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# Book Reviews: Workmen's Compensation in Maryland

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# BOOK REVIEWS

**WORKMEN'S COMPENSATION IN MARYLAND.** By: Maurice J. Pressman. Charlottesville: The Michie Company. 1970. Pp. XV, 369. \$25.00.

*Reviewed by G. Darrell Russell, Jr.<sup>1</sup>*

Mr. Pressman, a distinguished member of the Baltimore Bar has been a longtime practitioner before the Workmen's Compensation Commission of Maryland. His voice is one of the more respected ones in the field of Workmen's Compensation, and he has previously contributed a volume entitled *Workmen's Compensation in Maryland 1928*.<sup>2</sup> His present work, *Workmen's Compensation in Maryland*, updates the earlier one.

The laws which deal with workmen's compensation are ever expanding; the coverage, statutes, rules and decisions, are in a constant state of flux. We have no exact statistics upon which to authenticate this premise, but members of the Baltimore Bar will tell you that their workmen's compensation files are second in volume only to their criminal files. Rare is the practitioner who, in his day to day duties, does not find himself regularly appearing before the Workmen's Compensation Commission.

Despite the crowded docket of compensation work, attorneys have limited text sources which can be utilized in the compensation field. The texts which deal solely with compensation law are *The Law of Workmen's Compensation*, by Larsen,<sup>3</sup> and *Workmen's Compensation*, by Schneider;<sup>4</sup> however, *American Jurisprudence* and *Corpus Juris Secundum* provide a wealth of accumulated opinions and comments.

Mr. Pressman has made a genuine effort to fill a void. Workmen's compensation laws vary from state to state. For the Maryland law, the sources for the local attorney are the *Maryland Code Annotated* and the *Maryland Law Encyclopedia* or *Maryland Digest*. But this effort doesn't fully fill the void because he is limited by: (1) the nature of the laws involved and (2) the nature of the practice.

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<sup>1</sup> Special Assistant Attorney General of Maryland for the State Accident Fund. B.S., 1964 Loyola College; J.D. University of Baltimore 1967.

<sup>2</sup> M. PRESSMAN, *WORKMEN'S COMPENSATION IN MARYLAND* (1928).

<sup>3</sup> A. LARSON, *THE LAW OF WORKMEN'S COMPENSATION* (1965).

<sup>4</sup> A. SCHNEIDER, *WORKMEN'S COMPENSATION* (3d ed. 1941).

(1) THE NATURE OF THE LAWS INVOLVED: As Maryland workmen's compensation laws become more voluminous, they become more confusing. The laws are changed very fast in Annapolis by the legislature and the two appellate courts. But there is a predictable trend; as the coverage becomes broader, the compensation benefits for the injured employee begin to resemble health insurance.

In 1956, the Governor appointed a commission to annually review and recommend changes in the compensation laws. Following the recommendations and with the Governor's approval, these changes are submitted to the legislature to be enacted into law. This is in addition to the workmen's compensation laws passed by the legislature of its own accord. The benefits have been consistently increased, the latest being effected at last year's session.

Because the law is highly complex, there are relatively few workmen's compensation experts. The legislature felt compelled to compound the confusion by passing more "definitive" laws. In any event, this is all very satisfactory for insurance carriers and claimants who travel to Annapolis, with the result being, higher premiums and larger fees. Thus, the coverage has been expanded so that a federal government takeover may be in the not too distant future.

Presently, one of the areas of greatest confusion in Maryland compensation law lies in the Maryland Annotated Code, article 101, §66; therein is created the Subsequent Injury Fund, formerly termed the Second Injury Fund.<sup>5</sup> Its purpose is simply to provide a fund for the benefit of those who suffer injuries superimposed upon pre-existing infirmities. But paradoxically, it's not simple law at all and many lawyers, commissioners and judges have exhausted their wits trying to interpret it. Mr. Pressman is surprisingly terse in this area, he devotes a mere ten pages in his text to the Subsequent Injury Fund, the bulk of which is quoted from two cases.

Not enough is really said about the law by Mr. Pressman, who has such sterling credentials in the life-long practice of compensation law. About the only time he indulges in editorializing upon court of appeals decisions, he does so to refute law favorable to the insurance carriers.

(2) THE NATURE OF THE PRACTICE: Mr. Pressman says he hopes his book ". . . [M]ay be of some help to the judiciary, members of the Workmen's Compensation Commission and to the lawyers in Maryland."<sup>6</sup> It may be of "some" help to some, more than to others. Those for whom it will be more of the "some" help are the claimants' lawyers. Mr. Pressman is a claimant's attorney and he writes from that

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<sup>5</sup> MD. ANN. CODE art. 101, §67 (1955).

<sup>6</sup> M. PRESSMAN, *Preface to, WORKMEN'S COMPENSATION IN MARYLAND* at ii (1970) [hereinafter cited as PRESSMAN].

point of view. Those areas of the law disadvantageous to the claimant are subdued or overlooked by Mr. Pressman.

The cases within and without his State have repeatedly held: "The Act is to be interpreted as broadly and liberally in favor of the employee as its provision will permit, in furtherance of the humane purpose which prompted its enactment."<sup>7</sup> Consequently, the Court of Appeals and the court of special appeals have immeasurably aided the broad health insurance concept envisioned by the legislature. And they have, thereby, given some credence to Mr. Pressman's reportorial difficulty in detailing and supporting those decisions adverse to the claimant.

The elementary qualification for benefits is injury; Mr. Pressman discusses those which arise out of or in the course of employment. He quotes from landmark Maryland cases: "The causative danger must be peculiar to the work, and not common to the neighborhood. It must be incidental to the character of the business, and not independent of the relation of master and servant."<sup>8</sup> Mr. Pressman rejoins: "There is no reason for any court to state that the hazard to which a workman may be exposed must not be one to which the general public is equally exposed."<sup>9</sup>

After presenting the legal defense of intoxication, Mr. Pressman is constrained to submit that, "... [I]n the absence of substantial evidence to the contrary, it shall be presumed 'that the injury did not result *solely* from the intoxication . . .'"<sup>10</sup> He then finished his one paragraph devotion to this topic with four citations. One of these citations is *Smith v. State Roads Commission and Accident Fund*.<sup>11</sup> This case has received national acclaim in its detailing of the defense of intoxication; Mr. Pressman merely records the citation.<sup>12</sup>

Many claims are disallowed due to willful misconduct of the employee. In skimming over this area of law which is disadvantageous to the claimant, Mr. Pressman cites and quotes four cases where the claim was disallowed due to willful misconduct. But predictably he quotes the language from which the case belies the decision. Thus, from *Harris v. Dobson & Co.*,<sup>13</sup> Mr. Pressman, quotes, "... [N]ot all violations of rules or orders amount to willful misconduct, which under the statute, disentitles an injured workman to compensation. Few operations, perhaps none, can be carried out in strict accordance with rules and orders; some departures in practice are

<sup>7</sup> *Id.* at §1-3.

<sup>8</sup> *Weston-Dodson v. Carl*, 156 Md. 535, 538, 144 A. 708, 709 (1929).

<sup>9</sup> PRESSMAN, §2-6 (2) at 39.

<sup>10</sup> PRESSMAN, §2-6 (9) at 54.

<sup>11</sup> 240 Md. 525, 214 A. 2d 792 (1965).

<sup>12</sup> PRESSMAN, §2-6 (9) at 55.

<sup>13</sup> *Harris v. Dobson & Co.*, 150 Md. 71, 132 A. 374 (1926).

inevitable. And, we must assume that the legislature had this in mind, and did not intend to deny compensation for injuries resulting from such ordinary departures."<sup>14</sup>

Another weapon in the insurance lawyer's arsenal to defeat claims is to prove the injury occurred "away from the employer's premises." Mr. Pressman cites and quotes several cases where the employee was away from the employer's premises and still recovered. He effectively ignores the defense itself.

There have been cases where the claimant suffered injury due to weakness or pain from a prior injury. There have been many more cases where the court found no causal relationship between the two injuries. Mr. Pressman cites only the former category.

A claim may be defeated by showing the claimant was a casual employee as opposed to an employee of permanent or definite tenure. A landmark case in this category is *Lupton v. McDonald*,<sup>15</sup> wherein the claim was denied. Mr. Pressman comments, "It is difficult to understand the reasoning in *Lupton v. McDonald* . . ."<sup>16</sup> All members of the bar do not share this difficulty with Mr. Pressman.

Quotations from the defenses available to the insurance lawyer which were overlooked or subdued by Mr. Pressman would quickly result in a text by itself. Although a compilation of such a text would be obsolete by publication time due to the fast changing nature upon which these laws are predicated, and the legislature's and the courts' desire to multiply and change them.

Mr. Pressman compiled this work in conjunction with a 1968 Bar Association Committee report. Already it is obsolete in parts due to the time lapse and the changing complexion of Workmen's Compensation laws. He is to release a pocket supplement soon. Were this not primarily a claimant's text, I would eagerly await its release.

In conclusion, this work is generally disappointing in many respects, but to his credit, Mr. Pressman has summarized laws where static principles are fleeting.

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<sup>14</sup> PRESSMAN, § 2-6 (4) at 41.

<sup>15</sup> 241 Md. 446, 217 A. 2d 262 (1966).

<sup>16</sup> PRESSMAN, § 2-3 (2) at 12.