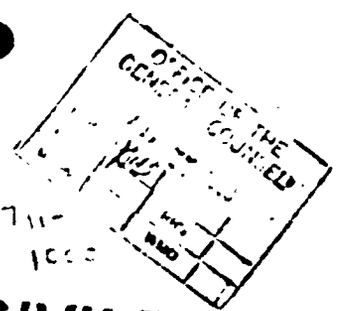
SAINT LUKE'S HOSPITAL
11311 SHAKER BOULEVARD
CLEVELAND, OHIO 44104

DIVISION OF MEDICINE

August 20, 1968



PRIVILEGED
J-M 83

Mr. Herbert M. Ball,
Vice President and General Counsel
Johns-Manville Corporation
22 East Fortieth Street
New York, New York 10016

Dear Herb:

I've studied the memorandum written by Mr. Standel and I believe something along this line would likely be the best approach to handling the overall problem of litigation. I would like to comment on some of the suggestions and make one or two of my own.

With respect to item 1, experienced Federal trial lawyers might not be too rare but to find one with an extensive background in pulmonary disease litigation would likely be quite unusual. With the exception of Ivan Sabourin I know of only two and possibly three lawyers whom I would consider relatively competent with regard to their knowledge of pulmonary disease and in that respect it would be confined pretty much to silicosis. One of these is William C. Hartman of the firm of Squire, Sanders and Dempsey here in Cleveland. He had a great deal to do with developing the Workmen's Compensation Law in the state of Ohio and in the course of that became quite well educated in medical matters pertaining. Unfortunately, he has developed a greater current interest in labor relations negotiations. The second man is Solon Stone of Buffalo, New York. I have testified a number of times for him and have always been impressed with his knowledge of silicosis and also with what would appear to be a very good legal approach. The third man is a lawyer,also from Buffalo, New York, whose last name is McKay and who has in the past been primarily a plaintiff's lawyer. He has cross-examined me a number of times. In addition to these men, I have probably been in contact with approximately twenty other lawyers, none of whom impressed me very favorably with respect to their preparation of cases or their knowledge of the pertinent medical factors involved. I have received the impression from most of these gentlemen that they approach a case much more strongly in terms of the legal aspects and hope for the best on the medical aspects. It is my impression also that in the Workmen's Compensation cases they have small hopes of achieving anything from the

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medical approach and hence do not pursue this very strongly. In jury cases the situation might be just the reverse, but I have had only limited experience with jury cases.

With respect to considering the developing of a highly competent legal personality, I have the following thoughts. There seems little doubt but that for the next twenty-five years there will be problems of this sort to handle because of the backlog of cases that we have every reason to believe now exist or will develop in the near future. This would suggest that it is not very prudent to put a great deal of training effort into an older man and I presume this is what Mr. Standel has in mind. It would seem to me worthwhile for J-M to either bring a man into their own organization or by retainer preempt his major interests and see to it that he becomes thoroughly trained in the biological aspects of asbestosis as well as in the various pertinent facets of the law itself. I have in mind also that legal proceedings are run by lawyers and as I indicated to you in my previous letter the most competent physician is of relatively little use to you unless the lawyer is equally competent or even more so. Moreover, a physician who is perhaps not too well versed in asbestosis can still be a useful person when he is examined by a lawyer having specific medical information. In addition, the properly trained and informed lawyer through the use of suitable reference material can see to it that his medical witness is reasonably well oriented before a legal appearance. There simply is no way by which a competent physician can make up for an incompetent lawyer. It would seem to me that the first requirement and probably the most important one is to have the fully qualified lawyer available to you.

With respect to item 2, it doesn't seem appropriate to use me as the active member representing the medical aspects in your asbestosis defense task force. It is within the realm of possibility to find someone in New York who could serve in this role. Such a man plus the utilization of well chosen physicians for the purpose of testifying at the local level should provide your legal representative with a fully competent witness. If it is possible at this time to predict the major geographic foci of anticipated Workmen's Compensation hearings or lawsuits, it should be possible to choose men from the medical profession at this time who would become the most desirable witnesses.

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With respect to item 3, I would agree that it is important to have someone available to fulfill this role. I am not certain, however, that Mr. Sheckler is your best bet. From what I know of the current developments in his department, I think his time is going to be fully occupied. In addition, I have some question about his capacity to project himself as a witness. I must say that I have a rather different kind of person in mind for this particular role although I don't know where he might be in your organization at this time.

With respect to item 4, I find myself somewhat uncertain as to the full reasons for choosing an Insulation representative. Possibly this has arisen from your major concern about the cancer cases in the insulation exposures. I would predict that you will have problems also with your own textile employees and with respect to Workmen's Compensation with all of the Divisions of the Company. Furthermore, I believe you will be faced with cases of lung cancer and mesothelioma occurring spontaneously in employees from all divisions as well as people who are not your employees. In saying this, I would point out that I believe it might be a mistake to pick a man whose knowledge is primarily in the Insulation division alone. Shouldn't you have someone whose knowledge is broader than this? I cannot help saying that if I were defending a case and I needed a person to represent both items 3 and 4 and wanted to choose one from your present employees I would pick Sidney Speil. I presume he would not be available for these things but I think he projects himself extraordinarily well and is fully knowledgeable in these various areas.

With respect to item 5, it occurs to me that a liaison and coordinating person might be needed but why not combine this role with that of the legal person to represent the things discussed in item 1. I suppose it is entirely possible that the liaison and coordinating person might be fully occupied with developing the task force and ultimately attending to so many details that it would detract from his possible role as "the competent lawyer for the defense" in the actual litigation. On the other hand, it occurs to me that you might combine the roles set forth under items 1 and 5 to the benefit of the program as a whole. Your choice of a man for this would be perhaps the single most important

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decision of all and since I do not know Mr. Standel or any other member of your legal department than yourself, I refrain from further comment.

I would like to make one other suggestion at this time. If the personnel for this task force, and I would include for this particular thought the potential doctors serving as witnesses at the local level, can be chosen in the near future, I would suggest a thorough indoctrination course organized to present the medical, legal, and economic aspects to these persons in depth. I would suggest that this group be kept relatively small but include those who would be active. Such a "course" would involve not only the presentation of all of the information in detail but most likely site visits as well. Those taking part should be able in the future at times of testimony to say that they have seen first hand and studied first hand the things that they might testify about. This was the approach used by those involved in the silicosis problem.

I know that the main emphasis of the Saranac Symposia was on the scientific aspects and I would not have in mind repeating precisely that kind of thing but I think you will agree that those symposia served as a training mechanism for those ultimately bearing responsibility of the legal aspects. I have in mind in our instance a more restricted and definitely oriented approach to the actual legal problems.

I rather like Mr. Standel's suggestion that perhaps this could be a much broader affair and bring in the considerations of other companies who face this same problem. I have reason to believe you might find men of considerable skill and interest in the other companies and we of J-M might stand to benefit by their views.

It is likely that I will be in New York within the next few days sometime and I would like to have an opportunity to discuss this in greater depth with you. I have already talked about this in some detail with Ivan and since you have taken the matter up with Clint, I hope it will be agreeable with you if I send a copy of our correspondence thus far to each of these people.

With best wishes.

Sincerely yours,

George W. Wright, M.D.
Head, Medical Research
Department

GWW:kg

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