General Headquarters
October 21, 1936

Mr. S. A. Williams,
Vice-President.

Re: New Illinois Occupational Diseases Act regulations

I discussed the new law and the question of our filing an acceptance of its provisions with Mr. Heth, with Mr. Clarke and with Mr. C. A. Livingston of the Illinois Manufacturers Association. I endeavored to see Mr. Donnelly, Executive Vice-President of the I.M.A., but he was out of the city during all of the time I was in Chicago.

The unanimous recommendation is that Johns-Manville Corporation file a notice of acceptance.

The only persons who are hesitating - and who have any justification for hesitating - are those whose businesses do not present an appreciable occupational disease hazard. Obviously, we do not fall into that classification. I am advised that those concerns which do have an occupational disease hazard - and particularly those which have a dust disease hazard - are filing notice of their acceptance of the Act.

Mr. Heth, Mr. Clarke and Mr. Livingston confirmed the advice I gave you at our conference on this question, when Mr. Voorhees and Mr. Kottcamp were present, to the effect that the power of the Industrial Commission to fix rules and regulations regarding the safeguarding of employees from the danger of occupational disease ~~was~~ is contained in the Health & Safety Act and not in the Occupational Diseases Act. The Commission has the power to establish these rules and regulations irrespective of our acceptance or non-acceptance of the Occupational Diseases Act so that nothing is gained on that score by failure to file, or delay in filing, the notice of acceptance. Moreover, if we do not file, we then become bound by the provisions of Section 3 of the Act which contains a provision that failure to abide by a rule or regulation of the Industrial Commission shall constitute negligence per se on the part of the employer. As Mr. Clarke pointed out, if we are afraid the Commission will issue drastic rules and regulations, that is all the more reason why we should file a notice of acceptance. The choice boils down to this: Do we wish to have a jury assess damages in cases of silicosis or asbestosis, or do we desire to be bound to pay only the compensation rates prescribed by the Act? Thus stated, the answer is obvious.

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It is my recommendation we file a notice of acceptance without further delay.

Attached is a copy of a form of acceptance which has been prepared for your signature. If you will sign and return it to me, I shall see that it is promptly transmitted to the Industrial Commission by Registered Mail. Please note that we are required to state the number of our employees. This means the number of employees in Illinois.

The Act requires that the employer shall either furnish its employees personally or post in a conspicuous place in the place of employment a copy of the notice of election. It is recommended that the first half of the attached acceptance (the part constituting the acceptance proper) be printed in large type and kept permanently on each bulletin board maintained in the Waukegan Plant.

VANDIVER BROWN
Legal Department

VB:T

Enclosure

CC: Messrs. E. M. Voorhees
J. P. Kottcamp (PERS.&CONF.-
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General Headquarters
October 21, 1936

Mr. S. A. Williams,
Vice-President.

Ill. Legis

Re: New Illinois Diseases Act

I have advised you on several occasions that, under the Illinois law and court decisions in effect today, we can avoid all potential future liability as to those employees who may have incipient dust disease by discharging them within sixty days after October 1, 1936. The new Act provides that employees have no right under the Act unless they have been exposed during sixty days after its effective date. They have no right at common law, this fact having been established in Vogel vs. Johns-Manville Products Corp. and in the case of McCreery vs. Libbey-Owens-Ford. Neither is there any chance that such employees could bring an action under Section 2 of the old Occupational Diseases Act upon the theory that the dust to which they were exposed was "poisonous" since that law was repealed as of October 1st. In other words, such employees would be entirely without a right of action against us if released before they had accumulated an exposure of sixty days or more.

I did not at any time recommend that such employees be discharged wholesale but I felt it my duty to call these facts to your attention for such action as you might determine upon after giving proper consideration to other factors.

I have discussed with Mr. Heth, with Mr. Clarke and with the Illinois Manufacturers Association, the interpretation I have placed upon the law and I find there is no conflict of opinion. Mr. Clarke advised Mr. Kottcamp that the Supreme Court would be very much tempted to reverse the position taken by it in the Vogel and McCreery cases if employers in Illinois should resort to this device in order to escape liability; however, he does not differ with me in his interpretation of the law as it exists today. He merely thought it not only conceivable but somewhat probable that the Supreme Court could, under certain circumstances, be induced to reverse itself, one of such circumstances being the sympathy it would feel for the employees if hundreds of them should be relegated to the scrap heap by callous employers taking advantage of their temporary legal immunity.

There is another way in which the employer may minimize or eliminate the prospect of future liability to those employees

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who have the disease at this time. The law provides that the employer shall not be liable unless he has exposed the employee "during a period of sixty days or more after the effective date of the Act". If, during the sixty day period, the employees are given work which does not involve exposure to thedust hazard, the foregoing provision is just as applicable as if the employee had been fired. Shifting the employee to non-hazardous work prior to the expiration of the first sixty days and keeping him engaged on such work during the remainder of his employment will result in a situation where "the employee was not exposed during the period of sixty days or more after the effective date of this Act to the hazard of such occupational disease".

VANDIVER BROWN
Legal Department

VB:T

CC: Messrs. E. M. Voorhees
J. P. Kottcamp (Pers.&Conf.-Add.Only)

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