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ACCIDENT INSURANCE FOR WORKINGMEN

REUBEN McKITRICK

MADISON, WISCONSIN
JULY, 1909

INTRODUCTION

This little summary is gotten out to aid the Wisconsin Special Committee on Industrial Insurance in its work. We hope it will be found useful to librarians and others who seek information on this great subject. It is not complete in any sense—the subject is too great. It merely summarizes some of the efforts along the line of casualty insurance in America and foreign countries.

In this connection Bulletin No. 74 of the United States Bureau of Labor will be found especially useful, as it contains a summary of all such laws in foreign countries.

CHARLES MCCARTHY,
Chief Legislative Reference Department
Wisconsin Library Commission.

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Prepared with the co-operation of the Political Science Department of the University of Wisconsin

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INTRODUCTION

The one quality of supreme importance in all plans and methods of insurance is solvency, the ability to pay the benefits agreed upon. Some governments engage in the insurance business, and in such instances the credit of the government stands as a guaranty for the payment of the policy claims. This is state insurance. The more usual method of conducting the insurance business, however, is through the medium of private corporations under government supervision. All the governments of the progressive countries in which insurance is very extensively carried on, have worked out certain tests whereby they are able to ascertain the ability of companies operating under their jurisdictions to fulfill the obligations assumed. These tests are as varied in their character and rigidity as the different states and countries in which they are applied, but they usually take the form of prescribing a regular procedure for incorporation; of requiring the creation and maintenance of certain capital accounts and reserve funds; of prescribing the different kinds of securities in which funds may be invested; of establishing a standard by which various occupations and industries may be classified according to the hazard involved; of providing the manner in which premiums and contributions shall be determined and collected; of fixing regular periods in which examina-

tions of accounts shall be made and statements rendered; and of determining the manner in which impairments of capital or deficiencies in assets shall be made good. These legal regulations are the expression in statute form of the principles and business methods adopted by strong private companies, and are very largely based on their previous experience. The problem in all efforts to insure workingmen against accidents is to devise a method which will so fit into the economic situation as not to be too burdensome on either the employer or the employee and still be financially sound. This bulletin is the result of an effort to collect and arrange in convenient form the various tests above referred to, and to indicate the possible sources of material for a comparative study of the various methods of insurance now in use for the benefit of injured workmen. No pretense is made to an exhaustive or even a complete study of this subject, but the primary purpose has been merely to outline the field from the standpoint of those essentials required in state supervision, and to suggest sources of information on particular points.

ECONOMIC AND LEGAL DEMAND

Purpose

The primary purpose of accident insurance for workingmen is to provide a certain and adequate return for the economic loss of wages due to personal injury in the course of employment.

Personal Accident Insurance

The common law doctrine provides no legal protection for workmen except in cases of negligence on the part of employers.[1] To a limited extent this rule is being modified in certain states by statutory provisions which increase the responsibility of the employer for accidents, especially in so far as they may be due to the negligence of a fellow servant.[2] The lack of legal protection and the personal care for themselves and those dependent upon them prompt many individual workmen to insure themselves against accidents. This gives rise to a demand for personal accident insurance which is supplied by legal reserve companies, assessment and fraternal companies or trade unions which conduct a benefit department on the assessment plan.

[1] Black—Law and Practice in Accident Cases, p. 71.

[2] Clark—Employers' Liability in United States. Bulletin No. 74, U. S. Bureau of Labor, p. 107.

Employers' Liability Insurance

All employers are liable under the common law for injuries to their workmen which are due to their own negligence.[1] In some states the legal responsibility of employers in certain industries is considerably increased by statutory abrogation of the fellow-servant rule, and modification of the laws of comparative negligence and assumption of risk.[2] In some foreign countries particularly England and New Zealand employers are made legally liable for all accidents regardless of negligence.[3] The payment of a damage suit or the payment of a personal injury claim in lieu of a suit may and frequently does place the finances of an employer in a critical condition. In order to avoid such a contingency many employers insure themselves against their legal liability for injury to their employees. This gives rise to a demand for what is known as "Employers' Liability" insurance which is supplied by legal reserve insurance companies organized on either the stock or mutual plan.

Workmen's Collective Insurance

Some employers out of motives purely personal prefer to insure their employees against accident rather than to insure themselves against legal liability for the accident should it occur. In that event the employers usually obtain a policy which covers all the workmen in the plant and pay the premium for it but they frequently share the cost of such insurance with their workmen by deductions

[1] Black—Law and Practice in Accident Cases, p. 71.

[2] Clark—Employers' Liability in United States. Bulletin No. 74, U. S. of Labor, p. 114, et seq.

[3] English Workmen's Compensation Act. Bulletin No. 74, U. S. Bureau of Labor, pp. 144-158.

from the pay roll.[1] In some foreign countries, notably Germany and Austria, employers in certain industries are required by law to insure their employees against accident rather than to insure themselves against legal liability for the accident.[2] This situation gives rise to a demand for what is known as "Workmen's Collective" insurance which is furnished both in the United States and in foreign countries by legal reserve companies organized on the stock or mutual plan.

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[1] Henderson—Industrial Insurance in U. S. p. 177.

[2] See Accident Insurance Laws of Austria and Germany, 17 Ann. Rpt. N. Y. Bur. of Labor. 1899. pp. 815 and 977.

DEFINITIONS AND LEGAL DISTINCTIONS

Insurance Defined

Insurance has been defined in general terms in common law as a contract by which one party undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event.[1] This definition has been written verbatim in the statutes of California, North Dakota and South Dakota.[2] Other definitions meaning practically the same though expressed in different form may be found in the statutes of Alabama, Kentucky, Massachusetts, Minnesota, Mississippi, North Carolina, Tennessee, Texas and Washington.[3] Another common law definition has been stated as follows: "Insurance is a contract by which one party, in consideration of a price paid to him adequate to the risk, becomes security to the other that he shall not suffer loss, prejudice, or damage by the happening of the perils specified to certain things which may be exposed."[4]

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[1] Cooley—Briefs on Insurance Law. vol. 1. p. 4.

[2] Cal. C. C. (1906) Sec. 2527; N. D. C. C. (1905), Sec. 5890; S. D. C. C. (1908), Sec. 1793.

[3] Ala. C. C. (1896) Sec. 2575; Ky. St. (1903) sec. 641; Mass. L. of 1907, ch. 576 sec. 3; Minn. R. L. (1905) sec. 1596; Miss. Code (1906) sec. 2563; No. Car. R. L. (1905), sec. 4679; Tenn. Code (1896), sec. 3275; Tex. R. S. (1895) Art. 3096a; Wash. Annotated C. & St. (1897) sec. 2838.

[4] 22 CYC 1384.

From an economic point of view insurance may be defined as a scientific method whereby the burden of a particular loss or damage is distributed throughout a group of persons exposed to similar loss or damage, and associated for the purpose of assuming that burden.

Plans of Organization

The business of insurance is usually conducted through one of two general plans of organization, viz: a state insurance fund or an incorporated company.

Insurance in a State Fund. Some foreign countries have organized a state insurance department in which a person or firm may become insured just as in an incorporated company. State officials collect and administer the funds and the state guarantees the payment of policy claims in case of a deficit in the cash funds of the insurance department. A good illustration of state insurance is found in New Zealand where the State Insurance Department is organized into three branches, viz: fire, accident, and life; and furnishes insurance on strictly business principles in competition with incorporated companies.[1] Norway conducts a casualty insurance business through its State Insurance office. In this instance the state pays all the expenses of the central office, half the expenses of the local branches and meets deficits.[2] Government insurance through the post office of England is also another illustration of state activity along this line.[3]

Insurance in Incorporated Companies. The more usual method of conducting insurance is through the medium of

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[1] Reeves, W. P. North American Review, January, 1906: N. Zealand Laws. (1899) No. 20.

[2] Bulletin No. 34, N. Y. Bur. of Labor. (1907) p. 360.

[3] For the law relating to government insurance through the Post Office see 45 and 46 Vict. c. 51. For statement and statistics of results of this insurance see Henderson—Industrial Insurance p. 167.

incorporated companies. Under this system the state supervises and regulates the insurance business but does not conduct it. Insurance corporations are formed under general laws, which collect, administer and disburse all the funds and assume all liability for the payment of policy claims and expenses in case of a deficit in the cash funds.

The state fixes a standard of solvency by requiring companies to have certain amounts of capital, to maintain certain reserve funds, to invest their assets in legally authorized securities, to render annual statements and to comply with certain other legal regulations. It thereby protects the policy holders from an improper conduct of the business through its lawful agents, the insurance corporations. This is the method adopted by all of the United States, by England except in case of life insurance through the post office, and by Austria and Germany.

Stock Companies. The Missouri statutes[1] define an insurance company organized on the stock plan as one which is owned and controlled entirely by its stockholders, and in the management of the profits of which the policy holders are not allowed to participate. It is pointed out in common law that a stock corporation is organized for the profit of its stockholders. "Its policies are issued solely upon the credit of its capital stock to persons who may be entire strangers to the corporation, who acquire by reason of their policies no right of membership and no right to participate in its profits, and who subject themselves to no liability by reason of its losses."[2] In all these particulars stock companies differ from those organized on the mutual plan. The insured have an interest in stock companies,

[1] Statutes (1905), sec. 7853.

[2] 21 Am. & Eng. Encyc. of Law 254.

however, even though not entitled to share in the profits, nor responsible for deficits, because accumulations from their premiums are in the company's keeping as reserves.[1]

Mutual Companies. "A corporation doing an insurance business, which has no capital stock and in the management and profits of which the policy holders alone participate, is a mutual company."[2] The essential features of a mutual company are that all policy holders are members of the company, that the companies are required by law to have a minimum membership, that the funds are made up from cash premiums and assessable premium notes, and that the policy holders participate in the profits.[3] Certain funds of a mutual company in Illinois have been defined by statute as the capital of the company,[4] and in a few other states mutual companies have what is known as a guarantee capital,[5] but a guarantee fund or the payment of cash premiums does not change the character of a mutual company to that of a stock company.

Assessment or Co-operative Companies. An assessment or co-operative company is one which contracts to pay a benefit to the designated beneficiary upon the death or physical disability of the insured, which benefit is conditioned not upon fixed payments, but upon the collection of assessments from time to time upon persons holding

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[1] Dawson, The Business of Life Insurance, p. 119.

[2] Mo. A. S. (1906) Sec. 7853.

[3] 22 CYC 1410; Spruance v. Farmers' etc. Ins. Co. 10 Pa. 285; 21 Am. & Eng. Encyc. of Law, 253; Cooley—Briefs on Ins. Law, v. 1, p. 51; Planters Ins. Co. v. Comfort, 50 Miss. 662; Mulroy v. Knights of Honor, 28 Mo. App. 463.

[4] Ill. Laws of 1905, p. 293, Sec. 9.

[5] Colo. L. of 1907, c. 193, sec. 25; Cal. C. C. (1906) secs. 437-9; Pa. Ins. Law (1905), pp. 28-9; Mich. Ins. Law (1907), sec. 13-16.

[6] Cooley—Briefs on Ins. Law v. 1, p. 51. See also Dawson, The Business of Life Insurance, chapters 14 and 15.

similar contracts.[1] Such companies are usually organized on the mutual basis and exist solely for the benefit of the members and their beneficiaries and not for profit. In twenty states they are required to maintain an emergency fund[2] and in six others are permitted to do so.[3] In a few states the maximum benefit is limited to the amount that can be realized from a periodical call or assessment.[4]

Fraternal Beneficiary Associations. A Fraternal Beneficiary Association is usually defined in the statutes as one which is organized and conducted for the sole benefit of its members and not for profit; which has a lodge system with a ritualistic form of work and a representative form of government, employs no paid agents except in the organization and supervision of the work of the local lodges and pays its losses and expenses and accumulates its reserves, if any, from voluntary donations, dues or assessments. The lodge system with the secret ritual and the representative form of government are the characteristics of the fraternal beneficiary association which

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[1] cf. definitions in Ala. C. C. (1907) sec. 3564; Cal. C. C. sec. 453d; Colo. L. of 1907, c. 193, sec. 71; Ill. L. of (1893) p. 117, sec. 11; Ind. Burns A. S. (1908) sec. 4748; Ia. Code, (1897) sec. 1784; Me. R. L. (1903) p. 497; Mass. R. L. (1902) c. 120, sec. 1; Minn. R. L. (1905) sec. 1639; Mo. St. (1906) sec. 7991; Mont. C. C. (1895) sec. 721; N. Y. R. S. (1905) v. 2, p. 1835; R. S. Ins. Law (1907), p. 43; Tenn. L. of 1897, c. 127; Va. L. of 1906, p. 138; Wis. L. of 1907, c. 546.

[2] Ala. C. C. (1907) sec. 3588; Ark. Kirby's Digest (1904) sec. 4348; Cal. C. C. 453h; Ill. R. S. (1905) c. 73, sec. 237; Ind. Burns A. S. (1908) sec. 4749; Kas. G. S. (1905) sec. 3644; Ky. St. (1903) sec. 662; Me. R. L. (1903) sec. 498; Mass. R. L. (1902) c. 120, sec. 10; Mich. Ins. Law (1907) sec. 94; Minn. R. L. (1905) sec. 1901; Mo. St. (1906) sec. 7905; Mont. C. C. (1895), sec. 724; N. H. L. of 1897, c. 38; No. Car. R. L. (1905) sec. 4792; N. Y. R. S. (1905) v. 2, p. 1888; O. Bates A. S. (1908) sec. 36301; R. I. Ins. Law 1907, p. 45; Tenn. L. of 1897, c. 127, sec. 7; Vt. P. St. (1906) sec. 4771; Va. L. of 1906, p. 147.

[3] Ark. Kirby's Digest, sec. 4348; Conn. G. S. (1902) sec. 3507; Ga. Ins. Law (1905) p. 15, sec. 14; Ind. Burns A. S. (1908) sec. 4751; Ore. St. (1903) sec. 3750; Tex. L. of 1905, c. 125; Wis. L. of 1907, c. 507.

[4] Nebr. Cobbey's G. L. (1907) sec. 6468 and 6471; O. Bates A. S. (1908) sec. 3630; Tex. L. of 1903, c. 111; Va. L. of 1906, p. 150; Wy. R. S. (1899) sec. 3277.

distinguish it from the assessment or co-operative company.[1]

Kinds of Companies

Companies are usually classified in one of two groups, either as assessment companies, or as "old line", "legal reserve" or "level premium" companies, depending upon the manner in which they conduct their business. The terms "old line," "legal reserve" and "level premium" when used in this sense are synonomous and are frequently used interchangeably, but there is a very essential difference between this kind of insurance and assessment insurance.

Level Premium Companies. Level premium insurance may be defined as that insurance which is furnished in return for a periodical fixed premium,[2] payable in advance and based on experience tables without reference to the losses or expenses which may be actually experienced in any particular year, as a price paid for the assumption of risk, and for which the insured is relieved of liability for any assessment to cover unexpected losses or expenses. Level premium companies charge a premium sufficient to maintain such reserves as will enable the company to carry out its own obligations on the basis originally agreed upon and to protect it

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[1] cf.definitions in Ark. Kirby's Digest (1904) sec. 4351; Cal. C. C. (1906) sec. 451; Colo. L. of 1907, c. 193, sec. 73; Conn. G. S. (1902) sec. 3582; Del. Laws, v. 22, c. 99, sec. 6; Idaho C. C. (1901) sec. 2246; Ill. R. S. (1905) c. 73, sec. 258; Ind. Burns. R. S. (1908) sec. 4764; Me. R. S. (1903) p. 500; Md. G. L. (1903) Art. 23, sec. 210; Mass. R. L. (1902) Ch. 119; Mich. Ins. Law (1907) sec. 144; Minn. L. of 1907, c. 321, sec. 1; Miss. Code (1906) sec. 2638; Mont. C. C. (1895) sec. 721; Nebr. Cobbey's G. L. (1907) sec. 6535; N. H. L. of 1895, c. 86; No. Car. R. L. (1905) sec. 4704—7; O. Bates A. S. (1908) sec. 3631—11; Okla. Wilson A. S. (1903), sec. 3236; Pa. Ins. Law (1905) p. 76; So. Car. C. C. (1902), sec. 1830; So. Da. C. C. (1908) sec. 725; Tenn. L. of 1905, c. 489; Tex. L. of 1899, c. 115; Va. L. of 1906, p. 152; Utah. St. (1903), sec. 418; Wash. L. of 1903, p. 145, sec. 1; Wy. L. of 1901, c. 51.

[2] Cooley—Briefs on Insurance Law, v. 1, pp. 54-55.

against unexpected losses and expenses.[1] Mr. Miles M. Dawson, an eminent New York actuary, explains the necessity for these reserves in the following terms: "A level premium, to cover an increasing hazard, converging into certainty of loss, as does a whole life premium, calls for an accumulation of the excess of the premium over the current cost during the earlier years, the drawing back from this accumulation and its interest during the later years and the final application of the entire fund toward paying the insured's own claim whenever his death takes place."[2] Reserves thus set aside constitute the distinguishing characteristic of level premium insurance.[3] Practically all stock companies and such mutual companies as provide in their policies for the payment of fixed premiums contract insurance on the level premium plan and are designated as "level premium" or "old line" companies.

Mutual Benefit Association. Assessment or co-operative companies and fraternal beneficiary associations are usually classified by the courts as Mutual Benefit Associations because they are both organized for the sole benefit of the members and not for profit. Strictly speaking these two classes of companies, frequently known as Mutual Benefit Associations, are the ones which do a purely assessment insurance business and therefore are commonly designated as "assessment companies." The term "Mutual Benefit Associations" may be said therefore to be the more general term used by the courts to include the two

[1] Dawson—Business of Life Insurance, p. 39. In connection with the subject of level premium and assessment insurance a careful study of chapters 3, 4 and 5 in Dawson's Business of Life Insurance will be found helpful.

[2] Dawson—Business of Life Insurance, p. 38.

[3] Dawson—Assessment of Life Insurance, pp. 7 and 8.

forms of organization which do a particular kind of business but not to designate a particular form of organization in itself.[1]

Assessment Companies. Assessment insurance is that insurance which is provided from funds derived from assessments or periodical calls levied to cover a particular loss or the losses and expenses of a particular term. "The predominant and distinguishing feature of all mutual benefit associations is that the payment of losses by death or injury is not by a fixed premium payable in advance, as in the case of ordinary insurance companies, nor by deposit notes, as in the case of mutual companies, but by post mortem assessments, intended to liquidate specific losses, and levied only on surviving members."[2] It is customary, however, among most assessment companies to charge an anticipated assessment in the nature of a more or less regular premium but on the condition that an additional assessment may be charged in case of a deficit. The character of an assessment or co-operative company is not affected by the fact that it may have established and maintains an emergency or guaranty fund to insure the prompt payment of its losses.[3]

Kinds of Insurance

From the standpoint of legal responsibility for protectection against accidents, there are two general kinds of insurance, viz., voluntary and compulsory.

Voluntary. When insurance against accident is provided in the absence of legal obligation to do so, it is said to be voluntary insurance. If such insurance is provided

[1] Cooley—Briefs on Ins. Law, v. 1, p. 54.
[2] Cooley—Briefs on Ins. Law, v. 1, p. 54.
[3] Cooley—Briefs on Ins. Law, v. 1, p. 55.

by the workman himself, it takes the form of personal accident insurance; but if it is provided by the employer for himself it is liability insurance, or if, for his workmen, then it is collective insurance. Throughout all of the United States and in Denmark, France, Great Britain, Greece, Russia, Spain and Sweden, insurance is voluntary.[1]

Compulsory. Compulsory insurance is such insurance against accidents as is required by law. It is collective in form and is usually provided from funds to which both employers and employees contribute. Insurance against accident is compulsory in Austria, Belgium, Finland, Germany, Italy, Netherlands and Norway.[2]

Distinction between Compulsory Insurance and State Insurance. State insurance is insurance which is provided in a fund created by the state and managed by state officials, but compulsory insurance is that insurance which is provided as the result of legal requirement and may be secured in either a state fund or in the funds of incorporated companies.[3] Compulsory insurance, therefore, is not state insurance, but may be insurance required by law in incorporated companies. The accident insurance of Germany and Austria is compulsory insurance, but not state insurance. All accident insurance carried in the Insurance Department of New Zealand is state insurance, but not compulsory insurance. A quotation from the explanation of the German Workmen's Insurance at the Louisiana Purchase Exposition in 1904 by Dr. Ludwig Lass will illustrate this principle: "According to the German sys-

[1] Bulletin No. 34, p. 360 (Chart) N. Y. Bur. of Labor. (1907)

[2] Bulletin No. 34, p. 360 (Chart) N. Y. Bur. of Labor. (1907)

[3] Contrast Accident Insurance Laws of New Zealand (63 Vict. No. 20, 1899) with Accident Insurance Laws of Austria and Germany.

system the productive classes, employers and employees, are—by means of corporate self-administration—exercising social self-help organized on the basis of regulations bearing the character of public law. *Consequently we have not in Germany*, as is often erroneously thought abroad, *an insurance by the state, but an insurance by the interested parties themselves, through the medium of vital corporations*,* which are standing between the state and the individual and which are charged with the execution of the insurance."[1]

Insurance on Life

The different kinds of insurance on human life have been classified according to the circumstances which make a benefit payable as life insurance, accident insurance and health insurance.

Life Insurance. Life insurance is that kind of insurance which involves the payment of money or other thing of value to families or representatives of policy holders, conditioned upon the continuance or cessation of human life, or involving an insurance, guaranty, contract, or pledge for the payment of endowments or annuities.[2]

Industrial Insurance. A kind of insurance has grown up in the United States and England in the past fifty years, as a branch of general life insurance, which is known as industrial life insurance, because of its peculiar nature and methods of business. When defined in the statutes the term industrial life insurance is generally used to mean that insurance for which the level premiums are regularly

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* The *italics* do not appear in the original copy.

[1] Lass—German Workmen's Insurance, pt. I, p. 15.

[2] Statutes of Texas, 1897—Art. 3096a.

payable and collectable weekly or bi-weekly, and the policies or benefit certificates are for sums of not more than five hundred dollars on a single life and may provide a weekly benefit for disability caused by sickness or accident not greater than twenty dollars per week.[1] Industrial insurance is accident and health insurance adapted to the special needs of workingmen on which the premiums are collected at frequent intervals. When used in this sense the term "industrial insurance" is to be distinguished from the same term which is frequently used to mean industrial life insurance.

Accident Insurance Accident insurance is that insurance which involves the payment of money, or other thing of value to families or other designated beneficiary of policy holders, conditioned upon the injury, disablement or death of the person insured resulting from travel or general accidents by land or water. In general this includes all personal injuries of whatever nature resulting from external, violent and accidental causes, and differs from life insurance only in that a policy claim accrues from a more limited number of causes.[2] In certain instances of accident insurance for workingmen the benefit may become payable only as the result of accidents which occur in the course of employment.

Health Insurance. Health insurance is indemnity for loss on account of sickness.[3] Closely allied to health insurance is the indemnity for old age which is provided for by many mutual benefit associations.[4]

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[1] Laws of Ga. 1905, c. 59; Mo. Stat. (1906), sec. 7943.

[2] Cf. Statutes of Texas, 1897, Art 3096a. The Fidelity & Casualty Co. of N. Y. Its History, Standing, and Business Methods. 1905. p. 10.

[3] Cooley—Briefs on Ins. Law, v. 1, p. 5.

[4] Cf. Statutes of Ark. Kirby's Digest, (1904) sec. 4351; Ill. R. S. (1905) c. 73, sec. 258; Nebr. Cobbey's C. L. 1907 sec. 6636; and definitions of fraternal beneficiary associations citations for which are given on page 19.

Pensions—Annuities—Indemnities. In the current discussions of insurance for workingmen the term "pension" "annuity" and "indemnity" are frequently used in the same sense and when so used they severally mean the payment of fixed amounts to a beneficiary throughout a period of years instead of one lump sum when the policy becomes a claim. The payments may be made weekly, monthly, quarterly or semiannually as may be agreed upon as well as annually. This meaning is not in strict accord with the technical definitions of these terms.[1]

Policies

An insurance policy is a contract in which it is agreed that the occurrence of particular circumstances or events shall make a benefit payable. Policies may be classified according to the nature of the agreement made as personal accident, employers' liability or workmen's collective policies.

Personal Accident. A personal accident policy is one which covers the individual against accidents happening to himself.[2]

Employers' Liability. An employer's liability policy is one which insures an employer against claims that may be made upon him because of injuries suffered by his employees and for which he may be liable by reason of some act or default.[3] It relates to a class of personal injuries for which some one other than the injured person is responsible, and who is legally bound to make compensation for the loss sustained.[4]

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[1] For an illustration of use above referred to see Willoughby—Workingmen's Insurance, pp. 70, 71 and 104.

[2] cf. The Fidelity & Casualty Co.—Its History, Standing and Business Methods—1905, p. 12.

[3] The Fidelity & Casualty Co.—Its History, Standing and Business Methods—1905, p. 12.

[4] Dunham, Yale Insurance Lectures, v. 2, p. 236.

Workmen's Collective. A workmen's collective policy is one which includes all the employees of a firm or corporation in a single contract and insures them against loss by reason of accident or accident and sickness. "Workmen's collective insurance is wholesale insurance, the policy running to the employer, and the protection thereunder to the workmen whether the employer be legally liable or not." The premium for this class of policies is based on the number of employees, the hazard of the occupation and the amount of wages,[1] and is usually paid by the employer, though he may share it with his workmen by deductions from their wages.

Funds

In general all that part of the income of an insurance company which is not used to meet current losses and expenses is credited, according to well established principles of business, to one or more of the reserve funds whence it becomes a liability of the company and is invested according to law for the security of policy holders. The reserve funds to which it may be credited have been named according to the purpose which they serve. The remainder of the income after these reserves have been set aside constitutes profits.

Reinsurance Reserve. Theoretically a reinsurance reserve is a fund set aside from premiums collected sufficient in amount to enable a company to transfer or reinsure all its outstanding, unexpired risks in some other solvent company or to settle the claims that become payable thereon as they arise.[2] Such a reserve can be computed according to scientific principles and is required by law to be main-

[1] Henderson—Industrial Insurance. p. 177.
[2] Dunham—Yale Insurance Lectures. p. 222.

tained by all legal reserve or level premium companies. It has been judicially described as a fund which must be equal in amount at all times to the aggregate policy liabilities at their then present value. It is created to secure these liabilities, and is from that circumstance impressed in a certain sense with an equity in favor of the holders of policies.[1] This fund is also known as the "premium reserve."

Liability Reserve. The liability reserve is a special fund which employers' liability companies are required by law in some states to set aside as security for obligations accrued but unpaid.[2] These claims accumulate because of

[1] New Haven Trust Co. v. Gaffney, 47 Atl. 769; 73 Conn. 480.

[2] The technical statement of the rule for computing this reserve as it appears in the New York Statutes is as follows: (Revised Statutes and General Laws, v. 4, Sup. p. 426): In estimating the condition of any casualty insurance corporation, under the provisions of this chapter, the superintendent shall allow as assets only such investments as are authorized by the existing laws of this state, at the date of its investigation; and shall charge as liabilities, in addition to the capital stock, all outstanding indebtedness of the corporation, and the premium reserve on policies in force, equal to the unearned portions of the gross premiums charged for covering the risks, computed on each respective risk from the date of the issuance of the policy. There shall also be charged as a liability to each company which undertakes or writes insurance under subdivision three of section seventy of this act, whether organized under this or any other state or country, a further reserve as hereinafter provided. For the purpose of computing said reserve, each such company which has been engaged in liability underwriting for ten years or more, shall, on or before the first day of October in each year, state in writing to the superintendent of insurance its experience in the United States, under all forms of liability policies, each year separately according to the calendar years in which the policies were written, during a period of five years commencing ten years previous to the thirty-first day of December of the year in which the statement is made, in the following particulars, namely: The number of persons reported injured under all of the forms of liability policies whether such injuries were reported to the home office of the given company or to any of its representatives; the amount of all payments made on account or in consequence of injuries reported under such policies; the number and amount, separately, of all suits or actions against policy holders under such policies which have been settled, either by payment or compromise; both of the above amounts to be ascertained as of date of the thirty-first day of August of the year in which the statement is made, and to include in the case of suits all payments made on account or in consequence of the injury from which the suit arose, whether prior to or later than the date at which the suit was brought. Each such company shall thereupon reserve upon all said kind of policies, irrespective of the date at which the policies were issued (1) for each suit or action pending, on injuries reported prior to eighteen months previous to the date of making the statement, whether such injuries were reported to the home office of the given company or to any of its representatives, and which is being defended for or on account

the time required for adjustment and settlement or for litigation and they are no longer protected by premium reserve because the insurance is not in force, since the policy becomes a claim against the company as soon as the injury occurs.[1]

Contingency Reserve or Surplus. A contingency reserve or surplus is a fund which is set aside after the reinsurance reserve has been provided for to meet unexpected losses and expenses.[2] The reinsurance reserve is computed on the basis of experience for a period of years. It is, therefore, based on averages, and in normal conditions a company would be financially sound with no other reserve than its reinsurance reserve. But in order

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of the holder of any such policy the average cost thereof as shown by said experience, and (2) for injuries reported under such policies at any time within eighteen months, whether such injuries were reported to the home office of the given company or to any of its representatives, the average cost for each injured person as shown by said experience. From the sum so ascertained the company may deduct the amount of all payments made on account or in consequence of said injuries reported within eighteen months, this amount to be taken as of the date at whith the statement is made. Any company which now issues, or shall hereafter issue, liability policies as aforesaid, and which has not been engaged in liability underwriting for ten years, shall nevertheless, until such times as it may be liable to state its experience of the period hereinbefore required, make and maintain a reserve upon all said kind of policies, irrespective of the date at which the policies were issued, determined as follows: (1) for each suit or action pending on injuries reported prior to eighteen months previous to the date of making the statement, whether such injuries were reported to the home office of the given company or to any of its representatives, and which is being defended for or on account of the holder of any such policy the average cost thereof as shown by the average of said experience of all other companies stated as required by this section, and (2) for injuries reported under such policies at any time within eighteen months, whether such injuries were reported to the home office of the given company or to any of its representatives, the average cost for each injured person as shown by the average of said experience of all other companies stated as required by this section: which average costs for suits and for injured person shall be furnished by the superintendent of insurance to each such company on or before the first day of December, in each year. From the sum so ascertained each such company may deduct the amount of all payments made on account or in consequence of said injuries reported within eighteen months, this amount to be taken as of the date at which the statement is made.

For other statements of the rule by which this reserve is computed consult Ala. C. C. (1907), sec. 4555; Cal. L. of 1906, Ex. Sess. c. 119, sec. 602a; Conn. L. of 1905, c. 272; Ill. L. of 1905, p. 288, sec. 12a; Mass. L. of 1907, c. 576, sec. 11; Mich. Ins. Law, (1907) sec. 426.

[1] Dunham. Yale Insurance Lectures, p. 245.

[2] Dunham—Yale Insurance Lectures, p. 223.

to guard against exceptional losses, some companies set aside a special fund before distributing profits, which is known as the contingency reserve or surplus. This reserve is not required by law but it is maintained by every conservative company as a safeguard against emergency.

Reserve or Emergency Funds. Reserve or emergency funds is the term applied to funds set aside by mutual benefit societies in order to enable prompt payment of policy claims in lieu of an assessment. They are required by law in some states to be maintained by this class of companies; in other states their maintenance is permissible but not obligatory.[1]

Profits. "Profits" is a term applied in the statutes of a number of states to that portion of the funds of an insurance company not required for the payment of losses and expenses, nor set apart for any other purposes allowed by law.[2] The term "profits" represents a definite concept in insurance law, for a large number of states specify that dividends may be declared only from profits, and that these profits must be estimated according to statutory rule.

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[1] Citations to statutes in which the term reserve or emergency funds is used will be found under the head of reserves for Assessment Companies and fraternal beneficiary associations, pp. 40 and 44.

[2] Typical definitions will be found in the following citations: cf. Laws of Colo. 1907, ch. 193, sec. 59; Laws of Mass. 1907, ch. 576, sec. 1; Laws of Minn. 1907, ch. 321, sec. 1; R. S. of Texas 1897 Art. 3096a.

ANALYSIS OF BUSINESS METHODS

Stock Companies

Incorporation. Any number of persons, though usually not less than three or five may form an insurance corporation under general law on the stock plan. The usual requirements for this class of corporations are that a certified statement including the name of the proposed corporation, the names of its incorporators who must be stockholders, its by-laws, the particular kind of insurance to be transacted and the amount of capital stock, must be filed with the insurance commissioner or the secretary of state. When the capital stock or such a portion of it as is required by law, has been paid in and doposited with the state treasurer or insurance commissioner if such deposit is required and the insurance commissioner is satisfied that the proposed corporation has complied with the law in all other respects, a license is granted and the new corporation may issue policies.

For companies which transact a general accident or employers liability business the amount of capital stock required is $100,000 in 32 respective states.[1] Florida, Indi-

[1] For general provisions relating to capital and incorporation see Ala. C. C. (1907) sec. 3563; Ariz. R. S. (1901) sec. 784; Ark. Kirby's digest. (1904) sec. 4335; Cal. C. C. (1906) sec. 420. L of 1906, c. 119; Colo. L. of 1907, c. 193 sec. 25; Del. Laws, v. 22 c. 99, sec. 4; Ga. Ins. Law (1905), p. 8; Ill. R. S. (1905) c. 73 sec. 212; Ind. Burns R. S. (1908) sec. 4769; Kas. G. S. (1905) sec. 3520; Ky. St. (1903) sec. 646; La. R. L. (1904) p. 844; Me. R. S. (1903) p. 479; Md. G. L.

ana, Iowa, Kentucky, Mississippi and North Carolina permit the organization of accident companies with a capital stock of $50,000.[1] In many states the capital must be fully paid in in cash before the company may issue policies. In others the company may begin business when one-half or even one-fourth of the capital has been paid in but is required to have the balance fully paid up within one year, otherwise the directors become personally liable for losses on new policies written after that time. The capital stock is invested in interest bearing securities and deposited with a state official or held in trust by the treasurer of the company as a guaranty for the payment of policy claims and is only to be resorted to when the premiums received and the other income of the company are insufficient.[2]

Disposition of Income. The income of a stock company consists chiefly of premiums and interest on investments. In the beginning the principal part of the income is premium payments but since nearly all stock companies adopt the legal reserve or level premium plan, the interest from the investment of reserve funds becomes a factor of increasing importance. This income for any particular year may be considered as constituting one concrete cash fund which is disposed of by the officials of the company according to fixed principles of law and business. Part of it must be used to pay losses on policies as they accrue;

(1904) p. 594; Mass. L. of 1907, c. 576, sec. 32; Mich. Ins. Law (1907) sec. 13-16; Mo. St. (1906) sec. 7957; Mont. C. C. (1895) sec. 652; Nebr. Cobbey's G. L. (1907) sec. 6417 and 6419; N. J. L. of 1907, c. 68 and c. 73; N. Mex. G. L. (1897) sec. 2095; N. Y. R. S. and G. L. (1901) v. 2, p. 1823; N. D. C. C. (1905) sec. 4429; O. Bates. A. S. sec. 3591-2-3; Ore. St. (1903) sec. 3710; Pa. L. of 1905, pp. 24 and 46; So. Da. C. C. (1908) sec. 687 and 690; Tenn. Laws of 1907, c. 450; Tex. R. S. (1897) Art. 30930; Utah St. (1907) sec. 403; Va. Laws of 1908, c. 234; Wash. Laws of 1895, p. 159, sec. 20; W. Va. Laws of 1907, c. 77, sec. 61; Wis. St. (1898) sec. 1947a; Wy. L. of 1903, c. 108.

[1] Fla. G. S. (1906) sec. 2756; Ind. Burns A. S. (1908) sec. 4601-2; Ia. Code (1897) sec. 1691; Ky. St. (1903) sec. 682 and L. of 1908, c. 6; Miss. R. L. (1906) sections 2582-3; No. Car. R. L. (1905) sec. 4727-9.

[2] 22. CYC 1398.

another part goes to pay current expenses which consist chiefly of commissions to agents, license fees, taxes, and incidentals; other parts are distributed to the reserve funds which are required by law or are kept voluntarily by the company as a matter of sound financial policy; and if any part is left it constitutes profits which may be distributed to the stockholders as dividends.

Re-insurance Reserve. After paying current losses and expenses out of the cash funds, the re-insurance reserve is the one which demands immediate attention. All level-premium companies are legally bound to maintain this fund because the premium is collected in advance to pay for insurance throughout a period of perhaps a year. If all of the funds were used immediately without regard to the future, the company might find itself quite helpless at the latter end of the year when some of the policies for which it had been paid in the beginning began to accrue. The rule fixed in the statutes of many states for computing this reserve is to set aside for this purpose fifty per cent of the gross premium income on all policies having one year to run; and a pro rata share of the gross premiums received for all those having more than one year to run.[1] The foregoing rule applies usually to accident and employers liability companies, as well as some others though the per cent. of premiums used is forty in some states instead of fifty.[2] The part thus reserved is arbitrarily de-

[1] cf. Statutes and laws, Ala. C. C. (1907), sec. 4755; Colo. L. of 1907, c. 193, sec. 35; Conn. L. of 1905, c. 272; Ill. L. of 1905, p. 288, sec. 12a; Ky. St. (1903) sec. 690 and 692; Mass. L. of 1907, c. 576, sec. 11; Mich. Ins. Law (1907) sec. 426; Minn. L. of 1907, c. 321; Miss. Code, (1906) sec. 2613; Mont. C. C. (1895), sec. 666, par. 6; N. Mex. Com. Laws. (1897), sec. 2169; N. Y. R. S. & G. L. (1901), vol. 2, p. 1851; No. Car. R. L. (1905), sec. 4704; Penn. Code (1896), sec. 3290; Tex. R. S. (1897), Art. 3050, par. 11; Vt. L. of 1902, c. 76; Wis. St. (1898), sec. 1966—44; W. Va. L. of 1907, c. 77, sec. 61; Wy. L. of 1907, c. 98.

[2] cf. Ia. Code, (1897), sec. 1702; Kas. G. S. (1905), sec. 3531; Nebr. Cobbey's G. L. (1907), sec. 6431; N. D. C. C. (1905), sec. 4427; Wash. L. of 1895, p. 159 sec. 23.

cleared by statute to be the unearned premium; and is supposed to represent that portion of the premiums collected which corresponds to the unexpired portions of the policies in force.[1] This fund is invested in interest bearing securities and is drawn upon to meet policy claims only when the cash funds are exhausted.

Other Reserves and Profits. If the company maintains a contingency reserve or surplus a certain percentage of the income will then be credited to this fund, unless the company transacts employers' liability insurance. In that event it is required by law to provide for its liability reserve according to the method described under that title in a preceding section before setting aside any other funds. Whatever is left, if anything, after retaining cash enough to cover all claims due and unpaid and all interest or other accounts payable to the company but not settled, constitutes profits which may be distributed to the stockholders as dividends by order of the board of directors. The statutes of practically all the states specify that dividends shall not be declared except from surplus profits and that in estimating such profits the reinsurance reserve and cash funds enough to cover all unpaid claims and all interest and other accounts payable to the company but still unsettled must be counted as liabilities.[2]

Capital Impaired—How Made Good. If, after balancing the accounts of a company according to the principles previously set forth, it is found that the liabilities exceed the assets, exclusive of the capital account, to the

[1] See also Dawson, Elements of Life Insurance, p. 84.

[2] For illustration of this point, cf. Cal. C. C. (1906) sec. 429; La. R. L. (1904) p. 849; Md. G. L. (1904) Art. 23, sec. 186; Mass. L. of 1907, c. 576, sec. 11; Minn. R. L. (1905) sec. 1639; Miss. Code (1906) sec. 2587; Mo. A. S. (1906) sec. 7881-2; also sec. 8011; No. Car. R. L. (1905) sec. 4736; O. Bates A. S. (1908) sec. 3602; Tex. R. S. (1897) Art. 3050, par. 11; also Art. 3080a; Tenn. Code (1896) sec. 3309.

extent of twenty per cent in some states, twenty-five in others, the capital is said to have been impaired. In that event the directors are required to make good this impairment within sixty or ninety days by an assessment upon the stockholders or show cause why the company should not be dissolved. Shares of stock, on which such assessment is levied but not paid within sixty days, are forfeitable and may be cancelled and sold by the directors.[1] It is in this essential particular that a stock company differs from a mutual company and an assessment company. An impairment of capital or deficiency in the assets is made good by the assessment of capital stock. In a mutual company such deficiency is repaired by an assessment of premium notes, and in a purely assessment company deficiencies are made good by additional assessments on all surviving policy holders.

Mutual Companies

Incorporation and Capital. Mutual companies are organized and incorporated in a manner similar to that of stock companies, except that in lieu of capital stock the company is required to have a minimum number of policy holders, each of whom is considered a member of the company. The statutes of Kentucky, which are perhaps typical in this respect, make it unlawful for any company organized on the mutual plan to begin business before agreements have been made with at least 200 persons, for insur-

[1] For Statutes relating to impairment of capital see Ala. C. C. (1907), sec. 4553; Ill. R. S. (1905), c. 73, sec. 223; Ind. Burns A. S. (1908), sec. 4642; also 4778 and 4789; Ia. Code (1897), sec. 1731-2; Ky. St. (1903), sec. 695; La. R. L. (1904), pp. 850 and 854; Mass. L. of 1907, c. 576, sec. 8, also 38; Mich. Ins. Law (1907), sec. 426; Minn. R. L. (1905), sec. 1638; Miss. Code (1906) sec. 2584; Mont. C. C. (1895), sec. 673-4; Nebr. Cobbey's G. L. (1907), sec. 6444; N. Y. R. S. & G. L. (1901), v. 2, p. 1834; No. Car. R. L. 1905, sec. 4733; N. Da. C. C. (1905), sec. 4432; Ore. St. (1903), sec. 3714; Tenn. Code (1896), sec. 3286; Texas R. S. (1897), Art. 3050, par. 11; Wis. St. (1898), sec. 1968-66; Wy. R. S. (1899), sec. 3182.

ance on which the premiums shall amount to not less than $100,000 of which $50,000 shall have been paid in cash, and notes of solvent parties, founded upon actual and bona fide applications for insurance shall have been received for the remainder.[1] In Illinois a mutual employers' liability company may be organized but may not commence business until at least 25 applications for insurance have been made; the total amount of insurance applied for must be based on a pay roll of not less than an aggregate annually of $25,000,000 in wages, and the total amount of the premiums on insurance so applied for shall not be less than $15,000, of which 25 per cent must have been paid in in cash and the balance secured by notes on bonds, or both.[2]

In Colorado mutual companies are required to have a guarantee capital of at least $50,000, which consists of personal notes on which a dividend of not more than eight per cent may be paid. This fund is provided purely for guaranty purposes, and cannot be drawn upon except when the cash funds have been exhausted and when the contingent mutual liability of policy holders has been drawn upon and found insufficient to meet the losses of policy claims.[3] In a few other states the maintenance of such a capital account is a matter of discretion on the part of the company. However, a guarantee fund does not change the character of a mutual company to that of a stock company.[4]

[1] Ky. L. of 1908, c. 6.

[2] Ill. L. of 1905, p. 293, sec. 5.

[3] Colo. L. of 1907, c. 193, sec. 59.

[4] Cooley—Briefs on Ins. Law, v. 1, p. 51. For other statutes relating to incorporation and capital requirements of mutual insurance companies, see Cal. C. C. (1906), sec. 437, 8 and 9; Colo. L. of 1907, c. 193, sec. 25; Del. Laws, v. 22, c. 29, sec. 4. Idaho C. C. (1901), section 2225; Ind. Burns, A. S. (1908), sec. 4716; Ia. Code (1897), sec. 1692; Ky. St. (1903), sec. 647; La. R. L. (1904), p. 854; Mass. L. of 1907, c. 576, sec. 34; Mich. Ins. Law (1907), sec. 13 and 16; Mo. A. S. (1906), secs. 7852, 7877 and 7879; Mont. C. C. 1895, secs. 650 and 653; Nebr. Cobbey's G. L. (1907), secs. 6417 and 6419; N. J. L. of 1907, chs. 68 and 73; N. Mex. Comp. Laws (1897), secs. 2095-7; N. Dak. C. C. (1905), sec. 4436; Pa. Ins. Law (1905), pp. 23, 28 and 29; Utah St. (1907), sec. 404.

Accumulation of Funds. Mutual companies may charge and collect upon their policies a full mutual premium in cash or in notes, and may fix in their by-laws the contingent mutual liability of their members for the payment of losses and expenses not provided for by their cash funds.[1] The contingent liability of a member usually cannot be less than a sum equal to and in addition to the cash premium written in the policy. It may be two, three or four times that amount but whatever it is it must be plainly and legibly stated on the policy.[2] It is this fact of fixing the contingent mutual liability of the members which distinguishes a mutual level premium company from an asssessment company. Each policy holder in a mutual company is in reality a stockholder in the company. As a policy holder he has paid a fixed premium for his insurance. As a stockholder he has assumed a definite liability for the solvency of the company and is entitled to share in the profits according to the liability assumed.[3]

Disposition of Funds. Mutual companies are required to maintain a reinsurance reserve of the same character and computed in the same way that stock companies are. Cash must also be reserved to cover unpaid claims and interest and other accounts payable to the company, but unsettled, before dividends may be declared.[4] A fund may be accumulated from the profits and invested according to

[1] For a typical statement of the law in this respect see Mass. L. of 1907, c. 576, sec. 48.

[2] For other laws bearing on this subject cf. Colo. L. of 1907, c. 193, sec. 71; Ill. L. of 1905, p. 293, sec. 6; Ia. Code (1897) sec. 1705; Mass. L. of 1907, c. 576, sec. 50; N. H. P. S. (1901) c. 168; N. Da. C. C. (1905) sec. 4440; Pa. Ins. Law, (1905), p. 68; also 22 CYC 1424.

[3] Cooley—Briefs on Ins. Law, v. 1, pp. 51 and 52.

[4] cf. Ill. L. of 1905, p. 293, sec. 18 and 21; Ind. Burns S. (1908) sec. 4664; Ia. Code (1897) sec. 1714; Mich. Ins. Law (1907) sec. 426; Mo. A. S. (1906) sec. 7881 and 7882; N. Da. C. C. (1905) sec. 4441; N. H. P. S. (1901) c. 168, sec. 5; Pa. Ins. Law (1905) p. 68.

law to take the place of notes given in addition to cash premiums as security for the payment of policy claims. Such notes may not be released until the amount so accumulated is equal to the minimum amount of capital required of stock companies, but the liability of each note decreases proportionately as the profits are accumulated.[1] In other states a permanent fund may be set aside from surplus profits by reserving 20 per cent of the net surplus until such fund is equal to 2 per cent of the insurance in force, after which the whole of the net profits must be distributed.[2]

Capital of a Mutual Company Defined— When Assessable. In the statutes of Illinois the capital of a mutual company is defined in the following language: "The amounts received for cash premiums and payments together with the investments and accumulations thereof remaining on hand at any time shall constitute the actual funds of such company; the amount due on premium notes shall constitute the contingent fund, and the aggregate of such funds shall constitute the capital of such company."[3] The statutes further provide that whenever a mutual company is not possessed of cash funds above its reinsurance reserve sufficient to pay its incurred losses and expenses it may make an assessment for the amount needed, upon the members liable for assessment in proportion to their several liability.[4]

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[1] cf. Ill. L. of 1905, p. 293, sec. 21; Ind. Burns, A. S. (1908) sec. 4652, 4654 and 4660; Ia. Code (1897) sec. 1704; Ky. St. (1903) ec. 685; Nebr. Cobbey's G. L. (1907) sec. 6433; N. Da. C. C. (1905) sec. 4427, 4441 and 4442; N. Mex. Com. Laws (1897) sec. 2111.

[2] Particularly N. Da. C. C. (1905) sec. 4441.

[3] Ill. Laws of 1905, p. 293, sec. 9.

[4] Ill. L. of 1905 p. 293, sec. 6; Ia. Code, (1897) sec. 1733; Mass. L. of 1907, c. 576; sec. 50; Mich. Ins. Law, (1907) sec. 426; N. Da. C.C. (1905) sec. 4444.

Assessment Companies

Incorporation and Capital. Insurance companies may be organized to transact business on the assessment or co-operative plan, either with a capital stock or on the mutual basis. The procedure for incorporation is just the same as for stock or mutual level-premium companies. In Maryland[1] assessment companies may issue policies for more than $1,000 provided they have a capital stock of $50,000, which must be invested in interest bearing securities and be deposited with the state treasurer. Colorado requires that a guaranty fund of $10,000 in cash or securities be provided[2] and in Alabama such companies may be organized on the stock plan with a minimum capital requirement of $5,000.[3] The more usual method is that five or more persons incorporate as a mutual company but that before the new corporation may issue any policies it must have bona fide applications for insurance from a definite number of persons and must have a certain amount of cash collected from these applicants and credited to the mortuary fund. The number of such applications required varies from 100 to 500 and the amount of cash required to be collected from $1,000 to $5,000. Ten states require that one full advance assessment be paid in cash.[4]

Reserves. Assessment companies differ from level-premium companies very essentially in the matter of re-

[1] Gen. Laws 1903, Art. 23, sec. 176.

[2] Laws of 1907, c. 193, sec. 71.

[3] Civil Code, 1907, sec. 3575.

[4] For statutes relating to conditions of incorporation see Ala. C. C. (1907), sec. 3574; Cal. C. C. (1906), sec. 453e; Colo. L. of 1907, ch 193, sec. 71; Conn. G. S. (1902), sec. 3572; Fla. L. of 1905, c. 5459; Ill. R. S. (1905), c. 73, sec. 210; Ind. A. S. (1908), sec. 4739; Ia. Code (1897), sec. 1787; La. R. L. (1904), p. 880; Me. R. L. (1903), p. 497; Md. G. L. (1904), art. 23, sec. 176; Mass. R. L. (1902), ch. 120, sec. 2—5; Mich. Ins. Law 1907, sec. 61—66; Minn. G. L. (1905), sec. 1698; Mo. S. (1906), sec. 7902; Mont. C. C. (1895), sec. 720; Nebr. G. L. (1907), sec. 6468 and 6471; N. Y. R. S. & G. L. (1901), p. 1884; O. A. S. (1908), sec. 3630; Pa. Ins. Law 1905, p. 52; So. Da. C. C. (1908), s c. 724; Tenn. L. of 1903, ch. 574; Texas L. of 1903, ch. 111; Utah S. (1903), sec. 405; Va. L. of 1906, p. 147; Wis. S. (1898) sec. 1955a; Wy. R. S. (1899), sec. 3277.

serve funds. It was noted in the analysis of the level-premium companies that they are required by law to keep large reserve funds but an examination of the laws relating to assessment companies shows that this subject is not mentioned in some statutes. In six states the keeping of a reserve is optional[1] and in twenty others it is obligatory but the fund required is very small in comparison with that of a level-premium company.[2] Seven states require a reserve equal to the amount realized from one periodical call or assessment; others require one equal to the maximum policy in force while others require that a certain per cent of each assessment shall be set aside for this purpose until a reserve equal to two dollars for every $5,000 of insurance in force has been accumulated.[3] After that time any cash on hand must be used to reduce future assessment. Mr. Miles M. Dawson, an eminent New York actuary, in his treatment of assessment life insurance emphasizes the fact that this question of reserves marks the essential difference between an assessment and a level premium company,[4] and Mr. Chas. E. Gross, in a lecture at Yale University refers to this same feature of assessment insurance as one of its principal sources of weakness.[5]

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[1] For laws in which the maintenance of a reserve is optional see Conn. G. S. (1902) sec. 3607; Ga. Ins. Law (1905) p. 15, sec. 14; N. H. L. of 1897, c. 38; Ore. St. (1903), sec. 3751; Tex. L. of 1905, c. 125; Wis. St. (1898), sec. 1955m.

[2] Laws of other states relating to reserves of assessment companies. Obligatory. Ala. C. C. (1907), sec. 3588; Cal. C. C. (1906), sec. 453h; Ill. L. of 1893, p. 117, sec. 12; Ind. Burns A. S. (1908), sec. 4749; Kas. G. S. (1905), sec. 3644; Ky. St. (1903), sec. 662; Me. R. L. (1903), sec. 498; Mass. R. L. (1902), c. 120, sec. 10; Mich. Ins. Law (1907), sec. 71 and 94; Minn. R. L. (1905), sec. 1701; Mo. A. S. (1906), sec. 7905; Mont. C. C. (1895), sec. 724; N. H. L. of 1897, c. 38; No. Car. R. L. (1905), sec. 4792; N. Y. R. S. (1901), v. 2, p. 1888; O. Bates A. S. (1908), sec. 3630l; R. I. Ins. Law, (1907), p. 45; Tenn. L. of 1897, c. 127, sec. 7; Va. L. of 1906, p. 147; Vt. St. (1894) sec. 4184.

[3] For reserves of this amount see Ill. L. of 1893, p. 117, sec. 12; Ind. Burns A. S. (1908), sec. 4749; Minn. R. L. (1905), sec. 1701; Mont. C. C. (1895), sec. 724; N. Y. R. S. (1901), v. 2, p. 1888; O. Bates A. S. (1908), sec. 3630l; Tenn. L. of 1897, c. 127, sec. 7.

[4] Dawson—Assessment Life Insurance, p. 8.

[5] Gross—Yale Insurance Lectures, v. 2, p. 332.

Other Legal Limitations and Exemptions. Assessment companies are usually exempt from the general insurance laws of the state and subject only to those relating specifically to them. However they are usually required to render an annual statement. In some states the amount of the benefits payable on any one policy is limited to the amount that can be realized from one periodical call or assessment[1] and in other states the company is required to furnish a statement showing that the amount that can be realized from any one periodical call or assessment will be equal to the benefit payable in the maximum policy issued.[2] Maryland prohibits any assessment company from issuing a policy for more than $1000 unless it have a capital stock or other available assets to the amount of $50,000.[3]

Fraternal Beneficiary Associations

Legal Regulation. Until within recent years there has been almost no legal regulation of fraternal beneficiary associations except to specify in one short section that they are exempt from the insurance laws. However the National Fraternal Congress in 1900 prepared and published a mortality table based on the experience of a number of the larger fraternal orders in America and also published and recommended the adoption of a uniform bill (1897) for the regulation and supervision of this class of insurance organizations.[4] Either in whole or in part and with many minor modifications in particular instances this uniform bill has now found its way to the statute books of a number of states and constitutes a very signifi-

[1] For a limited policy see Nebr. Cobbey's G. L. (1907), sec. 6468, 6471 and 6661; O. Bates A. S. (1908), sec. 3630; Texas L. of 1905, c. 125.

[2] cf. also Conn. G. L. (1902), sec. 3572; La. R. L. (1904), p. 880; Minn. R. L. (1905), sec. 1608; S. Da. C. C. (1908), sec. 724; Va. L. of 1906, p. 138; Wis. St. 1898, sec. 1955a.

[3] Gen. Laws (1904) Art. 23, sec. 176.

[4] Landis—Friendly Societies and Fraternal Orders, p. 76, et seq.

cant part of the insurance legislation which relates to assessment companies. In the main this legislation includes a definition of fraternal beneficiary associations, the substance of which has been given in a previous section of this bulletin, and a specification of their powers and limitations especially with reference to incorporation, obligations that may be assumed, and bases on which assessments may be charged. Annual statements of the finances are also frequently required. Laws modeled after the uniform bill usually exempt fraternal companies from all other insurance legislation, present and future, unless they are specially mentioned in the law and many states also specify that even the law relating to fraternal orders does not apply to any society which limits its benefits to $200 and its membership to any particular trade or calling or to the employees of a particular person, firm or corporation. In this way most mutual aid associations such as that of the International Harvester Company are exempt from any state regulation.[1]

Incorporation. The procedure for incorporation is just the same as for any other kind of insurance company. Any number of persons usually not less than five or nine may form the corporation but policies may not be issued until a certain number of applications for membership have been received and one advance assessment according to the by-laws has been paid by each such applicant to be placed to the credit of a mortuary fund. The number of applicants required varies from 200 to 500.[2]

[1] For citations to subject matter of the preceding paragraph see the list citations given on p. 20 or sections of the statutes immediately subsequent to them.

[2] For typical laws relating to incorporation of fraternal orders see Ill. L. of 1893, p. 130, sec. 7; Kan. G. S. (1905) sec. 3692; Mich. Ins. Law (1907) sec. 145 and 152; Nebr. Cobbey's G. L. (1907) sec. 6654; N. Y. R. S. (1901) v. 2, p. 1896.

Powers and Limitations. Fraternal beneficiary associations are usually given the power to contract life insurance and to insure against loss of life or physical disability of the insured due to accidents or disease. They are also frequently allowed to grant old age annuities, but are generally prohibited from paying such annuities before the insured has reached the age of 65 or 70. Nebraska prohibits any such association from issuing a policy for more than $1,000 until it has at least 2,000 beneficial members. All such companies and associations are required to derive their funds for the payment of losses and expenses, and for the creation and maintenance of reserves from periodical calls and assessments, and some states require that a clause be written in the policy authorizing extra assessments to meet deficiencies.[1] The laws of Massachusetts provide that if the amount realized from one assessment is not equal to the face of the policy, the benefit will be correspondingly reduced.[2] Several states have required that the rate of assessment be based on the mortality table adopted by the National Fraternal Congress.[3] Most fraternal orders are not allowed to employ paid agents except for the organizing and supervising of local lodges, but they may offer special inducements to members for the purpose of increasing the enrollment in these lodges.

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[1] For citations to most of the subject matter in this paragraph see list of citations given on page 20, or the statute sections immediately subsequent to them.

[2] R. L. (1902), c. 119, sec. 6.

[3] For typical statutes relating to mortality tables of the National Fraternal Congress see Ia. L. of 1907, c. 86; Me. R. S. (1903), pp. 501–2; Mass. R. L. (1902), c. 119, sec. 4; N. Da. C. C. (1905), sec. 4581; O. Bates, A. S. (1908), sec. 3621–22; Okla. Wilson, A. S. (1903), sec. 3249; Tenn. L. of 1905, c. 480; Wash. L. of 1901, p. 362, sec. 12; Wis. L. of 1907, c. 511.

Reserves. The maintenance of reserve funds is optional with most fraternal beneficiary associations.[1] Maryland, however, requires fraternal companies to maintain and deposit with the state treasurer a reserve fund of $10,000 invested in interest bearing securities,[2] and Maine requires a similar though more extensive fund.[3] In this instance the reserve must be equal to fifteen per cent of the total mortuary receipts, at least until a fund of $50,000 has been accumulated, which must be invested in interest bearing securities and deposited with the state treasurer. It may be drawn upon to meet death claims but for no other purpose, and may not be drawn upon when it is less than the amount of one assessment, or at least $1,000. If it is decreased below this amount it must be restored by assessment within six months.

[1] For typical statutes relating to reserves of fraternal beneficiary associations, see Ark. Kirby's Digest (1904), sec. 4339; Mass. R. L. (1902), c. 119, secs. 6 and 7; Minn. R. L. (1905), sec. 1703; Mo. St. (1906), sec. 1408; N. Y. R. S. (1901), v. 2, p. 1897; O. Bates A. S. (1908), sec. 3631—19; S. Car. C. C. (1902), sec. 1830; Tenn. L. of 1905, c. 480.

[2] G. L. (11903), art. 23, sec. 210.

[3] R. S. (1903), pp. 502-3.

ANALYSIS OF THE BUSINESS METHODS OF SOME FOREIGN COUNTRIES

Accident Insurance in Germany

Scope of the Law. Since 1884 the German government has required that all workmen and administrative officers employed in mines, salt works, establishments in which ores are treated, quarries, pits, on wharves, and in building establishments, factories and smelting works must be insured against accidents occurring in the course of their occupations.[1] In general the compensation consists of medical treatment and 66⅔ per cent. of wages for disability after the thirteenth week. Prior to that time compensation for accident comes out of sickness insurance funds. Compensation up to a maximum limit of 60 per cent of the annual wage may be paid the widow, children and other dependents in case of fatal accidents in addition to funeral benefits and whatever may have been paid previous to death. In its nature this is workmen's collective insurance in that it is furnished by employers and covers all the workmen in the factory or establishment. Employers secure this insurance by becoming members of "Trade Associations" which in reality are insurance corporations organized on the mutual plan along trade lines

[1] German Insurance Act of July 6, 1884, sec. 1.

and clothed with all the corresponding legal rights and liabilities.[1]

Determination of Trade Lines. The German law contemplates the organization of trade associations each of which shall embrace one trade only or several allied trades, extending over the whole empire or limited to particular districts. Preliminary to the organization of the trade associations it devolved upon the administrative officials of the government to determine the particular trades or groups of allied trades for which an association would be recognized by the Bundesrath. This classification was made from information furnished by employers who were required by law to send to the lower administrative officials of the district within a designated time, a statement of the articles produced and the manner of producing them. From these statements a list of all the establishments in a district was drawn up, arranged according to the classification of imperial statistics and stating the articles produced, the manner in which they are produced, and the number of employees who are to be insured. The list was then to be filed with the imperial insurance bureau. This work is done because competing associations are not allowed; but the employer is required to insure in the association corresponding to his industry in the district in which his establishment is situated. As the result of the foregoing restrictions accident insurance in Germany is compulsory to the extent that all employers in certain industries are required to insure their workmen and that they must obtain this insurance in the association of the particular trade and district to which their industry be-

[1] German Workmen's Insurance Act, 1884, secs. 5, 6, 9 and 10. See also Society of Comp. Leg. Journ., 1897, v. 2, pp. 33-4.

longs. Employers thereby become automatically members of a corporation and as such conduct the business of these mutual corporations according to their own volition, subject only to certain regulations of the imperial insurance bureau relating to solvency.[1]

Incorporation. The trade associations are organized by the voluntary action of employers in meetings arranged for that purpose. By-laws are drawn up which in general must fix the name and seat of the association; the manner of selecting the executive committee and the extent of its powers; the calling of the general meeting; the voting of members; the principles on which officers shall act in arranging the classification of the danger tariff, the procedure in case of changes in establishments or changes of employers; the consequences of a stoppage of work in establishments, and more particularly, the manner of making certain the payment of contributions of employers whose establishments close; the handling and auditing of the yearly accounts and the manner of exercising the powers granted the association for the purpose of preventing accidents and inspecting establishments. When the trade association has thus completed its organization and obtained the consent of the Bundesrath it is in full working order and may begin business. "The consent of the Bundesrath may be refused (1) if the number of establishments for which the trade association is to be formed, or the number of workmen employed in them, is too small to guarantee the ability of the association permanently to fulfil its obligations in respect to insurance against accident; (2) if establishments are excluded from the trade

[1] For subject matter of preceding paragraph cf. German Workingmen's Insurance Act, 1884, sec. 11, and Jour. of the Society of Comparative Legislation, 1897, v. 2, pp. 39-44.

association, which, because of their small number or the small number of workmen employed in them, can not form a solvent association of their own and can not be practically assigned to another association; (3) if a minority opposes the formation of the trade association and offers to form, for specific occupations or districts, a separate association deemed to be solvent." Provision is made in the law for the organization of the trade associations by the imperial insurance bureau in those districts where the employers do not take the initiative in this matter themselves.[1]

Pension Claims—How Liquidated. An accident causing death or total disability gives rise to a pension or indemnity that may run for a number of years and thereby becomes a fixed charge on the association throughout the period of its duration. There are two ways of meeting these claims and the way in which they are met very largely determines the character and the amount of the reserve fund that must be maintained by the association. The first method is to charge as a liabillty for that year the capital value of the pension, estimated according to actuarial principles, and to carry to the reserve fund an amount sufficient with its interest accumulations to meet all the future payments required by the pension claim. The contributions collected therefore must be large enough to supply the amount of cash necessary to be placed in the reserve fund. In other words according to this method an association estimates by means of actuarial principles its entire liability for a given pension as soon as it becomes a claim and collects in its cash contributions for that year an amount sufficient with the interest accumu-

[1] German Workmen's Insurance Act, 1884, secs. 12, 15 and 17.

lations to liquidate all of the pension payments just as they fall due. The advantage of this method is that it is a scientific way of providing for the payment of claims as they accrue and the objection that is sometimes offered to it is that it requires the maintenance of large reserve funds. The other method is to charge as a liability for the year only that part of the pension which is payable during that year and to leave the payments falling due in subsequent years to the receipts of those years. In this instance the contributions levied during the first years of the existence of an association are small but as the association grows older and the number of its pension claims accumulate the contributions levied must be increased to meet the expense of accumulated pension claims. Consequently it can be foreseen that the older the association becomes the larger the contributions that are levied upon the members must be. The advantage of this method is that it does not require the accumulation of such large reserves but it is objected to because members who join the association in the later years of its existence are called upon to help pay pensions that became claims before they became members.[1]

Reserve Funds. The German government has adopted the principle of the second method described in the preceding paragraph and requires a reserve fund to be created and maintained to offset the increasing contributions required and to bring about a state of equilibrium in the charges for pension payments. This fund is computed according to statutory rule by setting aside 300 per cent of the amount paid out in indemnities during the first year; 200 per cent, in the second; 150 in the third; 100 in the fourth; 80 in the fifth; 60 in the sixth; and thereafter until

[1] Willoughby. Workingmen's Insurance, pp. 70, 71 and 104.

the eleventh year 10 per cent less each year. After the close of the first eleven years, the interest of the reserve fund is to be added to the principal until the fund shall have reached twice the sum annually needed by the association. Thereafter the interest of the reserve may be used to decrease the contributions. The purpose of this reserve is to place the finances of the association on such a basis that the contributions made by the members would need to be large enough only to cover the actual payments for current losses and expenses for the year and to obviate the objection that otherwise new members would have to assist in paying losses which had become claims on the association before they became members.[1]

Contributions—How Determined. The entire business management is vested in a general meeting of the association, which may delegate part of its duties as an executive committee according to its by-laws. The management includes such duties as the classification of industries according to the hazard involved, the inspection of establishments, the adoption of measures for the prevention of accidents, the determination and assessment of contributions, and the administration of funds collected. Section 28 of the law of 1884 provides that the general meeting of the association shall establish rules for classifying establishments according to the danger of accident in them, and for determining the amount of the contributions in different establishments according to the danger tariff. The assignment of establishments to the different classes in the danger tariff is done by the officers of the association in the manner prescribed in the by-laws. Employers have

[1] German Workman's Insurance Law, 1884, Sec. 18; Willoughby, Workingmen's Insurance, pp. 70-1.

the right to appeal from the assignment made to the imperial insurance bureau. When it is recalled that the employers themselves make these by-laws and choose their own officers under them, it will be readily understood how completely the actual management of the business of the insurance institutions is left to the men who, nominally at least, carry burden. Provision is also made for the revision of the danger tariff at least once in five years, and for the union of two or more associations for the purpose of joint action, in part or in whole in paying indemnities.[1]

Classification of Industries and Assessment of Contributions. The Society of Comparative Legislation has published a description of the way in which industries are actually classified by the German trade associations and of the manner in which the assessment of contributions is made. The paragraphs relating to these subjects are quoted here in full. From this description it will be readily seen that accident insurance in Germany is assessment insurance in a mutual corporation organized along trade lines.[2]

"According to the scheme of the act of 1884, the sums required for the payment of the compensation awarded and the current expenses of administration of the association, were to be raised and levied among its members in such a way that each employer should pay a fair equivalent to the risk which the association was undertaking on his behalf. Thus in calculating the contributions of the individual employer two factors required to be taken into consideration: the number of workmen employed by him, and the extent of the danger to which they were exposed during their work. It was proposed to effect this by assigning to each establishment attached to the association a number, called a co-efficient of risk (Gefahrenziffer or Beitragsfuss), which was to correspond to the burden per unit of wages paid, which, in

[1] German Workmen's Insurance Act, 1884, Secs. 17 and 28.

[2] Journal of Society of Comparative Legislation, 1897, v. 2, pp. 39-42.

consequence of the accidents occurring in it, the establishment was likely to lay upon the association. The contribution due from the employer to the association would then be proportional to the number obtained by multiplying the total amount of wages paid in the establishment belonging to him by its co-efficient of risk."

"The tables of risks of the different associations naturally differ very considerably, but they must agree in dividing the establishments into classes according to the elements of danger attending different kinds of work. Thus trades in which steam-engines are used will generally bear a higher co-efficient than those in which hand-power alone is employed. Within the limits of the classes, subdivision is allowed according to the greater or less extent of the danger. Thus a business only using one small steam engine, within range of which few of the workmen need come, will be rated lower than a business of the same kind with a shop full of engines. Regard will also be had to the extent to which in the establishment in question the general rules formed for the prevention of accidents are complied with, but it is not permitted to rate a business higher on account of neglect in complying with special safety regulations. Such neglect is punished, if at all, in another way."

"The assessment of the contribution of the individual employer is made by the general board, and payment is due as soon as it is communicated to him. He may dispute it before the board if he is dissatisfied, and he has also a limited right of appeal to the insurance office, but only on the ground of some error in calculation, or of some mistake as to the amount of wages paid, or the co-efficient of risk of the establishment. But the employer cannot appeal on either of the last two grounds if he has made default in supplying the necessary information to the association. The right of appeal seems restricted, but in reality it covers all the ground. The other items upon which the calculation is based are such as concern the members of the association generally, and the proper place to dispute them is the general meeting of the association or section when the yearly accounts are presented for consideration and approval."

"The method by which the annual budget of the associations is made up and balanced must next be explained. The compensation due to persons injured, or their relatives, is paid as it falls

due by the post-office. Thus the state, through the post-office, guarantees its payment, and advances the sums of money required. The accounts of the associations are made up yearly, and the necessary amount levied upon the members in a single payment.

"Within eight weeks after the conclusion of the financial year the postal authorities forward to the association a statement of the payments made on its behalf during the year. The sum of these, together with the expenses of administration and the sum, if any, to be placed to the reserve fund, gives the total sum to be raised."

"The members of the association on their side, within six weeks of the end of the financial year, forward a statement showing the number of insured workmen employed during the year, the total amount of wages paid, and the co-efficients of risk at which their establishments are rated. Only one-third of the excess above 1,200 marks of the yearly earnings of individuals is taken into account. In default of such a statement one is drawn up by the confidential agents. Care is taken in this connection to avoid all unnecessary inquiry into the business of the employer, consistent with retaining the power of verifying his statements. Thus he is not compelled to give the names or wages of individual workmen, and in practice, if it is necessary to examine his books, he can have it done by some one from a distance who is not a trade rival."

Accident Insurance in Austria

Scope of the Law. In 1887 Austria adopted a compulsory accident insurance law which embodied the principle of the German law but which differs from the German law in many of the details of organization and administration. The law includes all workmen and administrative officials employed in transportation, manufacturing, mining, quarrying, and building, and all occupations in agriculture and forestry in which power machinery is used. Compensation is paid for all bodily injuries occurring in the course of employment and amounts to all expenses for medical

treatment and 60 per cent of the average daily wages for period of disability. In case of death funeral expenses and a pension for the widow and children not exceeding 50 per cent of the average wages.[1]

Organization. In general the insurance is provided in an "insurance institution" which is a corporation "under governmental supervision in accordance with the limitations of other insurance companies and the special provisions of this act." Section 9 of the Act of 1887 says that "the insurance prescribed under section 1 shall be under the management of a special insurance institution organized for this purpose and resting upon the principle of mutuality." There are seven of these institutions which are organized on a territorial basis corresponding to the political divisions of Austria instead of along trade lines as the trade associations of Germany. The proprietors of establishments in which workmen are required to be insured are declared by law to be members of the institutions although proprietors who have insured their employees to the same extent in some other company to which they pay as large a contribution as they would be required to pay as members of the insurance institutions, may be released from such membership by permission of the Minister of the Interior. Each institution prepares its own by-laws after a model form published by ministerial decree which in general provide for the voting powers of members, the choice of representatives of proprietors and insured workmen, assessment periods and the form and content of the declarations, reports and accounts which are to be made by proprietors and sent in to the insurance institutions. The management of the business is conducted by a board

[1] See Austrian Workmen's Insurance Act 1887. Sec. 1. 5. 6. 7 and 8.

of directors, one-third of whom are representatives of the proprietors; one-third, representatives of the workmen and one-third persons familiar with industrial conditions of the district, who are appointed by the Minister of the Interior. An examination of the Austrian law shows that accident insurance in Austria is compulsory to the extent that all employers in certain industries must insure their workmen against accidents occurring in the course of their employment and that with certain exceptions this insurance must be obtained from mutual corporations organized by the government to correspond to the political divisions of the country but managed for the most part by the employers and workmen themselves.[1]

Classification and Inspection of Industries. The law provides that all the various establishments shall be divided into different classes of risk in which there are several successive grades according to the danger of accident which they present and that the particular grade or relative position occupied by an establishment shall be designated by a number. The number used to designate the most dangerous class is one hundred and all others are fractions of this number, i. e. percentages which have been termed "Co-efficients of Risk." The general classes of establishments are fixed by the government but the assignment of a particular co-efficient to an establishment is done by the insurance institution in which the workmen are insured. The inspection of establishments is done by the local factory inspectors at the request of the insurance institutions and the expenses of such inspection are considered as part of its expenses of management. An appeal in regard to the classification of the industry and the assignment of a co-

[1] See Austrian Workmens Insurance Act, 1887, secs. 9, 13, and 57.

efficient of risk may be taken to the provincial administrative authorities (politische Landesbehorde) and finally to the Minister of the Interior.[1]

Determination of the Insurance Contribution. Within fourteen days of the expiration of a period set by the Minister of the Interior all proprietors subject to the Act are required to make a report to the insurance institution of the district in which their establishment is situated. This report contains a statement of the object and nature of the establishment, the number of insurable persons there employed and the amount of their yearly earnings to be taken as the basis of their insurance. In the case of new establishments the date of opening must also be reported. A preceding section of the law prescribes the method by which the amount of wages shall be determined and fixes the yearly wage at three hundred times the average daily wage. This method as it has been interpreted and put into actual operation by the insurance institutions and administrative officials of the government, is of very great significance in the classification of establishments because it reduces the various establishments to a common basis for determining the amount of hazard involved by ascertaining the actual amount of labor expended in a given plant in the given period instead of the number of laborers employed. In this way the Austrians are enabled to account for the additional element of danger involved in an establishment which employs eight men ten hours a day on a piece of work over one which employs ten men eight hours a day on a similar piece of work. The following description of this method is taken from Prof. Willoughby's Workingmen's Insurance: "Each industrial

[1] Austrian Workmens Insurance Act. 1887, sec. 14, 18 and 28.

establishment, in making its report to the insurance department, is required to show, not only the total number of persons employed, but the total number of hours of labor performed. With this data, it is possible to calculate the number of workingmen required to perform the same amount of labor if working full time for 300 days in the year. This number of complete workingmen is, then, the number used for purposes of comparison with the number of accidents. There is no doubt but that this method constitutes a radical improvement over the German practice. It is evident that in this way it is possible to calculate, in a much more scientific and accurate way, trade risks of accidents, than if no account were taken of the time that the establishments were not in operation, or were only running part time."[1] Having thus ascertained a basis for the determination of contributions the officers of the insurance institutions determine the total amount necessary to liquidate the current losses and expenses and amount necessary to maintain the reserves and assess the members of the institutions in proportion to the degree of risk in their several establishments.[2]

Reserve Funds. The Austrian law provides that each insurance institution shall set aside a sum each year to be used as a reserve fund and that any surplus accruing from the management of the business may be applied to this fund but that in no instance shall the reserve fund amount to more than 10 per cent. of the funds necessary for the liabilities of the insurance institution. Two-thirds of this reserve constitutes a special reserve for the institution itself and one-third is credited to a common fund for the

[1] Willoughby—Workingmen's Insurance, p. 106.
[2] Austrian Workmen's Insurance Law, 1887, secs. 6, 18, 19, 20, 21 and 22.

benefit of all the insurance institutions. The reserve fund cannot be drawn upon except in case of a deficit in the yearly balance and the special reserve must have been exhausted before the common reserve can be drawn upon.[1] In addition to the foregoing reserve the capital value of all pensions estimated according to actuarial principles, is collected in the contributions of the year in which such pensions become a claim on the institution and is set aside for the liquidation of pension payments as they fall due. This is the first one of two methods of settling pension claims that were described in a preceding section (page 48). The following quotation is an explanation of this fund as given by Prof. Willoughby:

"Finally, it is necessary to say a few words concerning the system adopted by Austria for the liquidation of the indemnities to which accidents give rise. It will be remembered that, in Germany, each year is made to pay only the sums actually disbursed during the year, without regard to the time when such liabilities were incurred. In Austria, however, the more scientific system was adopted whereby each year is required to provide for the liabilities incurred during its course, though their complete liquidation may not be accomplished for a great many years. Upon an accident occurring, therefore, the amount necessary for the complete payment of the pension to which it gives rise, is calculated according to tables of mortality, and then carried to the special insurance fund for the payment of pensions. The consequences of this system are, that in the beginning, the payments on account of pensions are much larger than they would be under the German method. On the other hand, these payments should remain fairly constant in amount, instead of constantly increasing until a period of equilibrium is reached, as occurs under the latter system.[2]

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[1] Austrian Workmen's Insurance Law, 1887, sec. 15.

[2] Willoughby—Workingmen's Insurance, p. 104.

Insurance in the Friendly Societies of England

Closely Akin to Fraternal Orders. The Friendly Societies of England furnish another very interesting and practical illustration of an effort to supply certain and practical relief from the burden of accidents and sickness in industrial occupations and the experience of these societies is of almost inestimable value in any attempt to arrive at a sound actuarial basis for accident and sickness insurance. They have still another very practical bearing on the American situation because they are so closely akin to our assessment insurance in fraternal beneficiary associations. The limits of this bulletin do not permit any detailed description of the organization and purposes of these societies but a very complete and excellent account of them including a careful explanation of the efforts to get their insurance departments on a sound financial basis may be found in English Associations of Workingmen by J. M. Baernreither.

Government Supervision. The Friendly Societies are not under any form of government supervision unless they are registered under the act of 1896. Registration is wholly a voluntary arrangement on the part of the society. The law of 1896 provides that there shall be a chief registrar of friendly societies who must have been a barrister of not less than twelve years standing and who shall be supplied with such assistants and actuaries as the duties of his office may require. His chief duties are to collect, publish and circulate "such information on the subject of the statistics of life and sickness and the application thereof to the business of friendly societies and such particulars of their returns and valuations and such other information" as he may deem useful to the members of the societies. In ad-

dition to the foregoing he is required to cause to be constructed and published tables for the payment of sums of money on death, in sickness or old age. The adoption of these tables is wholly optional on the part of the societies.[1]

Registration. Any seven or more persons may become a registered Friendly Society by following out the procedure set forth in the law. Societies may be registered for a number of purposes but the principal one is for the relief or maintenance of the members and their families and dependents in the event of certain contingencies. Certain legal advantages and privileges accrue to registered societies just as to incorporated companies. They are also required to have a registered office where communications and notices may be sent, to submit their books annually to a public auditor or some one legally authorized to audit them, to render an annual statement of receipts and expenditures, funds and effects of the society, to make a valuation of their assets and liabilities once every five years; and to furnish gratuitously every member or person interested in the funds of the society, an annual statement.

Valuation. Registration is optional on the part of a friendly society, but a valuation of its accounts once every five years is compulsory for all societies which have registered. The valuation must be made by a valuer chosen by the society, and the report must include a statement of the assets and liabilities, showing the benefits assured and the contributions receivable by the society and of its funds and affects, debits and credits. This valuation is the essence of all the governmental regulation of the English Friendly Societies. Its purpose, nature and extent have

[1] See English Act for the Registration of Friendly Societies 1896. 59-60 Vict. No. 25.

been very clearly expressed by Mr. Baernreither in his English Associations of Workingmen, as follows:

"The investigation required by a valuation of this kind is, as we have seen, a comprehensive one. Starting with an observation of the experience of the society during the last few years, it examines the management, takes into consideration the occupations of the members and their habits of life, the influence of local relations and the state of industry, then calculates each branch of insurance separately, and finally arrives at a result, which depends not only on a mathematical valuation but on an analysis of all the elements that effect the stability and growth f the society, on an anatomy of all its vital organs. The younger Mr. Neison, in his recent work, has expressed this thought very accurately. 'A valuation properly conducted,' he says, 'presents the means of correcting any misconceptions of the risks formed at the starting of the society, and this is its most important feature. The purpose of valuation is to maintain, as it were, the touch between the risks as they are and as they are assumed to be in the bases of the contracts, and periodically to adjust such differences as may arise. Due effect is thereby given to all local circumstances and features, which may be special to a particular society; and the skill of the actuary consists not in the performance of so many multiplications of the number of members by the values of specific benefits, for any one with a slight mathematical knowledge can effect this, but in drawing proper deductions from the varying circumstances of each society as exhibited in its records, and in knowing how much force may safely be attributed to each particular variation in its working This constitutes the mainspring of an efficient valuation.[1]

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[1] Baernreither—English. Associations of Workingmen, p. 270.

METHODS OF CONDUCTING STATE INSURANCE

State Insurance in Maryland

Legal Liability of Employers. So far but one effort has been made to operate a system of state insurance in the United States. This system was, nominally at least, a voluntary one but on account of constitutional defects it was in operation for such a short time that very little can be inferred in regard to its economical aspects.[1] In 1902 the Maryland Legislature passed an act[2] which made all employers in certain specified industries liable under the Public General Law for damages to an employee injured as the result of the employers' negligence, abrogated the fellow servant rule and specified that when the injury was due to the joint negligence of both the employer and the employee then the employer should be liable for one-half the damages sustained by the injury or death. The act applied to all individuals, partnerships and corporations, private or municipal, engaged in operating any coal or clay mine, quarry, and steam or street railroad, also to incorporated towns, cities or counties, or the contractors

[1] A detailed statement of the business transacted under this act may be found in Bulletin, No. 57, U. S. Bureau of Labor, pp. 645–648.

[2] Laws of 1902, c. 139.

for the same, engaged in constructing sewers or in any other work of excavation or construction.

Liability Relieved by Insurance. The act then provided that employers in these occupations might be relieved from such liability if they paid in monthly installments to the Insurance Commissioner the following annual sums for each workman employed:

1. In mining or quarrying - - - - $1.80
2. In operating a steam railroad - - - 3.00
3. In operating a street or trolley road - - .60
4. Every town, city or county (or the contractor therefor) engaged in constructing a sewer, or any other excavation or physical structure, such annual sum as the insurance commissioner should deem necessary to insure such employees for $1000 each in event of death, considering the occupation or trade risk involved.

Employers were permitted to deduct one-half of the amounts paid from the wages of the workmen after having notified them in advance that this would be done. They were not, however, entitled to the benefits of the law unless they made a certified report on the first Monday of each month to the Insurance Commissioner stating the number of persons employed in the respective occupations during the preceding month, including those employed for only a part of the month, and the estimated number of those to be employed during the month of the report, and paid in advance the proper monthly installment for each person employed.

Powers of Insurance Commissioner. The insurance commissioner was authorized to receive and administer all the money or insurance premiums so received and to keep

a separate account of them which was to be known as the Employers' and Employees' Co-operative Insurance Fund. The monthly balances were to be invested according to law in certain safe and convertible securities and full statistics of the operation of this function of the department were to be kept. A benefit of $1,000 was to be paid in the event of death of an employee as soon as the insurance commissioner was "satisfied by adequate evidence of such death" that it came within the provisions of the law. In addition to the powers mentioned above the insurance commissioner was vested with plenary power to determine all disputed cases which might arise in the administration of the law and to regulate from year to year the rates of premiums payable in order to preserve such fund and pay the death indemnifications provided for. Provision was also made whereby he might on application and hearing exonerate an employer from all liability imposed by the act if the employer showed satisfactorily that his employees were entitled to equal benefits in some other insurance scheme to which he contributed his share.

The Act Unconstitutional. This act was declared unconstitutional in 1904 after it had been in operation but twenty-two months because it vested the insurance commissioner with judicial authority and deprived the people of a right of trial by jury in certain cases which they had previously enjoyed. The decision was rendered in the Common Pleas Court of Baltimore but was never appealed to the district or supreme courts. The insurance commissioner immediately distributed the funds collected and discontinued this function of his department. The opinion of the Baltimore Common Pleas Court is here printed in full as it was copied from the records.

Andrew J. Franklin vs. The United Railway & Electric Company of Baltimore in the Court of Common Pleas.

The demurrer to the plea in this case depends for its determination upon the constitutionality, vel non, of Chapter 139 of the Acts of Assembly of 1902. This act had for its purpose the creation and maintenance of a co-operative insurance fund in the hands and under the supervision of the State Insurance Commissioner for the benefit of employees in certain enumerated lines of employment. It required the employers in these occupations to pay into the hands of the Insurance Commissioner a certain sum for each employee in service, and in the event of death from, or as the result of accident, made the sum of $1,000 payable to the widow or children of the deceased, as the Insurance Commissioner should think fit. The act provided for the payment of the death benefit, in two classes of cases in which there was previously no right of action, viz: where the death resulted from negligence of a fellow servant, and where the deceased had by his own negligence directly contributed to his death.

But for the handling and disbursement of this entire fund "plenary power" was lodged in the hands of the Insurance Commissioner, thus investing him with judicial or quasi judicial powers, and that without any provision for a trial by a jury, or any right of appeal from his conclusions. Had the act stopped here it might well have been argued that inasmuch as it provided for a fund for the benefit of certain widows and orphans who would otherwise be remediless, it was within the power of the legislature to place the administration of that fund in the hands of such officials as it might see fit. But the act did not stop with the provisions already referred to, but also embraced cases where the death had been caused by the negligence of the employer, cases where there would be a clear right of action in the courts under existing law. It also enacted that the employers who made the payments provided in the act should, by such payments, be exempted from further liability.

The effect of the act was, therefore, not only to vest in the Insurance Commissioner powers and functions essentially judicial in their character, but to take away from citizens a legal right which they theretofore enjoyed, and which could be enforced by

them in the courts, and also to deny to them the right to have their cases heard before a jury. It is only necessary to clearly understand the provisions of this act to see that they are in direct conflict with several of the provisions of the constitution of the state. Thus art. 5 of the declaration of rights, assures to the people the right of a trial by jury, Knee vs. City Pass. Ry., 87 Md. 624. Art. 19 gives to every one for injury done to him in his person or property, a remedy by the course of the law of the land. Yet both of these guarantees are completely ignored by the act in question. Without prolonging the matter, therefore, it is so clearly evident that the act in question is framed in total disregard of the provisions of the constitution that the act must be declared void, and the demurrer sustained.

Signed HENRY STOCKBRIDGE,
Judge.

Accident Insurance in New Zealand

State Insurance. The accident insurance law of New Zealand is of interest in an analysis of this kind because it illustrates a method by which state insurance is conducted. In New Zealand the political organization of the state conducts an insurance office and state officials administer the funds of the office. The insurance is conducted according to actuarial principles in competition with private corporations. Insurance in the state fund is purely voluntary on the part of all policy holders. The point of particular interest in connection with the New Zealand insurance department is the fact that the original capital for the department is raised on the credit of the government, that a sinking fund is created out of the proceeds of the accident branch for the redemption of the government securities when they mature, and that a deficiency in the cash funds of the insurance department shall be made up out of the public treasury. Any money advanced to the insurance department in this way is considered as a loan

which is to be returned to the public treasury as soon as practicable out of the proceeds of the insurance office. A brief abstract of the accident insurance law of 1899 is given in the following paragraphs:[1]

Accident Branch. The Commissioner of Insurance is authorized to establish an accident branch of the government insurance department for the purpose of transacting a personal accident and employers' liability business. He is authorized to enter into such contracts for or relating to insurance against accident as are usually undertaken by insurers against accident, including reinsurance, in New Zealand or elsewhere of the risks taken.

Capital. The governor in council is authorized to raise capital not exceeding 25,000 pounds for an accident branch of the government insurance department by issuing debentures or scrip, according to the stock law of 1877, and to prescribe the mode and conditions of repayment and the rates of interest thereon. The board is authorized to make temporary advances out of the government insurance account in lieu of such capital.

Sinking Fund. A sinking fund is provided for in order to create a fund for the redemption at maturity of all securities issued in respect of capital raised under the Act.

Reserve Funds. Such reserve funds for the purpose of the Accident Insurance branch shall be set aside out of surplus profits as the governor by order in council, may determine.

Provision for Deficits. (1) If, after recourse has been had to the available funds and securities, the balance in

[1] Accident Insurance Law of New Zealand, 1899, 63 Vict. No. 20.

the government accident insurance account is at any time insufficient to meet the charges thereon, it shall be the duty of the Controller and Auditor-General, under the warrant of the Governor and on the requisition of the Colonial Treasurer, countersigned by the Commissioner, to issue the amount of such deficiency out of the Consolidated Fund to the Colonial Treasurer to be transferred by him to the credit of the Government Accident Insurance Account.

(2) It shall be the duty of the Colonial Treasurer to certify every such deficiency to both Houses of the General Assembly within fourteen days after the issue of such moneys from the Consolidated Fund, if Parliament is sitting, or, if not, then within fourteen days after the commencement of the next ensuing session thereof.

(3) All moneys so issued and transferred shall be deemed to be advances by way of loan, and, with interest thereon, or on so much thereof as for the time being remains unpaid, computed at the rate of five per centum per annum, shall, without further appropriation than this Act, be repaid into the Consolidated Fund by the Commissioner out of the Government Accident Insurance Account as soon as practicable, having regard to the balance in that account.

Taxation. The Commissioner of Insurance is liable to assessment and taxation in the same manner and to the same extent as in the case of an accident insurance company.

CONCLUSION

A study of the foregoing pages, and more particularly the statutes cited there, reveals the fact that in many respects the requirements of various American states for the insurance companies under their jurisdictions are quite uniform in regard to the amount of capital required, the reserves to be maintained and the method of determining them and the manner in which impairments of capital and deficiencies in assets are to be made good. As a rule very little has been done in this country toward permitting the organization of stock or mutual companies for the purpose of transacting employers' liability or workmen's collective insurance, or encouraging the formation of any kind of company specially adapted to the handling of this kind of business. A comparison of the laws of American states with those of European countries, especially Austria and Germany, shows that a great deal more has been done there than here toward working out a minute classification of occupations and industries according to the hazard involved and toward encouraging the prevention of accidents through the activity of the insurance corporations whereby the cost of insurance is greatly reduced and the burden of industrial accidents more equitably distributed. It is evident that these countries are attempting to do a great deal in the way of modifying their law relating to the legal

liability of employers for accidents to their workmen by encouraging the organization of insurance corporations along trade lines in which workmen will be collectively insured against accidents in the course of their employment and still all the essential requirements of a solvent institution be carefully observed.

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