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January 7, 1982

Robert A. Boardman, Esq. 2-16
Johns-Manville Corporation
Post Office Box 5723
Denver, Colorado 80217

Indemnification and/or Representation of
Former J-M Employees, Officers and Directors

Dear Bob:

At various times in the past, we have discussed J-M's policies on the above subject, and the procedures necessary to effectuate it in specific litigation situations. The attached memorandum was written to me last year by my associate, Wondie Russell, after she became involved in the investigation which followed the "resurrection" of Vandiver Brown. In our previous conversations, we have focussed mainly on what the corporation "may" do under certain circumstances. Upon re-reading the attachment, I am struck by Wondie's suggestion as to what J-M arguably "must" do if it wishes to provide indemnification.

Obviously, we do not encounter this issue as corporate lawyers, and her suggestions about the possible imperatives of Delaware law may well be over broad. However, I know that there are many reasons to be quite attentive to the niceties of corporate regulation, and her suggestion about a potential claim that certain actions could be ultra vires seems worthy of your attention.

Please feel free to call me or Wondie Russell if you wish to discuss the matter further. In the meantime, best wishes for the new year.

Sincerely,

Curtis M. Caton

Enclosure
cc: Richard B. Von Wald
Dennis H. Markusson
(w/enclosure)

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MEMORANDUM

TO: Curtis M. Caton

FROM: Wondie Russell WR

DATE: October 19, 1981

RE: Indemnification and/or Representation of Former J-M Employees, Officers and Directors

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In the context of a Motion to Compel the Production of various documents, including correspondence between J-M and/or its attorneys, and Vandiver Brown and/or his guardians and attorneys, we have taken the position that this correspondence is protected by both the attorney-client and work product privileges. (Speake v. J-M) While there is some question whether a fair reading of Dennis Markusson's letter to David Britt dated September 1, 1981 (attached) actually supports a conclusion that the attorney-client privilege is applicable, that is the position we have taken for the present and the court has accepted our argument. This position should be communicated both to interested individuals within J-M and to outside counsel representing J-M in the asbestos health cases.

In part, our argument that an attorney-client relationship exists was supported by reference to J-M's stated policy regarding indemnification, expressed in By-Law XII. This By-law in essence says "You may, if the law says you can". The Delaware

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Code says: "You can, if the conduct was in good faith and if the corporation complies with certain required procedures."

At some point in the not too distant future, the question whether and, if so, to what extent, J-M should or must (i.e., pursuant to any statutory obligation such as California Labor Code §2802) defend and indemnify Vandiver Brown for all liabilities arising from his good faith performance of his prior duties should be addressed. If the answer to the question is in the affirmative, then the appropriate procedural steps should be taken so that J-M's commitment to Brown is proper and not ultra vires.

To be enforceable under the relevant Delaware statute and Article XII of the J-M By-Laws, any agreement to defend or indemnify a former employee, officer and/or director requires a determination that indemnification is proper under the standards of Delaware Corporation Code §145 by a) a majority vote by a quorum of the J-M Board of Directors, b) a written opinion by independent legal counsel, or c) by the stockholders.

The Brown incident also brings to mind J-M's representation of other individuals, e.g., Galbraith and Woodard in Wise v. J-M. If appropriate corporate action has not been taken to authorize their indemnification, we should consider bringing this matter to J-M's attention.

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