Johns-Manville

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December 18, 1981

Robert S. Venning, Esq.
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30th Floor, Wells Fargo Bldg.
44 Montgomery St.
San Francisco, CA 94104

RE: JOHNS-MANVILLE v. HOME (file 13-5760)
(Workers' Compensation Issue)

Dear Bob:

Per your request, I have listed several reasons why the asbestos-health attorneys have traditionally sought to prevent discovery of our plant worker compensation files. As you know, these reasons were provided to me by Bob Andre of that group. Bob stated that plaintiffs' counsel in the underlying actions request review or production of pre-Selikoff workers' compensation claim files for the following purposes:

1. Prevalence of disease and/or claims.

In early asbestos-health cases, including insulator or shipyard cases, plaintiffs sought to discovery J-M's W/C experience to establish mere numbers of claims or sick employees. Plaintiffs would argue that with that amount of sickness in its own employees, how could J-M ignore what was happening to an insulator or shipyard worker. Basically, this was an appeal to jury sympathy-type argument. Bob has witnessed the admission, in an insulator action, of trial exhibits illustrating another manufacturer's plant worker W/C claims experience.

2. Work conditions.

Plaintiffs have sought the production of plant worker W/C files to attempt to show work conditions and work practices. Bob believes that such plaintiffs' counsel

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were seeking to find comments by doctors, plant managers, industrial relations managers, and industrial hygienists on the condition of a plant, the lack of improvement over the condition observed during a previous visit, a workers' longevity in a dusty activity, lack of proper dust control equipment or lack of use of respirators. (Note--to the extent we have answered interrogatories relating to plant conditions, they usually paint a relatively rosy picture of the measures we took to prevent exposure to raw fiber in our own plants. Obviously, plaintiffs' counsel, even in an insulator or shipyard worker case, want to take potshots at these answers.)

3. Insurance company involvement.

Bob also believed that plaintiffs' counsel were looking for evidence of correspondence between insurers and insureds discussing overall health problems, prevalence of disease, work practices and conditions, and an alleged, however as yet unproved, conspiracy between manufacturers and insurers.

4. Comments by our own doctors.

Bob stated that our plant W/C w/c files could contain comments by our own doctors relating to plant conditions. Over the years, J-M has acquired some small, relatively dirty and dusty plants which they operated for various lengths of time, without improving conditions, then sold.

5. Smoking gun documents.

While not knowing of the existence of such documents, Bob stated that his group always fears the unexpected locating of a potentially harmful document of which they have not previously known. Examples of such documents might be letters from Ken Smith which would confirm portions of his deposition testimony, documents relating to an alleged "hush/hush" corporate policy, or documents relating to the need for labeling. Dennis Markusson has stated that there are plant physicians who have not yet been deposed in the underlying actions and who claim that they were told not to tell J-M employees of changes in their respiratory condition. Please note that while the issue of an alleged "hush/hush" policy is arguably relevent only in a J-M plant worker case, such evidence has been admitted in at least one insulator case in Jacksonville, Florida.

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6. Casual relationship between exposure and disease.

Bob believes that plaintiffs' counsel seek discovery of plant worker W/C files to attempt to show that the causal relationship between exposure to asbestos fiber and lung cancer or mesothelioma was accepted by Johns-Manville at a date earlier than we generally admit in the underlying actions.

7. Markusson fear.

Finally, there is the fear, held by Dennis Markusson, that plant worker W/C files will show cases of disease in employees either indirectly exposed to asbestos or exposed to low levels of dust.

Should you desire to discuss these reasons, please do not hesitate to contact me.

Very truly yours,

Kenneth G. Gulley

Kenneth G. Gulley
Attorney

KGG:lmh

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