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## WORKMEN'S COMPENSATION AND THE DISABLING NEUROSIS

ALEXANDER R. MANSON\*

**W**ORKMEN'S Compensation is a legislative remedy which was created in the early part of this century to ameliorate the harsh effects of the common law. Under the common law denial of compensation was the result in a great proportion of fatal and non-fatal industrial injuries.<sup>1</sup> The common law of torts required the injured workman to prove that his injury resulted from his employer's negligence and then gave the employer the defenses of contributory negligence, assumption of risk and fellow servant rules. These hurdles proved almost insurmountable for the injured employee seeking compensation under common law.<sup>2</sup>

A statutory scheme was eventually put into law which provided monetary payments and medical benefits for injuries which impaired the earning capacity of the worker, when such injury arose "out of" and "in the course of" employment.<sup>3</sup> Except when the payments are scheduled for loss of a particular member of the body, injuries are compensated only when they result in disabilities of total or partial incapacity to perform one's work.<sup>4</sup> The two general requirements which must be met are that the employee sustain an injury which impairs his earning ability and that this injury arise out of and in the course of employment. Of course the particular wording of a statute varies from state to state but the general scheme and purpose are approximately the same.<sup>5</sup>

Workmen's Compensation, unlike the Federal Employee's Liability Act,<sup>6</sup> which covers railroad workers whose employers engage in interstate commerce, does not merely abrogate certain restrictive aspects of the common law. In FELA cases the action is still one of common law except that the defenses of contributory negligence, assumption of risk and fellow servant rules are abolished. The action is still brought in a court of law and the negligence of the employer must be proven before a recovery is had. Albeit, to get a case to the jury in an FELA action less evidence is needed than in an ordinary negligence action.<sup>7</sup> In contradistinction, Workmen's Compensation completely supplanted the common law remedy and created a whole new method for compensating injured employees unknown to the common law. In both the procedure established and the criteria used in granting an award, the method is in conflict with the common law.<sup>8</sup> This point is crucial and should be borne in mind when

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\* L.L.B., University of Buffalo, January 1962.

1. Riesenfeld and Maxwell, *Modern Social Legislation* 137 (1950).

2. *Ibid.*

3. 1, 2 Larson, *Workmen's Compensation Law* (1952).

4. *Ibid.*

5. Schneider, *Workmen's Compensation Statutes (1939-1949)*.

6. 45 U.S.C. §§ 51-60 (1958).

7. 38 A.B.A.J. 1011, 1059 (1952).

8. The initial award is granted by an administrative board which is not bound by the rules of evidence or procedural limitations of the courts. 2 Larson *supra* note 3 at § 92.

considering cases where the courts, in passing upon awards, impart tort doctrines which require certain conditions not explicitly stated in the statute; e.g., the tort rule that there must be a physical impact to allow recovery. The Workmen's Compensation Act should, as far as possible, be considered as a unitary system and undue extrapolation from the common law doctrines used to establish causal relationships might better be avoided.

The impact of old methods of analysis is hard to avoid in any area of intellectual endeavor. It was almost inevitable that certain ways of thinking about a tort case of negligence would creep into the new scheme of workmen's compensation due to a general tendency of the mind to relate the familiar to the new. The early cases under workmen's compensation exhibited the tendency when they required that an injury could not be compensated unless it resulted from a physical impact to the body.<sup>9</sup> The impact rule was not rigidly adhered to and it soon became enough if the resulting injury could be described as physical.<sup>10</sup>

The requirement that there be an impact was bound up with the statutory mandate that there be an accident which causes the injury or that the injury be accidental.<sup>11</sup> The problem of causality was more readily solved if the court could point to a physical impact, which occurred at work, and the injury appeared in the place of impact. The courts found it somewhat more difficult to impose the monetary burden of an injury upon the employer where the usual industrial injury involving a physical impact was not present. An early English case, which became a precedent for later American decisions, defined an accident as, "an unlooked for mishap or 'an untoward event which is not expected or designed.'"<sup>12</sup> This definition gave the courts more leeway to compensate an injury to a worker, which was not expected, even though it did not result from a physical impact. The lack of an impact did not detract from the unexpectedness of the injury or the fact that it was a mishap or untoward event.

It was not long before the compensation boards and the courts were confronted with compensating mental disabilities which impaired the worker's earning capacity and arose out of the work situation. The problem centered around what factors the courts would recognize as establishing the conclusion that the mental disability arose out of a mishap that occurred or was the unexpected result of the employment situation. An analysis of this aspect of compensation law requires a brief excursion into the science of psychoanalysis or more generally the science of mental disease.

The psychoneurosis or neurosis may be broken down into several generally accepted classifications. They are grouped as: anxiety neurosis, hysteria or conversion neurosis, obsessive-compulsive neurosis, and neurasthenia.

The anxiety neuroses are states of fear or panic from which the individual

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9. Larson, *supra* note 3.

10. Burlington Mills Corp. v. Hagoood, 177 Va. 204, 13 S.E.2d 291 (1941).

11. 1 Larson, *supra* note 3 at § 38:80.

12. Fenton v. Tharley & Co. [1903] A.C. 443, 448.

suffers severely, but the thing which is feared or the object of panic which gives rise to the anxiety remains unknown to the sufferer. The anxiety remains diffused and not focused upon any specific ideational content that is perceived by the individual's conscious mind. This malady appears to be the most common among the types of neurotic disturbances.

The hysteria or conversion neurosis may be broken down into two classifications, episodic and conversion. Episodic hysteria is evidenced by amnesia, somnambulism and disassociation of one aspect of a person's conscious life from other aspects. The conversion disorder is a malady which converts the individual's unconscious impulses, which are reprehensible to the individual's conscious mind, into an organic disorder such as gastric ulcer, migraine, colitis, and paralysis of a member or any part of the body. It is probably the anxiety which the forbidden thought or impulse engenders that is converted into the organic syndrome.

A type of neurosis exists which eludes precise classification and may partake of the symptoms of either anxiety or hysteria neuroses but is distinguished in the manner in which it becomes externally observable. It is not in the four types enumerated above but is considered for certain purposes a separate entity and denominated the traumatic neurosis. Its onset is traced to a sudden fright or small injury or accident for which the emotional and physical equipment of the individual were not prepared to react. It is considered a flooding of the psychic apparatus with stimuli, in such great quantities, that the mind cannot bind and bring the stimuli under manageable control. All of the individual's mental energy is concentrated upon mastering these stimuli and the individual withdraws from other thoughts and activities until the stimuli are brought under psychic control and a mental equilibrium is returned. The neurosis is the result of the continuing attempt of the individual to master the stimuli engendered by the traumatic experience.<sup>13</sup> Freud considers the traumatic neurosis as a manifestation of the repetition-compulsion which he defines as a tendency inherent in all organic life to reinstate an earlier condition. The repetition-compulsion forces an individual to go back to his traumatic experience and mentally relive it in order to bind the stimuli in accordance with the pleasure principle. The pleasure principle is defined as a law of mental functioning which attempts to keep mental tension constant or as low as possible. Freud then postulates a death instinct whose goal it is to return the organism to the tensionless state of inorganic matter.<sup>14</sup> The above theory, which Freud denominated as metapsychological, is highly controversial and rejected by almost all neo-Freudians today. In any case its acceptance is not necessary for an explanation or understanding of the traumatic neurosis.

Fenichel analyzes the traumatic neurosis thusly: "After a little traumata, like a sudden fright or smaller accident, the person feels irritated for a certain

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13. Gultmacher and Weihofen, *Psychiatry and the Law* (1952).

14. Freud, *Beyond the Pleasure Principle* (1920).

time, cannot concentrate because inwardly he is still concerned about the event and has no energy free for attention in other directions. He then repeats the event in his thoughts and feelings a few times and after a short while his mental stability is re-established. Such a little traumatic neurosis may be explained as flooding of the organism by amounts of unmastered excitation and as attempts at belated mastery. The severe traumatic neurosis must be looked at from the same angle."<sup>15</sup> Of course, what would be a traumatic experience to one individual may be another's daily fare. The inherited constitution of the individual, his early experiences and modes of reacting to them, will be determinative of whether a particular experience has a traumatic effect upon the mental life or is assimilated with little effort.<sup>16</sup>

A more lengthy discourse on the traumatic neurosis is necessary due to its importance in relation to workmen's compensation claims. The majority of workmen's compensation claims which seek compensation for a neurotic disability involve a traumatically or an alleged traumatically induced neurosis. The source of the trauma is usually some powerful force or congerie of forces, e.g., a physical blow to the body, near escape from death, or other experiences encountered at the employment situation.

The external symptoms of a traumatic neurosis, as opposed to internal mechanics, are evidenced by emotional instability, restlessness, crying, and spells of rage. Marked sleeplessness and a return to the traumatic experience by way of dream life is a result of the tendency to relive the traumatic experience in order to gain a mastery of it. The person also works over his traumatic experience in waking life for the same purpose. There is usually a diminution of the sexual interest of the affected individual and complete loss of sexual potency may even result.<sup>17</sup>

The neurosis which most clearly exhibits its derivation from unresolved conflict arising from the unconscious mental life is the obsessive-compulsive neurosis. Its salient feature is a compulsion to dwell upon a worry which has little or no relation to the individual's actual life situation. This kind of neurotic might be obsessed with the idea that he has cancer or is inexorably developing a cancer when his actual health gives him no rational ground for such a belief or expectation. This type may be compelled to perform ritualistic acts contrary to his real desires, and in most cases bringing pain to the individual.

The motive for the ritualistic acts of the obsessive-compulsive neurotic is most cogently explained in the language of one of the greatest creative minds of all intellectual history, Sigmund Freud. His superlative integration of logic, reason, epigram, and vivid imagery has no comparison in scientific writing. The temptation to quote him at length is irresistible: ". . . The character of compulsion neurotics shows a predominant trait of painful conscientiousness

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15. Guttmacher and Weihofen, *supra* note 13.

16. Freud, *supra* note 14 at 44.

17. Freud, *supra* note 14 at 45.

which is a symptom of reaction against the temptation which lurks in the unconscious, and which develops into the highest degrees of guilty conscience as their illness grows worse. Indeed, one might venture the assertion that if the origin of guilty conscience could not be discovered through compulsion neurotic patients, there would be no prospect of ever discovering it.

"In the second place we cannot help noticing that the sense of guilt contains much of the nature of anxiety; without hesitation it may be described as 'conscience phobia.' But fears point to unconscious sources. The psychology of the neurosis taught us that when wish feelings undergo repression their libido becomes transformed into anxiety.<sup>18</sup> In addition we must bear in mind that the sense of guilt contains something unknown and unconscious, namely the motivation for the rejection. The character of anxiety in the sense of guilt corresponds to this unknown quantity."<sup>19</sup> Freud goes on to explain the relationship of a savage's taboos and the prohibitions and compulsions of the neurotic as both guarding against a forbidden impulse. He postulates that taboos, rituals and compulsions are defenses against the desire to kill. He reasons, "For what nobody desires to do does not have to be forbidden, and certainly whatever is forbidden must be an object of desire."<sup>20</sup>

Freud explains the existence of the individual's desire to slay his fellow men in the following manner: "But if we take into account the following results of psychoanalysis, our understanding of the problem is greatly advanced. The analysis of dreams of normal individuals has shown that our temptation to kill others is stronger and more frequent than we have suspected and that it produces psychic effects even where it does not reveal itself to our consciousness. And when we have learnt that the obsessive rules of certain neurotics are nothing but measures of self-reassurance and self-punishment erected against the reinforced impulse to commit murder, we can return with fresh appreciation to our previous hypothesis that every prohibition must conceal a desire. We can then assume that this desire to murder actually exists and that the taboo as well as the moral prohibition are psychologically by no means superfluous but are, on the contrary, explained and justified through our ambivalent attitude toward the impulse to slay."<sup>21</sup> Thus, it appears that the silly rituals and compulsions of the obsessive-compulsive neurotic are defenses against the anxiety engendered by the ego's perception of a morally reprehensible wish existing in

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18. Freud revised the view expressed in this sentence in a work entitled *Inhibitions, Symptoms, and Anxiety* published in 1926. He discarded the theory that repression of libidinal impulses resulted in a conversion of the repressed libido into anxiety. His new position was that anxiety preceded repression and not vice versa and indeed was the motive for the repression. The anxiety did not result from the transformation of repressed libido but was the result of a perception of danger felt to be real by the ego. This is not to say that the anxiety had to be a result of a danger that in fact existed in objective reality, but merely that the person experiencing the anxiety perceived it as a real objective danger to the organism.

19. Freud, *Totem and Taboo* 90-92 (1946).

20. *Ibid.*

21. Freud, *supra* note 19 at 42.

the unconscious, the attempted fulfillment of which the ego comprehends as a danger to it.

The courts have long held that where a physical injury has caused a disabling neurosis resulting in impairment of earning capacity that the neurosis will be compensable.<sup>22</sup> Among those courts which require a physical impact there seems to be a feeling that there has not been an accident within the language of the Workmen's Compensation Act unless a physical impact has preceded the onset of a disabling neurosis. For some strange reason which defies exact logical articulation these same courts will allow a recovery if a physical injury has preceded the neurosis and it is felt that the neurosis arose out of the injury, even in the absence of physical impact. If the court can find an impact then the impact can be defined as the accident from which the injury arose. Courts bound by this logic often stretch a point to find an impact. They will evolve a repeated impact theory, whereby each tiny noise, bump or jar is regarded as an accident occurrence. Then the last noise, bump or jar which precipitated the injury or the sum total of these will be regarded as the accident. A recovery granted for loss of hearing due to repeated loud noises of gunfire in a target range is a case in point.<sup>23</sup> This case exhibits the tendency to grant compensation where there is no physical impact but a distinct series of occurrences (the firing of guns), which can be defined as accidents if there is a resulting physical injury. One suspects that because the causal relationship between loss of hearing and the noise of the firing is fairly clear the court is less reluctant to abrogate the requirement of an impact. An accident is also found where the cumulative effect of years of pressure ultimately results in a disabling injury even though no one specific day of pressure caused the injury.<sup>24</sup>

The necessity of having a causal relationship between the disability and some occurrence that took place at work, in the course of that work, is a partial motive for the necessity of impact, an accident traceable to a reasonably definite time, place and occurrence or cause,<sup>25</sup> and the requirement that a physical injury must result. The neurosis comes out second best in these courts because it does not receive the benefit of the liberal construction of the accident requirement. The neurosis must be the result of an impact itself, or the result of physical injuries, however slight. Thus, a worker who was bitten by a cat at work and developed a neurotic fear of rabies and consequently was disabled was allowed to recover even though his physical injury was insignificant.<sup>26</sup> In New Jersey the claimant is out of luck who cannot prove an accident by way of a physical impact or physical injury. A claimant in that state asserted that a co-worker called her an "idiot" because she misunderstood what she was to

22. *Kolikoff v. Lucas*, 271 App. Div. 942, 67 N.Y.S.2d 153 (3d Dept. 1947).

23. *Winkle v. Boeing Airplane Co.*, 166 Kan. 503, 203 P.2d 171 (1949).

24. *American Maize Products Co. v. Nichiparchik*, 108 Ind. App. 502, 29 N.E.2d 801 (1940).

25. 1 *Larson*, supra note 3 at § 37.20.

26. *Kolikoff v. Lucas*, supra note 22.

do. This upset her very much and caused agitation and weakness. She was treated later by a doctor for severe nervous agitation. The court held there had been no accident within the meaning of the Workmen's Compensation Act. It stated, "I am satisfied that the petitioner did not meet with an accident arising out of and in the course of employment; in fact, there was not one iota of testimony to even suggest an accidental occurrence."<sup>27</sup> The causal relation here appears clear, and even if claimant had a predisposition to neurotic reaction, this should not bar recovery, since an aggravation of a pre-existing condition is compensable.<sup>28</sup>

New York is among the minority of states that refuses to compensate a mental disability unless a physical impact or physical injury is involved. In a 1959 case claimant hit a pedestrian by his cab and knocked him unconscious. The pedestrian was taken to the hospital where it was found that his injuries were merely superficial. Claimant was very upset and argued with a police officer at the scene of the accident. He became despondent and about a month later was admitted to the hospital with a mental breakdown. The Appellate Division in rejecting his claim for compensation stated, "we find nothing in the law that connotes purely excessive emotions, anger, grief or other mental feelings—unaccompanied by physical force or exertion can be the basis of an accident. It may be logically argued that claimant here is just as disabled as someone who suffers from a physical disability. This we do not dispute but it does not, at present, constitute an accident as defined by the Workmen's Compensation Law."<sup>29</sup>

The conservative position taken by New York and other states contrasts quite vividly with the English practice established quite soon after the inception of its workmen's compensation law. In 1910 claimant, a coal miner all his life, had been working at a coal face far underground when a fellow miner was crushed by a timber. Claimant helped get his crushed fellow worker out of the pit but he died shortly thereafter. Claimant developed a neurotic aversion to working at the coal face. The King's Bench merely asked if the disability was caused by what happened during the course of his fulfilling his duty to his fellow worker and whether this resulted in his inability to carry on his duties. It felt that since both questions were answered in the affirmative claimant was entitled to compensation.<sup>30</sup> The English court was unimpressed with the argument that no previous case had granted compensation without a physical impact or physical injury causing the neurosis.

Some courts felt precluded from granting compensation for a neurotic

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27. *Voss v. Prudential Ins. Co.*, 14 N.J. Misc. 791, 187 A.334 (1936).

28. *Ingalls Shipbuilding Corp. v. Byrd*, 215 Miss. 234, 60 So. 2d 645 (1952); *Sigley v. Marathon Razor Blade Co.*, 111 N.J.L. 25, 166 A. 518 (1933); *Smith v. Essex County Park Commission*, 15 N.J. Misc. 227, 190 A. 45 (1937). Pre-existing condition will be compensated in full if disability is precipitated by an occurrence arising out of and in the course of employment.

29. *Cherrin v. Progress Service Co.*, 9 A.D.2d 170, 192 N.Y.S.2d 758 (3d Dep't 1959).

30. *Yates v. South Kirby & Co. Collieries, Ltd.*, [1910] 2 K.B. 538.

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disability by the particular wording of the statute. Thus, a Nebraska court denied compensation for a neurotic disability where there was no damage to the body under a statute which defined injury to mean "violence to the physical structure of the body."<sup>31</sup> The claimant was a female elevator operator and was on duty when a passenger was caught between the floor of the elevator and the second floor of the building. Claimant was in the elevator for 30 minutes with the dying man. She developed a severe and disabling neurosis as a result of this experience. The court held that there must be an actual physical injury to the body before any consequent mental damage can be compensated.<sup>32</sup> The court had no trouble finding an accident but felt that this was not the type of accident which called for compensation since the injury did not conform to the statute.

Even a statute which requires injury to the physical structure of the body can be construed to allow recovery for a neurosis where no physical impact or physical injuries are involved as the Texas courts have proved. In *Bailey v. American General Insurance Co.*,<sup>33</sup> claimant developed a neurotic condition as a result of watching a fellow worker die. They were standing upon a scaffold which collapsed and the fellow worker plunged to his death while the claimant narrowly escaped. The court allowed a recovery even though there had been no physical impact or injury and the statute required an impairment to the physical structure of the body. The court felt a physical impact was not required before an accident existed under the statute and it found impairment to the physical structure of the body when control over the body was impaired, i.e., mental control. The court rightly saw that the mind and the body are an integrated whole and impairment of one inevitably effects the other. In another case a young lady was frightened by a flash from a short-circuited motor and fainted. She returned to work but later when she saw the fellow worker who caught her the first time she fainted, she fainted again. Thereafter she could not return to work because of a neurosis. An award of Workmen's Compensation was affirmed, the court stating, ". . . the rules of the common law of tort actions do not apply to cases under the Workmen's Compensation Act."<sup>34</sup>

The courts will generally allow compensation where there is a physical impact or physical injury from which the neurosis ensued and/or where there is a single event of a significant nature such as watching a comrade die or seeing an electric flash, and a neurosis results therefrom.<sup>35</sup> In general terms then, the claimant can recover if his neurosis can be traced to a physical injury which arose out of and in the course of employment. He can also recover if a single psychological event has precipitated his neurosis, i.e., if a psychological stimulus

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31. Neb. R.R.S. 1943 § 48-151(4) (1952).

32. *Bekeleski v. O.F. Neal Co.*, 141 Neb. 662, 4 N.W.2d 741 (1942).

33. 154 Tex. 430, 279 S.W.2d 315 (1955).

34. *Burlington Mills Corp. v. Hagood*, supra note 10.

35. *Roberts v. Dredge Fund*, 71 Idaho 380, 232 P.2d 975 (1951); *Geltman v. Reliable Linen and Supply Co.*, 128 N.J.L. 443, 25 A.2d 894 (1942).

has precipitated a psychological reaction as opposed to a physical or biological reaction.

There is a paucity of cases in which an award has been granted where a mental disability has arisen merely from the stresses and strains of the ordinary day to day work. *Carter v. General Motors Corp.* is such a case and is sharply distinguishable from the mental shock cases.<sup>36</sup> In *Carter*, claimant worked on an assembly line in a job which involved no extraordinary physical or mental strain. He had just been called back to work after a five month layoff and was given a new job. This consisted of taking wheel assemblies off of the assembly line, working on them and placing them back on the line. The claimant found that he could not keep up with his job unless he took two wheel assemblies off the line at once but when he did this he mixed the parts and his foreman yelled at him for it. If he did not take two assemblies off at a time he fell behind in his rate and his fellow workers grumbled because this also put them behind in their rate. After thirteen days of working in this situation claimant collapsed and was unable to continue working. His condition was diagnosed as paranoid schizophrenia. He sought compensation and the expert testimony at the hearing revealed that he suffered from an inadequate personality all his life. His personality appeared rigid and incapable of adapting to new situations and stresses. The Supreme Court of Michigan affirmed an award of compensation granted by the board in an opinion which reviewed the law of both Michigan and other jurisdictions on the subject. The court rejected the argument that compensation cannot be granted where there is no single mental shock or impact which can be pointed to as the cause of the mental disability. It held that as long as competent medical experts established the causal relationship between the stresses of the job and the mental disability the board was able to conclude that the mental disability arose out of and in the course of employment.

It does not appear that any reported cases under workmen's compensation have granted relief in a case of a mental disability arising out of the ordinary stresses of the job in jurisdictions outside of Michigan. What is surprising is that a case under the Federal Employees Liability Act has held on a motion to dismiss for failure to state a cause of action that a plaintiff states a cause of action when he alleges that he incurred a mental disability due to the ordinary stresses of his job. This is surprising because most text writers and cases state that the aims of workmen's compensation and its lack of a jury trial allow more liberality in establishing a causal relationship between the injury and the employment situation.<sup>37</sup> The courts have felt that a board, guided by presumed experts, would be able to see through false claims.

In *McMillan v. Western Pacific Railroad Company*, an FELA case, plaintiff alleged in his complaint that he was employed by defendant as a train

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36. *Carter v. General Motors Corp.*, 361 Mich. 577, 106 N.W.2d 105 (1960).

37. Guttmacher and Weihofen, *supra* note 13 at 52.

dispatcher and that defendant, in the words of the complaint, "negligently and carelessly required him to be subjected . . . to working conditions of unusual responsibility, stress and tension in that he was required to operate a system of central traffic control of defendant's railroad which system involved multitudinous and complex mechanical factors and mental decisions, extreme responsibility, constant but shifting attention, and numerous clerical functions which . . . imposed an unusual stress and burden upon the plaintiff's physical and nervous system, which caused plaintiff to suffer a severe nervous collapse which rendered him sick, sore, lame and disabled."<sup>38</sup> The California court felt that the FELA did not require an accident nor a bodily injury but merely an injury, either mental or physical, which was caused by the employer's negligence. It relied upon a 1949 United States Supreme Court case allowing compensation for silicosis.<sup>39</sup>

This case appears to be hard to reconcile with the theory of negligence to which it ostensibly adheres. Negligence presupposes an opportunity in the tortfeasor to foresee the consequences of his act or the opportunity to foresee such consequences assuming the tortfeasor uses reasonable diligence.<sup>40</sup> In the above case it is difficult to assume that the employer could have foreseen that this particular employee would have a mental collapse by merely being subjected to the ordinary stresses of his job, even granting that these stresses were somewhat out of the ordinary. In order to make the negligence theory meaningful one would have to consider it a part of the employer's duty of foreseeability to know the psychological condition of his employees, and what stresses they could be subjected to without mental collapse. But, then no one seriously considers an action under FELA as strictly a negligence action. It is a compromise between a negligence action and a workmen's compensation scheme. This method of handling railroad employees' injuries probably represents a political compromise the merits of which are outside the scope of this discussion. Suffice it to say that a jury may not be the most competent agency to assess causal relationship between a neurosis and the stresses of employment.

An analysis of the methods used to compensate claimants inflicted with a neurosis arising out of his employment will be passed over. The specific problem is what type of monetary payout will be most conducive to the recovery and rehabilitation of the neurotic. It is recognized by some that the desire to obtain compensation is a secondary factor which contributes to the continued

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38. 54 Cal. 2d 841, 357 P.2d 449 (1960).

39. *Urie v. Thompson*, 337 U.S. 163 (1949).

40. The purpose of the law is to prevent or secure a man indemnity from harm at the hands of his neighbours, . . . When a man foresees that harm will result from his conduct, the principle which exonerates that harm will result from his conduct, the principle which exonerates him from accident no longer applies, and he is liable. But, as has been shown, he is bound to foresee whatever a prudent and intelligent man would have foreseen, and therefore he is liable for conduct from which such a man would have foreseen that harm was liable to follow.

Holmes, *The Common Law* 146-7 (1881).

existence of the neurosis or prolongs its cure.<sup>41</sup> The subject is very nebulous and not enough is known about the effects of different modes of settlement to propose any one specific mode of settlement as most conducive to rehabilitation.

In a discussion of rules laid down by the courts, the effect of which is to deny recovery unless the case conforms to the rules, one should have recourse to the reality at which the rules are aimed. If the rules do not appear meaningful in relation to that reality then they have lost contact with, to paraphrase Holmes, "that lifeblood of the law, experience." Do the requirements laid down by the courts in compensation cases involving mental disabilities have meaning in relation to the psychological reality? Some courts allow compensation where there is a physical impact to the body of the claimant or physical injuries develop and a neurosis results. Other courts will allow it where a single psychological element or mixture of elements results in a neurosis. Still others will allow compensation where the ordinary stresses of the job bring the claimant to the point of a mental collapse. Do these distinctions have any correlative categories in psychiatry? Does the existence of an impact or single shocking event make the resulting neurosis more connected with the employment situation than ordinary stresses of the job resulting in a neurosis? Psychiatry would seem to say no. In the words of one text writer, "there is frequently no correlation between the intensity of the trauma and the resultant neurosis. In fact, it is said that the neurosis is more likely to occur when there has been no real physical injury. Particularly severe traumatic reactions may follow accidents in which someone else was killed or badly hurt and the patient himself escaped injury."<sup>42</sup>

It is more likely that a particular occurrence at work merely serves as an excuse for an inner conflict to attach to that occurrence unrelated to the objective intensity of that occurrence. This would seem to dispel the distinction between a single mental shock and prolonged stress as to one being more related to the job than the other. To quote from Freud again: "Supposing we do trace back a typical symptom in a case of hysteria to an experience or to a chain of similar experiences (for instance, an hysterical vomiting to a series of impressions of a disgusting nature), it will be confusing to discover in another case of vomiting an entirely dissimilar series of apparently causative experiences. It almost looks as though the historical factors revealed by analysis were but pretexts, seized upon by an inner necessity, when opportunity offered, to serve its purpose."<sup>43</sup> Thus, it appears that the external nature of the experience, whether it is a physical impact, an intensive mental shock, or horror does not have a determinative effect upon the onset of a neurosis. The slightest incident may be the cause of a complete mental collapse. If this is the true position of psychiatry, then compensation should be granted if the work situation precipitates a neurosis and this is established by competent medical testimony. It

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41. *Hood v. Texas Indemnity Co.*, 146 Tex. 522, 209 S.W. 345 (1948); see also Sullivan, *Conceptions of Modern Psychiatry* (1947).

42. Gultmacher and Weihofen, *supra* note 13 at 45.

43. Freud, *A General Introduction to Psychoanalysis* 240 (1935).

## *WORKMEN'S COMPENSATION*

matters not that the claimant was predisposed to mental breakdown, for an employer, under prevailing doctrine, must take the claimant as he finds him.

Is there not an element of arbitrariness in saddling the employer with the cost of a neurosis precipitated by any trivial happening at the employment situation? If the court's distinctions between impact and mental shock cases are not meaningful, should some other limiting criteria be used besides the precipitating event test? It does not seem unjust to place the burden of risk on the employer even though the claimant's early experiences predisposed him to a neurotic breakdown. Even in this era of increased leisure, the individual's life is still predominantly organized around his occupation. In the absence of an all-pervasive scheme of social legislation covering medical care and disability benefits for a disability no matter how incurred, the compensation system appears as the only available vehicle upon which to place much of the burden. Most industries can pass the cost of such compensation on to the consumer. Given the conservative temper of our present era, sweeping legislation setting up a compensation scheme for everybody is out of the question. Without a political solution of a comprehensive nature, it is not arbitrary or unjust to place the burden of disabling neuroses upon the Workmen's Compensation system if it is proved that the work situation precipitated it.