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File A-3-b Asbestos - General AIA

PLAINTIFF'S EXHIBIT
UC-2229

September 2, 1983

Memorandum For: MEMBERS

Subject: Forwarding of copy of AIA/NA letter dated Sept. 1 to Secretary Donovan and Assistant Secretary Auchter

At a meeting of the AIA/NA Executive Committee yesterday, it was agreed that a letter should be sent to Labor Secretary Raymond Donovan and to OSHA Head Thorne Auchter outlining reasons why the Association considers that issuance of an emergency temporary standard on asbestos would not be in the best interests of all parties concerned.

A copy of the letter is enclosed and invited to your attention.

As reported in the News & Notes of August 31, Donovan was briefed on the asbestos issue on August 29 and, according to his office, is expected to reconsider the matter next week. The News & Notes also reports that Auchter will be a speaker at the Association's industry-government conference scheduled for September 20-21.

B. J. Pigg
Executive Director

Enclosure

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ASBESTOS INFORMATION ASSOCIATION
NORTH AMERICA
1745 Jefferson Davis Highway, Crystal Square 4, Suite 509
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September 1, 1983

BY HAND

The Honorable Raymond J. Donovan
Secretary of Labor
Department of Labor
Room S2018
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Mr. Thorne G. Auchter
Assistant Secretary
for Occupational
Safety and Health
Department of Labor
Room S2315
200 Constitution Ave., N.W.
Washington, D.C. 20210

Dear Secretary Donovan and Assistant Secretary Auchter:

The Asbestos Information Association/North America (AIA/NA) is concerned by recent press reports that OSHA is considering issuance of an Emergency Temporary Standard (ETS) for asbestos. OSHA has had an outstanding permanent standard proposal since 1975; the Agency has been actively preparing to reactivate the proposal since last spring; and Assistant Secretary Auchter told a House Subcommittee on June 28, 1983, that no asbestos ETS would be issued because a full airing of the asbestos evidence should occur before any new regulations are issued. Accordingly, depriving interested parties through an ETS of the full due process rights of a permanent rulemaking cannot be legally or substantively justified. Moreover, issuance of an ETS would serve the interests of neither industry, labor nor the Agency and would significantly reduce the likelihood that OSHA will develop a permanent asbestos standard that is reasonable, cost-effective and meaningful to the protection of worker health.

AIA/NA met with Assistant Secretary Auchter shortly following his arrival at OSHA in the spring of 1981. As our April 1, 1981, letter indicated, AIA/NA has for several years been urging OSHA to initiate a rulemaking to develop an improved asbestos standard, which, inter alia, would prescribe work practices for use of asbestos-containing products at

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construction worksites in order to implement meaningful reductions in asbestos exposures at non-fixed locations for the first time. In urging OSHA attention to an improved standard, we supplied a copy of AIA/NA's comprehensive "Recommended Standard for Occupational Exposure in Construction and Other Non-Fixed Operations," which had initially been submitted to the Agency in 1980, and which we updated and resubmitted in April 1983.

AIA/NA's initiatives were but the most recent of a long line of constructive activities by the Association going back to 1975 to assess and improve regulation of asbestos. During this eight year period, there have been repeated reviews of the medical, monitoring and technology data bases, not only in the United States, but in many countries around the world.

From the numerous reviews of asbestos over many years, AIA/NA can find no evidentiary basis for an emergency standard today. Although a thorough and comprehensive assessment of the entire asbestos standard, including the permissible exposure level, is clearly warranted and welcomed by AIA/NA, no recently discovered evidence would justify precipitous measures. In addition, continuing efforts by the asbestos industry since 1975 have resulted in progressively lower exposure levels in most worksites. The Supreme Court and various courts of appeal have held OSHA's authority to issue an ETS is "narrowly circumscribed" to circumstances where there is an "obvious need for quick response to new health and safety findings."*/ The asbestos data do not provide the basis for exercising such extraordinary authority.

More significant than the absence of a rationale for emergency action is the likelihood such an initiative would foreclose or seriously delay development of meaningful long-term controls. As AIA/NA noted in its April 15, 1983, letter to Assistant Secretary Auchter, a thorough assessment of the medical, monitoring and technology evidence to develop a meaningful control strategy is best accomplished through a rulemaking in which all interested parties participate

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*/ Industrial Union Dept., AFL-CIO v. American Petroleum Institute, 448 U.S. 607, 651 (1980); Florida Peach Growers Assn. v. Dept. of Labor, 489 F.2d 120, 129-30 (5th Cir. 1974).

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fully. Among other things, such a rulemaking would make possible the necessary peer review of OSHA's asbestos risk assessment and the crucial assumptions upon which it relies. More significantly, only after a consideration of the many variables affecting asbestos regulation--including the varying means of addressing asbestos risks in different worksites ranging from primary manufacturing through secondary manufacturing and construction and other user environments to potential exposure to in-place asbestos--will it be possible to design a standard that most effectively eliminates any significant risks. AIA/NA is willing and anxious to work with OSHA and other interested parties to assess those varying situations. We fear that issuance of an ETS would channel efforts of all parties toward contentious disputes about the emergency standard rather than toward cooperative efforts to develop a reasonable permanent solution.

In sum, AIA/NA believes OSHA and all interested parties would be ill-served by issuance of an ETS. We urge the Agency to discard such an initiative and instead to concentrate its on-going efforts toward developing a reasonable, cost-effective permanent asbestos standard that will provide meaningful protection of worker health. AIA/NA therefore urges OSHA to convene tripartite government/labor/industry deliberations to seek cooperative development of such a permanent standard in an expedited manner. If you would like any further information, please contact me or our Special Counsel, Edward W. Warren of Kirkland & Ellis (202-857-5018).

Sincerely yours,

B. J. Pigg
Executive Director

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