him.

5 Perception, control of purposeful activity of testing reality, judgment, etc., constitute a group of functions which are collectively referred to as the ego. The ego may be conceived of as the surface of psychic apparatus. It mediates, as it were, between the individual and the outside world.
stimulus and the reaction to it may vary greatly. There are stimuli of such severe intensity that they may cause a neurosis even in a person with little predisposition; other stimuli are harmless for most persons but traumatic for certain types who have a readiness to be overwhelmed. Disposition (intensity of latent defensive struggles) and precipitating factors form a complementary series.

B. Disposition

From the foregoing, it appears reasonable that everyone has the capacity for mental breakdown or illness depending on the intensity of the stimulus and the individual’s disposition. Psychoanalysis has demonstrated that every mental process is the result of other mental processes which have preceded it. What appears as spontaneous, irrelevant, accidental or contradictory is directly or indirectly the result of psychic processes which have gone before. This is known as the law of psychic determinism. Once this fundamental concept is accepted, no mental process or behavior reaction can appear silly, queer or ultimately inexplicable.

1. Hereditary factors.—It has been shown that 21.4 per cent of the parents of patients with anxiety states have a similar disorder while 17.5 per cent have either an anxious type of personality, i.e., timid, apprehensive, mild phobias and given to excessive worry or a depressive personality. Nineteen per cent of the parents of hysterical patients have themselves had hysterical reactions, while fourteen per cent of them exhibited an anxious personality. It is to be assumed that certain hereditary and constitutional factors play an etiological role, but that it is essentially their interplay with environmental and developmental conditions which is responsible for the production of the neurosis. This neurotic potential therefore can be traced directly to one’s childhood.

2. Childhood.—Psychoanalysis considers both (1) persistence of infantile mental trends (for example: shyness, fear of being alone, inferiority feelings, extreme sensitivity, great attachment to family, extreme suggestibility) and (2) abnormal psychosexual development (for example: disgust for the sexual act, inability to fall in love, and preoccupation with bodily functions) of prime etiological importance. These factors are altogether unconscious and mirror a fantasy life which is in conflict with reality. As the individual gets older numerous battles are fought in the subconscious. Conflicts arise in the subconscious such as the social demands of 6 It is to be noted that it is not the severity of the stimuli per se but rather the emotional and symbolic meaning of the injury.


8 The subconscious is an accumulation of experiences that sometimes is in use outside the field of conscious awareness. Mental material is not all conscious or wholly uncon-
family life, the necessity for adjustment to love life, procreation of children and the numerous exigencies of the social and economic order. To prevent the unconscious ideas from reaching consciousness and to compel them to live an independent fantasy life is the primary function of the ego. Whenever adjustment to reality on the adult plane becomes difficult, the individual may indulge in regression, the return within the unconscious to early or infantile points of emotional fixation. During the regression period there is an unconscious gratification of impulses which cannot possibly be admitted to consciousness because of the pain they would inflict. In nearly every neurosis, the following are present: (1) failure of adjustment to adult love life; (2) inability to settle the conflict in reality at which time the individual regresses; (3) exclusion of painful experiences from the conscious (repression). It is to be remembered that the neurosis is precipitated by an external factor (physical or otherwise) in adult life, inducing withdrawal from reality into the world of fantasy and this point of development of the neurosis can be traced to hereditary factors and early childhood experiences.

C. Traumatic Neuroses

The term “traumatic neurosis” is reserved for a neurosis which is manifested after an injury. Two factors must constantly be remembered: first, injury is not always followed by a neurosis and there need be no injury to cause a neurosis. Second, there is no relationship between the severity of the stimulus and the resulting neurosis. Traumatic neuroses may be classified as follows:

1. Anxiety neurosis.—In these cases, the immediate response of the person may be extreme anxiety, fear or wild panic or there may be apparent calm with development of previously latent symptoms after a very short period. Palpitation, trembling, diarrhea, sweating, and other physiological disturbances are frequently associated with these fears. The injured party may develop insomnia with dreams representing the accident in more or less distorted form. During the day, there is a lack of concentration or uneasiness of mind. Although some of these functional disturbances are objectively determinable, there is no discoverable organic cause underlying their presence.

9 These are conflicts because they are not in harmony with conscious tendencies or principles of reality.

10 This is known as repression.
2. Conversion reaction or hysteria.—This term signifies that though there is no observable pathological cause for the pain, diminution of sensation, paralysis, etc., there is a definite functional disturbance. Repression plays an important part in conversion. The repressed drives, urges, and wants are released in the form of an alteration of a physical or physiological function which creates physical disability. The individual usually displays a lack of concern about his injury, and there is present calm acceptance of his physical disability. In cases in which the physical disturbances are predominant, it should be noted that there are often discrepancies between the findings on examination and symptoms. That is, there is a variance from the type of injury which is caused organically. For example, in paralysis, the reflex changes are usually at variance with the paralysis, and the muscles do not show the atrophic changes. Likewise, the paralysis may be selective, one voluntary action being present while another is not.

3. Obsessive reaction.—The obsessive reactions are those in which the individual continuously has thoughts which he is unable to control or put aside. It is often found in traumatic neurosis cases where the injured party cannot put the thought of the injury out of his mind; all other factors are diminished in importance. It is rarely amenable to reason or logic; the recognition of the absurdity of the obsession avails the patient nothing. The person’s thoughts are usually that the injury is permanent or much more severe than it really is.11

4. Neurasthenia.—The neurastheniac shows both physical and mental exhaustion. His mood is depressed and he is irritable, cannot concentrate, and complains a good deal of physical ailments which cannot be verified by examination. He is constantly preoccupied with his sexual organs and their functions. It is often difficult for the neurastheniac to return to work since his excessive muscular weakness and tendency to fatigue after slight exertion hamper normal activity and make volitional effort painful.

Complicating the entire picture of traumatic neurosis is secondary gain. That is, the injury is self-serving and fills a definite need on the part of the patient. When a neurosis is being established, it is very uncomfortable. But the ego tries to make a virtue of necessity and often uses the neurosis for its own purposes. It may try to gain advantages from the outside world by provoking pity, attention, and love. Attention is needed either as a sexual satisfaction (a substitute for love) or, more frequently, as a reassurance and a promise of help and protection. Sickness is often perceived as a right to privileges; these privileges may consist of material gains and of more subtle mental gains. Very often this is no either-or; the

11 Usually with the obsession there is a compulsion reaction (repeated impulses to carry out certain acts). But compulsive reactions are of little value in a discussion of legal implications.
most intense struggles for compensation are fought by patients who are much less in need of money than in need of a sign of parental affection and of assurance against abandonment. The longing for the time of childhood when one was being cared for is revived. Often this regression eliminates the feeling of responsibility.

EFFECTS OF TRAUMA ON THE SUBSEQUENT NEUROSIS

The actual injury, of course, is the basis for granting compensation, yet the trauma is seldom if ever, the sole cause of the resulting neurotic condition. In varying degrees however, the trauma may have its effect. The role that the trauma plays should be considered by the courts in awarding compensation and only the results of the actual injury should be compensable. The following five points demonstrate the varying effects that the trauma may have:

1. The trauma was the cause of the psychoneurosis. This can usually be said when there are no signs (manifest or latent) of neurotic or mental disturbances prior to the injury. Also, it must be inferred that the neurosis would not have occurred now or later without injury. It is not often possible for the injury case to meet both these criteria.

2. The injury was a major precipitating factor. In this case it is inferred that a neurotic problem was latent, but that the injury brought it into full bloom at this particular time.

3. The trauma was an aggravating factor. In such case an emotional disorder was clinically manifest prior to the accident, but the course of the condition was materially affected by the injury.

4. The injury was a minor factor. In this instance the trauma played only a minor contributing role to the well established psychoneurotic illness.

5. The trauma was and is unrelated to the psychoneurosis. In this case a period following the injury of, say, two or three months, exists before the development of the neurotic symptoms. One can then usually infer that the illness was not of real etiological significance, although this is not a hard and fast rule.

ILLINOIS CASES

There are a few Illinois cases which have granted compensation for traumatic neurosis. The first case on point is United States Fuel Co. v. Industrial Comm’n in which claimant suffered a back injury and thereafter walked in a stooped position. The physicians testified that they found no pathological explanation of claimant’s disability, and the Court held:

Where an employee has an honest, fixed, definite and continuing belief that he is suffering severe bodily pain, and that he is in such a disordered condition

12 ERBAUGH AND BENJAMIN. (Edited by Brahdy and Kahn.) Trauma and Mental Disorder (1937).

13 313 Ill. 590, 145 N.E. 122 (1924).
that he is unable to work... he is as much entitled to compensation as if he were in fact totally and permanently disabled by such accidental injury.\textsuperscript{14}

On the basis of the United States Fuel case awards were subsequently made in Harrisburg Coal Mining Co. v. Industrial Comm'n\textsuperscript{15} and Armour Grain Co. v. Industrial Comm'n.\textsuperscript{16} In both cases the Court held that it was immaterial if the resulting condition was caused by a physical injury or a mental disorder.

In all three of the above cases the injury was serious and the causal connection between the injury and the subsequent condition quite clear. In Sanitary Dist. v. Industrial Comm'n,\textsuperscript{17} however, claimant suffered from a highly nervous condition which he attempted to attribute to a slight trauma which had occured one year previously. Evidence was introduced which tended to show that claimant was in a bad mental condition prior to the accident. Because of this mental condition and the fact that the injury was slight, a causal connection between the accident and the subsequent condition could not be established and recovery was denied.

Ford Motor Co. v. Industrial Comm'n\textsuperscript{18} seems to be the first case in which the term "traumatic neurosis" was actually used by the Illinois Supreme Court. Claimant suffered a cerebral concussion, and his subsequent condition was characterized as a traumatic neurosis. The Court found a causal connection between the accident and the subsequent incapacity, and compensation was granted.

Regarding the Illinois Workmen's Compensation Act,\textsuperscript{19} several sections are pertinent to this discussion. A lump sum settlement is specifically provided for in section 138.9 and is most advisable in traumatic neurosis cases.\textsuperscript{20} Under the Illinois Act lump sum settlements are granted upon petition if the Commission is satisfied that it is in the best interests of the parties. Lump sum settlements, however, are rare in Illinois compared to weekly benefits which may be reopened under section 138.18(h). The reopening may take place at any time within thirty months at the request of the employer or the employee on the ground that the employee's disability has increased, recurred, diminished or ended. Subsequent discus-

\textsuperscript{14} Id. at 593, 145 N.E. at 123. \quad \textsuperscript{16} 315 Ill. 377, 146 N.E. 543 (1925). \quad \textsuperscript{18} 355 Ill. 490, 189 N.E. 498 (1934). Other Illinois cases involving traumatic neurosis are Edgell & Co. v. Industrial Comm'n, 353 Ill. 488, 187 N.E. 413 (1933); Postal Telegraph Co. v. Industrial Comm'n, 345 Ill. 349, 178 N.E. 187 (1931); Marshall Field & Co. v. Industrial Comm'n, 305 Ill. 134, 137 N.E. 121 (1922).

\textsuperscript{15} 323 Ill. 80, 153 N.E. 699 (1926). \quad \textsuperscript{17} 343 Ill. 236, 175 N.E. 372 (1931).


\textsuperscript{20} WECHSLER, A TEXTBOOK OF CLINICAL NEUROLOGY (1952); ALVAREZ, THE NEUROSIS (1951); FENICHEL, THE PSYCHOANALYTIC THEORY OF NEUROSIS (1945).
sion will attempt to show how these sections can be used or amended in traumatic neurosis cases.

The Illinois Act does not provide for apportionment when a pre-existing disability or propensity exists. Illinois case law, however, has consistently awarded full compensation in cases where a pre-existing disease is aggravated or accelerated by an accidental injury.21

POSSIBILITY OF OTHER FACTORS AS CAUSE FOR NEUROSIS

Since the vast majority of workmen's compensation acts merely require the trauma to be a precipitating or aggravating factor, it is of extreme importance in the preparation of the case for both plaintiff and defense attorneys to ascertain whether any other factors could have brought about the neurosis. This is especially true for the defense attorney who may uncover information which would completely exonerate the defendant from any pecuniary loss.

In Barr v. Builders, Inc.22 the plaintiff, prior to his accident, was served with notice that his mortgage was being foreclosed and that he would be forced to move. Late in July he suffered an industrial injury, and, the following month, he was evicted from his home. In answer to the question of whether or not a doctor would be inclined to disregard the claimant's poor financial condition as a precipitating factor for his neurosis, the doctor answered, "We see a lot of poor people and they are not in this bad a shape."23 The doctor conceded that finances were a contributing factor, but still maintained that the injury set off the neurosis. It is believed that, in this case, the claimant was not entitled to the full compensation awarded him. The extent to which the foreclosure was a contributing cause should have been brought out more vividly and the plaintiff's award should have been lowered accordingly. Furthermore, it is not inconceivable that the defense attorney could have found competent psychiatrists who would testify that the financial setback could possibly have been the factor which brought on the neurosis.

The vital causal connection between the trauma and the subsequent neurosis was recognized in Thompson v. Railway Express Agency24 where the court stated:

A psychoneurosis under some circumstances does present compensable injury but this should not open the way for indiscriminate compensation on that score simply because it follows an accident. The causal connection with the

21 Railway Express Agency v. Industrial Comm'n, 415 Ill. 294, 114 N.E. 2d 353 (1953); Town of Cicero v. Industrial Comm'n, 404 Ill. 487, 89 N.E.2d 354 (1949); Ohlson v. Industrial Comm'n, 357 Ill. 335, 192 N.E. 196 (1934).


23 Id. at 624, 296 P.2d at 1112.

24 241 Mo. App. 683, 236 S.W.2d 36 (1951).
accident must be proven by clear evidence, for such a neurosis may arise from any number of causes.\textsuperscript{25}

The force of this quotation can be shown in the decision of \textit{Patane v. Stix, Baer and Fuller}.\textsuperscript{26} In this case plaintiff was employed as a salesgirl in defendant's department store. She had a long period of inefficient selling and had often been threatened with discharge. The evidence indicated that she had a psychoneurotic personality long before the accident, an extremely trivial stimulus. Her poor work record continued, and she was discharged one year subsequent to the injury. By successfully showing that the claim for neurosis was filed after the discharge and that the discharge \textit{could} have acted as a precipitating cause, the defendant was able to avoid liability.\textsuperscript{27}

The value of expert testimony by psychiatrists in this area of the problem cannot be overlooked. Example: early in 1945, claimant suffered a fracture of the vertebrae of the spine. No psychiatric examination was made at this time. All treatments ended on April 30 and he was discharged as "cured." On May 1, while celebrating VE day, he was arrested by the police. A great deal of force was used to subdue him, and claimant suffered severe physical injuries in and about his face. While receiving treatment at the hospital he underwent a psychiatric examination in which his mental breakdown was diagnosed as a manic depressive psychosis. \textit{Quaere}: was this condition precipitated by the industrial injury or the police beating? To prove the causal relationship, an expert testified (apparently in a hypothetical) that nightmares about the accident, and claimant's worry about narrowly avoiding death contributed to the precipitation of the breakdown.\textsuperscript{28}

This case is illustrative of the fact that many times when liability has been granted under circumstances where the decision might have been adverse to the claimant, the testimony of expert psychiatrists has been enough for judgment to be rendered favorably for the plaintiff. In a recent decision,\textsuperscript{29} the situation was that the plaintiff's arm was crushed

\textsuperscript{25} \textit{Id.}, at 688, 236 S.W.2d at 39. Also see the dissent in Peterson v. Department of Labor & Industries where Tolman J. stated that "the mere fact that one suffered physical injuries in 1926 does not establish that a mental condition developing six years later was caused by those physical injuries." 178 Wash. 15, 23, 33 P.2d 650, 653 (1934).

\textsuperscript{26} 326 S.W.2d 402 (St. L. App. Ct. Mo. 1959).

\textsuperscript{27} Note the striking similarity in facts in Marshall Field & Co. v. Industrial Comm'n, 305 Ill. 134, 137 N.E. 121 (1922), where the claimant recovered. Also see Hood v. Texas Indem. Ins. Co., 146 Tex. 522, 209 S.W.2d 345 (1948), where a post-traumatic suggestion by a doctor was alluded to as a precipitating cause.


and was subsequently amputated. Seven to eight years later, abnormal behavior was first noted; shortly thereafter he was committed to a state mental institution. Competent psychiatric testimony was to the effect that the injury could have been the major cause of the present illness, and the reviewing court held that it could not be said as matter of law that plaintiff's claim was without foundation. It is to be noted that these cases in which there is a great time lag between the injury and the onset of manifested aspects of the neurosis are rare. It is urged that courts should as a matter of law deny such claims since the possibility of intervening factors is so great.

Most reviewing courts will not reverse prior decisions of the Commission where there was competent evidence to show that the trauma was the precipitating factor. It is essential, therefore, that the plaintiff present his case in such a way that the Commission thoroughly understand the problem before it. It is imperative that the psychiatrist testifying for the plaintiff present a complete "education" procedure. He should first point out that there is no relationship between the severity of the trauma that the patient sustained and the severity of the subsequent neurosis. Secondly, it should be explained that while in medical terminology the trauma is not the cause, it was the legal "trigger" of the neurosis which brought forth the latent neurotic potential. This should do much to overcome the ridicule and disbelief aimed at the claimant who suffers from a severe neurosis following a mild impact. This problem was alluded to in the Introduction. Thirdly, each neurotic symptom should be carefully explained, using appropriate analogies whenever possible; it is impossible for the Commission to grant an adequate award if they cannot understand the medical terminology used. Finally, the psychiatrist must show that the neurosis is directly connected with the injury and not collaterally due to desire for compensation, brooding over what could have happened or will happen, or any other secondary gain factors.

It is essential to go into these factors and thereby present an adequate

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33 "[A]fter his spine healed his brain did not recognize that his spine was healed...." U.S. Fuel Co. v. Industrial Comm'n, 313 Ill. 590, 592, 145 N.E. 122, 123 (1924).

34 See 28 F.R.D. 152 (1962) where Judge Wright points out the problem of experts confusing both the jury and himself.

picture of the neurosis to the Commission which will be sustained on a possible review. Failure to do so may lead the Commission to conclude that (1) claimant is a malingering or (2) no award can be given since no causal relationship between the injury and subsequent neurosis was proven.

COMPENSATION NEUROSIS

It should be noted that in the vast majority of cases which are classified by the courts as traumatic neurosis there is some element of financial gain or compensation. In most cases the injured party unconsciously does not want to get better since this might lessen his chances of securing a large money judgment. His ego is wounded and the employee retaliates against his employer. Too often the patient is badly handled psychologically by the insurance adjuster or his attorney. The patient may become financially harassed and more vindictive. This is known as compensation neurosis. This compensation factor infrequently exists alone, i.e., without secondary gain, etc., but in many cases is the primary factor in the continuation of the neurosis. Once a cash settlement is made, pain and disability often, but not always, subside rapidly. It should be constantly borne in mind that in practically all reported cases there was nothing physically wrong with the patient which would prevent him from returning to work.

In a recent study of the compensation factor in cases involving low back injuries, the patients were divided into two groups: (1) claimants and (2) non-claimants. It was found that 88.5 per cent of those not involved in any type of litigation were considered improved (able to resume normal activities, including work) while there were only 55.8 per cent improvements among those who were to receive compensation for their injuries. This report stated that, as a group, the patients suffering acute back sprain who receive compensation present different psychological problems from those who do not receive compensation yet whose injuries may be the same.


38 See Traumatic Neuroses: Medicolegal Puzzle: a symposium, where it was stated that only about one per cent are malingerers. 1 J. For. Sci. 65 (Jan. 1956).

39 Supra note 2.


41 Ibid.
The two leading cases denying damages for compensation neurosis are Swift & Co. v. Ware and Kowalski v. New York, N.H. & H.R.R.Co. In the Swift case the claimant was suffering from a psychoneurosis manifesting itself in the form of a right side hemoplegia (paralysis). The Court held that where the injured's nervous state consisted of the belief that he had sustained an injury, this was compensable. If, on the other hand, the neurotic state was occasioned by a desire to continue drawing compensation, this condition was not compensable because it did not grow out of an accident but out of the want, need and desire for food, clothing and support of his family. Similarly, in the Kowalski case, the Court concluded that claimant's nervous symptoms were due to uncertainty created by the continuing prospect of the plaintiff's reopening his case and receiving further compensation. His claim was denied on the finding that his symptoms could not have been caused by the original injury.

The reasoning of these two Courts was applied in Hicks v. Royal Indem. Co. where the court stated that "evidence must be carefully scrutinized because of the fact that compensation neurosis is so closely akin to post traumatic neurosis that the very faint line between them is so indistinct that it is extremely difficult to determine on which side of the line each particular case should be placed." It is submitted that the above cases represent the correct view of this problem of compensation neurosis. The inarticulated order of reasoning in the above cases is as follows:

1. The percentage of disability further caused by an aggravation of an industrial injury is compensable if the aggravating factors bear a causal relationship to the original injury.
2. But desire for compensation does not have a causal relationship to the injury.
3. Therefore the percentage of disability caused by a compensation neurosis is not compensable.

This argument, however, has not been accepted by the majority of courts. Many courts are inclined to hold that human beings cannot separate themselves from a myriad of emotions, and so long as one of the causes is industrial, it matters not that non-industrial causes play a part. One Court stated that to deny recovery was "like saying that [claimant] should not recover for the loss of a leg because the cut he received would not have resulted in such loss had gangrene not set in." The answer to this type of argument is that the disability (compensa-

43 116 Conn. 241, 164 Atl. 653 (1933). 45 Id. at 558.
complaint neurosis) is not traceable to or induced by a personal injury but to circumstances immediately following, i.e., possible litigation. Furthermore, these symptoms do not appear within a reasonable time after the injury but rather a reasonable time after the injured party becomes aware of the fact that he is entitled to compensation and that the amount of compensation to be received depends on his inability to work. It is to be remembered that the further the factors responsible for the neurosis are removed in time and direct consequence from the injury, the more such factors take on their true nature as independent, intervening causes. Proper reflection will show that there is a distinction between such a situation and a neurotic condition having a causal relationship with the injury.\(^4\)

The leading case which granted compensation for compensation neurosis is *Hood v. Texas Indem. Co.*\(^4\) Petitioner alleged that he suffered injury to his left foot and right elbow, was suffering presently from a traumatic neurosis and was totally and permanently disabled. It was found that the petitioner's neurosis was in fact influenced by an unconscious desire for compensation, and, after termination of the litigation, he would begin to improve. The Court held that if the injury was a producing cause, the employee was entitled to full compensation to the extent of such disability, even though other factors also contributed to the disability. The dissent maintained that a neurotic disability, the continued duration of which is solely caused by the existence of litigation, cannot be compensable.

The striking independency of this type of neurosis from the injury can be seen from an examination of *Texas Employers' Ins. Ass'n v. Ham.*\(^4\)

Several months passed after the accident before the neurosis appeared. The plaintiff then began suffering from a glove and stocking anesthesia which is loss or diminution of sensation from the elbows to the fingertips and from the knees to the toes. (This appears to be a conversion reaction.) Expert testimony was to the effect that the emotional stress of the litigation was a definite factor which brought about the neurosis. It is entirely possible that, had there been an early settlement of this case (1) the claimant would not have suffered from this neurosis, and (2) the employer could have saved a great deal of money.

In another Texas case\(^5\) the court followed the *Hood* case in awarding


\(^4\) 146 Tex. 522, 209 S.W.2d 345 (1948).


damages where testimony showed that plaintiff’s mental condition would improve greatly within a short time after the litigation. A Louisiana court stated that it was obvious that claimant was suffering from “‘compensationitis’ and is subject to an efficient cure by application of a ‘greenback poultice.’”

The importance of the compensation factor cannot be quickly overlooked and brushed aside as merely another element of damages. It is to be observed that in the majority of cases only with quick, adequate, lump sum settlements as opposed to a constant reopening of the case can the claimant more easily return to a normal, productive life. For example, in Atlantic & Gulf Stevedores, Inc. v. Michalski, all psychiatrists agreed that before the accident plaintiff was emotionally unstable. He was extremely tense as a result of difficulties with his father when claimant was young and with his wife in recent years. Two doctors testified that, in their opinion, the termination of litigation would help the claimant’s recovery. Another doctor stated that he could not see how the patient could be helped with treatment unless there was a permanent and final disposition of the case. A Dr. Truitt stated that all neurotic problems caused by the injury had been cleared up; that the compensation question was the sole reason why plaintiff could not return to work; that in his opinion the claimant would be able to return to work if the case was definitely settled. The Judge sagaciously recommended that the case be immediately and finally settled.

And in Peterson v. Department of Labor & Industries, the Court in 1927 was advised that claimant’s symptoms were apt to continue as long as the state paid compensation. He was paid until 1929 when his case was closed. Yet in 1932 claimant had his case reopened and was allowed further compensation on the grounds that his disability had not cleared up. Though psychiatrists still maintained he had a “desire neurosis” (for compensation), the Court dismissed this by stating that this could not be the case since his payments were stopped in 1929. It is submitted that the Court has clearly erred in this case because the mere fact that a lump sum has been paid does not stop the claimant from trying subconsciously to “get even.” The plaintiff must consider the payment fair, that the em-

52 Id. at 519.
53 Supra note 2.
55 Lump sums have often been recommended. e.g., some recent cases: Whitfield v. Firemen’s Fund Ins. Co., 125 So.2d 165 (La. App. 1960); Martino v. California Artificial Flower Co., 161 A.2d 193 (R.I. 1960); Gallagher v. Industrial Comm’n, 9 Wis.2d 361, 101 N.W.2d 72 (1960).
56 178 Wash. 15, 33 P.2d 650 (1934).
57 Id. at 19, 33 P.2d at 652.
ployer fully recognizes his claim and is not trying to “put something over.” Further, the fact that payments ceased in 1929 did not signify the end of litigation since claimant could and did reopen the case in 1932.

SECONDARY GAIN FACTORS

Though compensation neurosis is a highly complicated and important factor, it is not to be assumed that in all cases early settlement will always result in a prompt and quick recovery. In addition to the fact that the employee must consider the settlement fair, one must not lose sight of secondary gain factors, i.e., constant brooding over what could have happened or will happen, improper medical handling, and other collateral difficulties. These are all highly important independent factors which tend to prolong any neurosis following trauma and the principal reasons why a patient does not recover after litigation has ended.

Although many psychiatrists and most medical-legal periodicals report that lump sum settlements are best, there are a few reports which tend to show that the value of lump sum settlements are overrated. For example, of 321 cases investigated three years after a lump settlement, sixty-seven involved some form of neurosis. Of the sixty-seven only one had made a complete recovery; twenty-two had returned to work with earnings down forty per cent; twenty-two were at work, had not improved, with earnings down sixty per cent; of the last twenty-two, two were dead and none of the others were at work. This survey of cases illustrates the fact that while lump sum payments are in most cases advisable, each case should be judged and decided on its own merits. There are cases where there is neurosis following trauma which involves little if any of the compensation factor and secondary gain factors. The advisability of lump sum settlements is dependent to a large measure on the testimony of competent medical authorities, and their advice should be carefully considered.

Brooding and marital difficulties which prolong and aggravate the neurosis have, by the majority of courts, been placed in the same category as compensation neurosis insofar as recovery is concerned. In Skelly v. Sunshine Mining Co., plaintiff, a laborer, suffered minor cuts and bruises, and after treatment, physicians found no perceptible change in his physical condition. However, he complained of the increasing frequency of headaches and dizziness; he claimed traumatic neurosis and recovered. The plaintiff brooded over whether or not he could do heavy work in the future, had domestic worries, and other worries of like kind. The Court

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58 What is meant by early settlement has already been alluded to and will be more fully explained in Recommended Statutory Changes.

59 Henderson & Gillespie, supra note 3.

60 62 Idaho 192, 109 P.2d 622 (1941).
chose to ignore these factors even though the following testimony shows that these factors were responsible.

Q. [By Attorney] But the headaches would not be present if it were not for the accident. . . .
A. [By Psychiatrist] That is half truth, but . . . if he had not these other emotional factors he would not have the present headaches.61

The most important case representing the opposite point of view in the above mentioned situation is Phelps Dodge Corp. v. Industrial Comm'n.62 The Supreme Court of Arizona held that the plaintiff's neurosis did not arise from his injury, but was in fact induced by a deep-set fear or apprehension of imaginary ailments that might follow as a result of his injury and the deplorable condition in which his family might be left. The Court maintained that these were circumstances following the injury, and therefore no award for such neurosis could be made. It should be pointed out that the Court followed in essence the syllogistic type of reasoning previously mentioned in the discussion of compensation neurosis. Schneyder v. Cadillac Motor Car Co.63 involved a situation in which there was no physical impairment to the claimant preventing him from returning to work; however, plaintiff developed a bad mental condition in which notions of injustice and persecution in connection with his claim for compensation predominated. The Court remanded the case to see if the proper rule was invoked. This rule was stated as follows: "[W]here the mental disturbance is collateral to the injury, does not arise directly from it, but is due to worry, anxiety, or brooding over the accident or its effect . . . or the like, it is not compensable."64

Directly opposite results can be found in Rodriguez v. New York Dock Co.65 During the long litigation process claimant brooded and was melancholy over his injuries and his inability to work; the court concluded that the trauma induced the neurosis. One New Jersey case66 went so far as to hold that if the trauma was the initiating cause plaintiff could recover. Plaintiff was not suffering from any neurosis following the injury. Even though a psychiatrist testified that prior to and after the accident, claimant was potentially psychoneurotic and that his present neurotic condition was due to environmental, economic and family difficulties, the court stated that the trauma set off a chain of events which resulted in a neurosis.

As was previously stated in the section on secondary gain, there are

61 Id. at 202–03, 109 P.2d at 626.
64 Id. at 129, 273 N.W. at 419.
those individuals who find an illness an escape from unconscious difficulties. To escape the drudgery of existence, the grinding monotony of industrial life, family conflicts and responsibility, the individual unconsciously makes use of the trauma. That he thereby gives up a living wage for a mere pittance of compensation is no sound argument, because the unconscious gain may more than outweigh the loss in terms of money.\textsuperscript{67} This is the major reason why it cannot be said that lump sum settlements per se will solve all problems in this area. Perhaps these secondary gain factors should be called "security of disability."\textsuperscript{68} This is a sense of security based upon what the employee's disability promises for him in the way of medical attention or financial remuneration. It makes him feel incompetent to return to work and gives him a feeling that the safer thing for him to do is to hold on to these things. For example, in one case plaintiff was knocked down by a bolt slung from some moving machinery. The employee was sincere in his erroneous belief that he suffered a serious, disabling injury. In addition, this neurosis was prolonged and kept active by (1) underlying and unconscious feelings of persecution, and (2) a desire to use the injury as an excuse to evade responsibility. As in the majority of such cases, claimant was allowed recovery.\textsuperscript{69}

The minority position on the other hand is best evidenced in \textit{Miller Rasmussen Ice & Coal Co. v. Industrial Comm'n}\textsuperscript{70} which denied compensation for this "security of disability." As is usually found in such cases, the stimulus was minor, the only objective finding was an abrasion on both hips. Careful psychiatric examinations showed that prior to the injury the claimant was emotionally immature and was unable to face the responsibility of a growing family (wife and nine children); that he used the accident as a defense against the demands of reality; that he was ready to allow his wife to take over the responsibilities of wage earning while he planned to take her place in the home. The Court correctly held that there was no causal link between the minor injury and the claimant's present neurotic condition. It is believed that even had this been a major injury and had all other factors remained constant, no recovery would have been allowed.

At times, improper medical handling is often at fault in either actually initiating the neurosis or aggravating and keeping it alive.\textsuperscript{71} The physician must treat each case separately and not apply similar treatment for all regardless of physical condition. Failure to do so may start difficult psycho-

\textsuperscript{67} \textsc{Wechsler, \textit{A Textbook of Clinical Neurology} (1952)}.

\textsuperscript{68} \textsc{Eller v. Paul Revere Life Ins. Co., 228 Iowa 1247, 1252, 291 N.W. 866, 869 (1940)}.

\textsuperscript{69} \textsc{Webber v. Wofford-Brindley Lumber Co., 113 So.2d 23 (La. App. 1959)}.

\textsuperscript{70} \textsc{263 Wis. 538, 57 N.W.2d 736 (1953)}.

\textsuperscript{71} \textsc{Supra, note 2}.
logical problems. A recent report\textsuperscript{72} showed that in cases where people were initially suffering from low back pain, "physical therapy" often consisted of merely a heat lamp or diathermy. If the employee needed more intensive treatment, he frequently developed a prejudice against physical therapy which had to be overcome. The employee became resentful toward his employer, doctor or both and lost his motivation to work. However, adequate physical therapy may provide an "out" for the patient's psychological problems if it is started early enough.\textsuperscript{73} It is important that a doctor convey an optimistic attitude about the injury when possible. The patient should fully understand that his condition is only temporary (as is often the case). What definitely should be avoided are statements by the doctor such as: "If you are not dead in a few days you can come back and I will see what I can do about it."\textsuperscript{74} In the dissent in the \textit{Hood} case, it was stated that a doctor's suggestive statement that claimant would be incapacitated for at least six months (when clearly this was not true) could have been a significant factor in initiating the disabling neurosis. Sometimes, it is advisable for the physician to perform an exploratory operation to convince the patient that there is nothing wrong with him thereby enabling him to return to his proper role in society.\textsuperscript{75}

\textbf{APPORTIONMENT BETWEEN PRE-EXISTING NEUROTIC POTENTIAL AND POST-TRAUMATIC CONDITION}

As was previously mentioned, trauma may have various effects on different people. If one were to categorize those who suffer from traumatic neurosis, one would find the following: (a) those who already have a well established neurotic illness and display their symptoms to others before the trauma; (b) those who have pronounced neurotic tendencies; (c) those who have "mild" latent neurotic problems; (d) those who can be considered average.\textsuperscript{76} As will be shown, it is important to ascertain into which category a claimant is to be placed in order to determine the proper compensation for his injury. It should be noted that those who are in categories (b) and (c) never display the neurotic symptoms so that laymen associates can conclude that they are acting "peculiarly" or


\textsuperscript{73} \textit{Ibid}. Peculiarly, those who receive compensation are referred for treatment later than those who do not receive compensation.

\textsuperscript{74} Thompson v. Railway Express Agency, 241 Mo. App. 683, 686, 236 S.W.2d 36, 39 (1951).


\textsuperscript{76} What is meant by average is one who has a mature ego and who ordinarily will not have a post-traumatic neurosis. According to the classification of the effect of the trauma, he would be in category (a).
"queerly" and rarely, if ever, in any of the first three categories does the pre-existing neurotic condition or constitution disable the person to the point that he is unable to work. Therefore, it is of minor significance to one using a scientific approach to this problem to find the cases resplendent with laymen testifying to the fact that the plaintiff was a happy, jovial-type individual before the accident, and that now he is moody, depressed, complains of pain constantly, and no longer can do the work he formerly could do.\textsuperscript{77} Needless to say, this is a favorite device of plaintiffs' attorneys. It is not meant to deprecate such tactics, but merely to note that such evidence is of little value in scientifically approaching the subject. On the other hand, from the defendant's standpoint, if the neurotic symptoms were present previously, this may be evidence of the fact that the injury did not precipitate the neurosis.\textsuperscript{78}

The major stumbling blocks to a scientific apportionment between the pre-existing neurotic conditions or constitutions and post-traumatic conditions in workmen's compensation cases are the Workmen's Compensation Acts. The vast majority of such acts pay little attention to pre-existing conditions, both physical\textsuperscript{79} and mental.\textsuperscript{80} Those acts which do have some provisions for apportionment do so on the basis that the neurosis affected the workman's ability to perform his work properly. (Exception: Kentucky.)

Many, if not virtually all, claimants have some predisposition to a neurotic reaction.\textsuperscript{81} The industrial injury serves as a catalytic agent which triggers this potential into a neurosis. Although symptoms may be precipitated by a trauma, they are not necessarily directly related to the trauma but in varying degrees are related to claimant's neurotic history. It seems unjust then, that full compensation should be allowed for the subsequent psychoneurosis merely because of the "trigger mechanism" which often consists of a relatively minor injury, which, were it not for the neurosis would be entitled to little compensation. Although it is argued that the employer takes the employee as he is, the difficulties in determining whether an applicant for a job has a neurotic personality must be considered. While a relatively simple physical examination will dis-

\textsuperscript{77} E.g., Patane v. Stix, Baer & Fuller, 326 S.W.2d 402 (St. L. App. Ct., Mo. 1959); Bynum v. Maryland Cas. Co., 102 So.2d 547 (La.App. 1958).

\textsuperscript{78} Erwin v. Railway Express Agency, 128 S.W.2d 1077 (Kansas City Ct. App., Mo. 1939).


\textsuperscript{80} E.g., Murray v. Industrial Comm'n, 87 Ariz. 190, 349 P.2d 627 (1960); Jacobson v. Department of Labor & Industries, 37 Wash.2d 444, 224 P.2d 338 (1950).

\textsuperscript{81} Wechsler, A Textbook of Clinical Neurology (1952); Alvarez, The Neurosis (1951); Fenichel, The Psychoanalytic Theory of Neurosis (1945).
cover most physical disabilities, involved psychiatric examinations are required to discover neurotic potentialities. An employer should be expected to make sure that any employee who will be engaged in heavy work is physically fit for such work, but an employer should not be expected to ascertain beforehand if an employee will develop a neurotic reaction after a relatively minor injury. A few courts have recognized this and have apportioned awards accordingly by awarding compensation for the existing neurosis to the extent that it was aggravated by the accidental injury. In these and other jurisdictions there is usually a provision in the workmen's compensation statute which provides that where there is a pre-existing injury or disease, compensation shall be allowed only for such proportion of the disability due to the present injury.

In *Subsequent Injuries Fund v. Industrial Acc. Comm'n* claimant suffered from a life-long personality difficulty but nevertheless was gainfully employed. He received a compensable injury which aggravated the pre-existing disorder and a psychiatric break resulted. Claimant was found to have a seventy-nine per cent total permanent disability rating and forty-nine per cent was attributed to the industrial injury. The Court, on the basis of a prior case, held however, that the pre-existing disorder must be an actual labor disability, and that the statute was not meant to apply to asymptomatic diseases. A mere neurotic predisposition according to the view of this Court, would probably not justify apportionment. The above seems to be the general rule in cases where pre-existing physical injuries are considered in the compensation award, and if the physical condition was hitherto quiescent, and the accidental injury accelerated or precipitated it to the point of disability, compensation is granted. An attempt, however, has been made by those states which do apportion to encourage the hiring of the partially disabled by assuring employers that they would not be liable for the effects of an existing disability.

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84 1 Cal. Rptr. 833, 348 P.2d 193 (1960).


The Kentucky Supreme Court has apportioned, in cases where there was no previous disability, on the basis of a state statute which provides for apportionment where there is a pre-existing disease “whether previously disabling or not.” On two occasions the results of a pre-existing neurosis were separated from those of an industrial injury, and compensation was awarded only to the extent that the impairment was aggravated. In both cases total disability resulted from a compensable injury but only a fifty per cent award was granted.

A New Jersey court, in Simon v. R.H.H. Steel Laundry, also apportioned on the basis of a predisposition to undue psychic or emotional shock which in no way had previously disabled claimant from working. Although no traumatic injury occurred, claimant was rendered totally disabled as a result of an explosion. The Commission found sixty-five per cent of the disability chargeable to the accident and thirty-five per cent due to “unrelated paranoid trends.” Compensation was granted to the extent of sixty-five per cent.

Although it seems just to take into account this pre-trauma personality and apportion accordingly, by far the majority of courts which have dealt with the problem refuse apportionment. There are cases which speak of claimant having a “predisposition to neurosis,” “pre-existing latent mental disturbance,” “personality disturbance,” or as being “by nature of a neurotic condition,” yet none of these courts consider this prior condition in awarding compensation. The usual statement made by the court is that the injury was the “exciting cause” which precipitated the neurosis, and therefore full compensation should be, and is, awarded.

The extremes to which some courts go in awarding compensation when a pre-existing condition exists is manifest in Bynum v. Maryland Cas. Co. There claimant suffered from an anxiety psychoneurosis producing genuinely felt pain. The neurosis resulted from a series of three consecutive accidents. Total compensation was awarded for the third injury on the basis that it “could be the trigger which activated the neurosis.”

88 Old King Mining Co. v. Mullins, 252 S.W.2d 871 (Ky. 1952); Ashland Limestone Co. v. Wright, 219 Ky. 691, 294 S.W. 159 (1927).
95 102 So.2d 547 (La. App. 1958).
96 Id. at 552.
The existence of a prior neurotic condition makes any connection between the trauma and the subsequent condition much more difficult to prove. In *Miller Rasmussen Ice & Coal Co. v. Industrial Comm'n*⁹⁷ although claimant was not disabled prior to a slight trauma, the Wisconsin Supreme Court reversed the Commission's award for total disability because of claimant's basic, pre-existing psychoneurotic personality. A strong dissent, however, argued that the employer takes the employee as he finds him, and that it was entirely immaterial that without the underlying neurosis the traumatic neurosis would not have occurred.⁹⁸

Courts which deny compensation for neurosis arising out of collateral conditions (e.g., brooding, secondary gain, etc.) might also consider apportioning collaterally. A portion of the resulting neurosis might be traced directly to the trauma, and such portion might be considered compensable while the court might, at the same time, deny compensation for the neurosis arising from collateral causes. No court, however, has been found that so apportioned. Yet when a neurosis, which had theretofore not existed, manifests itself immediately following a trauma and then collateral causes enter into the picture and increase the severity of such neurosis, a Commission would be justified in awarding compensation for the former and not for the latter, thus making a collateral apportionment.

Although courts have been liberal in awarding compensation when proof of the connection between the trauma and the subsequent neurosis is weak, attorneys for the defendants nevertheless would be wise to show a prior neurosis or a neurosis arising from collateral causes when such is the case. In Illinois, since the workmen's compensation statute does not provide for apportionment, the reason for showing the existence of such a neurosis would be to defeat the contention of a causal relationship between the subsequent condition and the injury.

### SUICIDE

The suicide cases present an interesting problem in that they also involve a mental derangement following a trauma and therefore are similar to cases including traumatic neurosis.⁹⁹ Any compensation is based on the

⁹⁷ 263 Wis. 538, 57 N.W.2d 736 (1953).

⁹⁸ The New York Appellate Court in a similar case also denied compensation although the evidence tended to show that the accident was a precipitating factor in that there was no break with reality until the accident occurred. The court held that substantial evidence of such a precipitating factor would have to be shown. The fact that claimant had been suffering from a psychosis of long and insidious progress made the causal connection difficult to prove. *Jarecki v. John T. Clark & Son*, 3 App. Div.2d 612, 157 N.Y.S.2d 994 (1956).

⁹⁹ In three interesting cases compensation has been awarded when no trauma has occurred. *Burnight v. Industrial Acc. Comm'n*, 181 Cal. App.2d 816, 5 Cal. Rptr. 786
COMMENTS

victim's mental attitude at the moment that the suicidal act is committed, and the courts seldom critically examine causation. Three basic rules have developed for awarding compensation where suicide follows a trauma suffered "on the job." A discussion of these rules will follow together with a recent Illinois case of some import before the problem of causation is presented.

The basis for awarding compensation in the majority of jurisdictions is that the insanity must be shown to be the result of the trauma causing the victim to take his own life through an uncontrollable impulse or in a delirium of frenzy without conscious volition to produce death. This rule was first formulated in Sponatski's Case where the Massachusetts Supreme Court held:

Where there follows as a direct result of a physical injury an insanity of such violence as to cause the victim to take his own life through an uncontrollable impulse or in a delirium of frenzy 'without conscious volition to produce death, having knowledge of the physical nature and consequences of the act,' then there is a direct and unbroken causal connection between the physical injury and the death.

Although the Massachusetts legislature subsequently broadened the rule by a statute which does not require that the victim be acting without knowledge of the nature of the act, nevertheless the rule as originally set down is followed by the majority of jurisdictions.

The courts which follow this majority rule draw a distinction between the act of a man, insane as a result of an injury, who takes his own life without knowledge of the nature of his act and, on the other hand, the suicidal act of such a man who consciously determines to take his own life and carries this design into execution. In the latter case these courts say that the chain of causation between the injury and the death is broken by the voluntary, though insane choice of the injured person and an intervening cause comes into existence.

It is extremely difficult for a court to draw a precise line between a wilful choice of suicide, an uncontrollable impulse to commit suicide, and an uncontrollable impulse to

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100 Larson, Workmen's Compensation 36 (1952).


102 Id. at 5, 108 N.E. at 468.

103 Ann. Laws of Mass. ch. 152, § 26A (1961 Supp.). Compensation is now granted "if it be shown by the weight of evidence that, due to the injury, the employee was of such unsoundness of mind as to make him irresponsible for his act of suicide."

104 Barber v. Industrial Comm'n, 241 Wis. 462, 6 N.W.2d 199 (1942).
commit suicide without knowledge of the consequences of the act, but the courts have usually been extremely liberal in making the distinction and have been prone lately to find the latter where the majority rule is still adhered to.

New York has a similar, but somewhat more liberal rule than the majority. In *Delinousha v. National Biscuit Co.*\(^{105}\) it was held:

Death benefits are allowed if the injury results naturally and unavoidably in disease, and the disease causes death. This is so if the injury causes insanity from gangrenous poisoning or otherwise, and the insanity directly causes suicide; in other words, if the suicide is not the result of discouragement, of melancholy, or other sane conditions but of brain derangement.\(^{106}\)

It should be noted that brain derangement is the *sine qua non*.

Florida was the first state to make a radical departure from the majority rule. In *Whitehead v. Keene Roofing Co.*\(^{107}\) the requirement that the decedent must commit the suicidal act under an uncontrollable impulse and without conscious volition was done away with. The court criticized the majority rule by saying:

There is no force to the argument, propounded by some courts, that the act of suicide is an independent intervening cause of the death of the workman, thus breaking the chain of causation from the injury to the death of the deceased. While it may be an independent intervening cause in some cases, it is certainly not so in those cases where the incontrovertible evidence shows that, without the injury, there would have been no suicide; that the suicide was merely an *act* intervening between the injury and the death, and part of an unbroken chain of events from the injury to the death, and not a *cause* intervening between the injury and the death.\(^{108}\)

This new rule was first adopted outside of Florida in *Voris v. Texas Employers Ins. Ass’n*\(^{109}\) where the court also recognized that while the depressed person is perfectly aware that his act will produce death, the choice to kill himself may still not be entirely voluntary.

California too seems to have joined the minority. In *Burnight v. Industrial Acc. Comm’n*\(^{110}\) the appellate court criticized the requirement that the deceased must know the nature of his act and held that if the victim believes the resulting pain to be such that he cannot stand it, and becomes so depressed that he feels that suicide is the only way out, the act of suicide directly results from his injury. This rule, however, does not contemplate cases where there is little or no physical pain and in fact was


\(^{106}\) *Id.* at 96, 161 N.E. at 432.

\(^{107}\) 43 So.2d 464 (Fla. 1949).

\(^{108}\) *Id.* at 465.

\(^{109}\) 190 F.2d 929 (5th Cir. 1951).

\(^{110}\) 181 Cal. App.2d 816, 5 Cal. Rptr. 786 (1960).
evolved in a case where the victim had suffered no trauma whatsoever but nevertheless had a mental breakdown.

Illinois has most recently taken a stand with the minority in Harper v. Industrial Comm'n. While working in his company's warehouse, the employee sustained a back injury which was diagnosed as a herniated disk. An operation was performed, and approximately nine months later he returned to work and was assigned to a lighter task. He worked four full days and on the fifth day walked off the job, drove rapidly to his home, which was eight miles away, got his shotgun, drove to a tavern parking lot and shot himself. Evidence was admitted showing him to be a friendly and sociable man with a jolly disposition prior to the accident and that subsequent to the injury and the operation he was a less jovial man who "read much more than before." His doctor testified that he found no evidence of pain that would cause him to injure himself. In reversing the denial of compensation the Court criticized the rule of Sponatski's Case stating:

It seems to assume that a man's capacity to choose is a constant, unvariable factor, unaffected by whatever stresses may be brought to bear against it, and so it minimizes to the point of exclusion the possibility that capacity to choose may itself be impaired as the result of a compensable injury. If any degree of choice or volition remains, recovery is barred 'even though choice is dominated and ruled by a disordered mind'—which by hypothesis means a mind that has been disordered as the result of the injury for which compensation is sought. To us this underlying assumption of the Sponatski test is dubious, both from a medical and a legal point of view. The rule in the Whitehead case was considered to be the "proper approach" and was adopted.

A clear connection between the injury, the resulting pain with its physical and mental changes, and the suicide exists; this is pointed out by the Court. Having found this direct connection the Court found it unnecessary to delve into the decedent's mind at the moment of suicide in order to determine if there was an uncontrollable impulse.

This approach seems proper. It is impossible to determine what the suicide's thoughts were at the moment of death. What is important is that a direct causal connection exists between the injury and the suicide, as it did in this case.

The rules which the courts apply in determining if compensation is to be awarded deal solely with the condition of the victim's mind at the time of death. The courts seldom, if ever, consider the circumstances which led to the mental disorder. Compensation is awarded so long as there is some type of accident to trace this disorder to. The courts do not

111 24 Ill.2d 103, 180 N.E.2d 480 (1962).
112 Id. at 107, 180 N.E.2d at 481-82.
consider either collateral causes (e.g., brooding) or pre-existing psycho-neurotic or manic depressive personalities.

Suicide cases which involve a minor injury resulting in little pain are surprisingly plentiful. In *Karlen v. Department of Labor & Industries*, for example, a worker sustained an injury to his thumb which healed shortly thereafter. He suffered from what was diagnosed as manic depressive psychosis, and seven months later he committed suicide. Although two of the testifying physicians found no causal connection between the thumb injury and the victim's mental condition, nevertheless compensation was granted and the employer was forced to pay for the remote possibility of a suicide following a cured thumb injury.

In a similar English case the victim also suffered a thumb injury for which he was subsequently awarded compensation. Thereafter he developed neurasthenia and became depressed and melancholic; four months later he committed suicide. Compensation for the suicide was denied however, and the court held that in order for compensation to be granted it is necessary to prove that the suicide was caused by insanity and that the insanity was the direct result of the accident, not an indirect result caused by brooding over the accident. Although the deceased's mental condition at the time of the suicide may have been such as to qualify his dependants for compensation, it was denied because that mental condition was brought about by brooding over the accident. This seems to be an excellent approach. The court has not forced an employer to pay for the result of the deceased employee's own mental condition brought about by factors not under the employer's control, especially when such mental attitude is aggravated by collateral factors unrelated to the accident. American courts have failed to make such a distinction and compensation is awarded in many cases where brooding is the real cause of the insanity.

As in cases of traumatic neurosis, when a suicide is involved the courts do not consider the victim's mental condition prior to the accident. Such condition, if it exists, nonetheless should be brought out in order to determine the real cause of the insanity which culminated in the suicide. Several cases have noted a pre-existing neurosis or psychosis but still have found a causal connection between the injury and the suicide. Of these the following two are of particular significance since they are also cases where no trauma occurred.

In *Wilder v. Russell Library Co.* the workman, who had a predisposition to mental trouble, worked excessively and became nervous. An in-

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113 41 Wash.2d 301, 249 P.2d 364 (1952).
115 107 Conn. 56, 139 Atl. 644 (1927).
sanity developed which resulted in suicide. The Court reasoned that had it not been for the employment, the suicide would not have occurred and compensation was awarded. In *Burnight v. Industrial Acc. Comm'n* a similar result was reached. Prior to employment the victim had been diagnosed as a manic depressive psychotic with schizophrenic and paranoiac tendencies. He was sent by his employer to Mexico to supervise the construction of a plant, suffered a series of frustrations and thereafter committed suicide. The court did not go into the deceased's prior mental condition in determining whether the employment conditions were a direct cause or a contributing cause. Recent cases, however, grant compensation even if the trauma or employment conditions are shown to be only a contributing cause. In one case the California appellate court reversed a denial of compensation with instructions which adopted the more liberal minority rule as to the workman's mental attitude at the moment of the suicidal act.

Many cases exist where a pre-existing physical injury is either aggravated or accelerated and a suicide results. Here too compensation is uniformly granted even though the present injury would have been considered slight in itself.

In conclusion, it should be noted that the growing minority view recently adopted by Illinois allows compensation for a suicide even if the deceased workman took his life wilfully. But the requirement still applies that a causal connection must exist between the injury and the suicide. Proof of a prior mental condition or the existence of collateral mental circumstances may break this connection.

**RECOMMENDED STATUTORY CHANGES**

One recommendation is that any workmen's compensation statute provides either for apportionment or waiver by the employee of his rights to compensation for certain injuries. Regarding apportionment the Kentucky statute should be considered. It provides that compensation shall not be granted for the results of a pre-existing disease whether previously disabling or not. Paragraph 2 of the same section provides:

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See Olson v. F.I. Crane Lumber Co., 259 Minn. 248, 107 N.W.2d 223 (1960), victim suffered coronary on job but had a pre-existing heart condition; Prentiss Truck & Tractor Co. v. Spencer, 228 Miss. 66, 87 So.2d 272 (1956), victim had a dormant ruptured disk; Pushkarowitz v. A. & M. Kramer, 275 App. Div. 875, 88 N.Y.S.2d 885 (1949), victim suffered from 40 per cent loss of use of one eye, present injury resulted in total loss of vision in that eye. In all cases suicide followed.

The board shall apportion the aggregate extent and duration of disability among the contributing causes including but not limited to the following:
(a) 'Traumatic injury by accident';
(b) Pre-existing disease previously disabling;
(c) Pre-existing disease not previously disabling but aroused into disabling results by the injury or occupational disease.

The waiver provision allows an employee, with the approval of the board, to waive his rights to compensation for any injury which is due to a pre-existing disease. The Massachusetts statute provides:

No agreement by any employee to waive his rights to compensation shall be valid, but an employee... who is for any reason peculiarly susceptible to injury or who is peculiarly likely to become permanently or totally incapacitated by an injury may, at the discretion of the division and with its written approval within three months after the beginning of his employment, waive his rights to compensation. . . .120

The result achieved by either of these two methods is good for two reasons. First, employers may be more willing to employ persons with certain disabilities or diseases where otherwise they might prefer to exclude them. Second, an employer is not liable for the effects of a pre-existing disability or disease which he knows nothing about and therefore cannot guard against.

Apportionment seems the better of these alternative methods, and the above-quoted Kentucky statute represents an excellent way by which it can be done. Waiver, on the other hand, has its major shortcomings in that the prior infirmity must be manifest, the employer must have knowledge thereof and it is only granted upon petition. Any physical examination is costly, and a thorough examination involving “personality factors” is a complicated and expensive procedure. All employers could not be expected to have each prospective employee go through a psychiatric examination before hiring, especially in areas and occupations where job turnover is high. An apportionment provision, therefore, would do automatically what waiver does by involved procedure.

The workmen’s compensation laws have eliminated all common law defenses, but it is neither their function nor their purpose to make the employer an insurer.121 The employer is liable for all injuries received by the employee which arise out of and in the course of employment. But, if, after a slight trauma, a neurosis flares up in an employee who was highly susceptible to psychoneurotic complications or who actually had a prior neurosis, and only a faint line of causation exists between the trauma and the resulting condition, it cannot be said that the injury was the sole cause of the resulting condition. In such a case two factors must

be considered as making up the resulting condition. One arises from the injury itself, and the other from the pre-existing condition which is independent of the injury. Compensation should be allowed only for the former. In computing compensation the percentage of the resulting disability due to the pre-existing neurotic constitution or to collateral factors for which compensation should not be allowed would have to be determined. This figure would then be deducted from the compensation allowed had claimant's condition arisen solely out of the injury, and the award would be the balance. For example, after an injury claimant was one hundred per cent disabled for which he would be entitled to a lump sum settlement of $1,000. The prior neurosis is discovered to account for approximately thirty per cent of the resulting condition. The award therefore, would be $700 ($1,000 less thirty per cent or $300). Admittedly apportionment would be no easy task, yet it is better than ignoring the problem entirely.

Rehabilitation too should be considered in any discussion of statutory changes. Once liability for an injury is established, it should be the duty of the employer to help the disabled employee either to overcome any disability or to live within the limits of his disability to the best of his capabilities.

In cases of neurotic disabilities it is first necessary to help the victim overcome emotional reactions which may frustrate or delay rehabilitation. Such an emotional reaction may be fostered by the pendency of litigation. A statute should therefore provide for a speedy, lump sum, final settlement of the claim. When settlement is slow, collateral complications are given time to develop, and claimant's feelings of indignation and desire for compensation are kept alive. When settlement is continuously paid the neurosis is turned into a subconscious gainful occupation and no real incentive to improve exists. When settlement is not final the claimant expects further compensation will be forthcoming, and the idea of finality to the whole affair is not conveyed. However, this quick settlement should not be made before a careful examination of the claimant. Once a proper appraisal of the claimant's illness is made, the settlement should adequately compensate for all symptoms which can be attributed to the injury. Care must be taken in cases of traumatic neurosis so that the claimant is not led to believe that he is being pressured into a quick settlement, for if he believes the compensation to be unjust, resentment over being cheated and a desire for revenge frustrate rehabilitation.

When the award is made a specific sum should be set aside to be used solely for rehabilitation. To encourage claimant to take full advantage of

122 This could be received under §138.9 of the Illinois Act and is advisable in traumatic neurosis cases.