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to be amenable to the laws of the state as to transactions growing out of such business on the same bases and conditions as govern residents of the state.

If logic and reason prevail, as these questions again come before the Court, it may be expected that properly drafted statutes providing for service on a non-resident engaged in ordinary business in the state, through service on an agent there, will be upheld by the Supreme Court of the United States.

ROY COSPER.

PAYMENT OF ATTORNEY'S FEES BY LUMP SUM AWARD UNDER WORKMEN'S COMPENSATION ACTS

During the past quarter of a century the legislatures of forty-six states passed workmen's compensation acts designed to correct an outmoded system of determining fault by negligence in industrial accidents, but in their plans they gave scant attention to the position of the lawyer. The various schemes usually provided for the lawyer's presence in the hearing before the commission, and many acts contained simple provisions for the payment of his fees. But the draftsmen did not anticipate that payment of attorneys' fees would become a major problem which today faces the administration of workmen's compensation. The size of contingent fees which some lawyers have collected, their attempt to commute an award to secure lump sum payment, their ambulance-chasing activities, have all occasioned a flood of condemnatory criticism.

According to Walter F. Dodd:

The ambulance-chasing activities of certain runners and lawyers run riot in some jurisdictions, and such persons often succeed in entrenching themselves so firmly upon compensation practice that it is very difficult to shake them off.¹

Workmen's compensation is designed to award to an injured worker or his family small payments aggregating the most adequate compensation possible in each case, and the very nature of workmen's compensation suggests that attorney fees should account for but a small part of the costs.² But that some lawyers

1. Administration of Workmen's Compensation (1936) 304.

2. In *Illinois Zinc Co. v. Industrial Comm.* (1934) 355 Ill. 253, 189 N. E. 310, 311, the court said: "The fundamental purpose of the Workmen's Compensation Act * * * is to recompense, partially, the workman for his loss of earnings or earning power by reason of the injuries suffered, arising out of and in the course of his employment. In the event that the death

have refused to accept the spirit and purpose of the Act is manifest in two ways: (1) by the large contingent fees which they attempt to collect; (2) by their attempts to commute awards so as to secure payment of fees in a lump sum.³ As a consequence of pressure by lawyers and although it was intended that payments be seldom commuted,⁴ the lump sum settlements have almost equalled the number of periodic awards in some jurisdictions.⁵ The matter has arisen recently in Missouri in *Wims v. Hercules Contracting Co.*⁶ The problem in that case was whether the Court should allow attorney fees in a lump sum but continue periodic payments to the beneficiary, or whether the whole award must be lumped before the lawyer could receive a commuted fee. The court chose the former alternative. The desirability of the choice will be discussed later in the light of various problems which will be presented.

I

Much criticism has been directed against excessive contingent fees which have been permitted by the statutes and by the commissions. For the purposes of this discussion, however, little more than an allusion can be made to the contingent fee problem. That this device is a necessary part of each act cannot be denied, for otherwise attorneys would not undertake representation of clients in no position to pay them.⁷ In many jurisdictions, however, the fees are unbelievably high. The Michigan Committee on Workmen's Compensation reports that fees of claimants' attorneys averaged forty per cent of the awards obtained;⁸ in Wisconsin, the average fee was found to be thirty-six per cent;⁹

of the wage-earner follows as a result of the accidental injuries, the purpose of the act is to furnish to his dependents a fund, payable in installments, similar to, and in lieu of, the weekly pay check and to recompense in part such dependents for the loss of the benefit of the earnings of the wage-earner. It is of primary importance that this fund be safe-guarded, so that the purpose of the act—namely, the care and support of those dependents—may be accomplished." Dodd, *Administration of Workmen's Compensation* (1936) 719, is to the same effect.

3. Note (1938) 23 Iowa L. Rev. 43, observes that fear of possible invalidity of compromise settlements has caused the attorney to resort to commuted settlements.

4. R. S. Mo. (1929) sec. 3346.

5. See discussion page 110, *infra*.

6. (Mo. App. 1939) 123 S. W. (2d) 225.

7. *Report of the Joint Committee for the Study of Legal Aid* (New York, 1928) 47, and *Report of the Committee of Censors to the Law Association of Philadelphia* (1928) 25, both cited in Dodd, *op. cit. supra*, note 2, at 22.

8. *Employers' Liability and Workmen's Compensation Commission of Michigan Report* (1911) 16, cited in Dodd, *op. cit. supra*, note 2, at 23.

9. Wisconsin Bureau of Labor Statistics, *Thirteenth Biennial Report* (1907-1908) 13, cited in Dodd, *op. cit. supra*, note 2, at 23.

in Pennsylvania, fees constituted from thirty to fifty per cent of settlements;¹⁰ in Illinois, attorneys collected one-third of amounts awarded;¹¹ in New York, fees ranged from twenty-five to over fifty per cent.¹² A report by Edward O. Allen indicates very large contingent fees in California.¹³ In *Employers' Liability Assurance Corp. v. Sims*,¹⁴ the Texas court affirmed a contingent fee which amounted to one-third on an award of \$4,389.14. The Supreme Court of Missouri has allowed an attorney to recover twenty-five per cent of a lump sum award.¹⁵ Many states, however, have imposed statutory restrictions upon the amount of contingent fees which may be assessed. In Texas, the lawyer is not permitted a fee exceeding one-third of the award.¹⁶ In Louisiana¹⁷ and Tennessee,¹⁸ the attorney is restricted to a fee not greater than twenty per cent of the award. In Wisconsin the fee may be equal to ten per cent of the award but never over \$100,¹⁹ while in Wyoming²⁰ and New Mexico,²¹ the attorney is permitted only five per cent, and the former state requires that in all events the fee must be under fifty dollars. It is noteworthy that in Wyoming and Wisconsin there has apparently been no abuse of the lump sum provision while in Texas, as will be observed later, commutation of payments has become the usual practice.

II

Abuse of statutory provisions permitting commutation of payments where circumstances demand it has caused the lawyer to be further condemned. Dr. R. M. Little, Director of the New York Rehabilitation Division, reports: "Lawyers, runners,

10. Eastman, *Work Accidents and the Law* (1910) 121, cited in Dodd, *op. cit. supra*, note 2, at 23.

11. *Report of the Employers' Liability Commission of the State of Illinois* (1910) 196.

12. New York Employers' Liability Commission, *First Report* (1910) Vol. 1, p. 31.

13. Allen, *Fixing of Attorney's Fees by the Industrial Accident Commission* (1932) 7 Cal. State Bar. J. 234.

14. (Tex. Civ. App. 1933) 67 S. W. (2d) 445; see also *Georgia Casualty Co. v. Little* (Tex. Civ. App. 1926) 281 S. W. 1092, in which an attorney was permitted one-third of a \$3,587.55 award.

15. *State ex rel. Missouri Gravel Co. v. Missouri Workmen's Compensation Comm.* (Mo. 1938) 113 S. W. (2d) 1034.

16. *Tex. Vernon's Stats.* (1936) art. 8306, sec. 7d.

17. *La. Dart's Gen. Stats.* (1939) sec. 4411. *Bordelon v. Ludeau's Lumber Yard* (La. 1937) 177 So. 436 refused to allow an attorney over twenty per cent of \$1,827 award.

18. *Tenn. Code* (1932) sec. 6886.

19. *Wis. Stats.* (1937) sec. 102.26.

20. *Wyo. Rev. Stats.* (1931) secs. 124-128.

21. *N. M. Stats. Ann.* (1929) secs. 156-122.

pseudo friends and leeches attached themselves to injured workers who were drawing compensation and persuaded them by the thousands to request their money as a lump sum in order that they might get a part of it."²² Claimant's attorney will always seek a lump sum settlement because he prefers to receive his fee in one payment rather than in checks for small amounts strung out during as long as four hundred weeks.²³ The injured employee, badly in need of money, quickly assents to commutation because it brings him a large sum which he can spend immediately.²⁴ These attitudes are reflected in the large percentage of cases allowing lump sum awards. According to a statement in 1932 concerning the Oregon law, lump sum awards were made in fifty per cent of the cases.²⁵ In Illinois during the year 1927-1928,²⁶ lump sums were entered in over one-third of the eligible cases. A study reveals that during 1920-1924 the Wisconsin commission awarded commuted payments in about one out of every five cases.²⁷ As to the recipients' disposition of lump payments, the chairman of the Idaho Industrial Accident Board remarked that "Our experience (and we have made an investigation of 112 cases over a considerable period of time to determine what became of this money and whether or not it has been for the best interests of all parties as the laws intended) shows that in over ninety per cent of these cases the money did the claimants absolutely no good. They lost it."²⁸ A study in Illinois by A. C. Gernand has indicated substantially the same results.²⁹ The pressure brought by attorneys upon the courts in seeking to collect their fees more conveniently, has, therefore, through staggered payments worked a manifest hardship upon the beneficial results which workmen's compensation is designed to create.

The great majority of statutes do not specifically mention situations in which lump sum payment may be allowed an attorney.

22. Little, *U. S. Bureau of Labor Statistics Bulletin No. 511* (1929) 171.

23. Dodd, *op. cit. supra*, note 2, at 309.

24. *Ibid.*

25. Letter of October 26, 1932, from Mr. R. E. Jackson, claim agent, Oregon State Industrial Accident Comm., cited in Dodd, *op. cit. supra*, note 2, at 724. It should be noted, however, that this letter states that at one time lump sum payments were made in at least 80 per cent of the awards and that reduction in the number of lump sums has been significant in recent years. See note 67, *infra*.

26. From a study by A. C. Gernand, cited in Dodd, *op. cit. supra*, note 2, at 724.

27. Altmeyer, *The Industrial Commission of Wisconsin* (1932) 67.

28. Worstell, *United States Bureau of Labor Statistics Bulletin No. 511* (1929) 195.

29. Cited in Dodd, *op. cit. supra*, note 2, at 727.

The following provision in the Virginia Act is typical of most statutes which provide for lump sum payments:

* * * in unusual cases, where the parties agree and the industrial commission deems it to be to the best interests of the employee or his dependents, or where it will prevent undue hardships on the employer, or his insurance carrier, without prejudicing the interest of the employee or his dependents, be redeemed, in whole or in part, by the payment by the employer of a lump sum which shall be fixed by the commission, but in no case to exceed the commutable value of the future installments which may be due under this act.³⁰

By providing for commuted payment when the commission feels that it is for the best interests of the parties, the statute in reality gives discretion to the commission, and in some cases to the courts, to decide whether a lump sum payment should be made to an attorney. How the commissions and the courts have dealt with this discretionary power will be noted later. Numerous acts provide that a lump sum award must be for the best interests of one or both of the parties; some states require that it be for the best interest of the injured party or those who claim under him;³¹ others direct that the best interests of both parties constitute the basis for the award;³² and still others provide for lump sum payment if it is to the interest of either party.³³ The Vermont law provides another variation in that commutation will not be permitted for the purpose of satisfying a debt,³⁴ while a New Jersey statute specifically states that a lump sum will be denied when it was sought to pay fees to doctors or lawyers.³⁵

Most workmen's compensation acts contain some general provision relating to the payment of attorney fees. This Vermont statute is typical:

* * * claims of attorneys for services rendered an employee in prosecuting a claim under the provision of this chapter

30. Va. Code (1936) sec. 1887(45).

31. Neb. Comp. Stats. (1929) c. 48, sec. 140; Mass. Gen. Laws (1932) c. 152, sec. 48.

32. Mich. Comp. Laws (1929) sec. 8438; Idaho Code (1932) tit. 43, sec. 1121; Ind. Burns Stats. Ann. (1933) tit. 40, sec. 1408; Ala. Code (1928) sec. 7573.

33. Cal. Deering Gen. Laws (1931) art. 4749, sec. 28; Colo. Comp. Laws (1921) sec. 4456; Del. Rev. Code (1935) art. 6090, sec. 20; Ga. Code (1933) secs. 114-417; Ill. Smith-Hurd Ann. Stats. (1935) c. 48 sec. 146; Iowa Code (1935) sec. 1405; Me. Rev. Stats. (1930) c. 55, sec. 27; N. C. Code (1935) sec. 8081 (zz); S. D. Comp. Laws (1929) sec. 9460; Va. Code (1936) sec. 1887(45).

34. Vt. Pub. Laws (1933) sec. 6532.

35. N. J. Rev. Stats. (1937) tit. 34, secs. 15-25.

shall be approved by the commissioner; and, when so approved, may be enforced against compensation awards in such manner as the commissioner may direct.³⁶

Alabama has attempted to discourage ambulance-chasing in workmen's compensation cases by statutory provision that any attorney who solicits or hires another to solicit compensation cases shall be guilty of a misdemeanor and subject to fine and imprisonment.³⁷ A further penalty automatically disbars the attorney upon conviction.³⁸ In Texas³⁹ and Missouri⁴⁰ statutes allow the commission to award attorney fees in either periodic or commuted payments.

III

A survey of various decisions reveals that the courts have interpreted the general wording of the statutes in many different ways, leading to as many different problems. In several instances the result of the courts' interpretation has only been to vex administration of the acts further. In Illinois the provision relating to the commutation of payments is similar to the Virginia statute set out above;⁴¹ the wording merely requires that the best interests of the parties be served by lump payments.⁴² The Illinois court, however, in *Illinois Zinc Co. v. Industrial Commission*⁴³ and *Goelitz Co. v. Industrial Board of Illinois*⁴⁴ has held that compensation may not be lumped for the payment of attorney fees. Although the court concedes that the question of attorney's fees is one that should be considered in granting a lump sum payment, it asserts by way of dicta, however, that that matter cannot be controlling. This language seems strange in view of the facts of the *Illinois Zinc Co.* case in which a widow, besides being indebted to her attorney, also owed for a cemetery lot, back taxes, paving assessments, and needed to repair her cottage; nevertheless her request for a partial lump sum payment was denied. This 1917 decision is still controlling despite the fact noted above that an investigation in Illinois

36. Vt. Pub. Laws (1933) sec. 6558.

37. Ala. Code (1928) sec. 3998.

38. Ala. Code (1928) sec. 3998.

39. Tex. Vernon's Stats. (1936) art. 8306, sec. 7c.

40. R. S. Mo. (1929) sec. 3321 " * * * the commission may allow as lien on the compensation, reasonable attorney's fees for services in connection with the proceedings for compensation if such services are found to be necessary and may order the amount thereof paid to the attorney in a lump sum or in installments."

41. See page 111, supra.

42. Ill. Smith-Hurd Ann. Stats. (1935) c. 48, sec. 146.

43. (1934) 355 Ill. 253, 189 N. E. 310.

44. (1917) 278 Ill. 164, 115 N. E. 855.

showed lump sum payments in over one-third of the cases studied.⁴⁵ It is also important that, during the period there studied, \$7,967,451 of compensation was paid in cases eligible for lump summing and of this amount nearly sixty per cent was paid in lump sums.⁴⁶

Prior to 1933, Oklahoma permitted payment to an attorney in a sum commuted from the last payments made under the award.⁴⁷ An amendment to the workmen's compensation act in 1933⁴⁸ has, however, been construed by the Oklahoma Supreme Court as making periodic payments mandatory and forbidding commutation of the award for attorneys' fees.⁴⁹ In *Cornhusker's Theatres v. Foster*⁵⁰ the Oklahoma court, in a caustic opinion, dismissed the charge with the traditional remark: "The wisdom and expediency of the amendment is a question for the legislature and not the courts."

The Alabama court devised a peculiar "solution" to the problem of payment of attorneys' fees under its act. In *Woodward Iron Co. v. Bradford*,⁵¹ a 1921 case, it was held that where periodic payments are to be made under the act, then attorneys' fees must also be awarded over corresponding periods, because a contrary decree would make the employer an insurer to the extent of the attorney's fee against the death or remarriage of a dependent widow. The court reasoned that by requiring the employer to make a lump sum payment to an attorney, he would be forced to make payments which would not be required of him in the eventuality of the widow's death before the end of the compensation period. But three years later, in *Crowder v. Woodward Iron Co.*⁵² the same court decided that it was proper for the commission to direct payment of the attorney's fee out of the first money paid in under the award. As the plan now operates in Alabama, before the often indigent claimant can receive

45. See page 110, supra.

46. From a study by A. C. Gernand, cited in Dodd, op. cit. supra, note 2, at 725.

47. See *Interstate Window Glass Co. v. Kitchens* (1932) 161 Okla. 71, 17 P. (2d) 462; *Smith & Son Drilling Co. v. Cox* (1933) 162 Okla. 301, 21 P. (2d) 496; *Standard Roofing & Material Co. v. Wrotenbury* (1933) 166 Okla. 213, 27 P. (2d) 154.

48. Okla. Laws 1933, p. 263.

49. See *Cornhusker's Theatres v. Foster* (1937) 181 Okla. 341, 74 P. (2d) 109. *Southwestern States Tel. Co. v. State Industrial Comm.* (1938) 181 Okla. 533, 75 P. (2d) 468; *Barnsdall Refining Corp. v. Locker* (1938) 182 Okla. 318, 77 P. (2d) 749.

50. (1937) 181 Okla. 341, 74 P. (2d) 109, construed the amendment as making mandatory payment of attorney's fees periodically.

51. 206 Ala. 447, 90 So. 803.

52. (1924) 211 Ala. 111, 99 So. 649.

any compensation, he is obliged to wait until weekly payments have satisfied the attorney's fee. But it is difficult to see how the employer is very much less an insurer than under the rule in *Woodward Iron Co. v. Bradford*.

Under the express prohibitions of the New Jersey Act,⁵³ the courts have forbidden any commutation of payments to attorneys.⁵⁴ In Minnesota⁵⁵ and Nebraska⁵⁶ the courts have pointed out that statutory provisions restrict lumping of compensation payable periodically except under agreement of the parties and the court. Since objection by one party will defeat commutation for lawyer's fees as well as other payments, the practice of permitting lawyers to be paid in a lump sum has not been followed where periodic payments are involved.⁵⁷

The Texas statute permitting an attorney to collect as high as one-third of the award⁵⁸ has been liberally interpreted to allow frequent consolidations of the entire award, enabling lawyers to receive considerable fees. In *Texas Employers' Insurance Ass'n v. Howell*,⁵⁹ the claimant had been awarded compensation of \$7.20 per week for a period of 401 weeks. Under a contingent fee contract the attorney was entitled to \$2,512 as one-third of that amount. Although permitting the whole amount to be lumped, the court stated: " * * * the compensation rate is so small, especially with the deduction of his attorney fees, it is insufficient to support him and his family."⁶⁰ Commutation was also allowed in *Lumberman's Reciprocal Ass'n v. Belinken*⁶¹ where all the payments were lumped, permitting the attorney to receive thirty per cent of a \$3,833 award. An annotation in connection with *Georgia Casualty Co. v. Campbell*⁶² states:

And the fact, although noted only incidentally, that an unusually large proportion of the lump sum was expressly ordered paid to lawyers, presumably for services rendered,

53. N. J. Rev. Stats. (1937) tit. 34, secs. 15-25.

54. See *Serzan v. Naporowski* (1924) 2 N. J. Misc. 113, 131 Atl. 76.

55. See *State ex rel. Anseth v. District Court of Koochiching County* (1916) 134 Minn. 16, 158 N. W. 713, L. R. A. 1916F 957.

56. See Nebraska cases cited in *State ex rel. Anseth v. District Court of Koochiching County*, (1916) 134 Minn. 16, 158 N. W. 713, L. R. A. 1916F 957.

57. A similar requirement is imposed by statute in Massachusetts although no cases have been decided on the point. Mass. Gen. Laws (1932) c. 152, sec. 48.

58. Tex. Vernon's Stats. (1936) art. 3306, sec. 7d.

59. (Tex. Civ. App. 1937) 107 S. W. (2d) 391.

60. *Id.* at 392.

61. (Tex. Civ. App. 1920) 226 S. W. 154.

62. (Tex. Civ. App. 1924) 266 S. W. 854.

has been conspicuous in a number of Texas cases that have upheld lump sum awards.⁶³

Under the ordinary provision⁶⁴ subjecting claims for legal services to the approval of the commission, the Oregon court has decided that what the legislature intended by granting supervision to the commission over attorneys' fees was to prevent an attorney from exploiting the workman.⁶⁵ Since the Oregon Act provides for commutation of payments at the discretion of the commission,⁶⁶ the court concluded that either the award or the attorney's fee may be paid in a lump sum.⁶⁷ Similar results obtain in California⁶⁸ where the statute permits a reasonable attorney's fee to be made a lien on the award.⁶⁹ In *North Pacific S. S. Co. v. Industrial Accident Commission of California*,⁷⁰ the commission had ordered a lump sum payment of twenty-five dollars to the attorney and the balance of the award to the claimant in periodic payments. On appeal it was contended that the act did not specifically authorize a lump sum payment to the attorney. But the court pointed out that the employer was not injured and that the order conformed with the intention of the act which directed that the attorney's fee constitute a lien upon the award; the court further stated that the order employed the only advice making the lien effective. A Kentucky statute⁷¹ has been construed as specifically empowering lump sum payment to an attorney by commuting sufficient final payments of compensation payable under the award.⁷² The recent decision of *Wims v. Hercules Contracting Co.*⁷³ has placed Missouri in line with those states which, in order to satisfy an attorney's claim, allow commutation of final payments under an award. In the *Wims* case, the court allowed a contingent fee of twenty per cent to be commuted to \$1,056.60 and directed it paid to the attorneys. The balance of the award was ordered paid to the claimant in installments of

63. (1930) 69 A. L. R. 547, 549.

64. Ore. Code (1935) tit. 49, sec. 1843b.

65. See *Carr v. State Industrial Accident Comm.* (1936) 153 Ore. 517, 57 P. (2d) 1278.

66. Ore. Code (1935) tit. 49, sec. 1827(k).

67. In connection with note 24, supra, it is to be noted that the present Oregon construction has only recently been made possible through amendment, Laws of 1933, c. 115, sec. 1. Following this amendment the number of lump sum cases has markedly decreased, as Dodd has observed.

68. See *North Pac. S. S. Co. v. Industrial Accident Comm. of Cal.* (1917) 174 Cal. 500, 163 Pac. 910.

69. Cal. Deering Gen. Laws (1931) art. 4749, sec. 24(a).

70. (1917) 174 Cal. 500, 163 Pac. 910.

71. Ky. Carroll's Stats. (1936) sec. 4942.

72. *McFarland v. Gilbert* (Ky. 1939) 124 S. W. (2d) 473.

73. (Mo. App. 1939) 123 S. W. (2d) 225.

\$14.23½ over a period of 260 weeks. The insurance company here, as in the Alabama case,⁷⁴ objected that this scheme would make the employer an insurer to the attorney of the continuance of the widow's life. But the Missouri court refuted this contention by pointing out that most compensation awards "are in a sense conditional so long as any part of them remains to be paid in future installments * * *."⁷⁵ In addition to the argument advanced by the court, it might be noted that the cases involving payments to a widow constitute but a part of the total number of cases which arise under the act; as to them, the objection is obviously not valid. For example, out of 58,510 accidents in Missouri in 1935, only 78 resulted in death.⁷⁶

IV

Manifest variances between provisions of the acts in different jurisdictions prevent generalization, but certain desirable trends may be noted. It has been pointed out that, although the contingent fee is a necessary part of workmen's compensation,⁷⁷ undesirable results in many states indicate that the fee should be a small but adequate one. Ten or fifteen per cent would seem satisfactory. A very small percentage, such as the five per cent allowed in Wyoming,⁷⁸ might cause a claimant difficulty in procuring a capable attorney who would bother with his case; a very large percentage, as contingent fees amounting to one-third of the total award permitted by the Texas provision,⁷⁹ effectively reduces almost all awards to a lump sum. This is occasioned by the fact that if weekly installments are divided between the attorney and the claimant the latter usually does not have enough left to live on; while if an attorney is first paid a lump sum and the balance is payable to claimant in weekly installments, these also are often too small for adequate subsistence. Since the majority of statutes grant the commission discretion in lumping payments, the most wholesome interpretation appears to be that offered by the Oregon court,⁸⁰ which allows an attorney a lump sum derived by commutation of the latter payments under the award, the claimant then receiving the balance in weekly install-

74. *Woodward Iron Co. v. Bradford* (1921) 206 Ala. 447, 90 So. 803.

75. *Wims v. Hercules Contracting Co.* (Mo. App. 1939) 123 S. W. (2d) 225, 229.

76. Missouri Workmen's Compensation Commission, *11th Annual Report* (1938) 22.

77. See note 6, *supra*.

78. Wyo. Rev. Stats. (1931) sec. 124-128.

79. Vernon's Tex. Stats. (1936) art. 8306, sec. 7d.

80. See discussion *supra*, page 115.

ments. This arrangement removes the attorney's incentive for having the entire award lumped. It is commendable that Missouri has adopted this construction.⁸¹ Under the Illinois statute allowing commutation when "for the best interests of the parties,"⁸² the Illinois court could also easily reach this result and reduce the excessive number of lump sum cases with which it has had to deal.

Of course not all states can follow this recommended construction. Some commissions are limited by express statutory prohibitions against making lump awards to attorneys,⁸³ or else the act requires agreement by both parties to any commutation.⁸⁴ In these instances only further legislation can free the courts from the shackles of the present statutory provisions. It is regrettable that some lawyers have exploited a system which is vital to the welfare of the industrial class and that they have been accused of ambulance-chasing and appropriating payments intended for indigent families. It would seem that the profession itself, as well as the courts and legislatures, should be interested in correcting the situation.

AARON E. HOTCHNER.

DAMAGES AND THE OIL AND GAS LEASE— A PROBABLE MISSOURI APPROACH

I

In most litigation the careful practitioner will "hew to the line," but in the field of damages apparently the inclination of the most assiduous is to let the "chips fall where they may." As a result, the theory upon which liability in a tort action is built may be most meticulously woven, while an exorbitant claim for damages, devoid of a measurement theory, may be presented to the court in the sanguine expectation that the jury will award a small portion of the plaintiff's request. This procedure seems to be particularly characteristic where the case involves damages that are uncertain and indefinite. Curiously enough, however, in one situation where damages are admittedly very uncertain, con-

81. *Wims v. Hercules Contracting Co.* (Mo. App. 1939) 123 S. W. (2d) 225.

82. Ill. Smith-Hurd Ann. Stats. (1935) c. 48, sec. 146.

83. N. J. Rev. Stats. (1937) sec. 34, 15-25; Vt. Pub. Laws (1933) sec. 6532.

84. Mass. Gen. Laws (1932) c. 152, sec. 48; Neb. Comp. Stats. (1929) sec. 48-140; Minn. Mason's Stats. (1927) sec. 4285.