THE SECOND INJURY FUND OF IOWA: HOW COMPLEX CAN A SIMPLE CONCEPT BECOME?

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I. Introduction

The Second Injury Compensation Act[1] has been part of the Iowa Workers' Compensation Law for more than a third of a century although general awareness of its existence did not occur until the Iowa Supreme Court filed *Irish v. McCreary Saw Mill*[2] less than a decade ago. Since that time the number of applications for benefits from the Second Injury Fund[3] (hereinafter referred to as the Fund) has steadily increased. This in turn has resulted in more agency interpretation and judicial review[4] of Fund issues, including additional supreme court decisions in 1978[5] and 1979.[6] Despite such recent activity and discussion with respect to Fund concepts, some members of both the bench and bar are quick to label the relevant statutory provisions or respective case law as complex and confusing.[7] Hence, the purpose of this article is to leave the reader with an appreciation for the simplicity of the basic Fund concepts and with an understanding both of what issues remain undecided and of ways to approach these issues when representing an applicant for Fund benefits.

II. The Legislative Intent Behind the Statutory Provisions

Iowa Code section 85.64, which is the heart of the Second Injury Compensation Act, reads as follows:

> If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if

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1. Iowa Code §§ 85.63-.69 (1979).
2. 175 N.W.2d 364 (Iowa 1970).
3. Applications are filed with the Iowa Industrial Commissioner; fund cases are contested proceedings before the agency. Iowa Code § 17A.2(2)(1979); 500 Iowa Ad. Code § 4.1(7)(1979).
4. Iowa Code §§ 86.26 and 17A.19(1979)(judicial review by district court); Iowa Code § 17A.20(1979)(appeal to supreme court).
5. Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978).
6. Second Injury Fund v. Mich Coal Co., 274 N.W.2d 300 (Iowa 1979).
7. Judge William R. Eads captured this sentiment when in Robinson v. Second Injury Fund, No. CL-472-4-78 (Benton County Dist. Ct., Sept. 15, 1978) he commented: "[a]s is true of so many of Iowa's statutes, Section 85.64 is not, as was said by Justice Thompson in an opinion referring to another statute, 'a model of clarity.'"

> there had been no pre-existing disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the "Second Injury Fund" created by this division the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.
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> Any benefits received by any such employee, or to which he may be entitled, by reason of such increased disability from any state or federal fund or agency, to which said employee has not directly contributed, shall be regarded as a credit to any award made against said second injury fund as aforesaid.[8]

Although the Iowa Supreme Court held in *Anderson v. Second Injury Fund*[9] that the primary purpose behind second injury fund statutes was to encourage employers to hire the handicapped, the Iowa legislature originally established the Fund in 1945 to provide adequate compensation for the handicapped employee who sustained loss of another eye or limb in a subsequent injury.[10] The employers in Iowa had already been assured that if they hired a one-eyed, one-armed, or one-legged individual they would be liable only for any actual loss of the other eye or limb in a subsequent work-related injury because liability for total disability depended upon loss of two such organs or limbs in the same accident.[11] Hence, handicapped persons seeking employment covered by the Iowa Workmen's Compensation Act[12] did not have to overcome the concern employers had in some jurisdictions where the general rule that the employer takes the employee as he finds him resulted in the employer being fully responsible for the combined effect of the employee's prior handicap and his subsequent compensable injury.[13] However,

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8. IOWA CODE § 85.64 (1979).

9. 262 N.W.2d 789, 791 (Iowa 1978)(citing Kacena, *Workmen's Compansation in Tennessee: The Second Injury Fund*, 6 MEMPHIS ST. U.L. REV. 715, 716-719 (1976)).

10. 1945 Iowa Acts ch. 81.

11. IOWA CODE § 85.34(2)(s)(1979) provides in part that, "[t]he loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, caused by a single accident, shall equal five hundred weeks and shall be compensated as such . . . ." 1913 Iowa Acts ch. 147 § 10, a predecessor to § 85.34(2)(s), did not require that the loss of two such members or organs be in the same accident until amended by 1917 Iowa Acts ch. 270 § 7. In Pappas v. North Iowa Brick & Tile Co., 201 Iowa 607, 206 N.W. 146 (1925) (one-armed employee lost the use of his remaining arm in a work-related injury), the supreme court discussed the legislative intention behind the 1917 amendment which limited the employer's liability to the loss of the remaining arm. *See* CENTER FOR LABOR AND MANAGEMENT, UNIVERSITY OF IOWA, THE IOWA LAW OF WORKMEN'S COMPENSATION 99-100 (Monograph Series No. 8, 1967) [hereinafter cited as Iowa monograph]. *See also* note 93 *infra*.

12. The title of IOWA CODE ch. 85 was changed from Workmen's Compensation to Workers' Compensation by 1976 Iowa Acts ch. 1084 § 43.

13. Whereas states that followed the "apportionment rule" required employers to pay for only the disability to the member or organ that was injured, states following the "full-responsibility rule" directed employers to pay for the entire combined effect of the employee's prior disability and subsequent work-related disability. *See* 2 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION §§ 59.10 and 59.20 (1976 & Supp. 1979).

the handicapped person who did secure employment covered by the Iowa law and who subsequently sustained injury to another eye or limb was without means of recovery beyond the statutory scheduled amount for any permanent disability to that eye or limb.[14] The Second Injury Compensation Act provides the handicapped employee with a means of reasonably sufficient recovery in the event he receives a subsequent compensable injury that combines with a prior disability so as to result in a degree of disability that exceeds the sum of the compensable values of the prior and subsequent disabilities.[15] At the same time, the general purpose of encouraging employers to hire the handicapped is not defeated.

III. Elements of a Second Injury Fund Case

In *Irish v. McCreary Saw Mill*[16] an appeal was taken on behalf of the Iowa industrial commissioner to determine whether total disability and total loss of use of a member or organ listed in Code section 85.64 were required before a claimant could recover against the Fund. William A. Irish had suffered a prior 90 percent permanent loss of use of his left arm, for which he received 207 weeks of compensation, and a subsequent 37.5% permanent loss of use of his right hand for which he received 66 5/7 weeks of compensation.[18] The commissioner found that the claimant had sustained 75 percent industrial disability of his body as a whole as a result of the two injuries and ordered the Fund to pay 102 2/7 weeks of benefits[19] commencing from the date of the

14. Iowa Code §§ 85.34(2)(a)-(t) provide a specific (scheduled) number of weeks of recovery for permanent disability to particular members and organs. The number of weeks recovered usually depends upon the degree of functional impairment of the particular member or organ. Without the existence of the Fund, a claimant would be able to recover industrial disability (*see* note 19 *infra*) on account of an injury to a member or organ listed in the scheduled provisions only when the resulting disability somehow affected the body as a whole. Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

15. Every state except Georgia has some form of second injury fund. 2 A. Larson, *supra* note 13, at § 59.31.

16. 175 N.W.2d 364 (Iowa 1970).

17. Pursuant to Iowa Code § 85.67 (1979), the industrial commissioner is responsible for the compensation of the Fund assets and the attorney general appoints a member of his staff to represent the industrial commissioner and the Fund. In *Irish*, the Attorney General's Office in effect appealed from the industrial commissioner's decision to question a point of law on behalf of the Fund.

18. The scheduled number of weeks for loss of a hand and an arm are found in Iowa Code §§ 85.34(2)(1) and (m)(1979), respectively. The number of weeks of compensation for permanent disability to those members has been increased by legislative amendment since the dates of claimant's injuries in the *Irish* case. 1976 Iowa Acts ch. 1084 § 10.

19. When a claimant qualifies for Fund benefits, he is entitled to have his industrial disability determined. Functional disability is an element to be considered in determining industrial disability (reduction of earning capacity) but consideration may also be given to the injured employee's age, education, qualifications, experience and inability to engage in employment for which he is fitted. Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). In Becke v. Turner-

review decision.[20] The issues on appeal concerned the legislature's amendment of Code section 85.64 striking the words "and totally" from the first sentence of the Act, which referred to an employee becoming "permanently and totally disabled by a compensable injury," and striking the words "permanent total disability" from the second sentence of the Act, which provided that the Fund would pay the claimant the remainder of such compensation "as would be payable for permanent total disability after first deducting from such remainder the compensable value of the previously lost member or organ."[21] The supreme court reasoned that by the amendment, the legislature removed total disability as a necessary requirement for a claimant to recover against the Fund.[22] The court likewise concluded that the reference to loss of use was not intended to mean total loss of use of a member or organ of the body.[23] Accordingly, a claimant can recover against the Fund even when loss of a specified member or organ is partial as long as some significant permanent impairment is involved in both disabilities.[24]

Bush, Inc., Appeal Decision (Jan. 31, 1979) (Landess, Iowa Indus. Comm'r) the various factors to be considered in determining industrial disability were set forth:

> Numerous attempts have been made by the industrial commissioner's office in seminars and symposiums to educate concerning the factors considered in determining industrial disability. These factors include the employee's medical condition prior to the injury, after the injury and present condition; the situs of the injury, its severity and the length of healing period; the work experience of the employee prior to the injury, after the injury and potential for rehabilitation; the employee's qualifications intellectually, emotionally and physically; earnings prior and subsequent to the injury; age, education, motivation, functional impairment as a result of the injury and inability because of the injury to engage in employment for which the employee is fitted. These are matters which the finder of fact considers collectively in arriving at the determination of the degree of industrial disability.

Pursuant to IOWA CODE § 85.34(2)(u) (1979), compensation for permanent partial disability to the body as a whole is based on the percentage of 500 weeks that the disability bears to the body of the injured employee as a whole. Seventy-five percent disability to the body as a whole entitled the claimant in *Irish* to 375 weeks of benefits. Fund exposure is computed by subtracting the compensable value of both disabilities from the number of weeks for industrial disability in this case, 375 minus 272 5/7 [207 plus 65 5/7], or 102 2/7 weeks. (For discussion of "compensable value," *see* notes 44-55 and accompanying text *infra*.)

20. The amount of compensation due from the employer in *Irish* had already been paid when the decision was filed. Hence, the amount of compensation for which the Fund was liable became due in weekly installments beginning from the date of the decision determining the Fund liability. *See also* notes 51-55 and accompanying text *infra*.

21. 1951 Iowa Acts ch. 59 § 6. In lieu of the words "permanent total disability" the legislature inserted the phrase "the degree of permanent disability involved."

22. Irish v. McCreary Saw Mill, 175 N.W.2d 364, 367 (Iowa 1970). One-third of the states having second injury funds do not require permanent total disability before a claimant can recover against the second injury fund. *See also* 2 A. LARSON, *supra* note 13, at § 59.31.

23. 175 N.W.2d at 369. As would be expected, the *Irish* opinion relied on the maxim that the workers' compensation law is to be construed liberally for the benefit of the worker. The supreme court also pointed out that the preamble to 1951 Iowa Acts ch. 59 states that the purpose of the act was to liberalize the provisions governing the Fund. *Id.* at 367.

24. If the subsequent compensable injury to a member or organ specified in Code section 85.64 does not result in some degree of permanent impairment, the claimant is not entitled to

In the standard Fund case, the extent of disability will be clear cut. That is, the extent of the permanent impairment to the hand, arm, foot, leg or eye will be well defined by the medical experts. Complexity arises when the impairment to the member or organ extends to or directly affects the body as a whole or another member or organ,[25] or when the situs of the injury is confined to a portion of the fingers or toes, which are governed by statutory subsections separate from those subsections covering the hands and feet.[26] Accordingly, with respect to the latter type of injury, it has been argued on behalf of the Fund[27] that partial loss of use of the fingers would not otherwise entitle a claimant to compensation based upon loss of use of the hand unless the physical disabling effects of the injury actually extend into the hand itself,[28] and all provisions of the Workers' Compensation Act, of which the Second Injury Compensation Act is a part, should be considered in construing whether such partial loss of the fingers satisfies the loss of use of the hand as

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Fund benefits. Ross v. Sioux Quality Packers, Review-Reopening Decision (Sept. 6, 1978) (Mueller, Iowa Dep. Indus. Comm'r). Likewise, if the prior impairment to a member or organ specified in Code section 85.64 does not entail some degree of permanency, the claimant is not entitled to Fund benefits. Ross v. Service Master-Story County, Inc., Review-Reopening Decision (May 18, 1979) (Linquist, Iowa Dep. Indus. Comm'r).

25. *See* notes 68-90 and accompanying text *infra*.

26. IOWA CODE §§ 85.34(2)(a)-(k)(1979)(fingers and toes); IOWA CODE §§ 85.34(2)(1) and (n)(1979)(hand and foot).

27. In the case of *Simmons v. Black Clawson Hydrotile*, claimant had a prior loss of use of the left arm and a subsequent compensable injury to three fingers of the right hand. The treating physician testified that the situs of the injury was confined to the fingers, the situs of the operations was confined to the fingers, and the restricted motion was confined to the fingers. He rated the functional impairment to the index, long and ring fingers as being 13%, 10% and 5% respectively. Another doctor testified that loss or loss of use of the fingers *ipso facto* includes loss of use of the hand. He rated the functional impairment of the hand at 60%. The deputy industrial commissioner found that the claimant had suffered a 35% impairment to the arm because claimant was unable to perform the dorsiflexion maneuver (a particular wrist motion) satisfactorily. He further found the claimant was 95% industrially disabled. Simmons v. Black Clawson Hydrotile, Proposed Review-Reopening Decision (Aug. 22, 1978) (Bauer, Iowa Dep. Indus. Comm'r). The claimant, the employer and the Fund each appealed from the deputy industrial commissioner's decision. The industrial commissioner modified the deputy's finding regarding the extent of the subsequent disability by determining that the claimant had suffered a 60% permanent impairment to the hand because motion in claimant's hand appeared to be impaired as a result of the injury to the fingers. The industrial commissioner noted there was no medical testimony indicating claimant had any restriction in his wrist and therefore the deputy industrial commisioner's finding of disability to the arm because of loss of use of the wrist motion was unsupported by the record. Simmons v. Black Clawson Hydrotile, Appeal Decision (Sept. 21, 1979) (Landess, Iowa Indus. Comm'r).

28. Despite the argument that loss of fingers necessarily results in some disability to the hand in almost every case, a number of jurisdictions agree that such loss does not entitle the claimant to compensation based on loss of the hand unless the physical disabling effects of the injury actually extend into the hand itself. Travelers Ins. Co. v. Colvard, 28 S.E.2d 317 (Ga. Ct. App. 1943); Meade v. Industrial Comm'n, 48 Ill. 2d 215, 269 N.E.2d 288 (1971); Poray, Inc. v. Industrial Comm'n, 381 Ill. 251, 44 N.E.2d 847 (1942); Lewis v. City of Detroit, 58 Mich. App. 570, 228 N.W.2d 467 (1975); Hanson v. Hayes, 225 Minn. 48, 29 N.W.2d 473 (1947).

specified in Code section 85.64.[29]

Both the deputy industrial commissioner and the industrial commissioner analyzed Code section 85.64 in light of the scheduled disability provisions in Code section 85.34(2) when determining that claimant Dale B. Anderson did not qualify for Fund benefits[30] because only the right upper extremity was involved in compensable injury to his arm subsequent to a non-compensable loss of use of his hand.[31] Claimant contended "one hand" and "one arm" allowed him to apply for Fund benefits even though only one extremity was involved. The deputy commissioner set forth the numerical values for the loss of the component parts of the arm including the hand and the digits of the hand. He reasoned that the Iowa Workers' Compensation Act did not permit a claimant to recover in two work-related injuries to the same scheduled member more than the employee could recover in one injury to the scheduled member. That is, the total value of an arm is prescribed by Code section 85.34(2)(m) and permanent disability to a single scheduled member does not allow a determination of industrial disability.[32] The deputy commissioner added that as a practical matter the Fund suffered no exposure after the value of the second disability to the arm is paid by the employer and the value of the prior disability to the hand is deducted.[33]

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29. *See* State ex rel Fenton v. Downing, 261 Iowa 965, 970, 155 N.W.2d 517, 520 (1968); Consolidated Freightways Corp. v. Nicholas, 258 Iowa 115, 121, 137 N.W.2d 900, 905 (1965).

30. Deputy Industrial Commissioner Gardner, in an order filed March 2, 1976 pursuant to the Fund's motion for adjudication of point of law, denied the relief sought by the claimant against the Fund. Said denial was affirmed by the industrial commissioner (*see* note 35 *infra*), by the district court, and finally by the supreme court in Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978).

31. Unlike the claimant in *Irish* who sustained two compensable injuries, the claimant in *Anderson* sustained a non-compensable prior injury. Whereas the subsequent injury must be compensable in order for Code section 85.64 to apply, there is no similar requirement that the prior impairment must be the result of a compensable injury. *See generally* 2 A. LARSON, *supra* note 13, at § 59.32.

32. *See* Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). Deputy Industrial Commissioner Gardner also pointed out in *Anderson* that Code section 85.34(2)(s), the seeming foundation for Code section 85.64, was the only statutory provision permitting inquiry into industrial disability when scheduled members are involved. *See* note 11 *supra*; *see also* note 93 *infra*.

33. After lengthy discussion about the purpose behind second injury fund acts the supreme court in *Anderson* reflected the agency's thinking when it said:

> An employer hiring handicapped persons must provide full worker's [*sic*] compensation benefits for a handicapped employee. If such employee is injured benefits must be paid as if a previous loss of an extremity had not occurred. The employer in the instant case did so and claimant accordingly has been paid on the basis of 73 percent loss of his right arm.
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> The second injury fund however is not involved because claimant's disability following his 1973 injury is in no way affected by his earlier injury. The disability would now amount to 73 percent loss of the arm with or without the 1963 injury. The trial court was right in holding the facts are inappropriate for benefits under the second injury fund.

Anderson v. Second Injury Fund, 262 N.W.2d 789, 792 (Iowa 1978).

The supreme court's *Anderson* decision does not discuss the two spinal injuries which the claimant sustained prior to the compensable right arm injury because the claimant argued that said spinal injuries were material to the appeal only if the claimant was found entitled to recover against the Fund.[34] However, before the agency, the claimant contended his two spinal injuries should also have been considered in determining whether he initially qualified for Fund benefits.[35] After reviewing principles of statutory construction, the industrial commissioner determined that "another member" as used in Code section 85.64 did not include an injury to a portion of the trunk.[36]

The industrial commissioner has not by means of statutory construction or otherwise officially determined whether Code section 85.64 contemplates that a prior loss may be congenital.[37] However, a deputy commissioner found that a prior loss may be a result of a communicable disease.[38] He reasoned that even if the reference in Code section 85.64 to "latter injury"[39] might signal the necessity for a prior injury, an "injury" under the Workers' Compensation Act may include a disease process.[40]

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34. *Id.* at 790.

35. Anderson v. Vilas Feed Mill, Review of Order (July 30, 1976) (Landess, Iowa Indus. Comm'r), *reprinted in* 33 IOWA INDUS. COMM'R BIENNIAL REP. 228 (1978).

36. According to Professor Larson, the most significant current second injury fund controversy is over the restriction by half the funds to obvious impairments such as loss of members and eyes. However, prior impairments in some states include physical disorders such as epilepsy, diabetes, cardiac disease, arthritis, psychoneurotic disability, hyperinsulism, varicose veins, ionizing radiation injury and ruptured intervertebral disc (to name a few!). *See generally* 2 A. LARSON, *supra* note 13, at § 59.32. *See also* Iowa monograph, *supra* note 11, pp. 100-101.

37. *See* 2 A. LARSON, *supra* note 13, at § 59.32. Professor Larson discusses *McClean's Case*, 326 Mass. 72, 93 N.E.2d 233 (1950) wherein the statutory language which referred to claimants who "previously suffered a personal injury" was held not to include prior congenital defects, and urges that in the absence of such definitive language no distinction should be made between prior congenital and accidental injuries. *Id. But cf.* Robinson v. Second Injury Fund, CL-472-4-78 (Benton County Dist. Ct. Sept. 15, 1978)(suggesting that the prior disability necessarily must be the result of an injury because of the title, "Second Injury Fund" and because Code section 85.64 refers to "latter injury").

38. Asay v. Industrial Eng'r Equip. Co., Order (Feb. 24, 1976) (Gardner, Iowa Dep. Indus. Comm'r). The Fund moved for adjudication of law point: whether the prior loss of use of the left upper extremity as a result of polio the claimant contracted when he was five years old satisfied the entry requirements of Code section 85.64. *See* note 40 *infra.*

39. Reference is made to that portion of Code section 85.64 which reads: "the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no pre-existing disability."

40. IOWA CODE § 85.61(5)(b)(1975). Deputy Industrial Commissioner Gardner then suggested that Code section 85.64 appears to encompass more than a disease as set forth in Code section 85.61(5)(b) because it also refers to loss of use of a member at a prior time. He concluded "[a]ssuming claimant is able to show such prior loss of use of a member from any cause, the second injury fund would have potential exposure." Asay v. Industrial Eng'r Equip. Co., Order (Feb. 24, 1976) (Gardner, Iowa Dep. Indus. Comm'r). Upon full hearing and appeal, Asay was found to be entitled to Fund benefits as a result of the polio which caused his left arm to be 100% permanently disabled and the subsequent injuries to his right arm which left that arm 20% permanently disabled. Asay v. Industrial Eng'r Equip. Co., Appeal Decision (Sept. 28, 1977)

In any event, the prior impairment must be permanent in nature and must contribute something to the final disability.[41] The supreme court stated in the *Anderson* decision that " '[t]he source of this pre-existing disability is normally of no importance but it must be permanent and must tend to act as a hindrance to the individual's ability to obtain or retain effective employment.' "[42] The prior disability should be of such physical impediment that but for the other elements of compensability it could support an award of permanent disability benefits itself.[43]

Regardless of whether the employee received any compensation for a prior impairment, Code section 85.64 provides that the Fund is entitled to credit for the "compensable value"[44] of the prior loss or loss of use.[45] It has been argued that where the prior impairment is not the result of a compensable injury, the Fund should not be given credit for the compensable value of the prior injury. In the alternative, it has been argued that if credit is given to the Fund for the compensable value of the prior injury, such credit should be based upon the relevant scheduled number of weeks and rate in effect at the time of the prior injury rather than at the time of the subsequent injury. In affirming the industrial commissioner's deduction of the compensable

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(Landess, Iowa Indus. Comm'r), *reprinted in* 33 IOWA INDUS. COMM'R BIENNIAL REP. 224 (1978). District court appeal by Fund was voluntarily dismissed.

41. 2 A. LARSON, *supra* note 13 at § 59.32.

42. 262 N.W.2d 789, 791 (quoting Kacena, *Workmen's Compensation in Tennessee: The Second Injury Fund*, 6 MEMPHIS ST. U.L. REV. 715, 716-19 (1976)).

43. In Auch v. Iowa Window & Bldg. Maintenance, Review-Reopening Decision (March 11, 1976) (Gardner, Iowa Dep. Indus. Comm'r) the claimant who had a functional impairment to the right arm as a result of an elbow injury in the mid 1960's fell on August 27, 1971 and injured both kneecaps in a work-related incident. The deputy industrial commissioner explained that although the claimant sustained a degree of industrial disability as a result of the 1971 injury and resultant functional impairment to both lower extremities in accordance with Code section 85.34(2)(s), a separate question that had to be determined was whether claimant's prior upper extremity disability contributed anything to his present industrial disability. The deputy industrial commissioner noted that the prior impairment did not appear to have interferred with claimant's work performance and the claimant first complained to a doctor about the prior impairment after the hearing in the case had been held. The deputy industrial commissioner found no industrial disability existed as a result of the minimal functional impairment to the arm and no industrial disability in excess of that resulting from the 1971 injury existed as a result of all the injuries. *Id. See also* note 93 *infra*. *Cf.* Witt v. Merchants Delivery, Inc., Review-Reopening Decision (Nov. 14, 1975) (Hanssen, Iowa Dep. Indus. Comm'r), *reprinted in* 32 IOWA INDUS. COMM'R BIENNIAL REP. 174 (1976) (Fund benefits awarded upon finding the subsequent compensable injury resulted in 5% permanent partial disability to the leg and contributed very little to his total impairment as compared to the prior amputation of the left hand which was considered the primary source of claimant's industrial disability). *But cf.* 2 A. LARSON, *supra* note 13, at § 59.32 (suggesting that there is no Fund involvement where the prior disability is responsible for the final disability).

44. "Compensable value" is determined by multiplying the allowable number of weeks by the applicable rate of weekly benefits.

45. IOWA CODE § 85.64 (1979) also gives the Fund credit for any state or federal benefits claimant has received or is entitled to by virtue of the increase in disability but to which the claimant did not directly contribute. *See* 2 A. LARSON, *supra* note 13, at § 59.34.

value of the prior impairment based upon the relevant scheduled number of weeks and rate in effect at the time of the subsequent injury, the district court in *Robinson v. Second Injury Fund*[46] reasoned that the legislature would have used the term "compensation paid" instead of "compensable value" in Code section 85.64 if it had intended the Fund to receive credit only for those prior disabilities which resulted from industrial injuries and were compensated as such.[47] The court further suggested that use of the statutory language of "compensable value *of* the previously lost member or organ" (which could be construed as present tense) rather than "compensable value *at the time of the loss of* the previously lost member or organ" was an indication that the legislature intended the scheduled number of weeks and rate in effect at the time of the subsequent injury be utilized in computing the value of the prior disability.[48] The district court concluded that the compensable value in effect at the time of the subsequent injury controls computation of the prior compensable value, of the subsequent compensation paid, and of the industrial disability.[49]

Thus, if the sum of the compensable values of the prior and subsequent disabilities is greater than[50] or equal to the compensable value of the in-

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46. No. CL-472-4-78 (Benton County Dist. Ct., Sept. 15, 1978) (appealed to Iowa Supreme Court and dismissed by Order of the Iowa Supreme Court, No. 62656, filed December 6, 1978, for failure to take timely appeal pursuant to Rule 5(a), I. R. App. P.). The deputy industrial commissioner found that the claimant was 25% industrially disabled (125 weeks), but because the compensable values of the two qualifying disabilities were 125 weeks for the prior impairment and 18 weeks for the subsequent impairment, for a total of 143 weeks, the claimant was not entitled to any recovery from the Fund. Second Injury Fund Decision (Jan. 19, 1978) (Hanssen, Iowa Dep. Indus. Comm'r), *reprinted in* 33 IOWA INDUS. COMM'R BIENNIAL REP. 223 (1978), *aff'd*, Appeal Decision (April 4, 1978) (Landess, Iowa Indus. Comm'r).

47. *Id.* The district court noted that the claimant was just as industrially disabled despite the cause of his prior impairment. However, because the court was of the opinion the prior impairment had to be a result of an injury (*see* note 37 *supra*), and therefore, had the loss been from a disease, (again, in the court's opinion) there would have been no recovery despite the purpose of the statute to encourage hiring the handicapped, the opinion concluded "it follows that it is arguably illogical that the total award under the second injury fund should include compensation for a very old prior non-compensable injury." *Id.* at 2.

48. *Id.* The district court pointed out that a greater amount of actual benefits is deducted by using the present compensable value rather than the value in effect on the date of the prior injury. Yet, awarding industrial disability at the weekly rate in effect at the time of the subsequent injury but deducting the earlier scheduled number of weeks at the prior rate for the first loss could mean the claimant would receive greater compensation than someone whose prior loss was more recent and compensated at a greater number of weeks and at a higher rate. *Id.*

49. The Fund argued that the purpose of the Fund was not to further compensate those claimants who meet entry requirements for Fund benefits because they sustained a loss that was not work-related. Brief for Respondent Fund at 5. *See* Iowa monograph, *supra* note 11, wherein it is stated that:

> the fund is surcharged only to the extent that a disability is referable to employment. This keeps within the commonly accepted rationale of workmen's compensation. It is not considered benevolent. Instead, it is to fall upon those affected as an intrinsic and logically defined portion of the operating costs of business. *Id.* at 100.

50. *See* note 46 *supra*.

dustrial disability, the Fund incurs no exposure. If the sum of the compensable values of the prior and subsequent disabilities is less than the compensable value of the industrial disability the Fund is liable for the difference "after the expiration of the full period provided by law for the payments thereof by the employer."[51] For example, where findings are made that the claimant did sustain permanent impairment as a result of an injury in the course of and arising out of employment with defendant employer and the claimant is entitled to a degree of industrial disability (the combined disabling effect of a prior permanent impairment with the subsequent compensable permanent impairment was greater than the sum of the compensable values of both disabilities), the employer will be ordered to pay the claimant so many weeks of permanent partial disability benefits from the date the healing period ends[52] (in addition to any healing period benefits due),[53] and the Fund will be ordered to pay the claimant the difference explained above at the same weekly rate of compensation as the employer pays,[54] beginning the week following the last week of compensation paid by the employer.[55]

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51. IOWA CODE § 85.64 (1979).

52. IOWA CODE § 85.34(2)(1979) provides that for injuries occurring on or after July 1, 1973 (the effective date of the section as amended by 1973 Iowa Acts ch. 144 § 9) permanent partial disability benefits shall commence at the termination of the healing period which is defined in IOWA CODE § 85.34(1) (1979) and 500 IOWA AD. CODE § 8.3 (1979).

53. Since July 1, 1973, the employer alone seems to be responsible for healing period benefits. Prior to that date the healing period was automatically a percentage of the permanent partial disability resulting from the injury rather than a period of disability that is concluded upon return to work or recuperation from a medical viewpoint as is the standard today. *See* note 52 *supra*. IOWA CODE § 85.64 (1979) refers to the Fund paying "the remainder of such compensation as would be payable for the degree of permanent disability involved." Thus prior to July 1, 1973, the Fund was held liable for healing period benefits - that is, a given percentage of the number of weeks of industrial disability benefits that were assessed against the Fund. *See* Gregan v. Davis Brothers, Review-Reopening Decision (Nov. 21, 1972) (Mueller, Iowa Dep. Indus. Comm'r). Any argument that the claimant, under the present statutory scheme, should be compensated by the Fund rather that the employer for that portion of healing period which results from the fact that the claimant had a pre-existing disability (assuming the medical experts could decipher such period) appears to be without merit in view of the statutory language quoted above.

54. *But see* the second quoted paragraph in note 55 *infra*.

55. Prior to July 1, 1973, IOWA CODE § 85.34(3) limited payments for permanent total disability to a maximum of 500 weeks. Since that date, this subsection was amended to allow lifetime benefits. 1973 Iowa Acts ch. 144 § 10. Thus, whereas payments in a permanent total disability case formerly could be calculated and commenced as discussed in the text, the present § 85.34(3) situation was explained by the industrial commissioner as follows:

> Compensable value and rate of compensation are different as permanent partial disability and permanent total disability are not now compensated at the same rate as they were prior to the change in the statute. Because permanent total disability benefits are payable for life, there is no way to give credit for the compensable value of the previously lost member without deducting its compensable value from the beginning of the period in which Second Injury Fund payments are to be made. Furthermore, the statute suggests that the value of the previously lost member be "first" deducted. Applying this to the instant case results in a suspension of benefits during

Legislative intent regarding compensable value may be deemed to be clearly stated in Code section 85.64, but when that section is read in light of both Code subsection 85.34(2)(p) (providing 125 weeks of compensation for loss of an eye)and Code subsection 85.34(2)(q) (providing 200 weeks of compensation for loss of the second eye when the other eye has already been lost), legislative meaning behind compensable value appears obfuscated.[56] Since Code section 85.64 applies when a claimant with prior loss of vision in one eye sustains a subsequent compensable loss of vision of the other eye, there seems little reason to retain Code subsection 85.34(2)(q).[57] Yet, the industrial commissioner has used Code subsections 85.34(2)(p) and (q) to determine the compensable value of the two members;[58] the maximum value the prior loss could receive in the standard case would be (q) minus (p) or 75 weeks and the maximum value the subsequent loss could receive would be 125 weeks.[59]

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the period which the Second Injury Fund is entitled to credit as a result of the total prior loss of the left upper extremity. Although this result is contrary to the intent of compensating an injured worker during his period of incapacity from earning, it is necessitated by a failure to alter the Second Injury Fund provisions at the time a change was made in permanent total disability benefits.

The Second Injury Fund is entitled to credit for the "compensable value" of the previously lost member. Under the workers' compensation scheme, the "compensable value" is determined by multiplying the allowable number of weeks times the applicable rate of weekly benefits. The period of suspension would, therefore, be less than two hundred thirty weeks because the rate for permanent partial disability ($84) is less than the rate for permanent total disability ($91). The compensable value of the previously lost member is a total of $19,320 (230 x $84). This results in a suspension of benefits for 212.3 weeks ($19,320 divided by $91).

Asay v. Industrial Eng'r Equip. Co., Appeal Decision (Sept. 28, 1977) (Landess, Iowa Indus. Comm'r), *reprinted in* 33 IOWA INDUS. COMM'R BIENNIAL REP. 224 (1978) (district court appeal by Fund voluntarily dismissed).

Thus, the defendant employer commenced payment of 46 weeks of benefits at the weekly rate for permanent partial disability ($84) beginning on April 14, 1974. On March 2, 1975 the 212 2/7 weeks of credit for the value of the previously lost member began to run. On March 27, 1979, the Fund began paying the claimant benefits at the weekly rate for permanent total disability ($91) for life or until such permanent total condition otherwise ceases. *See also* notes 20, 51-54 and accompanying text *supra.*

56. Code section 85.64 does not provide for loss of hearing and therefore Code section 85.34(r), which provides 125 more weeks of compenstion for loss of hearing in two ears as opposed to such loss in one ear, obviously attempts to compensate the second loss which is otherwise limited to scheduled disability.

57. Subsection (q) was enacted by 1919 Iowa Acts ch. 220 § 6 before the Fund was enacted by 1945 Iowa Acts ch. 81. Subsection (q) was intended to mitigate the loss of the second eye which was entitled to only scheduled permanent disability.

58. Choquette v. Gunderson's Indus. Equip., Inc., Review-Reopening Decision (May 30, 1978) (Mueller, Iowa Dep. Indus. Comm'r) *aff'd,* Appeal Decision (Aug. 2, 1978) (Landess, Iowa Indus. Comm'r). Deputy Commissioner Mueller noted that "[t]he Fund would be entitled to a greater set off if the value of the left eye were based on 125 weeks; however, on the familiar principle that the law should be construed most favorably to the claimant, it is held that the basis of the value of the left eye is 75 weeks."

59. Note that Code subsection 85.34(2)(p) has been amended to provide 140 weeks of compensation for the loss of an eye. 1976 Iowa Acts ch. 1084 § 10. The maximum value of the

Clearly, reaching the determination of "who" - the employer or the Fund or both - is liable for "what portion of disability" - the scheduled member or organ or the body as a whole - can be as simple in one case as it is complex in the next.

IV. The Employer - Fund Relationship in a Second Injury Fund Case

Since the claimant seeking Fund benefits must prove that he has sustained a subsequent compensable injury,[60] it is not unusual to find the employer and Fund aligned against claimant's application for compensation from the employer and for benefits from the Fund in an arbitration proceeding.[61] Likewise, since the claimant seeking Fund benefits must prove the subsequent injury was permanent in nature, (where nature and extent of disability are in issue in an otherwise meritorious arbitration or in a review-reopening[62] proceeding), both the employer and the Fund would be interested in limiting the recovery to a definite period of temporary disability.[63] However, as evidenced by the recent supreme court decision in *Mich Coal*,[64] the employer and Fund are often opponents in a proceeding where the claimant has an obvious meritorious claim for permanent disability benefits[65] and the

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subsequent loss depends upon the number of weeks set forth in subsection 85.34(2)(p); as this number is increased or decreased, the maximum value of the prior loss also would be affected.

60. *See* note 31 *supra*. In some states the claimant pursues full recovery against the employer who in turn seeks reimbursement from the Fund for the amount attributable to the pre-existing disability. *See* 2 A. Larson, *supra*, note 13, at § 59.31.

61. In an arbitration proceeding which is an original proceeding pursuant to Iowa Code § 86.14(1) (1979) all matters relevant to the dispute may be raised, questioned, and decided. This would include affirmative defenses set forth in Iowa Code § 85.16 (1979) (willful injury), in Iowa Code § 85.23 (1979) (notice), and in Iowa Code § 85.26(1) (1979) (statute of limitations) in addition to the usual issues of whether or not the employee sustained an injury in the course of and arising out of employment, whether any disability is causally related to the injury, and the nature and extent of such disability. Whether the Fund may raise any of these issues where the employer and claimant have settled the case is discussed at notes 96-101 and accompanying text *infra*.

An affirmative defense for the Fund in states where the employer pursues the Fund for reimbursement is that the employer had no knowledge of the prior impairment. That is, the prior impairment must have manifested itself in such a way that it would place the individual under disadvantage in obtaining employment. *See* 2 A. Larson, *supra* note 13, at §§ 59.31 and 59.33. *See also* notes 41-43 and accompanying text *supra*.

62. Iowa Code § 86.14(2) (1979). Where the review-reopening claim is not meritorious - for example, where the statute of limitations defense could be raised pursuant to Iowa Code § 85.26(2)(1979) the employer and the Fund would again be aligned against the claimant.

63. An exception would be the case where the evidence might support either a temporary total running award pursuant to Iowa Code § 85.33 (1979), for which the Fund would argue, or an award based upon a finding of a less costly degree of permanency resulting from the second injury, for which the employer would argue. (A temporary total running award allows unlimited duration of benefits where temporary disability presently continues.)

64. Second Injury Fund v. Mich Coal Co., 274 N.W.2d 300 (Iowa 1979).

65. However, in the *Simmons* case (note 27 *supra*) the employer and Fund argued that any finding of permanent impairment should be confined to the fingers. The employer desired to

crucial controversy centers on how and in what degree the subsequent injury contributes to the claimant's present disability.[66]

In the usual or stereotypical case, the actual permanent impairment sustained as a result of the subsequent injury to a member or organ specified in Code section 85.64 will be confined to such member or organ.[67] In *Mich Coal* such a line of demarcation with respect to the second injury was not evident.[68] In 1963 Steve Earl Lewis sustained a compensable injury to his left leg resulting in 40 percent loss of flexion and requiring the insertion of a plate that made the left leg a quarter inch longer than the right leg. He received 108 weeks of compensation based on 54 percent loss of use of the leg. Claimant returned to work with the same employer in November of 1964. In March of 1972 he sustained a compensable injury in which his right leg was broken resulting in its now being more than one inch shorter than the left leg which was severely cut in the same accident. Claimant received 110 weeks of compensation based on 55 percent loss of use of the right leg. In September of 1973 he returned to work for the same employer but foot ulcers developed which forced him to stop working. The claimant filed an application for review-reopening against his employer alleging 100% industrial disability as a result of the 1972 injury. Thereafter, the Fund was brought in as an additional defendant on employer's suggestion and claimant's motion. The deputy industrial commissioner found that claimant had sustained 80 percent industrial disability to the body as a whole and ordered the Fund to pay 182 weeks of permanent partial disability benefits[69] and the employer to continue to provide reasonable and necessary medical treatment of the foot callus problem.[70]

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limit the extent of liability; the Fund wanted to further argue that an injury to the fingers does not satisfy the entry requirements of Code section 85.64.

66. Although Iowa law requires the claimant to bring an action against the Fund for benefits, *(see* text of note 60 *supra)*, in situations where the issue is whether the employer or the Fund pays and not the actual percentage of industrial disability, the employer, not the claimant, will be the party interested in arguing that but for the prior injury combining with the subsequent injury, the claimant would not be disabled to the extent determined. Such was the case in *Mich Coal. See generally* 2 A. LARSON, *supra* note 13, at § 59.32.

67. An example is Irish v. McCreary Saw Mill, 175 N.W.2d 364 (Iowa 1970). The employer is liable for the scheduled disability resulting from the subsequent injury; the Fund is liable for the industrial disability less the compensable values of the prior and subsequent disabilities.

68. The discussion in the text analyzes the facts, findings, and conclusions which were before the supreme court when they decided *Mich Coal.* It should be pointed out that the supreme court remanded the matter to the deputy industrial commissioner who originally decided the case "under § 17A.19(8) for further proceedings, including receiving additional evidence if necessary, to enter a factual finding and order thereon in conformity with this opinion." Second Injury Fund v. Mich Coal Co., 274 N.W.2d 300, 304 (Iowa 1979). Upon remand, a hearing was conducted at which time further testimony from the claimant was taken and a deposition of the treating physician was filed as part of the record. The deputy industrial commissioner's decision upon remand is discussed in notes 76 and 79 *infra.*

69. Four hundred weeks based on 80% industrial disability less compensable value of 108 weeks based on 54% loss of left leg and less compensable value of 110 weeks based on 55% loss of right leg. *Id.* at 302.

70. Pursuant to IOWA CODE § 85.27 (1979), the employer, not the Fund, is liable for medical

The Fund filed a petition for judicial review.[71] The district court modified the deputy commissioner's decision by ordering the employer, instead of the Fund, to pay 182 weeks of industrial disability.[72] The employer appealed to the supreme court which reversed and remanded the case to the deputy industrial commissioner with instructions.[73]

With respect to the case in issue, the supreme court stated:

> However, the deputy made no finding of fact as to the degree of disability related to the body as a whole which resulted from the 1972 injury. This finding appears crucial to us to determine the obligations of the employer and the fund under § 85.64. The fact findings stated the two injuries and amounts received by claimant but did not identify the degree to which the 1972 injury was involved in the 80% disability of the body as a whole.[74]

With respect to Fund cases in general, the supreme court stated:

> We hold that in a second injury fund case under § 85.64 when the commissioner finds as to claimant's present condition an industrial disability of the body as a whole, the commissioner must also make a factual finding as to the degree of disability to the body as a whole of the claimant caused by the second injury. When supported by substantial evidence, this finding will better enable the employer and the Fund to know their obligations and avoid additional appeals. It will also enable us to perform our duty of review when an appeal is taken.[75]

Needless concern and bewilderment in the workers' compensation community has been generated over the quoted language. As indicated earlier, in the majority of Fund cases, the extent of disability resulting from the subsequent injury will not extend beyond the scheduled member in any meaningful manner. Where there is also a finding of industrial disability to the body as a whole as a result of the prior and subsequent disabilities, the industrial commissioner is required to state that the second injury contrib-

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expenses. Some states require their second injury funds to assume payment of medical expenses after a certain number of weeks have passed or after a certain amount has been exceeded. 2 A. LARSON, *supra* note 13, at § 59.34.

71. The industrial commissioner did not file a decision in this case. The deputy industrial commissioner's decision was appealed directly to the district court at a time when IOWA CODE § 86.34 (1975) (providing for judicial review of a review-reopening decision of a deputy industrial commissioner) was still in existence even though conflicting provisions in the Iowa Administrative Procedure Act (seemingly requiring an agency appeal as a means of exhausting administrative remedies before judicial could be pursued) became effective July 1, 1975. Such provisions were not retroactive. IOWA CODE § 17A.23 (1975). The original notice and petition had been filed on June 20, 1975. Code section 86.34 was repealed by 1977 Iowa Acts ch. 51 § 21. *Cf.* IOWA CODE § 86.26 (1979) (present provision for judicial review of decisions or orders of the industrial commissioner).

72. The extent of industrial disability was not in issue. 274 N.W.2d at 301.

73. *See* note 68 *supra*.

74. 274 N.W.2d at 303.

75. 274 N.W.2d at 304.

uted nothing to the degree of disability to the body as a whole.[76]

The *Mich Coal* opinion pointed out that the deputy industrial commissioner concluded "the claimant has sustained his burden of proof" after the deputy had stated "[t]he claimant has the burden of proving by a preponderance of the evidence that the injury of March 25, 1972, is the cause of his disability on which he now bases his claim."[77] The supreme court questioned if the deputy commissioner in fact meant the 1972 injury was the cause of the 80 percent disability, in which case the conclusion should have been that the employer, not the Fund, was liable.[78] The court added that there was ample medical evidence in the record on appeal to support such a finding.[79] Thus, in light of what then appeared to the justices to be an "inapposite" determination of liability,[80] it is not surprising that the supreme court decided

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76. On July 30, 1979 Deputy Industrial Commissioner Mueller filed a proposed review-reopening decision in the *Mich Coal* case. Pursuant to the supreme court directive, the deputy industrial commissioner found that the degree of disability to the body as a whole as a result of the subsequent injury was zero, and that the Fund was liable for the 80% industrial disability resulting from the combined effect of the prior and subsequent disability minus, of course, the compensable value of said injuries. The employer was ordered to continue to provide reasonable and necessary medical care for the callus problem. Lewis v. Mich Coal Co., Review-Reopening Decision (July 30, 1979) (Mueller, Iowa Dep. Indus. Comm'r). The Fund has appealed the proposed decision to the industrial commissioner.

The supreme court in *Mich Coal* did not require that a finding be made regarding the extent to which a prior impairment contributes to the industrial disability. Such a finding may be appropriate, however. *See* the discussion of Witt v. Merchants Delivery, Inc. and LARSON in note 43 *supra*.

77. Second Injury Fund v. Mich Coal Co., 274 N.W.2d 300, 303 (Iowa 1979).

78. *Id.* at 304. Thereupon the supreme court reiterated the need for the agency to make detailed findings of fact and conclusions of law as earlier urged in Catalfo v. Firestone Tire & Rubber Co., 213 N.W.2d 506, 510 (Iowa 1973). The *Mich Coal* court noted in passing that the district court had also failed to make the crucial finding that determines liability between the employer and the Fund. 274 N.W.2d at 303.

79. 274 N.W.2d at 304. In discussing the facts from the record on appeal, the court noted that the claimant regained fairly good function of his left leg when he returned to work after the first injury and that the claimant testified he did not have foot ulcers prior to the second injury, but that after such injury, ulcers would erupt after he worked or spent a period of time on his feet. The court also related:

> The evidence at trial before the deputy industrial commissioner showed that in Lewis' present condition: (1) the right leg is now one and one-quarter inches shorter than the left leg; (2) recurring ulcers and calluses have developed on the bottom of both feet as a result of the leg difference; (3) poor blood circulation has developed below the knees of both legs; and (4) pain in the lower back has developed.

274 N.W.2d at 302.

On remand, Deputy Industrial Commissioner Mueller reported that the treating physician testified that the claimant developed calluses prior to the subsequent injury but that claimant developed the calluses "with much greater ease" after said injury. The leg length difference which resulted in the improper weight distribution was determined to be the cause of the callus condition. It was also determined that the circulatory problems, which were caused by diabetes and by the subsequent injury, contributed to the callus condition. Lewis v. Mich Coal Co., Review-Reopening Decision (July 30, 1979) (Mueller, Iowa Dep. Indus. Comm'r).

80. 274 N.W.2d at 304.

to require the industrial commissioner to make a specific finding in Fund cases as to the degree of disability to the body as a whole caused by the subsequent injury.

By setting forth such a requirement, the *Mich Coal* decision implies that liability for industrial disability in cases where the subsequent injury is partially, but not solely,[81] responsible for the industrial disability should be allocated between the employer and the Fund.[82] This is in keeping with the statutory language of Code section 85.64 which states, "the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no preexisting disability."[83] Thus, if the degree of disability from the subsequent injury is greater than the relevant scheduled member amount but less than the determined total degree of industrial disability, the full compensable value of the subsequent disability should be deducted from the industrial disability along with the compensable value of the prior impairment so that Fund exposure can be accurately assessed.[84]

Such an equitable approach to the liability issue does not foreclose the Fund from arguing the theory advanced in the *Mich Coal* case that the employer alone was liable to the claimant because the industrial disability was the direct result of the subsequent injury and was not a result of any combination of the prior and subsequent disabilities-the prior disability did not substantially contribute to the industrial disability.[85] As discussed in division III of this article, the prior impairment must add something to the final disability before the Fund becomes liable.[86] A parallel argument is that

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81. *See* note 85 and accompanying text *infra*.

82. Deputy Industrial Commissioner Mueller explains this concept:

> Thus in the particular type of case where the second injury to a scheduled member would qualify the employee for fund benefits but also causes disability to the body as a whole, the employer must pay not only for the extent of the scheduled injury but the resultant disability to the body as a whole caused by that injury.

Lewis v. Mich Coal Co., Review-Reopening Decision (July 30, 1979) (Mueller, Iowa Dep. Indus. Comm'r).

83. In its appellee's belief in the *Mich Coal* appeal, the Fund argued:

> Although the Second Injury Compensation Act provides that the employer shall not be liable for the combined effect of a prior loss or loss of use of a specified member and a compensable subsequent loss or loss of use of another such member, nevertheless it must be stressed that the language of Code section 85.64 does contemplate that the employer is liable for the *full amount* of disability *attributable* to the subsequent compensable injury.
>
> Accordingly, the employer should be held liable for the full degree of disability attributable to the subsequent compensable injury. What appears at first glance to be a mere scheduled injury is, upon review of the medical and lay testimony, a disability that affected the soles of both feet, the circulatory system, and the back.

Brief for Appellee at 10, Second Injury Fund v. Mich Coal Co., 274 N.W.2d 300 (Iowa 1979). *Accord*, Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

84. Presumably the compensable value of the prior impairment could undergo similar analysis. *See* note 76, second paragraph, *supra*.

85. Brief for Appellee at 6-16.

86. *See* notes 41-43 and accompanying text *supra*.

if the subsequent compensable injury has such severe effects that it accounts for the industrial disability regardless of any contribution by the prior impairment, then the Fund would not be liable to the claimant.[87]

Had the medical evidence in *Mich Coal* shown that the subsequent injury resulted in permanent impairment to both legs, the Fund would have argued that the employer was liable to the claimant for the entire resulting industrial disability pursuant to Code section 85.34(2)(s).[88] It is feasible that even under just such a fact situation, an employer could apply the *Mich Coal* analysis of the employer-fund relationship in arguing that the prior impairment nonetheless contributed in some substantial way to the total disability and the Fund should be held liable for any degree of industrial disability that might remain after subtraction of the compensable values of the prior and subsequent disabilities. A concomitant issue would be whether the second injury materially aggravated the prior situs of impairment or whether it resulted in permanent disability to another portion of the same member.[89] Only the latter instance would be compatible with the employer's theory because any aggravation of the pre-existing disability would logically be the employer's responsibility.[90]

The applicability of Code section 85.34(2)(s) as opposed to Code section 85.64 is also in issue where the employment activity appears to result in disability to two organs or members over a period of time. In *Rosewall v. Wilson & Co.*, the claimant brought an arbitration proceeding against the employer for recovery of benefits on account of an injury to his right hand in April of 1976, a review-reopening proceeding against the employer for recovery of benefits as a result of an injury to his left hand in May of 1975, and a proceeding against the Fund for recovery of benefits on account of the injuries

87. *See* 2 A. LARSON, *supra* note 13, at § 59.32 wherein it is noted that there is no presumption of causal relationship between claimant's ultimate disability and the previous injury. *See also* Iowa monograph, *supra* note 11, at 100.

88. *See* note 11 *supra*. *See also* note 93 *infra*.

89. In *Ross v. Service Master* (note 24 *supra*) the situs of the subsequent injury to the right wrist (a comminuted fracture of the right distal radius and ulnar styloid) was not identical to the situs of the prior injury to the right wrist (a comminuted fracture of the right carpal navicular). The claimant also sustained a comminuted fracture of the right os calcis, or heel, as a result of the subsequent injury. The Fund argued that any contribution by the prior injury to the present industrial disability was by means of the subsequent aggravation of the wrist area by the latter injury. The employer's theory appeared to be that because the specific situs of each injury to the wrist was somewhat different and because one of the medical experts testified that the wrist was not permanently affected by the subsequent injury, the employer was liable for only the right heel disability. Deputy Industrial Commissioner Linquist found that there was no permanent impairment to the right wrist prior to the subsequent injury but that there was permanent impairment after the second injury. Hence, the employer was responsible for the industrial disability pursuant to section 85.34(2)(s). (Note this case was argued and decided based on the former interpretation of present Code section 85.34(2)(s). *See* note 93 *infra*.)

90. The employer, in any event, cannot rely upon the Fund concept as a way to avoid responsibility for aggravation of a pre-existing disability. *See* Iowa monograph, *supra* note 11, at 100.

to both hands.[91] The deputy industrial commissioner denied the arbitration claim, finding that the problems claimant experienced with his right hand in 1976 were a continuation of the problems he experienced with both hands in 1975 and were not causally related to the April 1976 injury. In the review-reopening decision, the deputy industrial commissioner ordered the employer to pay the claimant compensation for 10 percent permanent disability to the body as a whole, finding that the problems claimant experienced with both hands were caused by the employment activity for which a memorandum of agreement[92] was on file and that, because two members were involved, disability had to be evaluated industrially.[93] Although the hands were not oper-

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91. The three proceedings were consolidated for hearing. Rosewall v. Wilson & Co., Arbitration Decision, Review-Reopening Decision, Second Injury Fund Decision (April 25, 1977) (Hanssen, Iowa Dep. Indus. Comm'r); (the employer appealed from the review-reopening decision), *aff'd*, Appeal Decision (Sept. 15, 1977) (Landess, Iowa Indus. Comm'r); (the employer appealed to the district court and the Fund intervened pursuant to IOWA CODE § 17A.19(2) (1977)), *aff'd sub nom.* Wilson Foods Corp. v. Rosewall, No. CL-433 (Cherokee County Dist. Ct., June 29, 1978).

92. *See* IOWA CODE § 86.13 (1979). A memorandum of agreement establishes that an employer-employee relationship existed at the time of the employee's injury and that the employee's injury arose out of and in the course of employment. A memorandum of agreement does not foreclose inquiry into the nature and extent of the present disability. Freeman v. Luppes Transport Co., 227 N.W.2d 143 (Iowa 1975).

93. The determination that the employer was responsible for industrial disability was based on the former interpretation of present Code section 85.34(2)(s). In Prusia v. Armstrong Rubber Co., Appeal Decision (Sept. 4, 1979) (Landess, Iowa Indus. Comm'r) the industrial commissioner held that whereas an injury to two hands caused by the same accident may be evaluated industrially under former Code section 85.34(2)(s), under the present version of the subsection, if such an injury results in anything less than permanent total disability, the disability is compensated as a scheduled disability, meaning that only functional impairment is taken into consideration.

Prior to 1974, Code section 85.34(2)(s) read that such a loss "shall equal a permanent total disability, and shall be compensated as such." Code section 85.34(2)(u), unnumbered paragraph two (which did not undergo any legislative change in 1974), provides that an injury producing disability less than the stated total amount in the relevant scheduled subsection could be compensated at a proportionately decreased number of weeks. Prior to 1973, Code section 85.34(3) spoke in terms of permanent total disability, and payment of weekly compensation was limited to the period of the employee's disability, not to exceed 500 weeks. Accordingly, the industrial commissioner reasoned that since § 85.34(3) and § 85.34(2)(s) seemed to be similar with respect to the permanent total disability concept, and since the Iowa Supreme Court had determined that permanent total disability concerns industrial and not merely functional disability, a claimant would be entitled to have a disability resulting from injury to both hands caused by a single accident determined industrially, had not the legislature amended both Code sections. Furthermore, Code section 85.34(2)(u) would allow for the Code section 85.34(2)(s) industrial disability to be proportionately diminished where the disability was not total.

Now according to the industrial commissioner's *Prusia* decision, Code section 85.34(2)(s) no longer allows evaluation of an injury in terms of an industrial disability. Code section 85.34(3) was amended by 1973 Iowa Acts ch. 114 § 10, deleting the 500-week maximum. Thus, an injury to both hands in a single accident would have been compensated for the period of disability (which could have exceeded 500 weeks) but for Code section 85.34(2)(s) being amended by 1974 Iowa Acts ch. 1112 § 1 to state that such a loss "shall equal five hundred weeks and shall be compensated as such, however, if said employee is permanently and totally disabled he may be

ated on at the same time and did not deteriorate to the same degree simultaneously, both wrists had been developing traumatic synovitis as a result of claimant's continuous heavy use of his hands at work. Accordingly, the deputy industrial commissioner denied the claim for Fund benefits finding that claimant did not sustain a loss of use of one hand prior to a compensable loss of use of the other hand.[94]

In the cases discussed so far in this division, the employer and Fund have been actively defending against the claimant's respective claim for benefits from either or both of them.[95] An agency determination regarding the nature and extent of the disability resulting from the second injury as it relates to the question of Fund liability and exposure is not controlled by any agreement for settlement entered into by the claimant and employer with respect to the second injury.[96] Where the claimant and employer apply for and receive

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entitled to benefits under subsection three (3) of this section." The industrial commissioner reasoned:

> Under Iowa Code section 85.34(2)(s) as it now stands, the loss of both hands or a hand and a foot caused by the same injury is no longer compensated as if it were a permanent total disability unless it is, in fact, such. If an injury to both hands is anything less than a permanent total disability, under Iowa Code section 85.34(2)(s) the disability is compensated as a scheduled disability using the five hundred week schedule.
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> An injury to both hands caused by the same accident, as is the case here, does not fall under the "other" category of permanent partial disability [see unnumbered paragraph one of Code section 85.34(2)(u)] entitling the employee to a body as a whole disability pursuant to Iowa Code section 85.34(2)(u). Such an injury falls explicity within Iowa Code section 85.34(2)(s) the injury is compensated on a five hundred week schedule.

Prusia v. Armstrong Rubber Co., Appeal Decision (Sept. 4, 1979) (Landess, Iowa Indus. Comm'r).

94. Rosewall v. Wilson & Co., *supra* note 91.

95. The claimant may initiate an action against the Fund alone. If an approved full commutation between the claimant and the employer is not in effect with regard to the subsequent injury (*see* notes 97-99 and accompanying text *infra*), the Fund may move to join the employer as a necessary party. Likewise, where the claimant has initiated an action against the employer alone and the employer contends the Fund is liable for any industrial disability or at least a portion thereof, the employer may move to join the Fund as a necessary party. *Cf.* Second Injury Fund v. Mich Coal Co., 274 N.W.2d 300, 302 (Iowa 1979) (employer pointed out possible Fund liability and the claimant moved to join the Fund as an additional defendant). *See* IOWA R. CIV. P. 25.

96. In situations where the claimant and employer have entered into either an agreement for settlement which contemplates weekly payments of compensation for an agreed number of weeks or a partial commutation pursuant to IOWA CODE § 85.48 (1979), the Fund, in any action brought against it by the claimant, will probably successfully move to join the employer as a defendant provided that three years (statute of limitations) have not elapsed since the date of the last payment of compensation by the employer. *See* note 105 and accompanying text *infra* regarding Fund ability to raise the statute of limitations defense pursuant to IOWA CODE § 85.26(2).

In cases where the claimant and employer have entered into a full commutation pursuant to IOWA CODE § 85.45 (1979), the Fund, in any action brought against it by the claimant, would probably unsuccessfully move to join the employer as another defendant because the claimant's

approval of[97] a full commutation of benefits agreed upon by the two parties and based on the scheduled provision for a hand, an arm, a foot, a leg, or an eye and thereafter, upon actual payment of the commuted benefits, the claimant fully releases the employer with prejudice and then pursues an action against the Fund for industrial disability, the Fund is not bound by the approved application for commutation and may attempt to prove that the nature and extent of claimant's subsequent disability is not what the claimant and employer agreed upon.[98] Specifically, the industrial commissioner has reasoned that "[t]he Fund should have an opportunity to produce evidence as to the nature and extent of the claimant's disability as a result of the [subsequent] injury."[99]

Theoretically, the Fund may question any percentage of disability paid by the employer for the scheduled member pursuant to agreement with the claimant since the Fund was not a party to the agreement and since Fund exposure is determined to some extent by the compensable value of the subsequent injury.[100] Likewise, the Fund could dispute an employer's paying permanent disability for a hand or a foot when the evidence might support only a finding of permanent disability to the finger or the toe, thereby allowing the Fund to contest the applicability of Code section 85.64.[101]

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full release of the employer pursuant to IOWA CODE § 85.47 (1979) would negate further actual recovery by the claimant against the employer. Prior to the *Hickson* case (discussed at notes 98-99 and accompanying text *infra*) the industrial commissioner did allow the Fund on occasion to join the employer, who had been fully released by the claimant, as a means of inquiring into what benefits had been paid and why as opposed to what perhaps should have been paid and why.

In the event the claimant and employer enter into a special case settlement pursuant to IOWA CODE § 85.35 (1979), the question arises whether the claimant would meet the entry requirements of IOWA CODE § 85.64 because according to the holding in Rich v. Dyna Technology, Inc., 204 N.W.2d 867 (Iowa 1973), money received under a special case settlement is not considered to be compensation. Thus, the Fund could argue the subsequent injury is not a compensable injury as contemplated by IOWA CODE § 85.64 (1979).

97. No party to a contested case proceeding may enter into a settlement of the controversy without the industrial commissioner's approval. IOWA CODE § 86.27 (1979).

98. *See* Hickson v. W. A. Klinger Co., Appeal Decision (Aug. 4, 1978) (Landess, Iowa Indus. Comm'r). After the proceedings were begun and after the agreement and commutation had been completed, the claimant dismissed the employer.

99. *Id.* at 3. One of the Fund's arguments in *Hickson* was that the subsequent injury claimant sustained was to the shoulder and not merely to the arm (as agreed upon by the claimant and employer), and accordingly, the injury should be viewed as being to the body as a whole. In support of this position, the Fund relied on Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949).

100. Compensable value of the subsequent injury is too often hastily presumed to be the equivalent of the actual compensation paid by the employer. In accordance with the *Robinson* rationale (text accompanying note 47 *supra*) and pursuant to the *Hickson* holding (text accompanying note 99 *supra*), the Fund may present evidence showing that "the expiration of the full period provided by law for the payments thereof by the employer" referred to in IOWA CODE § 85.64 (1979) should have included more weeks of "compensation paid" to be the equivalent of the actual "compensable value."

101. *See* discussion of *Simmons* case, note 27 *supra*.

Whether the Fund may challenge determinations made by the industrial commissioner with respect to the nature and extent of the prior injury or the subsequent injury and pursuant to proceedings in which the Fund was not a party has not been specifically addressed by the agency.[102] However, the industrial commissioner further commented that "[t]his [the Fund's opportunity to present evidence as to the nature and extent of claimant's disability] is not to infer that the Fund should be able to participate in all claims involving injury to the members or organs contained in § 85.64, but if one of those members or organs is previously lost or lost usage, than an agreement as to the nature and extent of disability in which the Fund does not participate will not be binding upon them [*sic*]."[103] Focusing on the "nature and extent of disability" implies that the Fund would not be able to contend and attempt to produce evidence showing either that the compensability of the subsequent injury could have been successfully challenged by the employer had the employer raised an affirmative defense pursuant to Code sections 85.16 (willful injury), 85.23 (notice), or 85.26(1) (statute of limitations) in an arbitration proceeding,[104] or that had the employer raised a statute of limitations defense pursuant to Code section 85.26(2) in a review-reopening, further claim for benefits would have been denied and accordingly a claim for benefits against the Fund would have failed. The latter supposition is premised on the argument that in the event the statute of limitations has run with respect to reopening a case regarding a subsequent compensable injury, the claimant's cause of action against the Fund fails. That is, although the Iowa Code contains no specific statute of limitations with respect to bringing an action against the Fund, such an action is derivative of the claimant's successful recovery of compensation against the employer, and accordingly, in the absence of a specific Fund statute of limitations, section 85.26(2) should apply to actions brought under the Iowa Second Injury Compensation Act.[105]

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102. In addition to the Fund contending in the *Hickson* case that it was not a party to the commutation with respect to the nature and extent of the subsequent injury and therefore should not be bound by such commutation, the Fund also argued that it had no involvement in the earlier review-reopening proceeding which resulted in a decision determining the nature and extent of the prior disability and accordingly should be allowed to challenge such determination. Hickson v. W.A. Klinger Co., Appeal Decision (Aug. 4, 1978) (Landess, Iowa Indus. Comm'r).

103. *Id.* at 3-4. Presumably, the claimant or the employer or the deputy industrial commissioner will move to join the Fund in a proceeding in which it becomes apparent that the claimant may be entitled to pursue benefits under § 85.64. Obviously, a proceeding concerning a "prior" compensable injury would not in usual circumstances suggest potential Fund involvement. Thus, the proper determination of said injury's compensable value, from the Fund's point of view, would remain a matter that should be reviewed at the time of the proceeding against the Fund.

104. *See* note 61 *supra.*

105. There is no case law on the matter of the applicability of § 86.26(2) to proceedings brought against the Fund. In Libby v. Packers Sanitation, Ruling (July 19, 1979) (Linquist, Iowa Dep. Indus. Comm'r) the Fund filed a motion to dismiss claimant's application for Fund benefits alleging that the claimant had not timely filed his petition within two years of the date of injury. In support of motion to dismiss, the Fund quoted and emphasized the following portion of IOWA CODE § 85.67 (1979):

Just as the Iowa Second Injury Compensation Act and the case law thereunder do not specify a period of limitations for actions brought pursuant to the act's provisions, there is similarly no section regarding delivery of the original notice and petition upon the Fund and perfection of the claim. The relevant statutory provisions, the Rules of the Industrial Commissioner and the Iowa Rules of Civil Procedure that apply in other contested cases before the agency apply in Fund proceedings.[106] Delivery of the original notice and petition to the industrial commissioner is accepted as delivery upon the Fund.[107] However, because the Attorney General's Office actually represents the Fund and the industrial commissioner, a copy of the original notice and petition should be directed to that office.[108]

Finally, in those cases in which both the Fund and employer participate,[109] costs of the proceeding and of evaluations performed for determination of the nature and the extent of the subsequent disability and of the industrial disability are usually shared or assessed equally between the employer and the Fund.[110]

> *In his award* the industrial commissioner *shall specifically find the amount* the injured employee shall be paid weekly, the number of weeks compensation which shall be *paid by its employer,* the date upon *which payments out of the fund shall begin, and,* if possible, *the length of time such payments shall continue.* The industrial commissioner shall administer the provisions of this division *in connection with* and *under the same procedure as other cases* arising under this chapter.

Brief for Defendant Fund at 2 (emphasis added). The Fund argued that because the legislature intended the industrial commissioner to determine the compensation due the claimant from both the employer and the Fund simultaneously, it is unlikely that the legislature intended the statute of limitations to apply only to a claim against the employer and not the Fund. Likewise the Fund argued that the second sentence contemplates application of IOWA CODE § 86.26 (1979) to what is described as "the unitary hearing procedure mandated by section 85.67." In his ruling, Deputy Industrial Commissioner Linquist pointed out that the employer had made payments on the claim and therefore the claimant had three years from the date of the last such payment within which to bring his action.

California provides specifically by statute that the date of the award fixing the amount of disability and not the date of injury controls when the statute of limitations begins to run; whereas Oklahoma law provides that the claimant could not bring a petition to reopen an award for change in condition directly against the Fund, liability of which is purely derivative. 2 A. LARSON, *supra* note 13, at § 59.

106. For a thorough discussion of procedural matters in a contested case proceeding before the Iowa Industrial Commissioner, *see* Gardner, *Workers' Compensation Contested Cases Under the IAPA*, 27 DRAKE L. REV. 59 (1977).

107. *Id.* at 65.

108. Presently the assistant attorney general assigned to represent the Fund and the industrial commissioner is a member of the Tort Claims Division of the Attorney General's Office.

109. *See generally* notes 60-94 and accompanying text *supra.*

110. *But see* the *Auch* case, *supra* note 43, wherein the doctor who had treated the claimant for the subsequent injury apparently evaluated the claimant with respect to both the prior and subsequent disabilities on the last office visit. Deputy Industrial Commissioner Gardner found that the evaluation appeared to qualify under section 85.34 [*sic*] and ordered the Fund to share the expense of such evaluation with the employer. It is unclear from the decision upon whose request the evaluation was conducted. *See* note 116 *infra.*

V. Conclusion

The 1970's witnessed no major legislative changes with respect to the main provision of the Second Injury Compensation Act. However, agency decisions and judicial review in the past decade explained many Fund principles and elements and questioned legislative intent as it appears encased in the existing statutory provisions. Whether the future concept of the Fund will be broadened by legislative amendment to include, for example, a wider spectrum of prior and subsequent disabilities, is only speculative at this point. The future impact of the current statutory provisions depends primarily on the ability of the agency and the courts to reconcile the rationale behind the Fund with the language that creates the Fund while at the same time adhering to principles of statutory construction.

APPENDIX

A claimant seeking relief against the Second Injury Fund may file the industrial commissioner's Form 100, reprinted in this Appendix.[111] The "Second Injury Fund" box should be checked and paragraph 26 should be filled out. When the claimant is pursuing an action against both the employer and the Fund, most of the paragraphs on the Form 100 will be completed,[112] except for paragraphs 10 through 14 which have to do with death benefits.[113] When the claimant is pursuing an action against the Fund alone,[114] many of the paragraphs on the Form 100 might at first glance seem irrelevant. For example, the Fund is not liable for healing period benefits (paragraph 18)[115] nor medical expenses (paragraph 21).[116] However, because the action against the Fund is so closely connected with the compensable injury, it is advisable to supply most, if not all, of the information that has a bearing on such subsequent injury. Indeed, at the very least the claimant would have to allege that he sustained a subsequent injury (paragraph 4) to a member specified in § 85.64 (paragraph 16) which resulted in some degree of permanent impairment (paragraph 19) and for which compensation has been paid (paragraph 17b).[117]

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111. Gardner, *supra* note 106, at 63. 500 IOWA AD. CODE § 4.6 (1979) requires that a petition be prepared and filed with the original notice if a Form 100 is not used.

112. *See* Gardner, *supra* note 106 at 65, for detailed explanation of the paragraphs on the Form 100.

113. A surviving spouse or dependent of an employee who has died as a result of a work-related injury has no cause of action against the Fund. However, pursuant to IOWA CODE § 85.65, the employer or insurance carrier must pay the treasurer of state for the Fund $1,000 in case of compensable injury causing death and occuring after July 1, 1978. 1978 Iowa Acts ch. 1052 § 1. For compensable injuries prior to that date, which result in death, the assessment is $100.

114. *See generally* notes 95-105 and accompanying text *supra*.

115. *See* notes 52-53 and accompanying text *supra*.

116. *See* note 70 *supra*. Parenthetically, it should be noted that the Fund is not liable for any employee-requested independent examination pursuant to IOWA CODE § 85.39 (1979) since the Fund is clearly not an employer as contemplated by the Act. Gregory v. U.S. Homes, Ruling (Aug. 25, 1977) (Morganville, Iowa Dep. Indus. Comm'r), *reprinted in* 33 IOWA INDUS. COMM'R BIENNIAL REP. 100 (1978).

117. IOWA CODE § 86.20 (1979) provides for voluntary payment of compensation prior to determination of liability. Hence, if paragraph 17a were checked, the claimant would have to join an arbitration action against the employer with the claim against the Fund because whether or not the second injury was compensable would be in issue.

BEFORE THE IOWA INDUSTRIAL COMMISSIONER

ORIGINAL NOTICE AND PETITION

NOTE TO PETITIONER: All boxes and blanks appropriate to your claim must be checked and completed. All addresses must be given. You or your attorney must sign where indicated. **PLEASE TYPE OR PRINT LEGIBLY.** See reverse side for delivery and filing requirements.

Claimant

Respondent

Insurance Carrier

☐ Arbitration (86.14) ☐ Dependency (85.42, 43, 44)

☐ Review-Reopening (86.14) ☐ Equitable Apportionment (85.43)

☐ 85.27 Benefits ☐ Second Injury Fund (85.63 et seq)

☐ Death Benefits (85.28, 29, 31) ☐ Other (attach petition)

NOTE: The above boxes indicate only the nature of the proceeding. No answer by respondent is necessary.

You are notified that an action has been commenced before the Industrial Commissioner seeking relief under the chapters of the Iowa Code relating to workers' compensation and Occupational Disease Act benefits (Chapter 85, 85A, 85 and 87). A hearing will be held in the county indicated in No. 23 below at 1:30 p.m. on the 90th day after the filing of this form in the Industrial Commissioner's Office unless an appearance is filed on your behalf or you are otherwise notified. If the 90th day falls on a Saturday, Sunday or State holiday, the hearing will be on the first day following which is not a Saturday, Sunday or a State holiday. The filing of an appearance will result in a continuance of the matter from the above indicated day to a time to be assigned. Hearing will be in the county court house, except that hearings held in Polk County will be in the Industrial Commissioner's Office, 610 Des Moines St., Des Moines, Iowa.

You are required to file an answer within 20 days of the receipt of this document and to otherwise move or respond as provided by Rule 500 - 4.9 of the Industrial Commissioner's Rules. Failure to comply may result in the imposition of the sanctions of Rule 500 - 4.36 of the industrial Commissioner's Rules such as barring you from further activity for failure to appear and respond as required.

NOTE TO RESPONDENT: If you have workers' compensation insurance, notify your insurance company immediately upon receipt of this document.

IF ADDITIONAL SPACE IS NEEDED, USE REVERSE SIDE; IDENTIFY BY BOX NUMBER

1. Claimant's Address — Street — City — State
2. Employer's Address — Street — City — State
3. Ins. Co. Address — Street — City — State
4. Inj. date ___/___/___
5. Birth date ___/___/___
6. Earnings $____hr $____wk $____mo
7. Married ☐ Single ☐ Male ☐ Female ☐
8. Exemptions
9. Time w/empl. when inj.

DEATH

10. Deceased name
11. Relationship of claimant
12. Other Dependents — Relationship — a. ____ b. ____
13. Date of death ___/___/___
14. Funeral Expense

15. How did injury occur?

16. Parts of body affected or disabled

17. Have weekly payments been made? ____ a. Voluntary? ____ b. Compensation? ____

18. Time disabled (give dates)

19. Nature and extent of permanent disability

20. Names of doctors — a. ____ b. ____

21. 85.27 expenses: With whom incurred and amount — a. ____ b. ____

22. State the dispute in this case

23. County and judicial district where injury occurred (or Polk county if out of state)

24. Petitioner requests respondent to agree hearing may be held in the following judicial district:

25. Petitioner ready for hearing after:

26. If second injury fund benefits: a. date of first loss ___/___/___ b. member affected (first loss) _____ c. how affected _____

The petitioner incorporates by this reference the statutory provisions applicable to the relief sought and prays the Industrial Commissioner grant the relief sought, set a time and place for the hearing and request the respondents to respond or incur the sanctions noted above.

Petitioner's Attorney

Address of Attorney — Phone of Attorney — Signature (of attorney, or petitioner if unrepresented) — Date

Form No. 100

CPC-40261 5/78