Current Issues Under The Workmen's Compensation Law In Nigeria

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BY
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Introduction

Employee protection means more than just safeguarding against accidents and injuries. It also means providing a system which compensates workers or their dependants when, inspite of safeguards they are injured or killed while on the job.

Clearly, at common law, it is trite that an employee who has suffered an injury at work may claim damages from his employer if he can prove that the injury has been caused by the employer's negligence. There are, however, many instances where a person may suffer injury at work without the employer being negligent and because of the injury the worker's earning may cease, and indeed, his working capacity may be permanently reduced or he may even die. It was to deal with these cases that the Workmen’s Compensation Act was enacted. The idea behind the Act is that an employee who was injured in the course of his employment should be entitled to some compensation for the resulting loss of earning, even if the employer was not liable to pay damages. Compensation is payable by the employer who would add the cost of it to his costs of production.

Therefore the employer's liability for work-related injuries, diseases, or death is governed both by statute and common law. In all cases the injury, disease, or death must have occurred in the course of employment from a risk of that employment. But while protection under the common law is still based on who is at fault, Workmen’s Compensation laws generally provide compensation for any injury received, regardless of fault. As Fisk et al' remarkably stated:

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1 Cap 222 laws of the Federation of Nigeria. 1958. It is superseded by the Workmen's Compensation Decree 1987, Which is now codified as Cap. 470. Laws of the Federation of Nigeria, 1990

2 Generally covered by an insurance policy.

"It is significant that only within the twentieth century has it been deemed necessary to protect workers from injury, safeguard their health, require medical care for those injured while working) and continue payment of a portion of their wages while they are off work. Before this time, workers had so depend on the protection of the common law; which has become inadequate in today's industrialized society in terms of compensation for industrial injuries."

Thus, because of changes in our industrial system and a realization that the cost of injury is a cost production, must accommodate laws have largely taken the place of the common law rights, risks and duties. It is to curb or manage the injustices arising from the common law inability to cope with the consequences of work injuries and diseases that the movement for workmen's compensation through legislation gained momentum. Labour jurisprudence is replete with evidence of this movement.

Clearly, therefore, the *Workmen's Compensation Act* is the Modern Law governing employee's claim for industrial injuries. It is legislation directed towards social security and insurance for the injured worker and his family. The cardinal aim of the scheme is to protect the workman and his dependants from want and degradation (social and economic) as a result of industrial accident.

It must be said that the *Workmen's Compensation Act* is arguably the most comprehensive piece of legislation in Africa for the protection of employees. It is a very welcome and salutary development for good industrial relations and considered as a piece of social legislation consistent with societal aspirations. However, in the implementation of the legislation, certain important issues and

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5 Fisk et al. op. cit. P 440 (Footnote 3).
8 See Ogus et al. op. cit p. 239; Wambaugh op. cit pp. 129 - 130; Lawrence M. Friedman and Jack Ladinsky op. Cit. P 50. See Footnote 7.
considerations impede and seem to have whittled down the efficacy of the Act thus creating doubt and concern on its usefulness after all. The aim of this article therefore is to examine the current issues affecting the implementation and success of the Workmen's Compensation law in Nigeria. Before doing that however it is worthwhile to first briefly look at the principal features of the Act and the conditions for claiming compensation.

Features of the Act

Clearly, Section 3 sub-section (1) of the Act is the main plank or foundation upon which claims under the Act can be pursued. It states in summary the substantive provision which is that:

"Subject to subsection (2) of this section, if in an employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned be liable to pay compensation."

Conditions for compensation

From the provisions, the Act covers and provides relief to any workman who suffers a personal injury caused by accident arising out of and in the course of his employment. Relief is also afforded the deceased workman dependants. Therefore for claim to succeed under the Act four basic conditions must have to be satisfied. These are:

(a) That the victim is a workman;
(b) That he has suffered a personal injury;
(c) That the personal injury was caused by accident; and
(d) That the accident arose out of and in the course of the employment.

Workman

To be eligible for compensation, a person must be a workman. The Act defines a workman as a person if either before or after the commencement of this Act has entered into or is working under a contract of service or apprenticeship with an employer whether by way of manual labour, clerical work or otherwise, and whether the contract is expressed or implied, is oral or in writing. The workman must show that his injury has incapacitated him for
at least three consecutive days from earning full wages at the work at which he was employed otherwise he will not qualify for the claim. ¹⁰ Again, where the injury to a workman is attributable to the serious and willful misconduct of that workman, compensation claimed in respect of that injury shall be disallowed," except where such injury results in death or serious and permanent incapacity". Finally for the purpose of compensation under the Act a court may treat an illegal contract under which a workman was injured as a valid contract".

It is noteworthy that by Section 2(1) of the Act, public servants of the Federation or State and those that work under the Nigeria Police Force are regarded as workman and may take the benefit in the same way and to the same extent as if the employer is a private person.

Personal Injury

A workman is entitled to compensanon against personal injuries which he may suffer as a result of industrial accident. The Act did not attempt to define or even categorise what constitutes personal injury.

Definitely personal injuries may be physical or mental, but they must be injuries to the person, as distinct from injuries to property. Some learned writers!" propose that personal injury should include physiological injury or change including nervous shock or disfigurement. Clearly such injury must be one to any part of the living body", for example loss of eyes, two limbs, hands, thumb or any of the appendages. Whereas loss of or damage to personal property such as jewellery, clothing, vehicle and damage to artificial limb and so on are not personal injury within the contemplation of the Act.

Claim Must Be Based On Accident

The personal injury to the workman must have been caused by 'accident'. But

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¹⁰Section 3(2) (a) of the Act.
¹¹Section 3(2) (b) of the Act.
¹²See Section 3(3) (at-te) of the Act.
¹³Section 1(3) of the Act.
the Act does define what constitutes an accident or injury by accident. Rideout" opines that accident is an unlooked - for mishap or an untoward event which is not expected or designed by the person injured. Moreover, it signifies an event which although it may be one of several similar events, is capable of being reasonably clearly identified as the cause of the trouble!". Friedman" posits that the injury contemplated as accident could arise from deliberate but unexpected conduct of a third party, for instance an attack and robbery by thieves, murder of staff and events of nature. Clearly, therefore, an accident is an occurrence or happening which a reasonable man of the workman's status could not have foreseen as probable or likely to occur in the performance of his duties. It means not only that the injury must not have been designed by the workman himself, but also that is followed instantaneously from the event causing it.

**Prescribed Industrial Diseases**

As a matter of fact, an industrial or occupational disease does not qualify as a personal injury by accident where it is the result of a gradual process as indeed most diseases will be. It is for this reason that Section 32 of the Act authorises the Minister to prescribe certain industrial diseases for particular classes of employee". The Section clearly provides that:

"That Minister may by order extend the provisions of this Act to incapacity or death caused by any disease specified in such order, and compensation shall be payable as if any disease so specified was a personal injury by accident arising out of and in the course of employment"

The provision here protects the workman and enables him qualify for compensation for injuries arising from occupational disease without the unnecessary dichotomy. Therefore prescribed industrial diseases are an exception to the general rule, that a worker cannot claim under the act for injuries arising by process?".

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16 Principles Of Industrial Law op.cit p. 279; See also Fenton v Thorley (1903) A.C. 443 at 4:18, Per Lord Macnaughten. In the same case Lord Lindley stated at P 453 that an accident is an "unforeseen happening or an unexpected occurrence which produces hurt or loss" See also Adelumola v. State (J988) I.N.W.L.R. (Pt. 73) 683, Per Oputa, JSc.
17 Rideout, op., cit. P 280.
19 Dkene. o.Vc. Industrial Law In Nigeria op. cit. P 121
20 Ibid
Arising Out Of And In The Course Of Employment

This is one of the most important conditions to be proved in a workman to succeed in his claim under the Act. Thus even if the employee is a workman within the meaning of the Act, once it cannot be established that the injury resulting in his incapacitation or death arose out of and in the course of employment, the workman or his dependants cannot succeed in any claim for compensation.

An accident arises "out of" a man's employment if it was connected with the doing of something, which formed part of his employment. It arises "in the course of his employment" if it happens during the time when he is following his employer's business. The first statement relates, then, to the issue of causation, while the second deals with the much simpler time-factor:

The general meaning of this phrase is that once the employee arrives at his employer's business premises or he is at his place of work, the course of employment has begun, but this is sometimes qualified by the requirement that the workman must be doing something reasonably incidental to or in consonance with his employment. In Moore v. Manchester Lrners" Ltd., Lord Loreburn confirmed these views when he declared that:

"An accident befalls a man in the course of his employment if it occurs while he is doing what a man so employed may reasonably do within a time during which he is employed and at a place where he may reasonably be during that time to do that thing."

These words, arising "out of" and "in the course of employment" have given rise to a great deal of case law and so much discretion to the courts in interpretation. This can be seen from some of the cases. In R. v. Deputy Industrial Commissioner, Ex parte Amalgamated Engineering Union, a workman who had overstayed his tea break and had gone out to smoke because the booth allocated for leisure had been overcrowded was held to be entitled to claim compensation for industrial injury. In holding that the injury arose in the course of employment and thus reversing the decision of the Industrial Injuries

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2 Frank, Legal aspects of Industry and Commerce (1961) P. 201
3 Ogunniyi op. cit. P. 136
4 (1910) AC 498 at 500
commissioner, the court of appeal decided that in determining whether an employee or workman was acting in the course of his employment or not, the dominant factor is whether or not what he was doing when the accident occurred was something incidental to his contract of service, although he might have no duty to do it. The Court also came to the conclusion that in the particular case, this was an injury arising in the course of employment because it was not inherent in the job and it was enough if the employer consented expressly or by necessary implication to the activity by which the injury arose.

It has been stated that where a man goes away from work for his own purpose as where he goes from one end of the factory to another to compare notes on football pools, he is not acting in the course of his employment and cannot claim when injured.". He would however, be held entitled to claim under the Act if he went to get a tool or go to Lavatory".

The court in Noble v. Southern Railway Co. attempted to give another meaning to 'arising out of and in the course of employment'. Lord Arkin held in that case that where a man at his place of work does something which has nothing to do with his employment, for an example, if the guard of a train takes it on himself to drive the train and he is injured while driving, he is outside the course of his employment. In Nagakam v. Jtnabag (Nig) Ltd, it was held that the death of a worker resulting from the company’s bus conveying him and other workers home falling into a river did not occur in the course of his employment. In M. Ade Smith v. Elder Dempster Lines Ltd it was held that, as a rule, applicant’s (workman's) employment does not continue after he has left his place of employment. But, it does not necessarily end when the employee leaves the actual place where he is working and there may be reasonable extension where he travels from work by some form of transport provided by his employers and which he is under a contractual duty. As the Supreme Court stated:

"The general rule is that a man's employment does not begin until he has reached the place where he has to work or ambit, scope or scene of his duty and it does not continue after he has left it and the period of going and

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1) See Rideout op cit. P 283.
2) Ibid
27 (1940) AC 583
28 (1990) SCNIR 525
29 (1994) 17 NIR 145
returning generally excluded. There are exceptions to this rule, but the only 0\bel with which we are concerned in this case are those that relate to the provisions of transport and means of access and egress from the place of work."

In the case of *Scandinavian Shipping Agencies v. Ajide* the deceased and others were being ferried out at the close of work when his co-worker who tried to jump on board, caught the dress worn by the deceased and both fell into the lagoon and drowned. It was held that since there were other means of transportation, the accident did not arise out of or in the course of the deceased workman's employment.

It is clear from the *Nagakam am! Scandinavia Shipping agen.ie* cases that the workman's employment does not continue after he had left his place of work. The Court has held that a workman supervisor who was injured while attempting to prevent a fight between a stranger and a petrol attendant was entitled to compensation under the Act. It also seems that an employee who is injured in the course of employment while changing into work cloth is entitled since his act arises out of or is incidental to the course of his employment.

From the foregoing cases, it is apparent that the court decisions in interpreting the phrase 'arising out of and in the course of employment' are not clear cut owing to the peculiarity of each particular case. A further glimpse at the Act shows that a strict liability is imposed on the employer, and this is of great help to the claimant for benefit. It provides that an accident resulting ill death or serious and permanent incapacity of a workman shall be deemed to arise out of and in the course of his employment notwithstanding that the workman was at the time when the accident occurred acting in contravention of any statutory regulation or other regulation applicable to his employment or any orders given by or on behalf of his employer or that he was acting without instructions from his employer, if such act was done by the workman for the purpose of and in connection with his employers' trade or business. Under
Section 3 subsection (3) (c), it would appear that Noble" would have been entitled to claim since he was acting for the purpose of and in connection with his employers business.

Benefits Provided (Compensation Payable)

The Act provides for 3 types of benefits which are as follows:

1. Industrial Injury Benefit - Temporary Incapacity

This is for compensation for ordinary temporary injuries suffered by the worker in the course of duty. Section 9 (1) of the Act provides that:

Where temporary incapacity, whether total or partial, results from the injury;

a. the injured workman's basic pay shall continue to be paid for a period of six months and thereafter, if the injured workman has not resumed the duties of his office, he shall be paid a sum equal to half of his basic for an additional period of three months, and

b. if at the expiration of the total period mentioned in paragraph (a) of this subsection, the injured workman has not resumed the duties of his office and compensation due to him has not been determined, he shall be entitled to a sum equal to one-quarter of his monthly salary for the next succeeding fifteen months, but any sum paid under this subsection shall be deducted from any sums payable as compensation.

2. Industrial Disablement Benefit

When a workman is injured at his work and as a result becomes partially or totally incapacitated, his temporary injury is deemed to have graduated into disablement. He no longer needs an injury benefit but a disablement benefit. An incapacity may be partial or total, but in both cases it must be permanent. An incapacity is said to be permanent where it permanently reduces the capacity of the workman to earn.

Permanent Partial Incapacity"

This is where the incapacity is of a nature as to reduce permanently the earning

\[ ^{17} \text{Op. Cit. See note 27 ante} \]
\[ ^{18} \text{See Section 7 of the Act.} \]
capacity of a workman below the level of his capacity before the accident or injury occurred. Here the compensation is such percentage of the loss of his earning capacity. The word permanent incapacity must be distinguished from permanent injury. In Metal Containers(WA) Ltd. V Momodu Iyomifoku\(^{39}\), a workman had an accident in the course of his employment as a result of which he lost two teeth from his upper jaw. It was proved that the loss of teeth in no way prevented the workman from carrying out his pre-accident work and there was no evidence that his capacity to carry out any other employment was impaired. The magistrate awarded compensation on the ground that the extraction of the teeth resulted in permanent incapacity. On appeal, it was held that it is only in respect of a reduction of earning capacity that compensation is payable and that though the loss of two teeth is a permanent injury, it is not the same thing as permanent incapacity which alone would result in loss of wage-earning capacity.

**Permanent Total Incapacity**

An incapacity will be permanent and total where the injury is so serious as to completely prevent the workman from being employed again. In such cases Section 5 provides for compensation equivalent to 54 months earnings of the workman. If the incapacity is so grave that the workman would need the assistance of a house keeper or aid, an additional compensation of or 25\% of the award shall be payable.”?

3. **Industrial Death Benefit**

This benefit is payable normally to the widow of the workers, though where the husband of an insured woman has been dependent on her, he may claim this benefit as well. In exceptional cases, the parents of the deceased person may also claim death benefit if they have been substantially maintained by him or her where:

a. The workman leaves any dependant wholly dependant on his earning the amount of compensation shall be a sum equal to forty-two months earnings.

\(^{39}\) (1955) L.L.R. 130

\(^{40}\) see Section 5 and 6 of the Act.
b. The workman does not leave any dependant wholly dependant on his earnings but leaves any dependant in part so dependant, the amount of compensation shall be such sum, in any case not exceeding the amount payable under paragraph (a) of this section, as may be determined by the court to be reasonable and proportionate to the injury to the said dependant;

c. The workman leaves no dependant, reasonable expenses commensurate with the last position held in his employment by the deceased, shall be paid by the employer.

And by Section 12 (1), compensation payable where death of a workman has resulted from an injury shall be paid to the court, and the court may order any sum so paid to be apportioned among the dependants of the deceased workman or any of them in such proportion as the court thinks fit, or in the discretion of the court, to be allotted to anyone such dependant and the sum so allotted to any dependant shall be paid to him or be invested, applied or otherwise dealt with for his benefit in such manner as the court thinks fit.

Requirement Of Notice To Employer

Section 13 (1) and Section 14 (1) of the Act provide for notice to be given by the workman to the employer before proceedings for recovery of compensation will be initiated i.e. after the accident has occurred, the employee must notify the employer of intention to proceed to court. It must be done six (6) months before the commencement of claim for compensation. If no notice is given, the right of compensation will be lost. On the other hand in the event of any death of a workman the employer is required to notify the Labour Officer within 7 days from when the death becomes known to him.

Other Provisions

The Act contains other worthy provisions unlike the previous regulations in terms of compensations. These innovations are review of compensation - Section 18 (1), contracting out - Section 29 (1), which renders null and void any agreement between employee and employer that exempt payment of compensation, medical expenses - Section 29, medical examination and treatment - Section 15 and many others. A workman who fails to submit himself for medical treatment within a reasonable time may have his right of
compensation suspended. Medical practitioner is defined in the Act to mean Medical Practitioner registered under the Medical and Dental Practitioners Act of Nigeria as provided in the Laws of Federation 1990.

**Functions Of Court In Workman's Compensation Matters**

*Section 20 (1)* of the Act provides the High Court with responsibility to adjudicate on cases or dispute between employee and employer and enforcement of judgements resulting from injury sustained for purposes of implementing the provisions of the Act.

The Chief Justice of Nigeria is by *Section 36* of the Act empowered to make rules or procedures to be adopted by the court. The enactment of the rules and procedures has not been made possible because, by *Section 236* of the 1979 constitution of the Federal Republic of Nigeria as amended, the High Courts of the State have an unlimited jurisdiction to hear suits between parties in the event of any dispute. The rules of practice and procedures of our various High Courts apply to compensation matters as well.

**Compulsory Insurance**

By *Section 40 (1)* every employer shall insure every workman employed by him against injury or death arising out of, or in the course of his employment. It is pertinent to say that not many employers have been implementing this section of the Act relating to insurance. *Section 10 (2)* of the Act makes provisions for the Minister of Labour to make regulations prescribing the category of employers who must compulsorily insure their employee with respect to injuries or death arising out of or in the course of employment. Till date, it seems that these regulations have not been made to enforce the provisions of the Act.

**Current Issues**

The current issues affecting the implementation and success of the workmen's Compensation law in Nigeria may be stated as follows:

One major issue affecting the workmen's Compensation Law in Nigeria is the process of making claims. The time within which the compensation claims are paid to the workman take very long. In most cases, if the employer (or his insurance company) was not prepared to acknowledge liability lengthy court proceedings followed and many injured workers are forced to settle for less
than they would have been awarded by the court because they could not afford to wait for the end of the proceedings" coupled with the high cost of litigation. It is therefore highly suggested that an amendment should be made to the Act to provide for an Industrial Injuries Commission or Workmen's Compensation Board as it exists in New Zealand, America, Ontario, England and other civilized countries!". Under this system, injuries commissioners are appointed to visit workmen and assess claims and damages payable for injuries. Moreover, the existence of same makes for faster processing of claims for injured workman. Addressing a convention of the Law Society of Australia, Sir Victor Windeyer of the High Court of Australia remarkably stated as follows.

"... we live in an insurance age, we live in a motorised and mechanical age. People are suffering from accidents which are part of the hazards of the times we live in. The time will come I am sure when we will abandon this pretence of a contest between a plaintiff and a defendant: We will have some system of assessing the damages by a competent tribunal accustomed to it".

It is hoped that the Nigerian Law Reform Commission will take the necessary step to adopt this pragmatic approach about compensation for the victims of industrial accidents. This accords with the seeming general agreement on the necessity after an accident to create the most favourable climate for a speedy recovery and early return to gainful employment, where appropriate. Moreover there seems to be some medical evidence now to support the view that where a trial is delayed the injured person is more likely to develop compensation neurosis, i.e. develop symptoms which an earlier settlement would have prevented". Whatever reform eventually takes place, it should cease to look at a claim for compensation as a form of lottery". It is submitted that something akin to the standard letter sent by the Workmen's Compensation Board to an injured worker in Ontario acquainting him of his rights and responsibilities be adopted by the Board or commission to be set up to deal with compensation in Nigeria.

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41 Which may run into years because of the too many delays and the dilatory nature of our judicial system.
42 See Hickling, R. H. Compensation for personal Injury in New Zealand (1969) i.e. L. Q 191.
43 Australian Law Journal P 149
45 See Ison, T.G., The Forensic Lottery Staples Press (1968) p. 28 where the author talks about the uncertain, capricious and unsatisfactory method of compensating victims of injury or disease.
46 See Hickling, op. cit. P 200
Another important issue affecting the Act is that the benefits (quantum of compensation) provided are rather too low. This is apparently one of the reasons for the constant revision of the previous Workmen's Compensation Acts. The payment of fifty-four (54) months salary as compensation to an employee for permanent incapacity is just too small and unacceptable; it is suggested that the Act should be reviewed to fix an appropriate amount that will adequately resettle and take care of the workman's needs for life. Having been permanently incapacitated, the workman is left to his fate. The obligations of the employer to him ceases. The state cannot assist him either. So without adequate compensation that workman will continue to suffer untold hardship as soon as his little compensation is exhausted. There is no doubt that 54 months salary cannot actually compensate for permanent total disability such as lost of sight, limbs or feet which consigns the workman to constant psychological or emotional trauma and social ostracism through the rest of his life.

Furthermore, there is need to review and amend the Act to redefine "arising out of and in the course of employment" to include a situation where the workman is returning from work in the employers vehicle, craft or other means of transportation. This will take care of circumstances in the Nagakam and Scandinavian cases respectively. There is definitely the need to include all work injuries that are excluded except deliberate self injuries.

Whilst the provision of Section 40 with respect to mandatory obligation to insure is commendable, it is suggested that employers are not sufficiently deterred by the sanctions imposed. The provision of the Act should be amended so that employers who fail to insure workmen under their employment should be made to pay a fine ranging from Five Hundred Thousand (₦500,000.00) to Five Million Naira (₦5,000,000.00) depending on the shareholding or capital base of the corporate employer involved. The payment of such fixed but high fine will act as a sufficient impetus to compel compliance by employer to insure the workers under the Act.

Again, under the Act, the compensation paid to the employer is lump sum. Payment of this nature should be discouraged. It is suggested that payments be graduated like as it exist in pension schemes. This is suggested because most employees on disengagement spend their money without any meaningful investment to sustain them. Some also invest unwisely lose everything and then become a burden on the society again.
Since the enactment of the Act, the Minister of Labour in charge of labour matters is supposed to have made regulations envisaged by the Act. These regulations have not been made till date. This has affected the application of the Act. Until same is carried out, the full implementation of the Act cannot be easily achieved.

Despite the existence of the Workmen’s Compensation Act, so many employees who fall within the definition of workman in the Act are ignorant of the Act and their rights therein. The Act should therefore be amended to compel employers to educate their workers on their rights under the Act. In the alternative, the Act should be amended to give the Minister of Labour the power to appoint Labour Officers to visit from time to time employers of labour to educate the workmen on their rights under the Act and to ensure that there is effective monitoring of the activities of the employers to promote compliance with the Act.

**Conclusion**

There is no doubt that the Workmen’s Compensation Act is a most welcome and salutory piece of legislation geared towards the security and welfare of employees. It is definitely a piece of legislation consistent with societal aspirations. It gives hope and certainty of compensation to an injured workman than the common law reliance on “no liability without fault” principle which has been found to be of negligible significance either as deterrent or an important factor in promoting industrial safety, with its erratic and capricious approach to compensation of victims which has been likened to a lottery.

Nevertheless, there is the urgent need to address all the issues that have been raised which affects the success of the implementation of the Act. It is hoped that when this is done a complete solution would have been found in a complete document dealing with Workmen's Compensation.