

Preface

In the short span of a little more than one century, the concept of “Workers’ compensation Benefits” became known to all, but only a few really understood what it was all about. Many working people, unless they have received benefits, have little knowledge of entitlement or what is required to file for benefits. After an injury that occurs from an accident on the job, both the employer and the injured employee need to know about Workers’ Compensation and Disability Benefit laws and benefits.

Injured workers who sustain compensable injuries in the course of their employment are entitled to medical and wage replacement that may be the difference of being, or not being, able to feed a family and pay the rent. This is in addition to the medical care and treatment necessary to attend to the injury and return the injured employee back to work.

Employers once opposed the concept of providing benefits (paying money and medical bills) to an employee when they had no active part in causing the injury. They would not readily accept being required to pay without being at fault in causing the accident or injury or the resulting disability. However, the vision of the authors of the law, that it would persevere and survive, proved true.

The bargain that was made between employers and employees (industry and labor) turned out to be fairer than employers thought possible. The exclusive remedy of workers’ compensation benefits available to an employee against its employer for a compensable injury is thought by some today to even be a better bargain than first conceived. The exposure an employer has to liability for injury to an employee that is caused by the negligence of the employer could be many times that of the benefits provided by the Workers’ Compensation Law.

The volume has its focus on the New York statute, case law, and rules. However, federal law is discussed because of its interaction and relation to the state law, as well as its coverage of those workers who are in federal government employ and are entitled to some form of federal compensation benefits.

The agency that oversees the New York administration of the Workers’ Compensation Law, as well as the Disability Benefit and Volunteer Firefighters Benefit Laws, is the state Workers’

Compensation Board. It is a state agency and provides the administrative tribunal for the adjudication of contested claims by injured workers for benefits.

The Workers' Compensation Board is responsible for the fair, orderly, and expeditious administration and processing of claims. It has developed a computerized system that has almost eliminated the need for paper files. Hearings can now be held throughout the state without the delay caused by the former need to transport or produce the case file at each hearing. The is not to suggest that the claims made are normally disputed. Actually, most claims are not challenged, although an award is made in every case that is compensable.

The law has proven to be able to change with the times. Many dramatic changes have occurred in the law. When it was argued that only a claimant with a physical injury was entitled to benefits, the law redefined itself to accept purely mental injuries occurring from purely mental causes, without any physical injury. Even the exclusive remedy doctrine, the very lynchpin of the bargain between industry and labor that permitted the law to be enacted, came under assault and survived.

Many areas of law practice are often affected by the Workers' Compensation Law. It is also a constantly changing field of law. The law of negligence and workers' compensation has been significantly affected by cases such as *Dole v. Dow Chemical Co.*, 30 N.Y.2d 143, 332 N.Y.S.2d 382, 282 N.E.2d 288, 53 A.L.R.3d 175 (1972), and it makes my point. As a result of that case, the distinction between active and passive negligence was abolished in New York State. Previously, it had been New York rule that a passive tortfeasor could implead an active tortfeasor for indemnity, whereas an active tortfeasor could not implead either a passive tortfeasor or another active tortfeasor. In the case of *Putvin v. Buffalo Elec. Co.*, 5 N.Y.2d 447, 186 N.Y.S.2d 15, 158 N.E.2d 691 (1959), the Court of Appeals restated the old rule: "Conversely, where the defendant is alleged to be guilty only of active as distinguished from passive negligence, impleader is improper as a matter of law, since an actively negligent tort-feasor is not entitled to indemnity." In that case, an explosion took place on the premises of the third party defendant, a corporation who owned and operated a chemical plant. The plaintiffs were employees of the corporation at the time of the explosion. In an action by an employee's widow, she alleged that her husband was injured and died from the injuries as a result of the negligence of the defendant (a contractor, not the employer). The contractor was alleged to be guilty of active, as distinguished from passive, negligence, and the Court of Appeals held that the defendant contractor could not implead the third party defendant (the employer) as a matter of law, since in actively negligent tortfea-

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sor was not entitled to indemnity. *Dole v. Dow* changed all this.

In the *Dole* an employer used a chemical manufactured by Dow to fumigate a grain storage bin. Shortly after the fumigation, the employer directed the plaintiff's husband to clean out the bin. Upon entering the bin, the husband was overcome and died from the poisonous fumes. The widow sued Dow upon the theory that it had failed to properly label the fumigant and to properly issue instructions upon its use. Countering that it had properly labeled the poisonous fumigant and had issued appropriate instructions, Dow sought indemnity from the employer by impleading the employer upon the theory that it was his negligence that caused the death of the employee in that the employer either did not read the instructions or did not follow them.

Under the old rule, the impleader was improper, since Dow was charged with active negligence. The court held that the active-passive distinction had become a matter of semantics and ruled that where two parties joined in causing an injury their relative degrees of fault are questions of fact for a jury to decide. To put it another way, damages could be apportioned in accordance with the jury's findings of the degree of negligence of the various defendants, including the employer who was impleaded.

The court in *Dole* held, "where a third party is found to have been responsible for a part, but not all, of the negligence for which a defendant is case in damages, the responsibility for that part is recoverable by the prime defendant (the contractor) against the third party (the employer).

In both *Putvin* and *Dole*, the injured employee's exclusive remedy against his employer was to claim workers' compensation benefits.

In *Putvin*, the employer was protected from being impleaded into an indemnity suit by defendant. As a result of the *Dole* decision, that protection was abolished.

In 1974, the New York State Legislature enacted Article 14 CPLR sections 1401 through 1404 inclusive, codifying the *Dole* decision by providing contribution equitably apportioned in accordance with the relative culpability of each person liable for the same personal injury or wrongful death.

Although the *Dole* case, which governed apportionment by law among tortfeasors, created new rights for third party defendants, it has little or no effect on plaintiffs. Plaintiffs' rights in recovering remain unchanged. However, where the plaintiff was unable to sue an employer tortfeasor, because of the exclusivity of the remedy of the Workers' Compensation Law, such tortfeasor (the employer) could be found culpable under a *Dole* apportionment as a third party defendant. It was not until 1996 that efforts to restore the breach in the exclusive remedy doctrine

were addressed by the legislature.

The 1996 legislature not only addressed the *Dole* issue but many other problems. Fraud in the system, which results in a cost that diminishes the total dollars available to pay benefits, was attacked with felony penalties and enhanced supervision.

Benefit levels are reviewed periodically and have risen over the years. The indemnity benefits must be sufficient to enable injured workers and their families to live with some degree of comfort and dignity and not as wards of society. Never again will such an injured employee be dependent upon a suit against an employer in which fault and negligence of the employer were the alleged cause of a disabling injury or death. Workers' compensation is a right of all employees injured while performing the service required by the employment; it is intended to be given and received without civil suit or animosity.

There is little doubt that the law relating to workers' compensation benefits will continue to evolve through the amendments to the statute and the decisions of the courts and tribunals. This volume with its supplements will attempt to keep up with many of these changes. Where there is reference to data, statistics, or timelines which may change more frequently than can be reported in this volume, the reader is cautioned that in such cases the data is for demonstrative purposes and the current numbers should be confirmed.