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May 6, 1982

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LEGAL DEPARTMENT

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Johns-Manville Sales Corporation
P. O. Box 5723
Ken-Caryl Ranch
Denver CO 80217

Mr. Lively Wilson
Stites, McElwain & Fowler
3400 First National Tower
Louisville KY 40202

Re: Wallace Halverson vs. Johns-Manville Sales Corporation
13-05305

Dear Helen and Lively:

The plaintiff's attorney and the third party defendants' attorneys joined in moving for summary judgment on JM's third party action against other manufacturers on the ground that plaintiff Wallace Halverson claimed that he was never exposed to the insulation products of the third party defendants and that he had made a mistake in his interrogatory answer where he stated that he had in fact been exposed to those manufacturers' products.

We were unable to develop any direct proof of exposure and so the motion was granted.

You will recall that we originally commenced those third party actions mainly to have Judge Miles Lord removed from the case because of his son-in-law's employment with the lawfirm that represents GAF. Since the case has been assigned to U. S. District Court Judge Robert Renner, our purpose was accomplished and there is no longer any need to retain those third party defendants.

The court refused to grant summary judgment as the employers who also moved for summary judgment on the ground that to consider their fault, they have to be parties to the lawsuit. As you will recall, under the Minnesota law as it is developed, the employers' fault may be recovered from them to the extent of the workers' compensation

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benefits either paid or payable to the plaintiff. In Halverson's case that sum should be well in excess of $100,000.

Judge Renner then held a pretrial conference granting us the right to have Halverson evaluated by an employment evaluation company. That is favorable to us since I believe that Halverson's condition is such that while he is not to work at hard work or in a dusty environment, he is certainly not totally disabled. It is important to us since Halverson left the plumbing trade at age 57 making around $20,000 per year. I anticipate that the employment counselor will say that Halverson has available to him a number of jobs which do not take a great deal of skill and while not paying him as much as he would be paid in the plumbing trade, would provide him a living wage. This, of course, will go to two issues: mitigation of damages and whether Halverson lacks motivation to return to work because he is being so liberally paid under the workers' compensation law. I hope to get in the evidence of compensation payments by that method.

Judge Renner set a new discovery cut-off as of June 15, 1982. Other than our employment evaluation, I don't see the need for any further discovery.

Renner further requested marking of all of our exhibits, a complete witness list, proposed voir dire questions and proposed jury instructions. I would appreciate receiving from either of you whatever information is available for each of these requirements. I will need this information at least by the discovery cut-off deadline.

Judge Renner suggested that this case will be called for trial this summer probably in July. He would not be more specific although I explained to him the need to have ample time to obtain our witnesses because of the number of cases pending. He stated that he appreciated that problem and would attempt to give us as much time possible when the case is called for trial.

He also requested a stipulation of facts and a waiver of objection to the foundation of a number of exhibits for objections to those exhibits. Again, I would appreciate [illegible] this regard.

In summary, there are still three defendants in this case, [illegible] Eagle Picher, and Flintkote. There are two third party defendants, Halverson's last two employers. Plaintiff's treating physician will

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testify. His name is Dr. Terry Clark of the Duluth Clinic who has diagnosed Halverson has having asbestosis. Clark is a good witness and has been thorough in his examination and evaluation of Halverson. However, he has admitted that the generally accepted medical standard prior to Dr. Selikoff's report was that dust accumulations fewer than 5 million particles per cubic foot were probably not hazardous to an employee. I intend to press that issue since it will assist us in our state of the art argument and also assist in defusing the punitive damage issue.

We have had Halverson examined by Dr. Fee who has concluded that Mr. Halverson does not have asbestosis and that his problems come from other sources including cigarette smoking. We will need a state of the art witness who may turn out to be Dr. Fee. Lively, we probably should try to get together with Dr. Fee so that you can sit down and fill him in on the areas that he will have to be conversant with as you suggested in one of your previous letters.

I hope to hear from one or both of you at your early convenience.

Cordially,

Thomas R. Thibodeau

TRT/rkb

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