PLAINTIFF'S EXHIBIT
UC-3907

COMMENTARY ON MEMORANDUM OF APRIL 30, 1975
ON OSHA REGULATIONS-ASBESTOS USE WARNINGS

The commentary on the letter has been done in two parts; one covers the letter itself and the other presents specific remarks on the five recommendations. The memorandum opens with a discussion of §402A liability as it applies to a "defective" product. We are not selling a "defective" product so it is not clear how this is relevant to our problem. The real heart of the matter would seem to lie with comments k and l, i.e.,

> "recognition has been given to those products which are inherently dangerous, incapable of being made safe, and yet their utility to the consumer market counter-balances the risk."

There are two portions of this statement which deserve careful examination, 1) "incapable of being made safe," and 2) "consumer market." If "consumer market" means the general public, that is the type of end use now being studied by the CPSC and the FTC. Very little of our product reaches this market without being materially altered in ways to reduce the potential to produce airborne dust. If "consumer market" means industrial users the situation is obviously different. We need an interpretation of this relative to where our warnings should go.

The phrase "incapable of being made safe" also presents an interesting consideration. Dry, open, asbestos fiber has a definite tendency to become airborne when handled. We have a great deal of data that shows that our asbestos can be handled in a way that the airborne fiber levels are below the OSHA limits. The potential is constantly present, however, that the material can be mishandled to exceed these levels by a substantial amount.

It is technically feasible to treat our opened products to greatly reduce or eliminate their potential to cause airborne dust under normal handling situations (except abrasion when held by certain binders). One of our competitors, Johns-Manville, has already done this with a product used in the drilling industry and the patent literature contains a substantial amount of information on other applications. It would seem to me that treating our products to make them virtually dustless would be an outstanding defense under general liability. On the other hand, failure to do so, particularly in areas where others have, might leave us wide open to charges of defective product; i.e., one which could be rendered safe but was not, regardless of the extent of our warnings. Commentary on this by counsel is suggested.

The next section of the letter where a question occurs is in the discussion of compliance with OSHA regulations as a defense against strict liability. A number of cases "brought by a private citizen" are cited and the statement is made that "Section 16 of the OSHA regulations provides that states may assume jurisdiction where OSHA does not apply." This leads to the critical conclusion that we must do considerably more than comply with OSHA to avoid responsibility under strict liability.

The mention of "private citizen" and "where OSHA does not apply" leads to the following areas that need clarification:

1. Do the cases cited cover the situation where the exposure causing the alleged injury took place only in the industrial situation and where the appropriate state or federal regulations were complied with?

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