

The Effects of Lump-Sum Settlements in Workmen's Compensation Cases in New York State

Whether compensation for permanent incapacity should normally take the form of periodical payments or of a lump sum, and, where periodical payments constitute the normal form, what safeguards should surround commutation — these are questions upon which a difference of opinion exists in several countries. Hitherto it has been difficult to reach a reasonable decision on these questions for lack of a sufficient body of factual evidence against which the opposing opinions could be tested. By collecting the after-histories of over three hundred cases settled by lump-sum payments, the Rehabilitation Division of the Education Department of New York State has made an important contribution¹ to the solution of this problem. Although the cases investigated constituted a select class, their nature being, in particular, limited by the conditions of the New York workmen's compensation scheme, they do not seem to differ so widely from those arising under other schemes, even outside the United States, that the conclusions drawn from the investigation do not possess a considerable measure of general validity.

CIRCUMSTANCES AND PURPOSE OF THE INVESTIGATION

Compensation for permanent incapacity in New York State (as in other parts of the United States) is administered in a form which is normally that of fortnightly payments continuing for a number of weeks proportional to the degree of incapacity as indicated by a schedule embodied in the law. Where it is clearly in the interest of the claimant, the periodical payments may be wholly or partly commuted for a lump sum of equivalent value. Commutation, however, is allowed only after the Rehabilitation Division has found that commutation is likely to prove of advantage to the claimant.

Certain injuries of a lasting or permanent character are not mentioned in the schedule. Thus the law does not specify the number of weeks for which payments are to be made in case of fracture of the skull, strained back, or combinations of injuries. The fixing of compensation in such cases is left to the judgment of the Industrial Board or its representatives, the referees.

The procedure is apt to be protracted, since not only is the extent of the injury difficult to discern but its causal relationship with the

¹ Carl NORCROSS : *Vocational Rehabilitation and Workmen's Compensation*. Introduction by Riley McMillan LITTLE. New York City, Rehabilitation Clinic, 1936. xvi + 126 pp., diagrams. \$1.

accident may also be hard to decide, and these questions give rise to conflicting medical, as well as legal, testimony and arguments. Persons suffering from such injuries usually receive fortnightly payments, but in some cases they receive nothing until their claim is settled. Where it appears that further progress towards recovery has ceased — possibly two years or more after the accident — one of the parties or the referee himself, all of them tired of the dispute, may suggest that the claim should be definitely settled by the payment of a lump sum. If the suggestion is taken up, the parties proceed to bargain, and, after negotiations lasting perhaps several months, they agree upon a sum. The agreement must be submitted for approval to the referee: approval is rarely refused. These cases, which are called "compromise cases", form the subject-matter of the present investigation.

The Rehabilitation Division is consulted by the referees before approving compromise agreements, but its instructions are to consent to the agreement "unless there is clear evidence that the money will be wasted". Save in the case of habitual drunkards and persons who have already wasted large sums, such clear evidence cannot be adduced. In practice therefore the Rehabilitation Division consents to the great majority of compromise agreements.

The powers of the Rehabilitation Division in relation to commutations in case of scheduled injuries and to compromise agreements in cases of non-scheduled injuries respectively are quite different. In cases of scheduled injuries, the Division refuses consent to commutations unless there is evidence that the money will be properly utilised, and, where commutation is allowed, it sees that the money is devoted to the purposes authorised. In cases of non-scheduled injuries, on the contrary, the onus is upon the Division to show that the lump sum payable under a compromise agreement will be misused, while no power is given to it to control the spending of the money. The Division does indeed succeed in rehabilitating a few of the compromise cases, but the proportion of successes is notably smaller than is obtained among commutation cases. Many of the persons who are compensated under compromise agreements do not avail themselves of the services of the Division, which has therefore been unable to follow their future career.

It was in order to ascertain the consequences of compromise settlements that the present investigation was undertaken.

"Does the payment of a lump sum accomplish any therapeutic purpose? Do the injured men recover? Do they return to work? How do they spend their money? In short, what is the effect of the cash settlement upon them?"

These were the questions which it was the purpose of the investigation to answer.

GENERAL DESCRIPTION OF CASES INVESTIGATED

The subjects of the investigation were 322 men in New York State who had received under compromise agreements lump sums of \$1,000

or more between 1 July 1930 and 31 August 1933. For reasons which are fully explained in the report the cases investigated may be considered as typical of all cases compensated under like conditions. No women were included, since there are very few cases in which women receive compensation in this form.

The investigation was made by experienced officials of the Rehabilitation Division, who interviewed the men after having studied all the reports concerning their cases. The majority of the interviews took place in 1934, when a year or more had elapsed since the settlement.

There were shown to exist four outstanding characteristics which distinguish the cases investigated from the bulk of compensation cases: indefinite injury, long period before settlement, high age, and high cost.

It is because the permanent physical and economic effects of certain injuries are very difficult to assess (and are therefore omitted from the schedule) that recourse is had to compromise in order to settle the claims which result from them. Hence compromise cases are marked by the indefiniteness of the injuries they involve. Of the cases investigated, 35 per cent. involved back injuries, 20.8 per cent. head injuries, and 23.3 per cent. multiple injuries, in most of which a head or back was concerned.

The settlement represented by a compromise is not reached until a long period has elapsed since the accident, the referee having held numerous hearings without being able to determine a fair amount of compensation. More than half the cases investigated were not settled until more than two years after the accident; 11 per cent. were prolonged for more than six years. This period is occupied with a long series of medical examinations by the doctors of the hospital staff, the insurance company, and the Workmen's Compensation Division, and by the claimant's own doctor, with visits to lawyers, and with hearings before the referee. As a rule, in these cases, the man does not return to work before the settlement. These circumstances of anxiety and uncertainty are strongly conducive to the development of neurosis.

Compromise cases are mainly recruited from the older age groups, 55 per cent. being over 40 years of age, whereas the corresponding percentage for compensation cases generally is 37. Higher age means slower recovery, and greater difficulty in learning a new trade or in securing fresh employment.

The average total compensation paid in compromise cases settled in 1932 was \$3,751, as compared with \$764 for cases of scheduled injuries involving permanent partial incapacity. The average total comprised fortnightly payments amounting to \$1,763 and a lump sum of \$1,988. The medical, legal and administrative costs were of course very high also.

It may be added that more than half of the men covered by the investigation were foreign-born, two-thirds had two or more dependants (and were therefore liable to incur debts pending settlement), and over half had not completed their elementary education (and were therefore difficult to train for a new occupation).

According to the work they were doing at the time of the accident, the cases investigated were classified as skilled (38 per cent.), semi-skilled (31 per cent.), unskilled (27 per cent.), clerks and salesmen (4 per cent.).

The weekly earnings of the men concerned at the time of the accident varied from \$11 to over \$70 ; 41.5 per cent. of the men earned over \$40 a week and 17 per cent. over \$60.

PHYSICAL CONDITION OF CASES AT DATE OF INVESTIGATION

The health of the men was appraised partly by an experienced doctor and partly by rehabilitation officials, who have a working knowledge of the effects of accidents.

The men's health was considered from the practical standpoint of their fitness for work. It was found that 5 men had died, and that the 317 remaining could be classified as follows : good health, 104 ; fair health, 98 ; poor health, 115. Those in good health were strong enough to work in their old trades. Those in fair health had not entirely recovered but were able to do less strenuous work than formerly. Those in poor health were, for the most part, suffering constantly from their injuries. In 60 per cent. of the cases the accident had had a serious effect on physical health.

EMPLOYMENT AND WAGES AT DATE OF INVESTIGATION

The investigation was made at a time of severe unemployment, and therefore men suffering from any kind of physical handicap were at an exceptional disadvantage in seeking work.

At the date when they were interviewed, 45 per cent. of the men were in work, viz. 38 per cent. in genuine jobs and 7 per cent. in relief schemes.

The author of the report estimates that in normal times not more than 60 per cent. of the cases investigated would have found employment, the remaining 40 per cent. being in practice unfit for work.

Thus, whether or not a lump-sum settlement serves, as it is supposed to do, as a stimulus to find work, in only half the cases, more or less, is work actually found.

Of the 123 men at work, 55 were in the same occupation as before the accident or in a closely related one, and 68 were in a different occupation. These together constitute the 38 per cent. of the men who were in genuine jobs. The wages of the former had decreased by 40 per cent. and those of the latter by 60 per cent.

The reduction in wages is closely correlated with the state of health, as might be expected and as the following figures demonstrate :

Health	Number at work	Wage at date of accident \$	Wage at date of investigation \$	Decrease (per cent.)
Good	54	42	24	43
Fair	49	39	18	54
Poor	20	42	16	62

The general level of wages had, however, fallen during the period elapsing between the accidents and the interviews. The author of the

report estimates that the level fell by about 20 per cent. between 1929 and 1934-35. The average decrease in wages in the 123 cases of men at work was 50 per cent. or two-and-a-half times as much.

MODE OF SPENDING LUMP SUMS

The average lump sum amounted to about \$2,000. The manner in which it was expended is shown in the following table :

Purpose	Number of men spending specified percentage of sum for specified purpose					
	1-20 %	21-40 %	41-60 %	61-80 %	81-100 %	Total
Debts	93	66	27	16	5	207
Living expenses	59	50	71	59	32	271
Real estate	18	11	7	13	17	66
Business	13	8	17	4	9	51
Legal service	137	3	—	—	—	140
Travel	10	—	—	—	—	10
Medical service	36	9	1	—	—	46
Miscellaneous	18	8	6	1	4	37
Balance	33	31	15	9	8	96

The discharge of debts accumulated between the accident and the settlement absorbed a considerable proportion of the lump sums : two-thirds of the men used some part, and one-third of them used more than one-fifth, of their compensation for this purpose. These debts were incurred in spite of the fact that fortnightly payments were made in most cases pending the settlement. These payments were not sufficient, however, to cover the living expenses of a family, and as, in the majority of cases, more than two years elapsed between the accident and the settlement, considerable debts were bound to accumulate.

More money was devoted to living expenses, and more people devoted money to them, than to any other purpose ; this was reasonable and to be expected.

Only one-fifth of the men bought property. This proportion may seem low, but it must be mentioned that two-thirds of the men lived in or about New York City, where it is customary to rent rather than own houses.

As regards the smaller items, it may suffice to explain that the cost of legal service amounted to about 7 per cent. of the lump sum on the average, the fee being fixed as a rule by the referee, while medical

expenses were those incurred after the settlement, and for which the insurance company was not liable.

Before describing in some detail the most interesting object of expenditure, namely, that involved in setting up a business, it may be noted that the balance left in the hands of the beneficiaries at the date of the interviews was very small: only 96 men had any balance, and only 63 more than one-fifth of their lump sums. Thus, at the date of the interview the great majority of men had spent their compensation, and a final assessment could therefore be made of the utility which their lump sums had been to them.

About one-fifth of the men invested some part of their lump sum in an enterprise which was intended to render them self-supporting: 51 bought businesses and 8 bought farms. At the date of the interview these ventures had yielded the following results: 14 men were earning \$20 or more per week (average: \$26); 16 men were earning \$15 or less per week (average: \$12); 29 men had failed.

In the opinion of the author of the report only the 14 men who earned \$20 or over could be considered to have been successful. He draws the conclusion that only 4 per cent. of the entire group could be cited in justification of the argument, often advanced, that lump sums enable men to rehabilitate themselves by establishing themselves in business.

The report gives numerous examples of unsuccessful undertakings, of which a few may be quoted at random.

"A carpenter invested \$500 in a bakery. His money had been used to pay debts which the bakery had already incurred. He did not have sufficient shrewdness to see that his investment could not materially improve the business."

"Three claimants lost \$1,500 each, one in a gasoline station, another in the wholesale oil business, a third in a restaurant. Another injured workman went into the sawdust business and lost \$800. Four men bought auto trucks and went into various kinds of delivery or hauling business. The amounts lost were \$250, \$400, \$500 and \$700."

Apart from business failures, some twenty men squandered their money, mainly on drink or in speculations in land or stock, for which they had no experience.

"There were serious losses on the part of 51 men or 16 per cent. of the group. The average loss of these men was approximately \$900 each. It is estimated from \$60,000 to \$70,000 [in all] was spent unwisely. In the great majority of cases the money would have lasted longer and served a better purpose if paid in instalments. The settlement money played a small part in the rehabilitation of these claimants."

NEUROTIC CASES

In view of the widespread belief that lump-sum settlements serve as a cure for neurosis, special attention was given in the investigation to neurotic cases. Of the 322 cases investigated 64 had been diagnosed as neurotic at the time of settlement.

Among the causes to which the neuroses may be attributed are the severity of the injury, especially if the head is affected, and the long delay before the settlement, with the accompaniment of frequent medical examinations.

Forty-three of these men were examined by a doctor. It was found that 14 were in good health, 18 were in fair health, and 32 were either no better or else worse than at the time of the settlement. Interviews were held with 62 of the men (2 having died) by officials of the Rehabilitation Division, and their mental attitudes were reported to be as follows: 11 were content, 22 had vague complaints, and 29 were quarrelsome or bitter. It was considered that 17 men out of the 64 had improved in physical and mental health since the settlement. "Entire credit for the improved condition of the men cannot be given to the settlement. Some of them would have recovered their health in any case. But if there was any therapy in the settlement it was a factor in these 17 cases." For 41 cases there was no evidence of any therapeutic effect from the settlement, and for 6 other cases the investigator was doubtful.

Furthermore, 29 men who were not classed as neurotics at the time of the settlement had become such by the date of the interview, according to the specialist who examined them. Thus in these cases also the settlement had not had beneficial results.

Seventeen of the men diagnosed as neurotic at the time of the settlement were in genuine jobs and 4 were in relief schemes. The proportion of neurotics in genuine jobs, namely, 26.6 per cent., was notably smaller than the proportion of non-neurotics so employed, namely, 40.7 per cent.

"In the way in which they spent their settlement money there was little that distinguished the neurotic men from the group as a whole. There were some tragic losses and a few wise investments. On the whole the money was spent for debts, living expenses and miscellaneous items as was the compensation of the other 258 men who were not neurotic. In only a few instances did the money last as long as if it had been paid in bi-weekly instalments. From all the evidence the lump sum played an insignificant part in the rehabilitation of the neurotic men.

"Many of the neurotic men here studied reacted in a childish manner to the obstacles of life. They could not face the future after their accidents. Yet they were blandly given from one to eight thousand dollars in a lump sum and expected to act in a mature, shrewd manner. Such optimism on the part of the State is a tribute to the claimant, but it is hardly in keeping with a sound, conservative policy of workmen's compensation."

RECOMMENDATIONS

The author of the report concludes that lump-sum settlements in compromise cases do not, as a rule, improve the physical or mental health of the injured man or stimulate him to find work.

If any therapeutic effect follows from the settlement, it results, not from the form of the compensation, but from the ending of litigation.

These findings lead to certain recommendations, which tend to assimilate compromise cases to cases of scheduled injuries. Thus, in cases of non-scheduled injuries also, the compensation should be fixed by the referee, and not by agreement, and should likewise be paid in the form of periodical payments continuing for a fixed number of weeks. The settlement should be reached within a year of the accident. Even after the settlement medical aid may be continued for a limited time, in order to deal with those cases in which the doctor reports that "nothing can be accomplished by treatment while litigation is pending". The periodical payments may be commuted wholly or in part in those exceptional cases where the Rehabilitation Division considers that the interests of the beneficiary so require, the resultant lump sum being spent under its supervision.