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Johns-Manville

Internal Correspondence

To: Commercial Union v. Johns-Manville File (File 13-5761) Dat: December 23, 1981

From: K. G. Gulley (2-18)

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Subject: WORKERS' COMPENSATION FILES

In connection with various discovery requests in the Commercial Union v. Johns-Manville action, we have undertaken (or renewed) a factual investigation regarding the status of workers' compensation occupational disease claim files maintained at our various manufacturing locations. I have learned a great deal during the past several weeks of investigation, some of which contradicts information previously supplied to me by the asbestos-health group. The purpose of this memorandum is to summarize and memorialize my investigation to date.

Our specific investigation has centered on W/C occupational disease claim files for claims made after 1933 and before 1952. Given even this limited search criteria, a great deal was learned about our W/C records in general.

Manville, N.J.

All of the workers' compensation claim files, both active and inactive, relating to occupational disease have been computerized. Jim Hoppe is the custodian of the computer record which contains information in summary form, relating to these claims. Jim has provided me with two copies of the most current computer information.

The Manville W/C occupational disease claim files relating to claims prior to 1965 were produced in an underlying Mississippi action entitled Wedgeworth, et al v. Armstrong Cork, United States District Court, Southern District of Mississippi, Southern Division, Civil Action #278-5002 (R), and other consolidated cases. According to an affidavit filed by David Novack (of David Grossi' office), "prior to 1965 there were approximately 175 W/C claims filed at the Manville facility in New Jersey wherein the Petitioners alleged to have contracted an occupational disease related to exposure to asbestos." Prior to producing such files, I have reviewed them for the purpose of segregating the c

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documents which he considered to be privileged. The non-privilege portions of these 175 files were produced to plaintiffs' counsel in the underlying action. Subsequently, the Mississippi Court Judge held an in camera review of the alleged privileged documents and ordered a portion of those documents to be produced.

I have contacted Mary Ann Pobrowski (201-725-5000), the custodian of the Manville W/C files, who has confirmed that there is only one pre-1952 W/C occupational disease claim file at Manville. This file has been copied by Mary Ann and sent to Hill & Barlow for production to Commercial Union.

Mary Ann has also informed me that after the Mississippi production, the alleged privilege documents were reunited with the files from which they were taken, however, remain in a separate folder within each file, and that the 175 pre-1965 claim files have been recombined with the remainder of the W/C files. The files are stored alphabetically, however, they appear chronologically on the computer printout. Thus, the present status of these files is somewhat different than I was lead to believe by members of the asbestos-health group who informed me that there was a nice, neat set of Manville W/C occupational disease claim files which had been segregated and were stored separate from the remainder of the W/C files at Manville.

Additionally, I have learned that when removing documents which he considered "privileged", David Novack also removed documents which he considered to be "not typically found in a workers' compensation file." Thus, any re-production of the 175 files or some portion thereof, would require a re-review for privilege.

Long Beach, Ca.

Thomas Martin, the Employee Relations Manager at Long Beach for the last two and one half years, has confirmed that there are no pre-1952 W/C occupational disease claim files at Long Beach. From various correspondence he has reviewed, Mr. Martin believes that the first asbestos-related occupational disease claim was made by employee in approximately 1954.

I would also note that Mr. Martin stated that there are approximately 91 active and inactive occupational disease claim files at Long Beach.

Waukegan, Ill.

Bob Andre's affadavit which was filed in both the Mississippi action and the Boston insurance action, states that there are 16,377 active and inactive personnel files at Waukegan, and that the workers' compensation files have been segregated

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from the personnel files and the occupational disease claims separately indexed. Peggy Gann of Waukegan has informed me that this statement is not entirely accurate. Only the active W/C files have been segregated from the personnel files and only the active occupational disease claims catalogued. With regard to a substantial number, perhaps as many as 14,000, inactive personnel files, no segregation of workers' compensation claims has been made, nor has a cataloguing of the occupational disease claims been attempted. Helen Marsh is familiar with the volume of inactive personnel files (which "might" contain occupational disease claims) and both she and Peggy Gann have stated that it would take several people several weeks to review such files even to answer the threshhold question of whether or not they contain an occupational disease claim.

The active W/C claims have been computerized, similar to those at Manville, and none of the active claims were filed prior to 1952.

Bill Clayton, who joined the Waukegan W/C staff in 1951, and who is now at WRG, recalls no pre-1952 occupational disease claims. He believes that the first asbestos-related occupational disease claims were made in 1952 or 1953 and perhaps as late as the 1953-56 period. Helen Marsh, however, has stated that she would not be surprised to find, within the 10,000 plus inactive personnel files, pre-1952 occupational disease claims. Helen has also stated that in the event a review of the inactive personnel files is conducted, it would take ten people at least three-four weeks and because of space limitations at Waukegan, any review would have to be conducted off-premises.

Once again, this information is contrary to information I had previously received, from Dennis Markuson, who informed me that the Waukegan files had been segregated and reviewed for privilege in connection with the underlying Mississippi case. No Waukegan files were produced in the Mississippi action.

Helen Marsh informed me that approximately fifty W/C occupational disease claim files have been produced pursuant to individual requests in the underlying plant worker cases. Because of the situation with our Illinois local counsel, who was recently fired, we do not have a comprehensive list of those claim files which have been produced in the underlying litigation.

Finally, Helen Marsh believed that Jean Moore had been required to produce some early Waukegan W/C occupational disease claims in connection with the Pittsburgh plant worker cases. I asked Paul Sugarman to check with the Speak attorneys and he was advised that no such files were produced

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in connectionwith Schake. I will attempt to determine whether any Waukegan files have been produced in connection with any other Pittsburg plant worker cases.

Marrero, LA

I am waiting to hear from Clint Williams, the Industrial Relations Manager at Marrero (504-347-4513). Additionally, I have written the Jones, Walker firm in an attempt to secure a list of those W/C occupational disease claim files which they have produced in connection with the underlying Louisiana plant worker litigation.

Nashua, NH

I have talked to David Baron (603-883-3361) who has been responsible for W/C administration at Nashua for the past year. Nashua has been in existence since 1907 and employed 800 during its peak years. Mr. Baron informed me that the W/C claim files are combined with personnel files and that the inactive combined files are scattered in several locations. No attempt has been made to index, segregate or catalogue these files in any manner. Mr. Baron also informed me that he was "surprised" that as far as he could discern, no attempt had ever been made to learn what was in these old files.

During my investigation I discovered a blue file, number 4 18-2309, which contained material compiled by Kip Johnson, one of our W/C administrators who has recently been transferred to Tucson, Arizona. The preponderance of this material appears to have been gathered in response to a request by Dennis Markusson to determine when the first W/C occupational disease claim was filed. Copies of much of this material is also in the asbestos-health litigation assistants' file on workers' compensation. The file also contains the court pleadings relating to the early eleven New Jersey asbestosis claims. I have reviewed the information in this file for purposes of responding to the Commercial Union discovery request, however, it should be re-reviewed for the San Francisco litigation.

I will supplement this memorandum as additional information becomes available.

cc: C. K. Dearman
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