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December 15, 1958

F. G. O'Connor, Supervising Adjuster
The Travelers Insurance Company
494 Broad Street
Newark, New Jersey

Re: LeGrande v. Johns-Manville
[redacted] STH 10-2181

Dear Mr. O'Connor:

The conference in the above matter was held on Tuesday, December 2, 1958 at the Johns-Manville office in New York. Mr. Fisk, Dr. Smith, Mr. Schmidt and Mr. Doeg of Johns-Manville, Mr. Kalechock of Marsh & McLennan, Inc., Mr. Pennel, Mr. Monigan and I attended. The conference provided us with several valuable avenues for investigation, but there seems to be no question that if an adequate defense on the merits of the case is to be developed a great deal more research must be done. The following points were discussed.

1. It was thought that none of the other manufacturers or packagers of products similar to those of Johns-Manville have ever provided warnings of any sort on their labels or on their products. This lack of warning on the part of the industry as a whole can probably be well demonstrated by having

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F. G. O'Connor -2- December 15, 1958

as witnesses the Secretaries of certain Trade Associations, who are to check with the members of the associations, and the production men from two New Jersey competitors of Johns-Manville, Flintkote and Ruberoid. The fact that some of the other manufacturers or packagers use warnings can be further substantiated by obtaining, perhaps from H. H. Porter & Co., the containers from competitors of Johns-Manville which would show no warning. Someone will have to contact the Secretaries of these Trade Associations and find out if they will appear and how they might testify.

2. It appears that Johns-Manville, rather than not giving any concern to the safety of applicators such as the plaintiff, has for some time sought to learn of any signs of an ill effect of its products upon applicators in general.

(a) Johns-Manville, has a certain group of applicators in their employ in Detroit. Some of these applicators have been engaged in this work for thirty-five to forty years and there apparently has been no case of asbestosis or silicosis among these workers. We will have to find someone to testify who has actual knowledge of these facts, and we will have to find out what, if any, protective

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measures are taken by these applicators.

(b) In 1954, a manual was distributed to the buyers of Johns-Manville's products advising them of the best methods for applying its products. Within this manual there was a warning that applicators should avoid breathing any of the dust. This warning was apparently the result of Johns-Manville's medical staff having kept on the look-out for dangerous consequences to applicators. Either Dr. Anthony Lanza or Mr. Tom Brown (former house counsel) should be able to tell us what steps have been taken by Johns-Manville with regard to investigating the possibility of occupational diseases among applicators resulting from the use of Johns-Manville's products. Dr. Smith said he would investigate as to exactly what was done along these lines.

3. To show that there was no reason to be apprehensive about applicators contracting asbestosis it might be wise to call as a witness either of two men who are outstanding practioners in industrial medicine, Dr. Arthur Vorwald or Dr. Chick Sanders. We understand that either one of these men could testify that they have examined many employees of manufacturers and applicators and that from this experience there would be no reason to suspect that an applicator might contract asbestosis, but rather that there was reason to

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believe that an applicator probably would not contract any disease. It is also thought that Dr. Lemon can testify that in general there is no hazard among applicators. Someone will have to contact these men as to their opinions and availability to testify, presumably Mr. Smith.

6. It also appears that the applicators' union has never demanded that its members be protected from the possibility of contracting asbestosis by the installation of exhaust fans or the use of respirators. That the union probably would have done so had there been any suspicion of the possibility of contracting asbestosis is born out by the fact that such demands for preventive measures were made during collective bargaining when work with fiberglass was contemplated by the employer. Mr. Van Brown and Mr. Dan Cruise, as employees of Johns-Manville, apparently know more about this than anyone else and are to be contacted by Mr. Fink.

7. That Johns-Manville was actively interested in applicators can also be shown by the fact that in 1954 Mr. Smith and Mr. Dan Cruise, tried to run a series of X-ray tests on a certain group of applicators to see if there were any effects upon them as a result of using Johns-Manville's products. This test was never conducted because it was

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F. G. O'Connor -6- December 15, 1958

impossible to keep a check on any one man because of the frequency with which they changed jobs.

Testimony upon the foregoing would be designed to raise a question for the jury as to whether Johns-Manville acted reasonably and prudently in failing to recommend protective measures or otherwise to warn applicators of the hazard of contracting asbestosis. If a strong enough presentation of these facts is produced it may be possible to convince the jury that it was not reasonably foreseeable that a person such as the plaintiff would be subjected to any substantial hazard in the use of the defendant's products.

We shall keep you advised of further developments.

Yours very truly,

Howard B. Wachenfeld

HGW:GS

c.c. Mr. A. L. Fisk, Jr.
Mr. A. D. Schmidt
Mr. E. W. Smith

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