Tech. Services Issued Feb 24, 1977 Kemp 18-12

JOHNS-MANVILLE

MANVILLE, NEW JERSEY

This is an examination of your Claim, Medical and Cost Accounting facilities at Manville, New Jersey.

The study has been divided into segments of each area and while each is treated individually, we discovered the interrelationship of the departments and how each impacts the other, for example, the submission of Form 55-15 (quesstimate of reserves) from the Claim Department and the effects on cost accountings' responsibility for setting payment records and reserves.

This plant employs approximately 2,000 employees. Sixteen hundred "hourly" or "Union" employees and approximately 400 "salaried" or non-Union employees. Our review indicates that approximately 90% of the Union employees have or will file a claim based upon an allegation of "occupational disease" either "asbestosis" or "loss of hearing". Approximately 10% of the non-Union employees will likewise file claims. The financial implications are predictable and will be covered in this report.

CLAIM PROCEDURES

The vast majority of claims, other than traumatic, come to J-M via a claim petition from an attorney. Being a Union plant, employees are apparently encouraged to present their claims through an attorney connected with a local union. The receipt of this claim petition is then matched with the employee's personnel/medical/claim folder and placed in suspension until a medical examination can be made by a doctor of J-M's choice. The time span for the file remaining in suspension is normally 30 to 60 days, however, sometimes this is longer, based upon the volume of claims. At the time of our review, there were approximately 45 claims in this category. After receipt of the defense medical exams, Tom Bodnarchuk will review the findings and then will set what he considers the ultimate cost (benefits, medical and legal) on Form 55-15 which is referred to as "quesstimate of reserves".

This form and the information contained in it, is referred to Mr. Frank Kemp of J-M Cost Accounting Department, who will set up the necessary accounting procedures, payment records and address file.

After receipt of the medical examination, the case is normally set for a hearing. Notice of the hearing comes from the New Jersey Department of Labor and Industry, Division of Workers' Compensation, which will give the hearing center, date of the hearing, the judge that is to hear the cases, and the types of listing, whether trials or pretrials. Normally the list will include approximately 20 names, will reflect the petitioner's attorney as well as the representative's attorney. Upon receipt of the listing, Mr. Bodnarchuk will file a confidential Johns-Manville Product Corporation report, which is basically prepared for the respondent's attorney, and the

HS01367

Published by AsbestosClaims.Law
asbestosclaims.law/library/11077/1

four page report is extensive in the information provided to the defense attorney. The form does require a considerable amount of Mr. Bodnarchuk's time, in addition to other accompanying material which goes to J-M's attorney.

On the hearing date, Mr. Bodnarchuk or Mr. Lou Hemerda will accompany our attorney to the hearings.

A thorough knowledge of opposing attorneys, as well as doctors, allows your Claim Department to take full advantage of those overworked petitioner attorneys who will compromise his client's claim to move a volume of cases in place of having to try a case, inasmuch as the time involvement means less income to the attorney. Economics are well understood, yet principals are defended by your Claim Department.

After adjudication, the Claim Department notifies Cost Accounting of the disposition of the case, frequency of payments and amounts, in addition to any medical bills or attorney fees outstanding.

The quality of the claim files was excellent. J-M's historically has been involved from a medical standpoint of their employees and this concern allows J-M to present as good a medical defense as possible. Both Tom and Lou are extremely knowledgeable of the New Jersey Workers' Compensation laws, as well as its idiosyncracies which are many. Hopefully, Mr. Hemerda's involvement in the various Governmental Agencies will have some impact on controlling Workers' Compensation spiraling costs.

CLAIM LOSSES

In 1976, Johns-Manville received in excess of 600 claims and within the next five years, acturially, Johns-Manville can expect approximately 3,000 claims, totaling around $7,000,000 in benefits.

We were able to determine from a review of the claim files that the average occupational disease claim is costing J-M in excess of $2,300. In 1976, payment was made on 673 claims for a total of $1,894,708.16, or an average of $2,815.31. Approximately 15% of these claims were traumatic claims as opposed to the occupational disease type claim.

Sixty percent of all of the employees filing claims will file, or have filed more than one claim. These claims normally fall in the area of "additional benefits" based upon a worsening of conditions or survivor's benefits. Numerous files were reviewed where an individual claimant has filed five or more claims during his/her lifetime of employment.

TRAUMATIC INJURIES:

A small percentage of traumatic injuries occur at the J-M location in Manville, and of those claims that occur, treatment as well as notice is timely. All injuries occurring on the premises are normally treated in-house

HS01368

Published by AsbestosClaims.Law
asbestosclaims.law/library/11077/2

at the Medical Center where the facilities, as well as the personnel, are professionally equipped to provide medical attention. All future medical treatment is also provided for these employees and, thus, the cost of outside medical care is generally eliminated.

Mr. Bodnarchuk will settle approximately 100 traumatic claims a year of the "in-house" variety, whereas these claims are settled without an attorney in Mr. Bondnarchuk's office. The necessary papers are completed and the information forwarded to the Workers' Compensation Bureau. We were fortunate in observing one such settlement, wherein the injured claimant had sustained an injury to his right ring finger and was unable to make a fist. Initially, the offer to settle was based upon 33 1/3% loss of the finger and later upped to 40% which in our opinion was fair. It is our opinion that the settlement saved J-M many dollars as had the claimant been represented by an attorney, more than likely the award would have been for a percentage of the hand, as opposed to merely the finger. In addition, J-M would have been required to pay for the claimant's medical examination as well as a percentage of the claimant's attorney's fee.

RESERVING:

The reserving of the individual claims are done by Tom Bodnarchuk, who places his guesstimate reserve on Form 55-15 upon receipt of the defense medical reports. The reserves will be updated upon receipt of additional medical information, or if there is another claim filed for additional benefits, or if the updated medical report indicates a worsening of the claimant's condition. No reserve is set for in-house medical treatment. Reserving is done on a case to case basis, predicated upon a guesstimate of what the claimant will receive at the time of hearing. No consideration is given to reserving these cases on the ultimate future dollar amount that the injured employee will receive. As an example: If he is successful in this claim, we can forecast that with a high degree of certainty, that this individual will file additional claims approximately every two years, based upon the nature of the disease. On these particular cases, consideration should be given to reserving on the ultimate, as opposed to the present day award.

MEDICAL CENTER:

The J-M Medical Center is one of the best equipped medical centers that I have seen and J-M is to be complimented. The relationship between the Claim Department and Medical Center appears to be excellent with the Claim Department having full access to all information contained in medical records on each employee. The in house treatment appears to be of high quality and saves J-M many dollars in outside medical costs. Those cases requiring specialists receive outside medical attention as well as do the medical examinations by the applicant's doctors. It is our understanding that the Medical Center's total operating cost is allocated back to the four plants involved in the complex at Manville. We do not know what tax benefit Johns-Manville

HSO1369

Published by AsbestosClaims.Law
asbestosclaims.law/library/11077/3

derives from this setup, however, this will be covered under our recommendations.

The cataloging and continuous up-dating of employee's chest x-rays allows J-M to make as good a determination of the continuous condition of their employees as can be gathered and is of innumerable benefits to your Claim Department.

COST ACCOUNTING DEPARTMENT:

A morning visit with Mr. Frank Kemp of your Cost Accounting Department indicated that there is a severe need for accurate, timely loss information from the Claim Department. Presently all of the procedures for issuing benefit payments, are processed manually and are issued on a weekly basis. The Cost Accounting Department receives the Form 55-15 and at that time, completes an accounting sheet on each individual recipient of benefits, and this sheet is updated manually during the course of each payment. If the administrator of the vouchers sees that the payments are approaching or have exceeded the amount previously set by the 55-15 form, he/she notifies Mr. Bodnarchuk that the reserves should be increased, based upon the indicated payments.

Inasmuch as the list of claimants, the amount of benefits, as well as the future benefits are not off computer loss runs, the information must be done manually. Inasmuch as Mr. Kemp's department is required to post all payments as well as future reserves on claimants by year's end, the Claim Department must manually list each case held in suspension awaiting medical determination. Mr. Bodnarchuk estimates approximately two week's time for the compiling of this information. The previous listing supplied in late 1976, showed 225 cases in suspension, awaiting the guesstimate of reserves, and the total reserves posted on those 225 cases after a review, were $642,800. This system should be revamped and will be discussed under our recommendation's caption.

The issuance of the benefit payments is without proper policing. The legitimacy of those receiving the benefits should be routinely checked to see if the individuals are totally disabled and not employed elsewhere, further, if a wife has remained widowed or if she has remarried.

* * * * * *

(RECOMMENDATIONS)

HS01370

RECOMMENDATIONS:

I. From a procedural standpoint, the present system of matching the petition for benefits and the claimant's folder is proper, however, a backlog and a delay is created in the reserving of these files under the present system. Inasmuch as Tom must await medical reports from the defense doctor prior to posting Form 55-15, it is our recommendation that due to Tom's excellent knowledge of all factors related to reserving, that he make his guesstimate of the claimant's condition for reserve purposes at the time the petition for benefits is received. This system will also alleviate the end of the year list that has to go to Mr. Kemp's department.

II. We would further recommend that reserving be based upon the ultimate payment, as opposed to reserving on the individual yearly award. As J-M has many old employees with positive findings of asbestosis, we should be able to reserve on awards which are in the area of 17½ for permanent partial disability which the applicant will ultimately receive. We realize the current opinion as to the deductibility for Federal Income Tax purposes of amounts set aside by an employer of a self-insured program is in a state of flux, however, we do feel that under existing case law, an employer can set aside reserves to the extent that such reserves represent "accrued" liabilities. As the nature of the disease is understood, the condition never gets better, but continues to worsen. Further, knowing that a certain percent of these employees will file for additional benefits, it would appear that J-M could satisfy the "all events test", (i.e whether all the events have occurred during the taxable year which determine the fact of liability and whether the amount thereof is ascertainable with reasonable certainty.

Since 1973, two new cases have been reported which are relevant to J-M's position as to reserving. They are Crescent Wharf and Warehouse Company v. Commissioner, 513 F.2d772 (9th Circuit, 1975), reversing and remanding 59 T.C. 751 (1973); and Wien Consolidated Air Lines v. Commissioner, 528 F 2duet (9th Circuit, 1976), affirming 60 T.C. 13 (1973).

The facts and holdings of these cases should be analyzed by your Legal/Tax Departments and consideration given to your present situation as it stands to piece meal reserving at Ransville, New Jersey.

III. Your Tax Department should also consider what area is best served from a tax deduction as to the Medical Center. As it presently stands, the total cost (not including depreciation, etc.) is charged back to each plant as an allocated expense. The actual cost for medical treatment which has been provided from a Workers' Compensation claim standpoint, it is assumed, is not shown as a deductible expense in the handling of these claims. It would be our recommendation that the Medical Center's treatment cost be charged as part of the benefit payments.

HSO1371

IV. Inasmuch as the State of New Jersey has not expressed, nor has it questioned the issuance of benefit payments on a monthly basis by others in the state of New Jersey, J-M should switch over on all permanent and partial awards to a monthly issuance of benefit drafts, thus saving numerous thousands of dollars in man-hours as well as the cost of mailing. This system would also free-up individuals from this laborious task of weekly issuance of drafts and allow this time to be spent on more productive areas that will benefit J-M.

V. On random selected disability cases, checks should be hand delivered to the claimant (80% to 90% of all recipients of claim benefits live within 25 miles of Manville, New Jersey) to determine if a claimant is legitimately disabled and is unable to perform his present work. In addition, this procedure will allow J-M to determine the widow's status as well as whether the children are still living or have been emancipated.

VI. J-M should establish a monthly loss run that will give a break-out of individual claimants, date of loss, the location of their employment, amounts paid and future estimated cost. These loss runs will enable your Claim Department, as well as the Cost Accounting Department to follow individual claimants, the payments, reserves, and, if any case is approaching self-retention limits. These loss runs will also aid your Tax Department in their accounting to the Internal Revenue Service. Many benefits can be derived from proper computerized loss information, especially in the budgeting for future years.

Aetnatec has available individuals that could assist J-M in establishing computer loss runs, whether it be done at the Manville location or in Denver. Our cost for these trained individuals who could assist in setting up the necessary systems is $300 per day, or an agreed upon guaranteed cost after the initial survey has determined what is required or demanded by J-M.

VII. Inasmuch as J-M is facing an estimated $7,000,000 in benefit payments in the next five years, a complete review of the claim and medical operations should be undertaken to determine tax advantages, and whether J-M should undertake a new system of reserving and claiming tax deductions. Your Insurance Department as well as Legal and Tax Departments might want to consider a "captive" insurance system, which will allow possible tax advantages. Realizing that any new method may likely bring law suits from the Internal Revenue Service to determine the legality of J-M tax deductions, your company must make the determination as to whether such litigation is warranted and has a high percent of success.

* * * * * * * *

HS01372

(CONCLUDED)

Published by AsbestosClaims.Law
asbestosclaims.law/library/11077/6

CONCLUSION:

We would like to extend our thanks to Mr. Lou Memerda, Supervisor of Safety and Employment Benefits, Mr. Tom Bednarchuk, Coordinator of Workers' Compensation Benefits, as well as the girls for their cooperation in providing us with all materials requested, as well as their time. We were very impressed with the understanding and the professionalism displayed throughout your complex at Manville, as well as their devotion to loss prevention and awareness of the occupational disease problem. Prevented measures have been extensively undertaken by J-M since the early '50's, yet the contrasting medical opinions as to the degree of exposure to asbestos fibers, makes loss prevention extremely difficult, if not impossible. Due to the time span for manifestation...20/30 years, only time can tell if the many millions of dollars that J-M has spent to safeguard their employees will reduce these claims significantly.

Robert C. McDaniel, Vice President
AETNA TECHNICAL SERVICES, INC.

HSO1373

Published by AsbestosClaims.Law
asbestosclaims.law/library/11077/7