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Workmen's Compensation in South Carolina

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WORKMEN'S COMPENSATION IN SOUTH CAROLINA

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Like most of the social legislation on the statute books of American states today, workmen's compensation laws were first effective in Europe. The first such law was successfully enacted in Germany in 1884 and became effective October 1, 1885. The English Parliament took similar action during the following decade. Other foreign countries enacting workmen's compensation laws prior to 1910 included Austria, 1887; Norway, 1894; Finland, 1895; Denmark, Italy and France, 1898; Spain and New Zealand, 1900; The Netherlands, Greece and Sweden, 1901; Luxembourg, 1902; Russia and Belgium, 1903; Venezuela, 1906; Hungary, 1907; and Bulgaria, 1908.[1]

THE COMMON LAW

Under common law the status of injured workers in the United States as in foreign countries was most unsatisfactory. With the great increase in the number of laborers there was a considerable increase in the number of accidents for which redress was sought under common law.

Under this type of law various duties which the master owed the servant were recognized. For instance, he was to use reasonable care in selecting suitable fellow employees, to promulgate proper rules which would minimize the risk of hazardous employment, to provide a safe place to work, to install safe appliances, to warn employees of existing dangers and to give instructions in how to avoid these dangers.[2]

Compensation for injury or death could be had under the common law only in case of fault or negligence on the part of the employer. Then, too, principles of common law, as adopted by the courts, gave rise to three defenses usually urged on the part of the employer to an employee's claim for compensation for injury. The three defenses were (1) The Fellow Servant Doctrine, (2) The Assumption of Risk and (3) Contributory Negligence.

Under the assumption of risk doctrine the employee assumed the risk of all extraordinary dangers such as those which arose from

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1. WORKMEN'S COMPENSATION LAWS OF FOREIGN COUNTRIES, Bureau of Labor Statistics Bulletin No. 203, p. 298.
2. Burdick, F. M., *The Law of Torts* (4th ed.) pp. 198-227.

defective machinery and an unsafe place to work or for hasty and dangerous methods, if he knew about these, or might reasonably be expected to know about them and accepted the work in spite of them, or might have found out about them with the exercise of ordinary care, and continued working in spite of them.[3]

A British Court in 1837 modified the doctrine of *respondeat superior* in the case of *Priestley v. Fowler.*[4] A butcher boy's helper was injured through the overloading of the van by the butcher boy and the helper brought suit for damages against his master. The court reasoned in part as follows:

> If the owner of the carriage is therefore responsible for the sufficiency of his carriage to his servant, he is responsible for the negligence of his watchmaker, or his harness-maker, or his coachman. The footman who rides behind the carriage, owing to the negligence of the coachmaker, or for a defect in the harness, arising from the negligence of the harness-maker or for drunkenness, neglect or want of skill in the coachman . . . . the master for example, would be liable to the servant for the negligence of the chambermaid, for putting him into a damp bedstead; for that of the upholsterer, for sending in a crazy bedstead whereby he was made to fall down while asleep and injure himself; for the negligence of the cook, in not properly cleaning the proper vessels used in the kitchen; of the butcher in the family with meat of a quality injurious to the health; of the builder for a defect in the foundation of the house, whereby it fell and injured both the master and the servant by the ruins.

This precedent was followed in the United States in 1841 in the case of *Murray v. The South Carolina Railroad Company.*[5] The plaintiff, a fireman on a locomotive used by the defendants on their railroad was hurt while working as fireman because the engine on which he worked was thrown from the track. The accident occurred because of the careless and negligent conduct of the engineer who refused to lessen speed or stop the engine even though his attention had been called to an obstacle on the track which caused the accident.

This rule, which became known as the "Fellow Servant Doctrine," was forcefully reaffirmed in the case of *Farnwell v. Boston and Worcester Railroad Corporation*[6] in 1842 when a locomotive en-

3. Eastman, Crystal, *Work Accidents and the Law,* p. 170.
4. 3 MEGS. AND WELLS 1 (1837).
5. 1 McMULLAN'S LAW 385, 36 Am. Dec. 268 (S. C. 1841).
6. 4 METCALF 49, 38 Am. Dec. 339 (Mass. 1842).

gineer was injured through the negligence of a switchman in failing to change a switch. The work of the switchman and engineer brought them in no personal contact with each other, and the former could not have foreseen or guarded against the switchman's carelessness. The court said in part:

> The general rule resulting from considerations from justice as well as of policy is that he who engages in the employment of another, for the performance of specified duties and services for compensation, takes upon himself the natural and ordinary risks and perils incident to the performance of such services, and, in legal presumption, the compensation is adjusted accordingly. And we are not aware of any principle which should except the perils arising from the carelessness and negligence of those who are of the same employment. These are perils which the servant is likely to know, and against which he can effectually guard as the master. They are perils of the service and which can be as distinctly foreseen and provided for in the rate of compensation as any others.

The trend of judicial thinking as expressed in the above cases was possibly based on the individualistic tendency of the common law, which took it for granted that an employee was free to contract and was not bound to risk life or limb in any particular employment, and in the desire of judges to encourage large industrial undertakings by making the burdens on them as light as possible.[7]

Under the defense of contributory negligence, injured workers were denied damages if their negligence had contributed to their injuries.[8] With reference to this subject the United States Supreme Court said:

> Although the defendant's negligence may have been the primary cause for the injury complained of, yet an action for such injury cannot be maintained, if the proximate and immediate cause of the injury can be traced to the want of ordinary care and caution in the persons injured; subject to this qualification, which has grown up in recent years, the contributory negligence of the party injured will not defeat the action, if it is shown that the defendant might, by the exercise of reasonable care and

7. BRYCE, JAMES, "THE INFLUENCE OF NATIONAL CHARACTER AND HISTORICAL ENVIRONMENT OF THE COMMON LAW," 19 *Green Bag* 569.

8. Burdick, F. M., *The Law of Torts* (4th ed.) p. 522.

prudence, have avoided the consequences of the injured party's negligence.[9]

With little or no compensation given the injured laborers, the time and costs consumed in obtaining awards, together with the sharp increase in industrial accidents due to the great industrial growth in the United States it is not surprising that there was popular demand throughout the country for immediate reform. The remedy finally decided upon in the states was the passage of workmen's compensation laws. It was necessary, however, in certain instances to overcome constitutional difficulties. After these problems were cared for, one after another of the states approved workmen's compensation laws and today they are effective in all of the forty-eight states.

LEGISLATIVE HISTORY IN SOUTH CAROLINA

South Carolina's Workmen's Compensation Act became effective September 1, 1935 leaving only two states, Arkansas and Mississippi, which had not yet approved such legislation. For a score or more years before, however, persons advocated legislative action but it was not until 1930 that the movement received strong support in the legislature. Two bills were introduced, one by J. Rutledge Smith of Charleston and the other by Senator R. M. Jefferies of Colleton. The Smith Bill got little attention but the Jefferies Bill was debated freely in committee hearings. The strongest opposition came from the lumber interests with some industrialists and labor leaders strongly supporting the proposed legislation.

No action was taken by the legislature on the bill but a committee was appointed by the President of the Senate to study the question of workmen's compensation.[10] This Committee some months later suggested to the Senate that no action be taken at the 1931 session of the General Assembly because the depressed conditions in industry did not warrant legislation at that time.

A workmen's compensation bill introduced in the House by Representatives Aycock of Union, W. C. Johnson of Anderson and others did not advance beyond the committee stage. However, in December, 1934, a group of industrial and labor leaders united for the purpose of having the General Assembly pass such legislation. A bill was forthwith introduced by sixty-three members of the House but opposition crystalized. Various changes were necessarily made in the

9. Grand Trunk Railway v. Ines, 144 U. S. 408, 429.
10. See "Report of the Legislative Committee" in *Proceedings of the Sixteenth Annual Convention of the South Carolina Federation of Labor*, 1930.

proposed law and, by increasing the members of the Industrial Commission from three to five, and by exempting specific industries such as lumber and building, rock quarries and domestic and farm laborers, much opposition was silenced.[11] Finally, on May 18, the last day of what up to that year was the longest session of the General Assembly in the history of South Carolina, the bill was adopted by both Houses and sent to the Governor.[12]

ADMINISTRATION

The more important objectives of the act included provision for prompt and reasonable compensation for injuries suffered in the course of employment to the victims and their dependents; the provision for adequate medical treatment when injuries occur; the freeing of the courts of personal injury litigation with its attendant delays and costs; the elimination of economic waste in time losses and heavy expense necessarily involved in many trials and appeals in industrial accident cases; and the relieving of public and private charity of much of the destitution due to uncompensated industrial accidents.

To achieve these and other objectives the South Carolina Workmen's Compensation Act authorized the establishment of a Commission to put into operation and to administer the law. This Commission is composed of five members who are appointed by the Governor with the advice and consent of the Senate for a six year term.

The Act confers upon the Commission certain administrative powers including the authority to award compensation to injured employees and to pass upon agreements for compensation payments, to inspect, make recommendations, and report on safety provisions and to approve medical charges and legal fees. Quasi-judicial powers include the holding of hearings in disputed cases, deciding cases and passing upon agreements. Executive duties are exercised in directing the office force, appointing various employees and making reports.

The South Carolina Industrial Commission holds hearings in the forty-six counties of the state. The annual number of cases has increased from 11,458 in 1935 to 44,315 in 1951 and much of the commissioners' time is consumed in conducting hearings, making or approving and enforcing awards. Testimony is taken at the hearings, and the injured employee and his employer or their representatives

11. *News and Courier*, May 25, 1935.
12. *The State*, May 19, 1935.

appear to present respectively their sides of the case. Some idea of the volume of the work may be obtained from the following table.

TABLE I.

Total Annual Number of Cases Filed and Compensation Awarded by the South Carolina Industrial Commission, 1935-36 — 1950-51.[13]

Fiscal Year	*Cases*	*Compensation*	*Medical*
1935-36	11,458	$ 250,677	$ 170,670
1936-37	21,912	603,927	391,711
1937-38	18,054	654,829	330,235
1938-39	19,227	595,400	351,656
1939-40	25,994	394,223	405,019
1940-41	28,787	835,558	434,662
1941-42	38,165	1,139,215	578,101
1942-43	44,963	1,180,290	582,731
1943-44	46,946	1,312,496	490,893
1944-45	36,864	1,358,293	474,681
1945-46	30,997	1,276,095	487,790
1946-47	33,933	1,763,846	698,437
1947-48	41,225	1,888,159	822,962
1948-49	36,660	1,831,282	860,313
1949-50	35,667	1,755,179	912,597
1950-51	44,315	578,134	535,311

To assist it in this work the Commission appoints a secretary who has general supervision of the Commission's Office. The staff also includes among others a claims examiner, statistician, coverage officer, docket, general and recording clerks, medical examiner, safety engineer, reporters, a director and an examiner of state and county claims and a field auditor. This group performs numerous duties such as tabulating and analyzing data on cases, answering a multitude of inquiries and scheduling and notifying interested persons on hearings.

UNCONTESTED CASES

An uncontested case is that type of case which does not present a contest by means of an actual hearing before a commissioner. The agreement or settlement is reached without a hearing. The framers of the Workmen's Compensation Act of South Carolina, realizing the

13. *Sixteenth Annual Report of the South Carolina Industrial Commission*, 1950-51, p. 8.

advantages of the direct settlement of claims made provision for this simple method of settlement. If the disability of the employee extends beyond the initial period, settlement by agreement between the employer and employee in accordance with the Act is encouraged. To protect the worker, a copy of the settlement must be filed by the employer with and approved by the Industrial Commission. It is necessary, of course, to have this supervision to make certain that the agreement system is not abused with respect to full compensation promptly paid. Then too such agreements should be recorded in order to have available complete statistical data on industrial accidents and their cost by industries or firms.

Payments under the above type of agreement are as enforceable as awards by the Commissioner after a hearing.

FILING A CLAIM

The injured worker can file a claim for compensation with the Industrial Commission if his disability lasts for more than three days and if his employer, or his employer's insurer has not made compensation payments. The Act provides that the claim must be filed by the injured employee or his representative within one year after the accident or death, or compensation will not be allowed.

CONTESTED CASES

If the employer and the injured employee, or in case of death, his dependents, have not reached an agreement within fourteen days after the employer has knowledge of the injury or death, or if there is a disagreement between them concerning an agreement approved by the Commission, either party may make application to the Industrial Commission for a hearing in regard to matters of issue. The Commission then sets the date for the hearing at the earliest practical time and notifies the contending parties accordingly. Unless otherwise agreed to by the parties and authorized by the Industrial Commission, the hearings will be held in the city or county where the injury occurred.

The Commission or any of its members can hear the parties at issue, their representatives and witnesses and determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue are filed with the record of the proceedings, and a copy of the award is sent to the parties in dispute. In case the parties are heard by a deputy, he or a designated person swears the

witness and transmits all testimony to the Commission for its determination and award.

If either the employer or employee is dissatisfied with the award, application for review by the full Commission may be made within fourteen days. In such instances the Commission reviews the award, and if just grounds be shown therefor, this body will reconsider the evidence, receive further evidence, rehear the parties or their representatives, and if proper, will amend the award.

As may be noted in the following table, the number of hearings by a single commissioner is not large when the total number of cases filed with the Commission is considered. Appeals from the single commissioner to the full Commission are relatively few in number.

TABLE II.

Number of Cases, Awards Issued by Agreement, Hearings by Single Commissioner and Full Commission — Arranged by Years

1938-39 to 1950-51[14]

Year	*No. of Cases Filed with Commission*	*No. of Awards Issued (by agreement)*	*No. of Hearings by Single Commissioner*	*No. of Hearings by Full Commission*
1938-39	19,955	7,153	315	134
1939-40	25,994	7,583	298	91
1940-41	28,776	9,706	521	119
1941-42	38,165	10,869	715	128
1942-43	44,963	9,907	800	62
1943-44	46,946	10,844	959	144
1944-45	36,864	9,739	1,371	173
1945-46	30,997	9,009	1,260	162
1946-47	33,933	13,606	1,574	208
1947-48	41,225	16,490	1,678	218
1948-49	36,660	9,902	1,593	200
1949-50	35,667	6,217	1,621	264
1950-51	44,315	8,979	1,323	154

14. See the *Fourth* through the *Sixteenth Annual Report of the South Carolina Industrial Commission,* 1938-39 to 1950-51. The figures 6,217 and 8,979 given above for the years 1949-50 and 1950-51 represent the number of perfunctory awards issued approving voluntary settlement agreements between parties. There were also 1,069 and 1,149 supplemental settlement agreements for 1949-50 and 1950-51 respectively.

The award of the full Commission is binding as to all questions of fact, but either party to the dispute may, within thirty days, appeal on matters of law to the Court of Common Pleas of the county in which the alleged accident happened or in which the employer resides or has his principal office.

This procedure is critized by numerous persons in South Carolina, many contending the Court of Common Pleas should be allowed to review matters of fact as well as law. Conceding the good intentions of the Commissioners, it is recognized over the years that in hundreds of hearings the facts which of necessity must be determined are so complex and of so much importance to the parties that they deserve the attention of a jury and a judge experienced in legal procedure and the law of evidence. Final appeal may be had to the Supreme Court of South Carolina but as in other states, relatively few cases are carried to the highest court of the state.

Cases may be reopened upon motion by the Commission or upon application of either of the contending parties for review. The Commission may review any award whether it was settled directly or on appeal to the Industrial Commission. This award may end, diminish, or increase the compensation previously awarded, but such revision cannot affect any monies previously paid. Continuing cases may be reviewed at any time, but closed cases can be reopened only within twelve months from the date of the last payment of compensation.

This provision proposes to protect the injured worker in the case where the injury is of a more serious nature than thought at the time of the first hearing or to protect the employer where the reverse situation is true. While the exact number of reopened cases in South Carolina is not available, it is estimated that they are few in number.

The use of lawyers at workmen's compensation hearings varies. It was hoped that with the establishment of a Commission, which followed an informal procedure, it would be unnecessary to use what, during the old damage suit days, was generally considered a most expensive institution, legal counsel. Today probably most employees in South Carolina are not represented by lawyers at hearings, while all employers and insurance companies are so represented. This occurs largely because the firms and insurance companies retain lawyers by the year for all legal work and therefore are the least expensive and most convenient representatives to appear at hearings.

As the procedure is not involved and as it is relatively easy to

present the facts before the Commissioners, there is little need to retain lawyers to represent either of the parties concerned. Many close observers of the administration of workmen's compensation in South Carolina feel that lawyers should not be allowed to appear in at least eighty-five per cent of the cases. The same persons admit that there are occasional cases in which because of technical problems involved, legal assistance is necessary. Such being the case, it seems necessary to allow the use of lawyers in all cases in which the parties to the dispute care to retain them. The framers of the Workmen's Compensation Act of South Carolina foresaw that need and in order to protect the injured employees, included a provision giving the Commission authority to approve all fees for lawyers appearing in compensation cases under the Act.

Various reasons have been given for what seems to be the non-enforcement of the above provision of the Act. It is not contended that in all cases this power conferred upon the Commission is not exercised but that in some way or another the injured employees often pay unusually high legal fees. It is reported that separate contracts are entered into between attorneys and clients. Be that as it may, the writer in interviews with injured workers in various cities of South Carolina found that attorney's fees often ranged from 20 per cent to 50 per cent of the compensation award.[15]

Many protests have been made by editors, labor leaders, employers and others concerning the practice of certain lawyers of charging exorbitant fees. Persons have directed attention to the provision in the South Carolina Workmen's Compensation Act which makes it a misdemeanor punishable by a "fine of not more than $500 or by imprisonment not to exceed one year, or by both such fine and imprisonment"[16] for any person to receive a fee unless it is approved by the Commission.

Observers throughout South Carolina say that clever subterfuges are used by certain attorneys to avoid prosecution under the above provisions. It is suggested that the Bar Association of South Carolina might assist in caring for this problem by taking disciplinary action against offending attorneys. The establishment of a fee schedule which the Bar Association and the Industrial Commission believe reasonable would at least be a guide to the Commission in approving legal charges submitted by attorneys. Legal fee schedules are used in most of the forty-eight states.

15. See Simpson, William Hays, *Workmen's Compensation in South Carolina*, pp. 53-57.
16. S. C. CODE, §§ 7035-67 (1942).

MEDICAL SUPERVISION

While there are numerous industrial accidents that require little attention many others present serious problems for the Industrial Commission. Other than for ordinary first aid, medical reports must be made to the Commission for all cases treated.

The medical, surgical, hospital and other treatment, including medical and surgical supplies as may reasonably be required must be supplied by the employers to injured workers for a period not exceeding ten weeks. In case of disagreement between the employers and employees, the Industrial Commission may order such further medical, surgical or hospital treatment as it thinks necessary. During the disability periods the employers furnish the services of physicians whom the employees must accept unless otherwise ordered by the Industrial Commission. Any injured employee who refuses the doctor's services forfeit their right to compensation unless the refusal is approved by the Industrial Commission, which then may order a change in the hospital or medical services. In emergency cases, where the employers have failed to provide medical care, physicians other than those provided by employers may be asked to treat the injured workmen at the employers' expense.

The employers are liable only for such medical, surgical or hospital charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured persons.

Because of non-uniformity of medical charges in industrial accident cases the South Carolina Industrial Commission on November 20, 1950 approved a schedule of fees for physicians and surgeons as recommended by the South Carolina Medical Association. However, hospital, nurses and other medical charges not controlled by the schedule of fees may be paid by the insurance carrier or self-insurer without prior approval of the Commission provided such charges are no higher than the prevailing level of charges for similar treatment in the same community. The Industrial Commission will pass upon these charges upon request.

COMPARISON OF COMPENSATION LAWS

The comparative analysis of the workmen's compensation laws in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia which follows covers the main features of those laws with general comments.

Of these states compensation insurance is elective in Alabama, Florida, Louisiana, Tennessee, Georgia, North Carolina, South Carolina and Texas; but in Georgia, North Carolina, and South Carolina it is compulsory, with certain exceptions, as to public employees and in Texas to motorbus companies. In Arkansas, Mississippi and Virginia compensation insurance is compulsory. In ten of the states employers may have their insurance needs cared for by private companies or by self-insurance but in Texas employers are limited to private insurance companies.

REPORT OF ACCIDENTS

In establishing a workmen's compensation system a principal objective was to provide a simple, convenient, inexpensive and quick method of settling claims of injured workers.

TABLE III.
EMPLOYER'S REPORT OF ACCIDENTS

State	Keeping of accident record by employer	Reporting requirements		Penalties for failure to report	
		Time limit	Injuries covered	Fines	
				Maximum	Minimum
Alabama	Required	Within 15 days[1]	Injury and death	$ 500[2]	
Arkansas	Required	Within 10 days and as required	Injury and death	100	
Florida	Required	Within 10 days and as prescribed	Injury and death	100	
Georgia	Required	Within 10 days[3]	Injury receiving medical or surgical treatment or causing over 7 days absence	25	
Louisiana	Not required	No provision			
Mississippi	Required	Within 10 days	Any injury resulting in death, any injury causing loss of time beyond day of accident	100	
North Carolina	Required	Within 5 days[4]	Disability of more than 1 day	25	5
South Carolina	Required	Within 10 days[4]	Disability of more than 3 days	25	5
Tennessee	Not required	Within 10 days	Disability of 7 days or more	100[5]	50[5]
Texas	Required	Within 8 days[4]	Disability of more than 1 day	1,000	
Virginia	Required	Within 10 days[4]	All injuries	25	

1. Supplementary report required 90 days, or upon termination of disability.
2. Also imprisonment for not over 12 months.
3. Supplemental report upon termination of disability.
4. Supplemental report required after 60 days, or upon termination of disability.
5. For second and subsequent offenses, minimum $100, maximum $200.

As may be noted in the above table all states but two, Louisiana and Tennessee, the employers are required to keep records of injuries to employees. The next formal step in the procedure after an employee is injured is the report of the accident by the employer. While the Louisiana law is silent on this subject, laws of the other states require that accidents be reported by employers within five days, as in North Carolina, to within fifteen days as in Alabama. The limit of the period in seven of the other southern states is ten days and in Texas it is restricted to eight days.

Injuries covered in the reports are classified as injury and death, disability of one, three or seven days or all injuries. For failure to report such injuries, fines varying from $5 an offense in North and South Carolina to $1,000 in Texas may be assessed.

WAITING PERIOD AND MEDICAL BENEFITS

All the compensation acts require that medical aid be furnished to injured employees and all also provide for a waiting period during which compensation shall not be paid. The waiting period in South Carolina is three days, four in Florida, five in Mississippi and seven days in the other states. The waiting period is justified because of the cost and administrative burden of bookkeeping in setting up claim files and accounts where but a few dollars are involved. This period relates only to compensation. Medical and hospital care is provided immediately, regardless of the fact that compensation is not paid for a special period. Most of the laws provide that if the disability continues for a certain specified period the compensation is retroactive to the date of injury. In Arkansas, North Carolina, Texas and Tennessee, if the disability lasts for four weeks, compensation is paid from the date of disability. In South Carolina and Mississippi the retroactive period is two weeks; in Louisiana and Virginia it is six weeks. There is no retroactive period in Alabama, Florida and Georgia.

Medical benefits may be enjoyed by injured employees for unlimited periods in Arkansas, Florida and Mississippi but such are limited from one to six months in the other states. Several of the states have placed limitations on medical costs. These vary from $500 in Alabama to $1,000 in Florida.

TABLE IV.
Waiting Period and Medical Benefits

State	Waiting period	Retroactive period	Medical Benefits Limitations by Statute		Artificial Appliances Furnished
			Time	Amount	
Alabama	7 days[1]	none	90 days	$ 500.00	yes[2]
Arkansas[3]	7 days	4 weeks	unlimited	unlimited	yes
Florida[4]	4 days	none	unlimited	1,000.00	yes[2]
Georgia[5]	7 days	none	10 weeks	500.00	yes[2]
Louisiana	7 days	6 weeks	----------	1,000.00	yes[2]
Mississippi	5 days	2 weeks	unlimited	unlimited	yes
North Carolina[6]	7 days	4 weeks	10 weeks	unlimited	yes
South Carolina[7]	3 days	2 weeks	10 weeks	unlimited	yes
Tennessee	7 days	4 weeks	6 months	800.00	yes
Texas[8]	7 days	4 weeks	4 weeks	----------	yes
Virginia[9]	7 days	6 weeks	60 days	----------	yes

1. Applies only to temporary disability.
2. Included in total amount allowed for medical care.
3. Unlimited time extension permitted in medical benefits except 90 days limit in case of silicosis; may be extended to 180 days.
4. Unlimited amount in dollars extensions permitted in medical benefits.
5. Additional benefits for such time as will lessen period of disability. Board may permit additional $250.00 benefit.
6. Medical benefits unlimited except in case of silicosis or asbestosis, treatment limited to 3 years with maximum expenditure of $1,000 a year.
7. Unlimited time extensions permitted in medical benefits.
8. 91 days time extension permitted in medical benefits. Hospital services may be extended for not over 90 days.
9. 180 days time extension permitted in medical benefits.

Artificial appliances are supplied by all of the states but are included in the total amount allowed for medical care in four states.

All the eleven Southern states have placed time limits for which compensation is payable for injuries. Such limits for stated injuries may be noted in Table V.

TABLE V.

Number of Weeks for Which Compensation is Payable for Specified Injuries

State	Loss or Loss of Use of													
	Arm at Shoulder	Hand	Thumb	First Finger	Second Finger	Third Finger	Little Finger	Leg	Foot	Great Toe	Other Toes	Sight One Eye	Hear. One Ear	Hear. Both Ears
Alabama[1]	200	150	60	45	30	20	15	175	125	30	10	100		150
Arkansas[2]	200	150	60	35	30	20	15	175	125	30	10	100	40	150
Florida[2]	200	175	60	35	30	20	15	200	175	30	10	175	40	150
Georgia[2]	200	150	60	35	30	20	15	175	125	30	10	100		150
Louisiana[1]	200	150	50	30	20	20	20	175	125	20	10	100		
Mississippi[2]	200	150	60	35	30	20	15	175	125	30	10	100	40	150
North Carolina[2]	220	170	65	40	35	22	16	200	144	35	10	120	70	150
South Carolina[2]	200	150	60	35	30	20	15	175	125	30	10	100	70	150
Tennessee[1]	200	150	60	35	30	20	15	175	125	30	10	100		150
Texas[1]	200	150	60[3]	45[3]	30[3]	21[3]	15[3]	200	125	30	10	100	4	150
Virginia[1]	200	150	60	35	30	20	15	175	125	30	10	100	50	100

1. Payments under this schedule are in lieu of all other payments.
2. Payments under this schedule are in addition to payments for temporary total disability during the healing period.
3. For loss of metacarpal bone for corresponding thumb, finger, or fingers, 10 weeks is added.
4. Board allows 75 weeks for loss of hearing in one ear provided medical examination shows 50% loss of hearing as a whole.

Table VI shows the maximum amounts which can be paid for scheduled injuries. Within the past four years these amounts have been increased appreciably in the majority of the Southern states.

TABLE VI.

Maximum Amounts Which Could be Paid in Dollars for Scheduled Injuries

State	Loss or Loss of Use of													
	Arm at Sh'lder	Hand	Thumb	First Finger	Sec'd Finger	Third Finger	Little Finger	Leg	Foot	Great Toe	Other Toes	Sight One Eye	Hear. One Ear	Hear. Both Ears
Alabama[1]	4,600	3,450	1,380	1,035	690	460	345	4,025	2,875	690	230	2,300	1,150	3,450
Arkansas[2]	5,000	3,750	1,500	875	750	500	375	4,375	3,125	750	250	2,500	1,000	3,750
Florida[3]	7,000	6,125	2,100	1,225	700	700	525	7,000	6,125	1,050	350	6,125	1,400	5,250
Georgia[3]	4,800	3,600	1,380	840	720	480	360	4,200	3,000	720	240	2,400		3,600
Louisiana[1]	6,000	4,500	1,500	900	600	600	600	5,250	3,750	600	300	3,000		
Mississippi[2]	5,000	3,750	1,500	875	750	500	375	4,375	3,125	750	250	2,500	1,000	3,750
North Carolina[2]	6,600	5,100	1,950	1,200	1,050	660	480	6,000	4,200	1,050	300	3,600	2,100	4,500
South Carolina[2]	5,000	3,750	1,500	875	750	500	375	4,375	3,125	750	250	2,500	1,750	3,750
Tennessee[2]	5,000	3,750	1,500	875	750	500	375	4,375	3,125	750	250	2,500		3,750
Texas[1]	5,000	3,750	1,500	1,125	750	525	375	5,000	3,125	750	300	2,500		3,000
Virginia[1]	4,000	3,000	1,200	700	600	400	300	3,500	2,500	600	200	2,000	1,000	

1. In this group of states compensation for temporary disability is deducted from the allowances for permanent partial disability.
2. In this group of states compensation for temporary disability is allowed in addition from the allowances for permanent partial disability.
3. In this group of states compensation for temporary disability is allowed in addition to permanent partial disability with certain limitations as to period.

It would appear that employees in South Carolina whose injuries may be included in one or more of the classifications in Table V will have the advantages afforded by law for similar injuries in a majority of other Southern states. The Carolinas, however, provide for an advantage of seventy weeks as compared to forty weeks in other Southern states for injury to the hearing in one ear.

As shown in the table which follows, a majority of the eleven Southern states do not have provisions in their laws for benefits to employees whose bodies are disfigured from injuries.

TABLE VII.

Bodily Disfigurement

State	Maximum % of wages	Maximum duration of benefits	Limits of weekly payments		Total maximum under state law
			Minimum	Maximum	
Alabama	65	100 weeks	$ 5.00	$18.00	$1,800
Arkansas	No benefits provided				
Florida	No benefits provided				
Georgia	No benefits provided				
Louisiana	No benefits provided				
Mississippi	No benefits provided				
North Carolina	Discretion of the Commission				2,500
South Carolina	Discretion of the Commission				2,500
Tennessee	No benefits provided				
Texas	60	300	9.00	25.00	7,500
Virginia	No benefits provided				

Of the four states providing benefits for bodily disfigurement, the laws in two, Alabama and Texas, specify the maximum per cent of wages, maximum duration of benefits and limit the weekly payments. In North and South Carolina this matter is left to the discretion of the Commission. The maximum allowed by law in the Carolinas is $2,500.

More of the states provide for facial disfigurement than for bodily disfigurement. The benefits for facial disfigurement may be noted below.

TABLE VIII.
Facial Disfigurement

State	Maximum % of wages	Maximum duration of Benefits	Limits of weekly payments		Total maximum under State law
			Minimum	Maximum	
Alabama	55[3]	100 weeks	$ 5.00	$18.00	$1,800
Arkansas	65	[1]	7.00	20.00	Not to exceed 2,000
Florida	[2]				Not to exceed 2,000
Georgia		No benefits provided			
Louisiana	65	100 weeks	3.00	20.00	2,000
Mississippi[1]					2,000
North Carolina		Discretion of Commission			2,500
South Carolina		Discretion of Commission[4]			2,500
Tennessee		No benefits provided			
Texas	60	300 weeks	9.00	25.00	7,500
Virginia	60	60 weeks	6.00	20.00	1,200

1. Awarded by the Commission at its discretion. Amount to be proper and equitable compensation. No award to be made until a year from the date of the injury.
2. Commission to award equitable and proper compensation. Commission considers only the effect disfigurement has upon future earning capacity of injured employee in similar employment. No such award shall be entered into until 12 months after date of injury.
3. 55% is base maximum, 5% is added for dependent wife and 5% for dependent child up to absolute maximum of 65%. This applies to both facial and bodily disfigurements.
4. An award is mandatory, but method of payment and amount are discretionary.

Of the nine states whose laws provide for facial disfigurement only one state, Texas, provides for a higher maximum benefit than does South Carolina, while six states provide for smaller benefits.

Compensation is paid in certain designated classes of disability including temporary total, permanent partial and permanent total. The term "disability" has been defined in various ways by the courts in interpreting state compensation laws. Some courts have held that it means inability to earn wages, or full wages at work at which the employee was working at the time of injury, while other courts have held that it means the inability to perform any kind of work which might be obtained. A few courts have interpreted it to mean inability to obtain work.

The maximum benefits for temporary total disability as provided in eleven Southern states are included in the following table.

TABLE IX.

Maximum Benefits for Temporary Total Disability

State	Maximum percentage of wages	Maximum period	Maximum weekly payments	Total maximum stated in law
Alabama	65	300 weeks	$23.00	$9,200
Arkansas	65	450 weeks	25.00	8,000
Florida	60	350 weeks	35.00	
Georgia	50	350 weeks	24.00	8,400
Louisiana	65	300 weeks	30.00	
Mississippi	66-2/3	450 weeks	25.00	8,600[1]
North Carolina	60	400 weeks	30.00	8,000
South Carolina	60	500 weeks	25.00	8,000
Tennessee	60	300 weeks	25.00	
Texas	60	401 weeks	25.00	
Virginia	60	500 weeks	25.00	10,000

1. 450 weeks or $8,600, whichever is less.

As may be noted in the above table four states provide for benefits on a higher maximum percentage of wages than does South Carolina. Virginia and South Carolina have the largest maximum period of payments for benefits, 500 weeks, of the eleven states.

The maximum benefits for permanent partial disability are listed for various states in the table below.

TABLE X.
Maximum Benefits for Permanent Partial Disability

State	Maximum percentage of wages	Maximum Period	Maximum payments per week	Total maximum stated in law
Alabama	65	400 weeks[1]	$23.00	$9,200
Arkansas	65	200 weeks[2]; 450 weeks for nonlisted disability	25.00	8,000
Florida	60	200 weeks[3]; 350 weeks for nonlisted disability	35.00	
Georgia	50	200 weeks[4]; 300 weeks for nonlisted disability	20.00	
Louisiana	65	400 weeks	30.00	
Mississippi	66-2/3	200 weeks[2]; 450 weeks for nonlisted disability	25.00	8,600
North Carolina	60	200 weeks[2]; 300 weeks for nonlisted disability	30.00	8,000
South Carolina	60	200 weeks; 300 weeks for nonlisted disability	25.00	8,000
Tennessee	60	400 weeks[5]	25.00	7,500
Texas	60	200 weeks; 300 weeks for nonlisted disability	25.00	
Virginia	60	200 weeks; 300 weeks for nonlisted disability	25.00	7,500

1. Special provisions for disfigurement.
2. In addition to compensation for temporary total disability; in some states, such compensation for temporary total disability is limited to a specified number of weeks. Special provision for disfigurement.
3. Special provision for disfigurement.
4. In addition to compensation for temporary total disability for not more than 10 weeks.
5. In addition to compensation for temporary total disability limited to a specified number of weeks.

The benefits allowed in eleven Southern states for permanent total disability are designated in the table which follows.

TABLE XI.

Benefits for Permanent Total Disability

State	Maximum percentage of wages	Maximum period	Maximum payments per week	Total maximum stated in law
Alabama	65	400 wks[1]	$23.00	$9,200
Arkansas	65	450 wks	25.00	8,000
Florida	60	700 wks	35.00	
Georgia	50	350 wks	24.00	8,400
Louisiana	65	400 wks	30.00	
Mississippi	66-2/3	450 wks	25.00	8,600[2]
North Carolina	60	400 wks	30.00	8,000[3]
South Carolina	60	500 wks	25.00	8,000
Tennessee	60	550 wks[4]	25.00	7,500
Texas	60	401 wks	25.00	
Virginia	60	500 wks	25.00	10,000

1. $5 (or actual wage if less) for additional 150 weeks, if disability resulted from loss of both eyes or both arms, paralysis, or mental incapacity.

2. Maximum 450 weeks or $8,600, whichever is less.

3. If disability is due to paralysis resulting from injuries to the spinal cord, compensation is payable for life, and without regard for total maximum amount.

4. All cases drawing more than $10 a week payments after first 400 weeks reduced to $10 a week for remainder of 550 weeks.

The benefits for widows and children in death cases as provided for in the laws of eleven Southern states are shown in the following table.

TABLE XII.

Benefits for Widows and Children in Death Cases

State	Maximum percentage of wages		Maximum period	Maximum payments per week	Total maximum stated in law
	Widow only	Widow plus children			
Alabama	35	65	300 wks[1]	$23.00	$9,200
Arkansas	35	65	450 wks	25.00	8,000
Florida	35	60	350 wks	35.00	
Georgia	42½	42½	300 wks[1]	20.40	
Louisiana	32½	65	300 wks[1]	30.00	
Mississippi	35	66-2/3	450 wks	25.00[2]	8,600
North Carolina	60	60	350 wks[1]	30.00	8,000
South Carolina	60	60	350 wks[1]	25.00	8,000
Tennessee	35	60	400 wks[1]	25.00	7,500
Texas	60	60	360 wks[1]	25.00	9,000
Virginia	60	60	300 wks[1]	25.00	7,500

1. Less period of disability payments, if any.
2. An immediate lump sum payment of $100 is made to the widow.

It may be noted that there is a tendency to recognize a greater economic loss in case of permanent total disability than in case of death.

The following table lists the funeral benefits allowed in the designated states.

TABLE XIII.

Funeral Expenses

State	Limits of funeral benefits
	Maximum
Alabama	$200
Arkansas	250
Florida	150
Georgia	225
Louisiana	250[1]
Mississippi	350
North Carolina	200
South Carolina	200
Tennessee	250
Texas	250[2]
Virginia	300

1. Plus $50 maximum contingent expenses.
2. Only where there is no beneficiary.

Funeral benefits provided for in the above mentioned states range from $150 to $350. South Carolina is one of four states which allows $200 or less for such expenses.

SUMMARY

While accident insurance laws were enacted in Germany, England and various other European countries during the last two decades of the nineteenth century the first such law became effective in the United States in 1911. By 1920, however, forty-one of the states had approved workmen's compensation laws. South Carolina's law became effective September 1, 1935, thus making it the forty-sixth state to approve such legislation. Adoption was completed in the forty-eight states when on December 5, 1940 and on January 1, 1949 similar legislation became effective in Arkansas and Mississippi respectively. The rapid approval of this type of legislation was pos-

sible because it became generally recognized that legislative action was necessary to compensate injured employees who under terms of common law were not given sufficient protection.

The procedure followed in contested and uncontested cases which arose between claimants and their employers or the insurance carriers was reviewed. The number of these cases has increased during recent years from 19,955 in 1938-39 to 44,315 in 1950-51. During the same period the number of hearings by a single commissioner increased from 315 to 1,323 and the hearings by the full commission from 134 to 154.

The use of lawyers at hearings is permitted but not required. Unfortunately exorbitant charges for legal services to injured workers have been made by certain attorneys. This practice, however, has met with local protests from labor leaders, employers, editors and others.

Finally by use of a series of tables a comparative analysis was made of certain provisions of the workmen's compensation laws of eleven Southern states.

RECOMMENDATIONS

During recent years considerable improvement has taken place in the administration of the Workmen's Compensation Law in South Carolina. It is highly possible however that the good work of the Industrial Commission could be as effectively and more economically carried on by a three member commission than by a larger body. Provision for the establishment of a three member commission was approved by the General Assembly of South Carolina but the change has not been made.

For better administration of the law there is need for, among other things, additional rules and regulations concerning procedures in controverted cases, regulations relating to administrative functions not cared for in the statute and for more complete statistical data relating to accidents. The lag period between the time of accident and first payment of compensation to the injured worker should be made as short as possible. It is believed a change from the agreement system to the direct system in compensation cases may be helpful in this matter.

The United States Department of Labor, the Labor Department of South Carolina and various mills throughout the state have joined in programs designed to prevent accidents. The Industrial Commission might expand its efforts in the promotion of this program.

The coverage of the Workmen's Compensation Law in South Carolina is not as complete as in other states, elective coverage being provided for employers of fifteen or more regular employees while in other Southern states elective coverage varies from three in Florida to ten in Georgia. More exemptions are allowed in South Carolina than in other Southern states. The coverage of the law therefore should be extended to place it in a classification favorable to neighboring states.

The Workmen's Compensation Law of South Carolina should be so amended as to include provision for assistance in the rehabilitation of the industrially disabled. Less than half of the Southern states now have such a provision in their Workmen's Compensation Laws.

A careful review by the Industrial Commission of lawyers' fees in workmen's compensation cases as provided by law is urged. It is suggested that the Industrial Commission in cooperation with the South Carolina Bar Association adopt a reasonable fee schedule for legal assistance in such cases.

From time to time arguments have been advanced by leading citizens of South Carolina for the privilege of public inspection of records of the Industrial Commission. This together with review of facts as well as of law by the courts on appeals from decisions of the Commission may be helpful in the solution of certain disturbing problems relating to workmen's compensation. The above recommendations are submitted as suggestions for improvement of the Workmen's Compensation Law in South Carolina. Other problems exist which should be given attention and as time passes additional changes must necessarily be made to care for new conditions which arise.