General Headquarters
July 15, 1936

Mr. S. A. Williams,
11th Floor.

Re: Dust Diseases - New Illinois Law

As you have already been advised, a series of decisions by the Illinois Supreme Court has established that an employee has no common law right of action against an employer for damages occasioned by dust disease contracted in the course of employment; nor do employees have any right under any existing Illinois statutes to sue an employer in the courts for this type of disease.

There is a possibility, however, that employees still have a right to bring an action before the Industrial Commission under Section 2 of the old Occupational Diseases Act which has not as yet been held unconstitutional. Whether they have this right or not will probably be determined before the year is out. A decision that compensation for a dust disease could be secured under this section would involve a ruling that the dust which caused the disease was "poisonous". Sand and asbestos are not poisonous within any generally accepted meaning of that word but the courts may be inclined to stretch its meaning or give it a new significance in order to prevent employees who may have acquired the disease prior to the effective date of the new Act from being entirely without remedy. If this should occur, however, the determination of the existence of the disease and the extent of the disability will be determined by the Industrial Commission and not by a jury and the awards will be limited to the compensation rates prescribed by statute. The bait which produced the "racket" no longer exists and from all appearances the "racket" is dead.

The new Occupational Diseases Act does not become effective until October 1, 1936. No employee will have any right under this new act to file a claim for disability or death resulting from asbestosis or silicosis unless exposed "during a period of sixty (60) days or more after the effective date" of the Act (Section 25).

As you will see from the foregoing, there is a possibility that employees who have contracted pneumonoconiosis prior to October 1, 1936 may be entirely without remedy. They will be if (a) the dust producing the disease is held to be non-poisonous and Section 2 of the old Act for that reason inapplicable, and (b) they are unable to show exposure for a period of 60 days after October 1, 1936. Accordingly, there is a good chance that employers in Illinois will be in a position, provided they take appropriate action, to start out on October 1, 1936 with an entirely clean slate in so

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far as potential liability in any form for dust disease theretofore contracted by their employees is concerned. The employer may ~~thereby~~ minimize, if not completely eliminate, this potential liability for years to come by (1) taking steps, on or before November 29, 1936, to remove from the payroll all employees who, as a result of exposure prior to that date, have contracted pneumonoconiosis in its incipient stages or have a record of exposure which might be calculated to produce the incipient stages, and (2) by taking effective steps to eliminate dust at all points where created in quantities sufficient to constitute a hazard. A rare opportunity for a thorough clean-up is thus presented in Illinois; however, in deciding whether to avail ourselves to the fullest of this opportunity consideration will doubtless have to be given to the social as well as to the purely dollars and cents aspects involved.

VANDIVER BROWN
Legal Department

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CC: Mr. E. M. Voorhees