General Headquarters
March 25, 1935

PERSONAL & CONFIDENTIAL

Calif. Legis

Mr. A. Cromwell,
Lompoc.

I am glad to note that the California Self-Insurers' Association is giving serious consideration to formulating legislation for the State of California which will protect Industry and insurance carriers against the racketeering aspects involved in the pneumonoconiosis claims which are apparently flooding the courts from one end of the country to the other.

It is the feeling of the officials of our Company and of representatives of most other industries having a dust hazard with whom I have come in contact that the chief safeguard against future disaster lies in securing the enactment of properly drawn disease legislation which will cover the disabling types of pneumonoconiosis. I attended a "Symposium on Dust Problems" held in Pittsburgh on January 15th under the auspices of the Mellon Institute of the University of Pittsburgh. The meeting was attended by representatives of some 85 industries or trade associations and the dust problem was discussed from many angles by various outstanding experts. I am enclosing herewith copies of two of the addresses delivered to the meeting, as follows:

(1) "The Problem" by Alfred C. Hirth of the firm of Williams, Eversman & Morgan, attorneys of Toledo, Ohio who are General Counsel for Owens-Illinois Glass Company; and

(2) "Silicosis from the Insurance Viewpoint" by F. Robertson Jones, General Manager, Association of Casualty & Surety Executives.

Mr. Hirth's address you will find extremely interesting and a most thoughtful presentation of the background and present status of the problem. Mr. Jones' address, as its title indicates, approaches the problem from the insurance viewpoint and in general terms defines the essentials of the ideal occupational disease law covering pneumonoconiosis. I would summarize the most important of these essentials as follows:

(1) A listing and defining of the diseases to be covered — the so-called "scheduled" type of Act rather than the "all inclusive". I believe your California law is now of the latter type.

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(2) A provision that the liability to compensate for the scheduled diseases be exclusive of all other liability.

(3) A provision for the determination by medical experts (rather than by lay commissioners) of the existence of the disease and the disability and of the extent of the disability.

(4) A provision requiring a definite amount of exposure to dust as a condition precedent to the right to claim compensation for pneumonoconiosis.

(5) A statute of limitations to safeguard Industry against stale claims.

(6) A provision for re-opening settlements and awards with the view of either increasing or decreasing or eliminating an award as developments subsequent to the initial award may indicate are desirable.

(7) Provision for a definite maximum limit of liability, both compensatory and medical.

There does not, to the best of my knowledge, exist at the present time any state law specifically covering any form of pneumonoconiosis except in Wisconsin and I am not familiar with that law. Some of the all inclusive types of laws in other states are being held to cover silicosis, this I believe being true in California. I understand from Dr. Lanza, Assistant Medical Director of Metropolitan Life Insurance Company, that North Carolina has either very recently enacted what he considers a very adequate law or has pending before it a draft of legislation for this purpose. I have not seen this law, or the proposed law, and I am not able to provide you with a copy. However, I am enclosing herewith the following:

(1) Copies of two Bills which recently passed the lower House of the New Jersey Legislature (Assembly Nos. 143 and 144) and which are now pending before the Senate and the purpose of which is to make "silicosis", as therein defined, a compensable occupational disease. This proposed legislation is, in the main, satisfactory but we have opposed its enactment in New Jersey by reason of the very misleading and most unsatisfactory definition of silicosis which you will note is defined to mean the disease resulting from the inhalation of "minute particles of dust containing free silica or combined silica or both". As you know, asbestos contains no free silica which is universally regarded as the only thing which can cause silicosis; on the other

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hand, it does contain a silicate or combined silica and if the proposed definition were adopted asbestosis would become, under the New Jersey law, a form of the much more serious disease.

(2) A draft of a proposed occupational diseases law prepared by the Illinois Manufacturers Association for submitting to the Illinois Legislature. This proposed law was prepared by a Committee of the Manufactuers Association after more than a year's intensive study and, in my opinion, is fair to all interests involved. Moreover, it presents a risk which insurance carriers consider "insurable". You will note that asbestosis is separately treated and defined in the Illinois Act and there is no fault to be found with the definitions of either silicosis or asbestosis.

I have discussed with Dr. Lanza the various proposed definitions of silicosis and he has urged the desirability of using a definition formulated by the Bureau of Mines which, as I recollect, is substantially as follows: "A disease of the lungs due to the breathing of air containing silica (SiO_2) dust, characterized anatomically by generalized fibrotic changes in both lungs with the development of miliary nodulation demonstreble by X-ray examination".

You will appreciate that the proposed laws in Illinois and Jersey are drawn with the view of either amending the existing Occupational Disease Legislation or building upon the experience of those particular States with existing workmen's compensation laws and they will not, therefore, be helpful so far as the California problem is concerned other than in their general aspects.

VANDIVER BROWN
Legal Department

VB:T
Enclosures
VIA AIR MAIL

CC: Messrs. S. A. Williams
E. M. Voorhees

P.S. The draft of the proposed Illinois law is not enclosed as I have only one copy; however, I am obtaining another and will send it to you within a day or two.

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