November 16, 1971

MEMORANDUM TO FILE

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cc: G. Earl Parker

ASBESTOSIS LITIGATION
MEETING WITH JOHN TUCKER, BEAUMONT, TEXAS
NOVEMBER 12, 1971

On November 12, 1971, Talmadge Neece of Travelers, Lyman Field and I, met with John Tucker and Gordon Pate in Beaumont, Texas to discuss the Borel and Potter asbestosis litigation.

John Tucker indicated that a motion for judgment on the verdict and a motion for judgment notwithstanding the verdict had been filed with the court in the Borel case. It is anticipated that a judgment will be entered in the very near future. The judgment will be against six defendants in the amount of $58,534.04. This reflects the actual damages, as determined by the jury, in the amount of $68,000 plus $1,652.94 for funeral expenses, $9,783.30 for medical bills, less $20,902.20, which was the amount paid in settlement by four other defendants in the case. Judge Fisher has indicated to Mr. Tucker that he will not order a new trial in the Borel case, as has been requested by Ward Stephenson.

It was decided by Talmadge Neece, Lyman Field and myself to keep John Tucker in the Potter case. We will definitely have a problem with the local bar and Judge Fisher if Mr. Tucker is removed. The local bar in Beaumont is a very closely knit group. Mr. Tucker is a proud man and will obviously be offended if he is removed from the case. We felt that it was worth sacrificing something in the Potter case to make sure that he does a good job for us on the Borel appeal. Lyman Field will sit in and assist Mr. Tucker during the Potter trial, which probably will be scheduled for sometime during January of 1972. It is conceivable, that Ward Stephenson will postpone the Potter trial at the last minute. Ward advised John Tucker that Mr. Potter is near death and therefore he wants to try the case as soon as possible. Gordon Pate feels that Mr. Potter is pressuring Ward for some money, and Ward is testing the defendants to see if by scheduling the trial for January he will be able to obtain some settlements prior to trial. A final pretrial conference in the Potter case has been scheduled for mid-December. Lyman Field will attend this conference and will be introduced to Judge Fisher and recorded as "of counsel". It was decided that Gordon Pate will forward the X-rays, medical records and depositions of the various doctors who have examined Mr. Potter to Dr. Hans Weill in New Orleans, for review to make sure that Mr. Potter does in fact have asbestosis as has been alleged and to determine if Dr. Weill wants to examine Mr. Potter in Beaumont prior to the trial.

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This week Lyman Field will write a letter to Page Keeton, Dean of the University of Texas Law School, advising him that the writer has been retained by Travelers, at the request of Johns-Manville, that he is impressed with the brief prepared by Dean Keeton and would like him to play a significant role in the Borel appeal. If Dean Keeton is interested in getting involved in the Borel appeal, Lyman will set up a meeting with him in mid-December when he comes to Beaumont for the pre-trial conference in the Potter case. Lyman will delicately attempt to maneuver the situation so that Dean Keeton prepares the brief in the Borel appeal and lets Mr. Tucker sign it and Dean Keeton will be listed as "of counsel". If this is accomplished, shortly prior to the argument of the appeal, we will attempt to get Dean Keeton to present the oral argument at the appeal and at that time remove John Tucker from the Borel case and all other pending asbestosis litigation in Beaumont. In any event, Lyman Field will review and revise our brief on appeal, whether it is prepared by Dean Keeton or John Tucker.

While I was in Beaumont, I was advised that Ward Stephenson filed a new asbestosis suit in the U. S. District Court in Beaumont, Thomas S. Hartwell vs. Johns-Manville Products Corporation, et al., on November 11. A copy of the complaint has been obtained from the court. After our meeting with Mr. Tucker, Talmadge Neece of Travelers agreed to write a letter to Gordon Pate assigning this new case to him, with Lyman Field as co-counsel. John Tucker will receive a copy of this notification and will be advised that Travelers and Johns-Manville feel that he is too busy with the Borel appeal, Potter trial, and the other two asbestosis suits in Beaumont (Crawford and McDaniel) to get involved in this new case. Such an approach should psychologically assure Mr. Tucker that he is not going to be removed from the Potter and Borel cases. Since only Johns-Manville Products Corporation and Owens-Corning Fiber Glass Corporation are named as defendants in the Hartwell suit, we must consider impleading other manufacturers of insulation products containing asbestos, as we have done in the McDaniel case. It has been decided to promptly schedule the deposition of Mr. Hartwell to determine what other manufacturers' products he was exposed to in addition to those of the named defendants. The complaint does admit that he worked with insulation products of other manufacturers. The deposition of Mr. Hartwell will be scheduled for January in order to keep Ward Stephenson busy so that he won't have too much time to prepare for the Potter trial. After the taking of Mr. Hartwell's deposition, we will then implead various other manufacturers as third-party defendants.

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John Tucker was much friendlier at our Friday meeting and more cooperative than he was during the Borel trial. However, Talmadge Neece and Lyman Field observed his disorganized manner and lack of comprehension of many important aspects of these cases.

I indicated to Lyman Field that I will forward a copy of Page Keeton's brief to the attorney representing Johns-Manville in the Bassham case in New Mexico. In addition I will schedule a trip to Albuquerque to review the Bassham case with our attorney and to evaluate his competence. I will have our New Mexico counsel prepare a draft of our brief on appeal for my review and for review by Lyman Field.

Lyman Field and I agreed not to revise our warning label on asbestos products until after the Borel appeal is decided, so as not to prejudice our case on appeal. We do not want the judges on appeal to learn of our change of the warning label subsequent to the Borel trial. This may indicate to the court that we felt the warning label was not adequate.

Talmadge Neece has retained Lyman Field to represent Johns-Manville Sales Corporation in the Harrod case which was filed recently in Kansas City, Kansas. Lyman will immediately get a copy of the original complaint which was filed. We were served with a copy of an Amended Complaint but have never been served with the original complaint. Lyman will promptly, through discovery, ascertain Mr. Harrod's age, pre-1964 work experience to see if there is any prior exposure which could have contributed to his current alleged respiratory problems and will obtain Mr. Harrod's Workmen's Compensation records and all medical reports for evaluation. This case differs from the other asbestosis cases which have been filed, in the following ways:

1. Only seven years of exposure to asbestos insulation products is alleged.

2. All of Mr. Harrod's exposure was during the period when J-M had warning labels on our asbestos insulation products. Since the complaint alleges that J-M was negligent in failing to warn the plaintiff of the possible harm from use of our products, I assume that plaintiff's counsel was not aware of the existence of our warning labels.

3. All of the plaintiff's exposure was with one insulating contr

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4. There is no allegation that the plaintiff has asbestosis or mesothelioma. It is merely alleged that he is experiencing various respiratory problems and has a "fibroid condition". This may be an emphysema case.

Richard P. Carter

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