OCCUPATIONAL DISEASE CLAIMS

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I. INTRODUCTION

The Occupational Disease chapter of the Iowa Workers' Compensation laws establishes a class of compensable employment claims which differ in several very significant respects from injuries treated in other portions of the compensation structure. A practitioner must pay particularly close attention to the threshold requirements and specific limitations contained in the Occupational Disease chapter in order to insure proper handling of an employee's claim.

II. SCOPE OF THE ACT

In 1947, Iowa enacted chapter 85A[1] as a supplement to the existing workers' compensation statute[2] which provided compensation where the employee sustained a "personal injury."[3] Chapter 85A was remedial legislation

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1. 1947 IOWA ACTS ch. 71, § 17.

2. IOWA CODE ch. 85 (1981).

3. The Iowa statute permits the awarding of compensation when the employee sustains a "personal injury." IOWA CODE §§ 85.20, .61(5) (1981). Perhaps the most succinct case law definition of covered "personal injury" is found in *Almquist v. Shenandoah Nurseries*, 218 Iowa 729, 734, 254 N.W. 35, 39 (1934):

> A personal injury, contemplated by the Iowa Workmen's Compensation Law, obviously means an injury to the body, the impairment of health, or a disease, not ex-

intended to ameliorate the proof requirements normally associated with establishing a traumatic injury,[4] and to obviate discrimination[5] against disabled workers whose productivity has been terminated by disease.[6] The early Iowa statute contained a "schedule" which enumerated seventeen classes of diseases[7] and designated the typical environment associated with each disease.[8] In 1973, Iowa joined the majority of states by abolishing the schedule,[9] and amending section 85A.8 to provide a comprehensive definition of compensable ocupational diseases. The Occupational Disease statute reaches all employers customarily covered by chapter 85 of the compensation laws,[10] and provides coverage to the same class of employees protected by the regular act.[11]

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cluded by the act, which comes about, not through the natural building up and tearing down of the human body, but because of a traumatic or other hurt or damage to the health or body of an employee.

. . . .

[B]ut such personal injury need not arise out of an accident.

4. In order to qualify for benefits under chapter 85, a worker must establish that the injury was one "arising out of and in the course of the employment". IOWA CODE § 85.3(1) (1981). *See* McClure v. Union County, 188 N.W.2d 283, 287 (Iowa 1971). The phrase "arising out of" mandates that the injury has a logical nexus with the performance of some job duties benefiting the employer and stemming from performance of some task reasonably related to the employment. Musselman v. Cent. Tel. Co., 261 Iowa 352, 356, 154 N.W.2d 128, 130 (1967); Burt v. John Deere Tractor Works, 247 Iowa 691, 700, 73 N.W.2d 732, 737 (1955); Crowe v. DeSoto Consol. School Dist., 246 Iowa 402, 405-06, 68 N.W.2d 63, 65 (1955); Pattee v. Fullerton Lumber Co., 220 Iowa 1181, 1187, 263 N.W. 839, 842 (1935). The phrase "in the course of" requires that the injury occur during a time and at a location where the employee might reasonably be expected to be performing job-related tasks. Bushing v. Iowa Ry. & Light Co., 208 Iowa 1010, 1018, 226 N.W. 719, 723 (1929). *See generally* Duckworth, *Injuries Arising out of and in the Course of Employment*, 30 DRAKE L. REV. 861 (1981).

5. Diseases are typically the result of insidious attacks on the body structure or breakdown of body tissue resulting from prolonged exposure spanning a number of years. See 3A A. LARSON, WORKERS' COMPENSATION LAWS § 95.21, at 508.136-.137 (1976). The original compensation scheme did not contain special rules for handling diseases. "If a man loses an arm, compensation is provided. If he suffers from lead poisoning . . . there is no protection . . . no sound reason exists for this discrimination." Biennial Message to the General Assembly of Iowa, Governor Blue, *Senate Journal* 28 (1947).

6. Early cases tried to ease the problem of proving that a particular period of employment caused an occupational disease by allowing compensation if the employee could demonstrate that a particular employment incident "lighted up" or "aggravated" a pre-existing, dormant disease. *See* Almquist v. Shenandoah Nurseries, 218 Iowa 724, 736, 254 N.W. 35, 41 (1934) (pre-existing ulcer-induced weakness of the stomach); Fraze v. McClelland Co., 200 Iowa 944, 205 N.W. 737 (1925) (tuberculosis lighted up by chest injury).

7. IOWA CODE § 85A.9 (1973) (repealed 1973 IOWA ACTS, ch. 144, § 30).

8. *E.g.*, IOWA CODE § 85A.9(8) (1973) (repealed 1973 IOWA ACTS, ch. 144, § 30) provided: "Zinc Poisoning. Any process or occupation involving direct use of or direct contact with zinc or its preparation, compounds or alloys."

9. 1973 IOWA ACTS, ch. 144, § 30.

10. IOWA CODE § 85A.2 (1981) includes employers affected by the mandatory acceptance provisions of § 85.3.

11. IOWA CODE § 85A.3 (1981).

III. What Are Occupational Diseases?

When the specific schedule of covered occupational diseases was deleted in 1973, the legislature adopted a lengthy definition of an occupational disease which closely followed the definition in other states.[12] Occupational diseases are specifically excluded from coverage as "personal injuries" by statute.[13] Since the 1973 amendment, *McSpadden v. Big Ben Coal Co.*[14] is the only significant Iowa case construing the section 85A.8 definition of occupational diseases. Harry McSpadden had worked in underground coal mines for 54 years, and at the time of the hearing was unable to breathe without great exertion, and was unable to perform the customary duties associated with his mining job. Claimant sought permanent, total disability against his most recent employer, claiming to have suffered deleterious effects from inhaling coal dust and toxic gases.

The case was prosecuted before the Industrial Commissioner as a claim for pneumonoconiosis under Iowa Code section 85.13. Although the Industrial Commissioner's determination that claimant failed to establish that he had compensable pneumonoconiosis was sustained on appeal, the case was reversed and remanded to determine whether McSpadden suffered some other compensable disease.[15] In this latter context, the Iowa Supreme Court laid down the following analysis of the proof standards created by section 85A.8:

> Moreover the criteria for establishing the employment causation of an injury under Chapter 85 are not the same as those for establishing the employment causation of an occupational disease under Chapter 85A. As previously stated, to qualify for benefits under Chapter 85, the claimant must prove that his injury arose out of and in the course of his employment with the defendant-employer. On the other hand, to prove causation of an occupational disease, the Claimant need only meet the two basic requirements imposed by the statutory definitions of occupational

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12. Iowa Code § 85A.8 (1981) provides:

> Occupational diseases shall be only those diseases which arise out of and in the course of the employee's employment. Such diesases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation or process in which the employee was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which an employee has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.

For other representative examples, *see* Ala. Code tit. 25, § 5-110 (1975); Minn. Stat. § 176.011(15) (1969); Ohio Rev. Code Ann. § 4123.68(BB) (Page 1980).

13. Iowa Code § 85.61(5)(b) (1981).

14. 288 N.W.2d 181 (Iowa 1980).

15. *Id.* at 193.

> disease, given in section 85A.8. First, the disease must be causally related to the exposure to harmful conditions of the field of employment. All but the last sentence of the definition pertains to that requirement. . . . Secondly, those harmful conditions must be more prevalent in the employment concerned than in everyday life or in other occupations. The latter requirement is based on the last sentence of the definition.[16]

Clearly, the section 84A.8 statutory definition delineates the causation standard and controls the evidentiary proofs. A casual reading of the above-cited dicta from *McSpadden* may mislead claimants into believing that their burden of proof under chapter 85A is easier than the proof requirements of chapter 85. A close analysis of the section 85A.8 definition of occupational disease appears to compel an opposite conclusion.

It is interesting to note that the first sentence of section 85A.8 contains the same "arising out of" and "in the course of" dual standard of chapter 85.[17] Beyond that introductory sentence, however, section 85A.8 posits the following requirements for an occupational disease: (1) direct causal connection or relationship with the occupation; (2) flow as a natural or direct incident from the injurious exposure (may not be independent of employment); (3) must have a discerable origin in the employment risk; (4) must develop as a rational consequences of the employment risk; and (5) the hazard should be more prevalent in the occupation than in everyday environment or exposures. It is noteworthy that these same tests, albeit in slightly different language, are also incorporated into the limitations language found in section 85A.12.[18] Under this latter section, in order for a disease to be compensable it must also be "characteristic" and "peculiar to" the occupation. Although the court in *McSpadden* suggested that there are only "two basic requirements" which must be established to prove an occupational disease,[19] in reality there may be three distinguishable criteria or requirements posed by a combined reading of sections 85A.8 and 85A.12. The various sentences and phrases found in these two sections can be grouped or clustered into three definitional categories, which are so critical in determining whether a given disease passes the threshold requirements for an "occupational" disease that they deserve greater scrutiny.[20]

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16. *Id.* at 190.

17. *See* note 4 *supra*. Dicta in *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 190 (1980), suggests that the court does not intend to place very much weight on the classic "arising out of" and "in the course of" criteria. The court seemed to distinguish the chapter 85 test from the proof requirements of chapter 85A. *Id.* at 190. *See* text accompanying notes 18-19 *infra*.

18. Disablement or death following exposure—limitations. IOWA CODE § 85A.12 (1981).

19. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 190 (Iowa 1980).

20. Unfortunately, there are no Iowa cases which describe or define these terms other than the comments found in *McSpadden*. *Id.* However, *McSpadden* borrows heavily by way of example from cases of other jurisdictions. In the absence of native case law, this writer must likewise look beyond Iowa borders for assistance in analyzing these terms.

A. *Characteristic of Peculiar to Trade*

These two standards appear directed toward establishing a general relationship between the nature of the employment and the contracted disease.[21] Delaware, for example, has required proof of a distinctive relationship between the disease and the nature of the employment, as contrasted with diseases which are just as easily contracted in other occupations or everyday life outside of employment.[22] Still other courts require proof of an uncommon amount of the disease or a routine frequency of a special hazard which is concomitant with the employment.[23] Still another interpretation requires a showing that the employment creates a peculiar hazard of the disease in excess of that posed by other forms of employment and that the disease is not a common, ordinary disease of life to which the general public is exposed.[24] Some courts deny recovery if the claimant merely demonstrates that the disease was contracted while on the job.

The interaction of these requirements is demonstrated in the case of *James v. Spaulding Bakeries, Inc.*[25] James, a lifelong bakery employee, developed pulmonary emphysema which was identified by a medical expert as having its roots in his lifelong employment in the baking industry. However, the failure to present testimony establishing that the characteristics of claimant's pulmonary fibrosis was different from that suffered by the general public defeated the claim for failure to establish that the disease was peculiar to the claimant's occupation.[26]

A logical argument can be advanced for reading the term "peculiar" in a broad, rather than in a limiting sense. There is no compelling reason to interpret the phrase "peculiar to the occupation" to require that the disease

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21. A working definition of the term "peculiar" is found in *Air Mod Corp. v. Newton*, 59 Del. 148, _, 215 A.2d 434, 442 (1965): "resulting from the peculiar nature of the employment, i.e., from working conditions which produce the disease as a natural incident of the particular occupation, attaching to that occupation a hazard different from, and in excess of, the hazards attending employment in general."

22. General Motors Corp. v. Veasey, 371 A.2d 1074, 1076 (Del. 1977) (a compensable occupational disease is one resulting from the peculiar nature of the employment attaching to that occupation a hazard different from, and in excess of, the hazards attending employment in general).

23. Hanna v. Workmen's Compensation Appeals Bd., 32 Cal. App. 3d 719, ___, 108 Cal. Rptr. 227, 229 (1973). The disease must have been "incurred in an occupation productive of an uncommon amount of the disease or in which the disease routinely constitutes a special hazard or in which the disease is commonly regarded as a concomitant of the employment. . . ." *Id.* at _, 108 Cal. Rptr. at 229.

24. Phelps v. Gunite Constr. and Rentals, Inc., 279 So. 2d 829, 831 (Fla. 1973) (contact dermatitis).

25. 19 Pa. Commw. Ct. 359, 339 A.2d 591 (1975).

26. *Id.* at _, 339 A.2d at 593. *See also* Palder v. Park East Movers, 19 N.Y.2d 373, 227 N.E.2d 40, 280 N.Y.S.2d 140 (1967) (ailment must result from distinctive feature of kind of work performed by other employees similarly employed; insufficient if it is an ailment caused by peculiar place in which claimant happens to work).

originate exclusively from the particular kind of employment in which the employee is engaged.[27] The term "peculiar" may merely indicate that the conditions of employment must result in a hazard which distinguishes it in character from the general run or ordinary occupations.[28] Diseases are not, in principle, compensable mainly because they were contracted on the job site. In an excellent example, the Supreme Court of Maine indicated that occupational disease statutes were not intended to protect an employee who contracts pneumonia simply by standing next to an infected worker.[29] In that example, the employee's exposure to the disease would have occurred regardless of the nature of the occupation in which he was employed. The Maine court further held that a compensable disease must be so distinctively associated with the employee's work that there is an obvious direct causal connection between the employment and the affected disease.[30]

In *Booker v. Duke Medical Center*,[31] the claimant was assigned to manually test blood samples in the laboratory at Duke Medical Center. Blood routinely spilled on his fingers, and he thereby came in contact with blood samples containing infectious hepatitus at least once a day. Buttressed by expert opinion testimony that Booker was exposed to a much higher risk of contracting serum hepatitus than even other employees in the hospital, the court held the claim compensable. the court's analysis emphasized the fact that although serum hepatitus was an "ordinary disease of life," such diseases were compensable nonetheless if the employee were not equally exposed to the disease outside the employment.[32]

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27. For cases adopting this view, see *Ritter v. Hawkeye Security Ins. Co.*, 178 Neb. 792, 795, 135 N.W.2d 470, 472 (1965); *Le Lenko v. Wilson H. Lee Co.*, 128 Conn. 499, 503, 24 A.2d 253, 255 (1942).

28. Glodenis v. American Brass Co., 118 Conn. 29, 40, 170 A. 146, 150 (1934).

29. Russell v. Camden Community Hosp. 359 A.2d 607 (Me. 1976).

30. *Id.* at 611-12. For an opposing interpretation which seems to hinge simply on the fact that the disease was contracted from a co-worker, see *Gray v. City of St. Paul*, 250 Minn. 220, 84 N.W.2d 606 (1957) (motor patrol officer forced to ride in same vehicle with tubercular officer held exposed to risk of contracting tuberculosis far greater and in different manner than general public).

31. 297 N.C. 458, 256 S.E.2d 189 (1979).

32. *Id.* at _, 256 S.E.2d at 200. The court explained that:

> Appellees also argue that serum hepatitus is an "ordinary disease of life" and is therefore noncompensable. They cite in particular Dr. Michael McLeod's statement on cross-examination that "serum hepatitus is not a disease which is limited to persons who handle blood. Members of the general public from time to time are (also) afflicted with the disease." Clearly serum hepatitus is an "ordinary disease of life" in the sense that members of the general public may contract the disease, as opposed to a disease like silicosis or asbestosis which is confined to certain trades or occupations. Our statute, however, does not preclude coverage for all ordinary diseases of life but instead only those "to which the general public is *equally exposed* outside of the employment. . . ." (emphasis added.) The testimony of Dr. McLeod and Dr. Currin cited earlier supports the Commission's conclusion that the public is exposed to the risk of contracting serum hepatitis to a far lesser extent than was Mr. Booker.

B. *Natural Incident—Direct Cause Rational Consequence*

Several courts have ruled that a disease must be so distinctively associated with the employee's occupation that there is a direct causal connection between the duties of the employment and the disease contracted.[33] This combination of factors seems to require that a claimant demonstrate that the disease's causative factors are present in or indigenous to the employment. At least one court has held that in order to establish an "occupational hazard," one must demonstrate that the causative factors of the disease are present in the entire industry or occupation.[34]

In *Hansel v. Sherman Textiles*,[35] Pauline Hansel contracted byssinosis which she claimed was caused by exposure to cotton dust at the Sherman Textiles plant. In sustaining a denial of the claim, the North Carolina court commented on the fact that there were no specific findings establishing the amount of cotton dust ordinarily present in the area where Hansel worked. The court noted that for an illness to be compensable, it must be fairly traceable through the employment as a contributing proximate cause.[36] A disease is characteristic of or incident to an occupation when there is a recognizable link between the nature of the job and an increased risk of contracting the disease in question.[37]

C. *More Prevalent*

The last sentence of the section 85A.8 definition of "occupational disease" precludes recovery if the hazard is one to which an employee would have been equally exposed outside of the occupation.[38] This requirement may necessitate statistical evidence or expert testimony establishing that the incidence of the particular condition is substantially greater in the specific industry or occupation than in the general population.[39] For example, recovery has been denied where the employee failed to prove that the incidence of contact dermititis due to exposure to nickel was substantially greater among steel workers than among members of the general public.[40] A slightly different quantum of proof may also satisfy the statute. A claimant

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Id. at _, 256 S.E.2d at 200. *See also* Mills v. Detroit Tuberculosis Sanitarium, 323 Mich. 200, 35 N.W.2d 239 (1948).

33. *See* Russell v. Camden Community Hosp. 359 A.2d 607, 611 (Me. 1976); Cast Crete Corp. v. Duncan, 383 So. 2d 245, 247 (Fla. Dist. Ct. App. 1980).

34. Fruehauf Corp., Independent Metal Div. v. Workmen's Compensation Appeal Bd., 31 Pa. Commw. Ct. 341, ___, 376 A.2d 277, 280 (1977).

35. _ N.C. App. _, 270 S.E.2d 585 (1980).

36. *Id.* ___, at 270 S.E.2d at 588.

37. Booker v. Duke Medical Center, 297 N.C. 458, _, 256 S.E.2d 189, 198 (1979).

38. *See* Iowa Code § 85A.8 (1981).

39. *See, e.g.*, Roofner v. Workmen's Compensation Appeal Bd., 38 Pa. 218, _, 392 A.2d 346, 348 (1978); Aleutian Homes v. Fischer, 418 P.2d 769 (Alaska 1976).

40. Cook v. Workmen's Compensation Appeal Bd., _ Pa. _, 415 A.2d 1021 (1980).

may be able to show that he was exposed to the hazard or risk conditions conducive to causing a disease in a measurably greater degree, or in a substantially different manner than persons in employment generally.[41]

D. *Special Provisions Relating to Pneumonoconiosis*

In 1973, the Iowa legislature broadened the provisions relating to silicosis and redefined dust-inhalation cases under the broader term of pneumonoconiosis.[42] There is a two-fold test to establish compensable pneumonoconiosis. First, the statute requires a medical finding of a "fibrotic condition of the lungs" that is "characteristic" of pneumonoconiosis.[43] The second requirement is proof that the fibrotic lung condition was caused by the "inhalation of dust particles."[44] If one has surpassed the first hurdle of establishing the presence of pneumonoconiosis, the prospective claimant is still faced with the sometimes difficult task of linking the pneumonoconiosis to employment activities. In some cases, the very nature of the employment may warrant a conclusion that the pneumonoconiosis developed from the occupation. However, in the more frequent situation, the injured employee may have a very difficult time establishing the requisite causal link between the disease and the employment. In fact, the legislature has created a presumption that pneumonoconiosis, in the absence of conclusive proof, shall be deemed non-occupational in origin.[45] However, this represents a rebuttable presumption which can be overcome by demonstrating that during the ten years preceding development of the disability, the employee had been exposed to dust-inhalation for at least five years.[46] This section also imposes a minimum state contact rule which necessitates that at least two years of the five years of dust-inhalation exposure occur within the state of Iowa.[47]

Classification of an occupational disease within the pneumonoconiosis category will be of tremendous significance because the monetary exposure of a particular employer or insurer is greatly compromised. Section 85A.13(3) imposes a specific dollar value limitation or ceiling on the amount recoverable for disability arising from pneumonoconiosis. The statutory

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41. *See, e.g.*, Young v. City of Huntsville, 342 So. 2d 918 (Ala. Civ. App. 1976).

42. IOWA CODE § 85A.13(1) (1981).

43. *Id.* § 85A.13(2). Actually this first condition requires expert opinion that not only establishes the presence of a fibrotic condition but also offers an opinion that the fibrotic condition is characteristic of pneumonoconiosis. Proof of fibrosis in the lungs, standing alone, will not be sufficient to establish the presence of pneumonoconiosis. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980).

44. IOWA CODE § 85A.13(1) (1981). McSpadden, 288 N.W.2d at 188. As a practical matter, this requirement has always depended upon expert medical opinion.

45. IOWA CODE § 85A.13(2) (1981).

46. *Id.* The claimant who lacks conclusive evidence of causation must satisfy the statutory minimum length of exposure to dust-inhalation. Otherwise, section 85A.13 creates a presumption of the nonexistence of the occupational causation. McSpadden, 288 N.W.2d at 189.

47. IOWA CODE 85A.13(2) (1981).

formula for computing benefits[48] provides a current maximum ceiling for total disability (as of the date this Article was written) in the amount of $20,400. At the agency level, this statutory formula has been upheld and applied.[49] Although the statutory consolidation which regrouped silicosis and asbestosis under the generic term of pneumonoconiosis occured in 1975, evidently the legislative revision committee was unaware of the drastic limitations imposed by this statute. Otherwise, one would presume that an attempt would have been made to place these benefits on more of a parity with other compensation benefit schedules and rates. The last sentence of the statute clearly evidences a legislative intention to eventually reach parity with the benefits available under chapter 85.[50] However, even if this section is changed in the near future, its application would apparently be prospective only.[51] There is a strong possibility that the low benefit ceiling imposed by section 85A.13(3) can be further reduced by the combined operation of sections 85A.13(4) and 85A.7(4). Section 85A.13(4) requires that disability or death benefits shall be reduced if the pneumonoconiosis is complicated by any other disease except tuberculosis.[52] In order to understand

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48. *See* IOWA CODE § 85A.13(3) (1981), which provides:

> [Starting with a base figure of $500.] [T]hereafter, the total amount or limit of the compensation and death benefits . . . shall be increased at the rate of fifty dollars per month. . . . Such progressive increase in the limits of the aggragate compensation and benefits for disability and death shall continue until the limit upon such benefits fixed in the workers' compensation law is reached, and thereafter the total aggregate of such compensation and benefits shall be the total of compensation benefits otherwise provided in the workers' compensation law.

The clear import of this provision is that one starts with a minimum figure of $500 on January 1, 1948 and simply adds $50 to that figure for each successive month until you reach the claimant's date of death or onset of disability. Of course, this is an extremely low ceiling for pneumonoconiosis benefits.

49. The principal (and perhaps only) decision of the Industrial Commissioner dealing with this dollar value limitation is *Delno G. Brigman v. Big Ben Coal & Old Republic Insurance Co.* 33rd Biennial Report, Indus. Comm'r 203 (1978).

A pulmonary function study performed on Brigman, who had a twenty year history of working as a coal miner, resulted in a medical diagnosis of 100% disability due to pneumonoconiosis complicated by emphysema. The decision held that the maximum claimant Brigman could recover was $17,350. Unfortunately, the decision does not contain any detailed analysis of section 85A.13. However, the absence of any detailed reasoning may simply reflect the fact that the statutory language in question is relatively straightforward and not susceptible to many different interpretations. *Id.*

50. The 1947 Code drafters were dealing with an Act which provided $20 as the maximum weekly benefit, 300 weeks maximum, and a $6,000 ceiling on permanent total disability. IOWA CODE §§ 85.27, .31 (1947); 1947 IOWA ACTS chs. 65-66. The 1980 maximum healing period rate has increased to $384 per week with lifetime benefits for permanent total disability. Under the present scheme, even if other chapter 85 benefits were frozen, pneumonoconiosis would not reach a parity with other compensation benefits for another 287 years!

51. *See, e.g.*, Secrest v. Galloway Co., 239 Iowa 168, 172, 30 N.W.2d 793, 795 (1948) (statute of limitations amendment held prospective only).

52. IOWA CODE § 85A.13(4) (1981) provides as follows: "In the case of disability or death

the statutory reference of section 85A.13(4) "reduced as herein provided," one needs to refer to section 85A.7(4) which requires a reduction of benefits if the occupational disease is complicated by a non-occupational disease or infirmity.[53]

The "limitations and exceptions" language found in section 85A.7 clearly applies to all types of occupational disease. Section 85A.13(4), which has applicability only to pneumonoconiosis, merely reinforces the fact that benefits must be further reduced in cases of "complicated" pneumonoconiosis. This particular issue frequently arises in a claim which combines a car-cardiac infirmity with pulmonary insufficiency attributable to pneumonoconiosis.

E. *Disablement*

Under the Iowa act, weekly compensation is payable only if the employee is disabled from an injurious exposure.[54] The term "disablement," defined in section 85A.4, creates alternate tests for establishing disability:

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from pneumonoconiosis complicated by any other disease (other than tuberculosis), or from any other disease complicated with pneumonoconiosis, the compensation shall be reduced as herein provided."

53. When an occupational disease is aggravated by a noncompensable disease or infirmity, or vice versa, benefits must be reduced "to such proportion only of the compensation that would be payable if the occupational disease was the sole cause of the disability or death, as such occupational disease bears to all the causes of such disability or death." *Id.* § 85A.7(4).

Generally, disability which results from an aggravation of a pre-existing disease or injury does not justify a compensation award unless the aggravation was a proximate cause of the additional disability. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 908, 76 N.W.2d 756, 760-61 (1956). In order to establish a pre-existing condition under case law development, one must show that an actual health impairment exists. Sondag v. Ferris Hardware, 220 N.W.2d 903 (Iowa 1973); Merchant v. SMB Stage Lines, 172 N.W.2d 804 (Iowa 1969). While a claimant is not entitled to compensation for the effects of a pre-existing condition, the mere presence of a latent disease prior to an injurious exposure would not constitute a defense. *See* Nicks v. Davenport Produce Co., 254 Iowa 130, 135, 115 N.W.2d 812, 815 (1962). A latent, nonsymptomatic condition may be fully compensable if there is a "lighting up" of that condition which is produced by an injury or injurious exposure. Gosek v. Garmer and Stiles Co., 158 N.W.2d 731, 737 (Iowa 1968); Musselman v. Central Tel. Co., 261 Iowa 352, 359, 154 N.W.2d 128, 132 (1967).

It is certainly possible that an occupational aggravation of a non-disabling, non-occupational condition could result in a compensable "occupational disease" if the aggravating conditions are fairly traceable to the employment. *See* Walston v. Burlington Industries, _ N.C. App. _, 271 S.E.2d 516 (1980); Bowman v. Twin Falls Const., Co., Inc., 99 Idaho 312, 581 P.2d 770 (1978). *But see* Rockford Transit Corp. v. Industrial Comm'r, 38 Ill. 2d 111, _, 230 N.E.2d 264, 265 (1967) (pre-existing emphysema aggravated by conditions of employment held non-compensable in absence of evidence that disability occurred sooner than it would have without exposure to the occupational irritants). The very language of section 85A.7(4) recognizes that an otherwise non-compensable disease can be aggravated by the conditions of the employment and mandates apportionment between the two separate causes of the resulting disability. IOWA CODE § 85A.7(4) (1981).

54. IOWA CODE § 85A.5 (1981). If the employee is able to continue in his employment, despite the occupational disease, he is to receive reasonable medical services.

(1) actual incapacitation from work, or (2) the inability to earn equal wages in other suitable employment. At first blush, the concept of disablement is arguably distinct from the concept of disability created by chapter 85.[55] In the wake of *McSpadden,* the demarcation between chapter 85A disablement and classic disability has become somewhat blurred. The supreme court indicated that there was no reason to refrain from using the industrial disability criteria in determining whether the claimant was incapacitated or unable to earn equal wages.[56] The court identified an employer's refusal to supply any work to a claimant after he contracts his disease and the claimant's inability to find other suitable work, after making bona fide efforts, as additional criteria which should be considered by the Industrial Commissioner.[57]

The test of incapacitation appears to be a medical question which depends almost exclusively upon medical appraisal of the claimant's physical condition. If a claimant were unable to perform any employment, he would clearly have satisfied the first test of section 85A.4. By contrast, the "equal wages" test appears to be a mixed question of medical limitations combined with socio-economic evaluation of alternative employment. Only in connection with this second test of section 85A.4 would consideration of the "industrial disability" criteria mentioned in *McSpadden* seem appropriate.

A literal reading of this statute suggests that the inability to earn an "equal wage" may be sufficient to qualify as disablement even though the claimant may in fact be earning income. As a matter of policy, with one exception,[58] the statute is silent on the question of whether it is possible to recover permanent *partial* disability under chapter 85A. There is a tendency

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55. Disability for injuries under chapter 85 (other than scheduled injuries) has been classified as "industrial disability" which is a reduction in earning capacity. Criteria analyzed in determining industrial disability include the actual functional disability, claimant's age, education, qualifications, experience and his inability, because of the injury, to engage in gainful employment. Olson v. Goodyear Service Stores, 255 Iowa 1112, 1121, 125 N.W.2d 251, 257 (1963).

56. The following is found in *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 192 (Iowa 1980):

> There is no reason to believe that these criteria should not also be applicable in determining the claimant's capacity to perform his work or earn equal wages in other suitable employment. . . . [A]t least in cases where claimant proves he has been unable to continue working for reasons related to his disease.

57. *Id.* at 192. *See also* Blacksmith v. All-American, Inc., 290 N.W.2d 348, 350 (Iowa 1980) (transfer to lower-paying job after phlebitis attack); Mich. Coal Co. v. Second Injury Fund, 274 N.W.2d 300, 302 (Iowa 1979). It is an open question as to whether the section 85A.4 twin test is to be judged solely from the perspective of available work at the defendent-employer's place of business or whether the claimant must show that he was precluded from the job market in other industries. A close reading of *McSpadden* suggests that the term "suitable employment" found in section 85A.4 may refer to employment with the charged respondent: "For example, a defendant-employer's refusal to give any sort of work to a claimant after he suffers his affliction may justify an award of disability." *Id.* at 192.

58. Iowa Code § 85A.17 (1981). "Disability" seems to recognize that permanent partial indemnity is payable under chapter 85A.

to automatically assume that the only weekly indemnity available under this chapter is for permanent total disability. Such a conclusion would be warranted if disablement were defined exclusively on the basis of incapacitation from performing work. However, the fact that the statute recognizes the status of an employee who is earning less than equal wages at least opens the door for arguing that section 85A.5 compensation should include permanent partial disability benefits.[59]

IV. Last Injurious Exposure

Chapter 85A also contains special rules, designed to benefit the employee, which identify the employee who shall be held accountable for an occupational disease. Section 85A.10 imposes liability upon the employer who last injuriously exposed the claimant to the hazards of the disease.[60] In the case of pneumonoconiosis there must be a minimum exposure of not less than sixty days.[61] Until recently, the Iowa Supreme Court had not had occasion to provide guidance in interpreting the phrase "last injuriously exposed." Although the phrase has not been specifically defined, dicta in *McSpadden v. Big Ben Coal* provides the following insight:

> It does not require that the claimant prove that his disease was actually caused by that exposure. Rather, we believe it is sufficient that he show

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59. Under the rules of statutory construction, such enactments must be accorded a logical, sensible construction which gives harmonious meaning to related sections and accomplishes the legitimate legislative purpose. *See In re* Estate of Bilven, 236 N.W.2d 366, 369 (Iowa 1975); Olson v. District Court, 243 Iowa 1211, 1214, 55 N.W.2d 339, 340 (1952). The primary purpose of the workers' compensation statute is to benefit the worker insofar as the statutory requirements permit. Cedar Rapids Community School v. Cady, 278 N.W.2d 298, 299 (Iowa 1979); Hoening v. Mason & Hanger, Inc., 162 N.W.2d 188, 190 (Iowa 1968). There is absolutely no reason to define disablement in terms of a standard based on reduction in earnings unless a person can be simultaneously disabled and working. Such an analysis is not in conflict with the second paragraph of section 85A.5 which can be read to insure medical benefits for those individuals who do not meet either of the two tests of disablement. Section 85A.17 would not make reference to permanent partial disability unless recoverable as a form of weekly benefits.

60. *See* Iowa Code § 85A.10 (1981).

61. *Id.* § 85A.10. It would appear logical that an employer cannot be held liable in a pneumonoconiosis case if the period of employment is less than the statutory 60 day minimum. Stated differently, 60 days employment appears to be a threshold requirement for employer liability. The Industrial Commissioner so ruled in sustaining a motion for summary judgment in *Tracus v. A. C. & S., Inc.*, 33rd Biennial Report, Indus. Comm'r 200 (1978). An interesting question can arise with this type of 60 day requirement. Does the 60 day period have to be a continuous, uninterrupted employment by the same employer? In *Smith v. Workers' Compensation*, 618 P.2d 942 (Okla. 1980), claimant was seeking compensation for 56 days of exposure during 1976. Claimant had previously worked for five days in 1973 for the same employer. Construing language comparable to Iowa Code section 85A.10, the Oklahoma Supreme Court held that the statute did not require continuous, uninterrupted employment by the same employer before liability could attach. The court expressly allowed a claimant who could demonstrate exposure to harmful quantities of dust to tack earlier periods of employment onto the 56 days of continuous exposure which preceded his disablement. *Id.* at 944.

> that the hazardous employment condition which at some time caused his disease existed to the extent necessary to possibly cause the disease at his last employer's place of employment.[62]

A number of other heavily industrialized jurisdictions have grappled with interpreting this phrase. *Haynes v. Feldspar Producing Co.*[63] is a typical decision from a jurisdiction which interprets "last injuriously exposed" to mean the employer who last exposed the claimant to the possibility of injury. In *Haynes,* the claimant had contracted silicosis during an earlier employment. The last employer was held liable for compensation even though there was no clear medical proof that the latter employment resulted in an injurious exposure. The medical evidence introduced was equivocal on the question of whether silicosis actually advanced while in the respondent's last employment. The court reasoned that since dust was present at the latter place of employment, there was an "exposure" which could conceivably have caused some harm.[64]

In the absence of a biopsy or prior treatment, it would be almost impossible to clinically determine whether a given period of employment actually increased or advanced a claimant's disease. Similarly, it would be almost impossible to pinpoint a time span for contraction of most occupational diseases. Add to this milieu the fact that most workers exposed to pneumonoconiosis-type risks are hired out of labor union halls for relatively short periods of time, and the task of identifying a "responsible" employer becomes almost impossible.

The "last employer" rule undoubtedly represents a policy decision to choose an identifiable employer and relieve the disabled worker from the burden of establishing which of several employments produced a disease, and thereby run the risk of being barred by limitation periods from recovering compensation because the disease may have been contracted in the service of a prior employer.[65] Another illustrative decision, cited with approval by the Iowa Supreme Court in *McSpadden,* is *Climax Uranium Co. v. Smith.*[66] Decedent Smith worked in the Climax Uranium mine for twenty days out of approximately nineteen years of similar employment. The Colorado statute provided in effect that an injurious exposure was a concentration of toxic material which would be sufficient to cause occupational disease

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62. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 188 (Iowa 1980).

63. 222 N.C. 163, 22 S.E.2d 275 (1942).

64. *Id.* at _, 22 S.E.2d at 278. Since dust was present to create an exposure, the court reasoned that "we must assume, because he still lived and breathed, he was capable of further injury." *Id.* at _, 22 S.E.2d at 279.

65. Colwell v. Trotman, 44 Or. App. 855, 615 P.2d 1094, 1096 (1980). This rule also serves the interest of judicial economy in avoiding the enormous time and expenses which would be required in trying to allocate coverage or apportion liability among two or more consecutive employers. *See* Utica Square Salon of Beauty v. Barron, 595 P.2d 459 (Okla. Ct. App. 1979).

66. 33 Colo. App. 337, 522 P.2d 134 (1974).

in the event of prolonged exposure.[67] The Colorado statute did not refer to the length of exposure necessary to actually cause the disease. Despite the unusually brief employment period, liability was affirmed on the theory that the legislature intended to impose liability on the last employer who was responsible for any type of injurious exposure.[68]

The Kentucky Supreme Court has been somewhat more explicit in its handling of this issue. In *Gregory v. Peabody Coal Co.*[69] the claimant had been a coal miner for over thirty years, but his tenure with the last employer was limited to twenty-five days of labor. Peabody, the last employer, was held solely liable for the injury on the grounds that the "last injurious exposure" arose on the date of disablement "while working under conditions which would, regardless of the time element, cause such a disease."[70]

In *McSpadden v. Big Ben Coal Co.*,[71] it appears that the Iowa Supreme Court adopted a hybrid or "middle" position. While the claimant is not required to prove that his disease was actually caused by any exposure, the claimant must nonetheless show that some exposure occurred and that it could have contributed to his health condition.[72] In the absence of a specific statute, it is doubtful that the responsible employer can seek contribution from earlier employers who exposed the employee to the employment hazard.[73]

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67. *Id.* at _, 522 P.2d at 139.

68. Similar reasoning has been reached in comparable cases in a number of other jurisdictions. *See* Stanley v. Hinchliffe & Kenner, 395 Mich. 645, 238 N.W.2d 13 (1976); Aseltine v. Leto Constr. Co., 43 Mich. App. 559, 204 N.W.2d 262 (1972); McCormick v. United Nuclear Corp., 89 N.M. 740, 557 P.2d 589 (Ct. App. 1976); Hudgins v. United States Fidelity & Guar. Co., 479 S.W.2d 804 (Tenn. 1972).

69. 355 S.W.2d 156 (Ky. 1962).

70. *Id.* at 159. *See also* Edwards v. Catapano & Grow Constr. Co., 15 A.D.2d 843, _, 224 N.Y.S.2d 565, 567 (1962). In a comparable decision the Oregon Court of Appeals ruled that it was not necessary to prove that the last employment was a material contributing cause to the disease, but merely that the conditions of the last employment were such that they could cause asbestosis over some indefinite period of time. Mathis v. State Accident Ins. Fund, 10 Or. App. 139, _, 499 P.2d 1331, 1336 (1972).

71. 288 N.W.2d 181 (Iowa 1980).

72. *Id.* at 191-92.

73. Several states do have statutes or case law interpretations which authorize second-level litigation between successive employers. California authorizes employers in the chain of causation to debate the issue of apportionment of their relative liability in a separate proceeding after the employee has recovered from the "last employer." Marsh v. Workmen's Compensation Appeal Bd., 257 Cal. App. 578, _, 65 Cal. Rptr. 69, 71 (1968). Michigan has an express apportionment statute. Mundy v. Detroit Gray Iron Foundary, 57 Mich. App. 331, _, 225 N.W.2d 754, 756 (1975); *see also* Maynard v. State Workmen's Compensation Comm'r, 239 S.E.2d 504, 508 (W. Va. 1977). In the absence of an apportionment statute, it has been held that there is no common law right of contribution between employers in the chain of exposure. Jensen v. Dronicks Floor Covering Serv., 309 Minn. 541, _, 245 N.W.2d 230, 232 (1976); Masco v. Barnette Foundry & Mach. Co., 53 N.J. Super. 414, _, 147 A.2d 579, 584 (1959).

V. LIMITATIONS

The Iowa act contains specialized provisions establishing a statute of limitations[74] which supplements and operates in addition to the two year statute of limitations provisions for original proceedings under section 85.26.[75] An employer is not liable for an otherwise compensable disease unless disablement or death occurs within one year after the last injurious exposure to the disease.[76] A special provision exists in the case of pneumonoconiosis which expands the limitation period to three years after the last injurious exposure.[77] Under a combined operation of the discovery rule articulated in *Orr v. Lewis Central School District*[78] and section 85A.12, any cause of action must be filed within two years of when the claimant knows or in the exercise of reasonable case should have known that his disease may be work-connected.[79] Satisfaction of the two year statute of limitations under section 85.26 is a requirement which is independent of the temporal disablement requirement found in section 85A.12. Since disablement could clearly occur long after contraction of the disease, a claim may be barred under section 85.26 before it would be affected by the limitations found in section 85A.12. A separate rule exists for death which follows a period of

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74. Strict adherence to the temporal limitations of a statute of limitations is considered a condition precedent to the exercise of rights created under the statute. In other words, under the Iowa act, a lapse of the two year period operates so as to extinguish all of the rights created under the statute. In one of the earliest Iowa cases interpreting section 13.86, which was the forerunner of the current two year statute of limitations, the Iowa Supreme Court ruled that any claim for workers' compensation benefits would be lost after the lapse of two years:

> The legislature, having the power to create the right, may affix the conditions under which it is to be enforced, and a compliance with those conditions is essential. Verbal promises and acts that mght ordinarily constitute an estoppel do not estop employer from asserting the limitation defense. Nor is the infancy of some claimants an excuse. It is the right to claim benefits under the act that is lost after the lapse of two years. [Citations omitted].

Otis v. Parrott, 233 Iowa 1039, 1045-46, 8 N.W.2d 708, 712-13 (1943).

Since the Iowa act is a special statute of limitations, the lapse of the statutory period operates to completely extinguish any rights of action which were created under the statute. Secrest v. Galloway Co., 239 Iowa 168, 173, 30 N.W.2d 793, 796 (1948).

75. In 1977, the legislature amended the section 85.26(1) statute of limitations to delete the phrase "within two years from the date of the injury causing such death or disability." IOWA CODE § 85.26 (1977) (amended 1977 IOWA ACTS, ch. 51, § 2). The current language now reads "within two years from the date of the occurrence of the injury for which benefits are claimed." IOWA CODE § 85.26(1) (1981). The Iowa Supreme Court in *Orr v. Lewis Cent. School Dist.*, 298 N.W.2d 256, 257 (Iowa 1980), held that section 85.26 is subject to the discovery rule articulated in *Chrischilles v. Griswold*, 260 Iowa 453, 463, 150 N.W.2d 94, 100 (1967). "Under the discovery rule, the period of limitations does not begin to run until the claimant knows [or should have known] of his injury and its probable compensable nature." Orr v. Lewis Cent. School Dist., 298 N.W.2d 256, 261 (Iowa 1980).

76. IOWA CODE § 85.12 (1981).

77. *Id.*

78. 298 N.W.2d 256 (Iowa 1980).

79. *Id.* at 257.

continuous disability: if compensation has been paid or awarded, death is compensable only if it occurs within seven years after the last injurious exposure.[80]

In actual operation, the limitations provisions of section 85A.12 may work an extreme hardship on potential claimants. In original proceedings for benefits under chapter 85A, if more than one year has lapsed since the last arguable injurious exposure to the disease, no compensation may be recovered. For example, if disablement did not occur until two or three years after retirement, an otherwise compensable claim would be barred by this statute of limitations. Presumably no special burdens of proof would attach to the concept of "injurious exposure" as it is used under section 85A.12; the term should be given the same meaning and construction as when the phrase is utilized in section 85A.10. Thus, any claim for compensation benefits should be filed and perfected as soon as possible after there is any manifestation of a disablement, such as reduction in earnings or transfer to a lower grade job.[81]

VI. Notice

In order to preserve a claim for benefits under the Occupational Disease Act, appropriate notice must be given to the employer within ninety days of the "first distinct manifestation" of the disease.[82] The procedure associated with giving notice is expressly identical to that contained under the regular workers' compensation statute.[83] The preliminary issue is: What are the triggering factors which will start the clock running on an employee's duty to give notice under section 85A.18? Although the statute indicates that notice is mandatory within ninety days after the "first distinct manifestation thereof," it is not at all clear in Iowa what is actually meant by that phrase.

The leading case in the area of the notice requirements is *Jacques v. Farmers Lumber & Supply Co.*.[84] Jacques had been employed as a spray painter until May 30, 1947. Following his retirement, he developed symptoms that were ultimately diagnosed as tuberculosis. On August 12, 1947, his doctor informed him that his employment as a spray painter had aggravated the tuberculin condition. On October 8, 1947, Jacques gave notice of the injury to his former employer. The notice date was more than ninety days after the cessation of employment, but was within ninety days of the date Jacques' physician diagnosed a causal connection.

The court held that a condition is said to occur when the employee has been advised by a physician of a diagnosis which "discloses to the employee

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80. Iowa Code § 85A.12 (1981).

81. See earlier discussion of disablement concept. *See* text accompanying notes 54-59 *supra*.

82. Iowa Code § 85A.18 (1981).

83. *Id.* The "notice" provisions of the regular statute can be found in sections 85.23-.25.

84. 242 Iowa 548, 47 N.W.2d 236 (1951).

the nature of his disability."[85] Under *Jacques*, the "occurrence" of any disease appears to be the time when the claimant knew, or should have known, that he had a work-related disease. Clearly, depending upon the nature of the disease, this date could vary from a brief lapse following a classic accident or exposure, to the particular time when a physician has not only made a diagnosis, but has explained that diagnosis to the injured employee. Notice probably will not be required under the *Jacques* rationale until the employee has been informed by a medical practitioner that a connection exists between the employment and the compensable disease.[86]

It can frequently arise that an employee suffers under a manifestation of a particular disease without knowing the actual diagnosis of his medical condition, or without the benefit of a medical opinion supplying a causal connection to the employment. For example, in the Pennsylvania case of *Roschak v. Vulcan Iron Works*,[87] the claimant was suffering from a lung disorder of fairly long standing. In fact, he was confined to a sanitarium for approximately seven months before his attending physician had diagnosed the condition as an employment-connected pulmonary problem. The Pennsylvania Superior Court held that an employee was not required to give notice to the employer until competent medical opinion had linked his condition to his employment.[88]

Applying a statute similar to section 85A.18, the Louisiana Court of Appeals has interpreted the word "manifest" to mean that a disease has not manifested itself, even if the employee has ceased work, until the claimant is aware or should have been aware of the causal relationship between the disease and employment.[89] Another variation of this rule can be found in Cali-

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85. *Id.* at 554, 47 N.W.2d at 240. In *Jacques v. Farmers Lumber & Supply Co.*, the court explained as follows:

> Since the legislature made disease compensable under its term "injury" then clearly it must have meant the "occurrence" of this type of "injury" was when the employee found out about the disease. To hold otherwise would defeat the obvious legislative purpose. The employee could hardly be held under a duty to notify his employer of a disease of which he had no knowledge.
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> . . . .
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> As stated, it would defeat the very purpose of the workmen's compensation law to first hold a disease an injury and therefore compensable and then hold the occurrence of the injury could be before the workman discovered the disease. Whether or not a person is suffering from a disease, or any particular disease, or the lighting-up of some latent disease, is generally a question to be determined by physicians. The condition must be said to occur, within a statute placing a burden of notice of occurrence on the employee, when the physician's diagnosis discloses to the employee the nature of his disability.

Id. at 552-54, 47 N.W.2d at 239-40.

86. *Id.* at 552, 47 N.W.2d at 240. *See also* Orr v. Lewis Cent. School Dist., 298 N.W.2d 256 (Iowa 1980).

87. 157 Pa. Super. Ct. 227, 42 A.2d 280 (1945).

88. *Id.* at __, 42 A.2d at 284.

89. Ludlam v. International Paper Co., 139 So.2d 67, 70 (La. Ct. of App. 1962). The Loui-

fornia which requires not only that the disease actually resulted in a disability, but also that the claimant, through an exercise of reasonable diligence, should have discovered that the condition was a compensable matter.[90] Resolution of this type of issue will clearly turn upon an analysis of the subjective knowledge held by the claimant; and the reasonableness of the claimant's conduct will be judged in light of his education and intelligence.[91] It may be important and relevant to establish and trace the pattern of medical consultation or evidence that was available to the claimant in order to pinpoint the time frame during which there was a "distinct manifestation" of the disease. In light of the other severe limitations imposed upon claimants under this Act, this particular factor will probably always be heavily weighed in favor of the employee.[92]

There are two separate, distinct methods for satisfying the "notice" requirement.[93] If the employer has actual knowledge of the occurrence, under the first part of section 85.23, that actual knowledge will obviate the balance of the notice requirements. The Iowa Supreme Court has consistently held that actual knowledge by either the employer or its representative will satisfy the statute.[94] Although it has not directly articulated such a standard, it

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siana Occupational Disease Statute required an employee to file "within four months of the date of his contraction of the disease or within four months of the date that the disease first manifested itself." *Id.* at 69. Claimant retired from his job at a paper mill as a direct result of reaction to airborne paper dust. Additional diagnosis of lung condition was not made until some time after his retirement. He applied for compensation which was granted by the court through an interpretation of the work "manifest" as requiring a showing by the employer that the claimant had knowledge that his known condition was causally related to the employment. *Id.* at 70.

90. Marsh v. Industrial Accident Comm'n, 217 Cal. 338, 18 P.2d 933 (1933). In *Arndt v. Workers' Compensation Appeals Bd.*, although the claimant died in 1971 from lung disease, research did not show the disease was caused by exposure to asbestos dust until 1973. 56 Cal. App.3d 139, 128 Cal. Rptr. 250 (1976). Claimant belatedly tried to recover compensation and the appeals board dismissed her claim because it was not filed within the statute of limitations. The California Court of Appeals reversed the lower court's decision and held that "the stated commencement date of the running of statute of limitations may be inoperative in cases where the claimant does not know or in the exercise of reasonable diligence would not have known" that the injury was compensable. *Id.* at _, 128 Cal. Rept. at 255. The court held that the statute of limitations began to run only when the claimant knew or should have known that the death was of industrial causation. *Id.* at _, 128 Cal. Rptr. at 256.

91. Robinson v. Department of Transp., 296 N.W.2d 809, 812 (Iowa 1980).

92. Historically, the court's perspective has been one of giving the general compensation statute a broad and liberal interpretation. Halstead v. Johnson's Texaco, 264 N.W.2d 757, 759 (Iowa 1978). If the limitations statute is open to more than one interpretation Iowa will consistently use the avenue which gives the employee a longer period within which to file a claim. Sprung v. Rasmussen, 180 N.W.2d 430, 433 (Iowa 1970).

93. Iowa Code § 85.23 (1981).

94. Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 179 (Iowa 1979); Nicks v. Davenport Produce Co., 254 Iowa 130, 136, 115 N.W.2d 812, 815 (1962); Hobbs v. Sioux City, 231 Iowa 860, 862, 2 N.W.2d 275, 276 (1942). In *Farmers Elevator Co.*, the Iowa Supreme Court was urged to construe section 85.23 in such a manner as to require that the claimants give notice of

appears that the court will construe the employer's actual knowledge from the perspective of a "reasonable man," and require that the nature of the employer's actual knowledge at least suggest or infer that the injury may be work connected.[95] It is clear that there is no requirement that the claimant provide information on the precise nature of the alleged injury.[96] A mere allegation that a disease has been contracted should satisfy sections 85.24 and 85A.18.

If the circumstances of a particular disease do not impart actual knowledge of the occurrence or contraction to the employer, then claimant must supply a specific notice to the employer. Although the statutory sections speak in terms of written notice,[97] development of case law in this area negates any requirement of formal written notice.[98]

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their intention to file a claim within ninety days. Some support for that position was allegedly garnered from Larson's treatise, 3 A. LARSON, WORKERS' COMPENSATION LAWS, § 78.31(a), at 15-42 (1978). Farmers Elevator Co., 286 N.W.2d at 179-80. One of Manning's bosses visited the claimant in the hospital on the day after his accident and was therefore aware that the injury had occurred while claimant was on his way home from a customer-appreciation dinner. The court noted: "The agency could reasonably find that this knowledge should put a 'reasonably conscientious' manager on notice 'that the case might involve a potential compensation claim.'" Farmers Elevator Co. v. Manning, 286 N.W.2d at 180.

95. Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980). Robinson suffered a heart attack at home on a Saturday and contended that the notice requirements were satisfied by virtue of the fact that the employer knew he had suffered a heart attack. The court held that the "actual knowledge" standard was not satisfied unless the employer has information putting him on notice that the injury may be work-related. *Id.* at 811. While Robinson's employer was aware of the history of heart problems, the D.O.T. was not made aware that the claimant started to have chest pains on the afternoon prior to his attack while still at work. While an employee must obviously know about an injury or disease in order to identify it as work-connected, Iowa will not require positive medical information before the notice obligations begin to run. *Id.* at 812.

In *Robinson*, the court adopted the rule set forth in, *In re Wheaton*, 310 Mass. 504, 506, 38 N.E.2d 617, 619 (1941) and *Lewis v. Chrysler Corp.*, 394 Mich. 360, 230 N.W.2d 538 (1975). Robinson v. Department of Transp., 296 N.W.2d at 812. An employee must give notice if he has information from any source which puts him on notice of its probable compensability. *Id.*

96. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 1177, 38 N.W.2d 161, 163 (1949).

97. IOWA CODE §§ 85.23-.24 (1981).

98. Hobbs v. Sioux City, 231 Iowa 860, 863, 2 N.W.2d 275, 276 (1942). Respondent city tried to argue that knowledge of an accident by its general street foreman was insufficient notice to the city. The court rejected this contention and held that oral notice to the city's foreman satisfied section 85.24. The court noted that the whole purpose of the statute was to "enable the employer to investigate the facts pertaining to the injury," and that knowledge held by the foreman was in fact knowledge of the City. *Id.* at 862, 2 N.W.2d at 276. Oral notice imparts actual knowledge to the employer or its representative. *See* Knipe v. Skelgas Co., 229 Iowa 740, 748, 294 N.W. 880, 883 (1940).