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ATTORNEY-CLIENT COMMUNICATION

March 21, 1969

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C. B. Burnett
Herbert Morton Ball
J. B. Jobe
K. V. Lindell - Asbestos
A. B. Marchant
A. C. Smith - Finderne
F. J. Solon, Jr.
Ivan Sabourin, Esq. - Montreal
W. L. VanDerbeek - Finderne
Dr. G. W. Wright - Cleveland

ENVIRONMENTAL HEALTH TASK FORCE

REPORT TO POLICY COMMITTEE
ON THIRD LEGAL PROBLEMS SUB-COMMITTEE MEETING

DATE AND LOCATION: March 18, 1969, at GHQ

PRESENT FROM THE LEGAL PROBLEMS SUB-COMMITTEE: Herbert Morton Ball (Chairman); L. M. Fenner; C. L. Sheckler; H. M. Jackson; and R. R. Standel, Jr. (Secretary)

PRESENT FROM THE POLICY COMMITTEE: Herbert Morton Ball (F. J. Solon, Jr. joined the meeting for part of the discussions).

DISCUSSION: 1. Current Common Law Asbestosis Litigation

R. R. Standel, Jr. reported that he understood that formal settlement of the Tomplait (Beaumont, Texas) litigation was imminent. He stated that J-M was attempting to secure from plaintiff an indemnity undertaking covering any potential liability of J-M pursuant to any cross-claim that might be filed by Fibreboard Paper Products Corporation (the sole defendant not contributing to the settlement) in the event that plaintiff secures a judgment against that corporation. In order to insure the effectiveness of any indemnity agreement obtained from the plaintiff, the local attorney has been instructed to attempt to obtain an escrow agreement and/or the personal undertaking of plaintiff's attorney.

To date, Mr. Standel has not been advised of the actual execution of a formal settlement agreement.

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There was some discussion of the Bradshaw (Detroit, Michigan) case. In this connection, Mr. Standel pointed out that the dismissal of the Johns-Manville corporations from this case was not final in that it is subject to appeal either by the plaintiff or by any of the co-defendants against whom plaintiff should obtain judgments.

2. International Labeling Problems

Herbert Morton Ball reported on the consideration given by members of the Policy Committee to the labeling of asbestos fibre being shipped to countries other than those in North America. He stated that it had been determined that for the time being no such labeling program would be put into effect. He advised that C. B. Burnett has requested that the laws of the various countries be investigated to determine what labeling requirements, if any, exist and what liabilities for failure to comply might obtain. Therefore, it was agreed that W. P. S. Breese should take W. W. Lanigan's place on this Committee.

In this connection Hugh Jackson pointed out that many of our states have labeling laws, which if they were literally enforced, would require labeling of our fibre and other products. Mr. Jackson cited, for example, the laws of California and Illinois.

Mr. Ball pointed out that we face not only the problems of labeling relating to our asbestos fibre but that similar problems were extant with respect to certain other product lines, such as Celite. He indicated that, generally speaking, the same legal considerations would pertain.

3. Asbestos Health Bill

C. L. Sheckler brought up the subject of House Resolution 2503 (a bill to promote the safety of workers engaged in making asbestos products for shipment in commerce, etc.) that had been introduced by Congressman Patten. He indicated that it seemed strange that in view of the many toxic materials presently utilized in industry a more general approach to such materials had not been taken. That is, it seemed strange to single out a single material such as asbestos.

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It was pointed out by Messrs. Ball and Standel that although the bill provided for recourse to the courts, the problem was that once health standards were promulgated under the bill by the Secretary of Health, Education and Welfare it was unlikely that any of such standards would be revised by the courts because the courts pay great deference to the findings of administrative bodies in such areas as the promulgation of standards.

It was determined at this time that F. J. Solon, Jr. should be asked to join the meeting so that the optimum over-all approach to this legislation could be considered.

Upon his arrival, Mr. Solon indicated that he believed that this bill was not new and that Congressman Patten had brought forth a similar bill some time ago which died in the House Committee on Labor. In this connection it appeared significant that the present bill was referred to the Committee on Interstate and Foreign Commerce. Mr. Solon speculated that the bills were identical and that Congressman Patten was probably just trying another avenue of approach. He said that he would have the bills compared to determine if they were in fact identical.

It was determined that our approach to the new bill should be two-fold:

(1) Mr. Solon will refer the bill to Hill and Knowlton and ask them to follow its progress as they have other measures; and

(2) Mr. Sheckler will contact some of the employer groups who would probably be interested and in which Mr. Sheckler is active. Mr. Sheckler suggested that, among, others, the following groups would probably be most concerned:

Asbestos Textile Institute;

International Insulation Manufacturers Assoc.; and

Asbestos Cement Products Assoc.

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It was agreed that the bill would be followed as stated above, with the understanding that the Office of the General Counsel would be consulted when necessary.

Possible additional avenues of approach to be utilized at a subsequent time are:

(1) Discussion of the bill with Congressman Patten; and/or

(2) Discussion of the bill, its ramifications and potential complications, with an appropriate representative of the Department of Health, Education and Welfare as, according to the provisions of the bill, the Secretary of that Department would be charged with the responsibility of promulgating standards thereunder.

R. R. Standel, Jr.

cc: W. P. S. Breese
E. H. Fenner - Finderne
H. M. Jackson
C. L. Sheckler

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