PLAINTIFF'S EXHIBIT

UC-5435a

PREPARED TEXT -

ORAL PRESENTATION BEFORE THE

CALIFORNIA STATE OCCUPATIONAL SAFETY

AND HEALTH STANDARDS BOARD

AUGUST 30, 1979

TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
(Asbestos)

Held in San Diego, California

on

August 30, 1979

Union Carbide Corporation
Metals Division
Niagara Falls, NY 14302

UCASB00658612

Introduction

My name is John L. Myers and I am employed by Union Carbide Corporation as Marketing Manager for its "Calidria" asbestos products. Union Carbide produces about 30,000 tons per year of asbestos fiber from a mine and mill located in the King City area of California. The operation employes approximately 70 people with an annual payroll of nearly $2,000,000 and is the largest industrial employer in a radius of about 50 miles.

We produce and market raw asbestos fibers for industrial use but do not manufacture finished asbestos-containing products. Our plant has had complete air monitoring and medical surveillance programs since operations were initiated in 1963. Our interest in the proposals to change the "action level" for monitoring and medical examinations is because these changes can have a massive impact on the users of asbestos-containing products with, we believe, little or no gain in worker protection.

Changes in Section (8) - Monitoring and Recordkeeping

The staff proposes to reduce the level in paragraph (g)(1)(A) at which monitoring is required from 1 fiber/cc >5μ to 0.1 fiber/cc >5μ. The question of the appropriate "action level" to trigger monitoring and also medical examinations was discussed at the standards Board hearing on April 26, 1979. At that time, there was general agreement among labor, industry, and even state governmental representatives that a level of 0.5 fibers/cc longer than 5μ was reasonable. This level was based on considerations of worker protection, ability to measure, and an efficient allocation of professional resources. This level was adopted unanimously by the Board.

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Subsequent to this action, on May 10, 1979, the Federal OSHA Regional Administrator, Mr. Gabe Gillotti, informed Mr. Don Vial by letter that this action by the Board was "unacceptable . . .Your asbestos exposure language will need to be identical to Federal OSHA" and quoted OSHA Program Directive #300-16 as the basis for this requirement.

Mr. Gillotti's letter was a surprise since California has a state plan which has been fully approved "as effective as" the Federal regulation in accordance with Section 18(e) of the OSHA Act and under Part 1902 of the implementation regulations. There has been no change in the Federal Regulations. 19CFR 1910.100 1 (j)(2), (3) or (4) which would require their incorporation into the State Regulations in accordance with Section 18 of the OSHA Act.

We discussed this with John W. Whittlesey, Esq. a Union Carbide Counsel specializing in OSHA matters. He has authorized the following opinion and will be glad to provide a written confirmation if the Board desires one.

1. Program Directive #300-16 is an administrative interpretation only. As such it does not have any regulatory or statutory authority.
2. California may elect to modify their regulations to conform but are under no statutory requirement to do so.
3. Failure to conform to such an Administrative interpretation does not provide the "substantial evidence" required under Section 18(g) of the OSHA Act to sustain a withdrawal of certification.
4. The authority delegated to the Regional Administrator under paragraph 1953.4 (a)(2) relates to inconsistent interpretations of standards as they exist. It does not require standards which have been certified "as effective as" to be modified to conform identically.

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California is not required to change their present regulations to conform to the Federal wording. The choice is up to the Standards Board.

There are at least two reasons why the Board should retain the present action level of 1 fiber/cc or at most lower it to 0.5 fibers/cc.

1. The very large burden on resources to comply with (and enforce) a 0.1 fiber/cc level.
2. The inability to measure the airborne concentration at this very low level.

Significant releases of asbestos fiber must take place before the 1 fiber/cc >5μ current action level is exceeded. It is fairly easy to ascertain where initial monitoring does not need to be conducted and unnecessary action can be minimized. If, on the other hand, the California Asbestos Standard is changed to require monitoring at a level of 0.1 fiber/cc, virtually every place of employment where asbestos is present in <u>any</u> form must be monitored at least once.

Brake repair shops provide a specific example of the scope of the problem. Molded brake linings contain asbestos. Airborne fibers can be released when they are sanded, machined, or when the drum is blown out with compressed air. It has been shown that airborne asbestos concentrations can be controlled to low levels by careful handling, proper work practices and the use of vacuum cleaners to remove dust.

There are over 20,000 brake repair shops in California, the majority of which are service stations. A survey of 100 shops was made by CAL/OSHA some months ago and it is our understanding that it was found that a low level of airborne fiber is common but exposures above one fiber per cc are rare. Generally, the higher levels occured at the large truck repair shops where such things are blowing and sanding have been practiced without proper dust control. If the proposed action level is adopted, all of these shops, which are generally small businesses, would be required to monitor at least once.

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We recently asked two industrial hygiene consulting laboratories the cost to conduct a basic "initial monitoring" for a relatively simple operation like a brake shop. Both gave a range of $300-$500 per test. These figures do not include travel and living expenses or provide for any significant extra technician travel time to the test site which can occur frequently.

Applying a representative value of $400 to the approximately 20,000 registered brake shops gives a cost of $8,000,000 added to the operating expense of this industry to comply with the new regulation. Each inspection would also use up about two man-days of the time of trained personnel. If we assume 200 man-days as equivalent to a working year, it would take the full-time activity of 200 trained technicians to carry out the monitoring in a year. We doubt if this quantity of people and equipment is available. The main information obtained from such a massive test program would be that exposures are generally above zero, and below one fiber/cc, which is already quite well established.

This discussion has emphasized brake shops because they are a well defined entity, already registered and identifiable. The same problem exists for the widespread low exposure in the less well defined construction industry. There is also an additional compounding factor in construction in that the "place of employment" changes a number of times a year so that continuous monitoring at frequent intervals would be required. The brake shops may really be only the tip of a very large iceberg.

Changing the initial monitoring action level to 0.1 fiber/cc would place a very heavy cost burden on the employer, require a massive use of limited technical resources in an area of low exposure and consequently low risk, and give a very questionable return in terms of worker protection. We recommend that your present standard be retained.

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The second reason not to change to a 0.1 fiber/cc action level regards the ability to measure this concentration and I would like to ask my colleague, Dr. Rhodes, to discuss this aspect.

(j) Medical Examinations

The staff has proposed that the requirements for medical examinations be changed from the present one fiber/cc TWA "action level" to 0.1 fibers/cc >5μ as an eight-hour time-weighted average. It is instructive to continue with the brake shops as an example of the potential impact of the proposed regulations on this small-business oriented industry. It has been our observation that a local filling station is likely to have a couple of young mechanics who handle the brake repairs along with other general repair work. The larger franchise type shops may have a dozen or more people who repair brakes with some frequency.

For estimating purposes, it will be assumed that there will be two persons per shop for a total of 40,000 persons requiring pre-employment and annual medical examinations under the new proposed regulations. This does not allow for employee turnover.

Dr. Clark Cooper, who supervises the joint union-employer medical surveillance program for Western Department of the Asbestos Workers Union, has provided an estimate of $60-75 per man for a minimum physical examination to satisfy OSHA requirements. This is on a large-scale contract basis conducted by well qualified personnel. Examinations of an individual or small groups, as would probably be the case for brake repair shops, would increase the costs to approximately $100 each. These costs do not include time spent away from the job to obtain the examination.

At a conservative $50 each, the medical examinations could cost $2,000,000 annually and, obviously, double this to $4,000,000 annually at the

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higher unit cost. This discussion, as with monitoring, emphasizes the brake shops. The less well defined construction industry is faced with the additional complications of a transient workforce and moving workplaces.

Although this is clearly a very large cost burden, the fundamental question is not the cost per se, but what is accomplished in terms of worker protection. Although it is admittedly controversial as to what exposure level is "significant", we believe that the present California level of one fiber/cc TWA, or some level in that general vicinity, such as 0.5 fibers/cc is reasonable and meets the California objective of a standard which is enforceable and makes a positive contribution to worker health. The lowering of this level to 0.1 fiber/cc would require a large new investment in time, money, and people by both the employer and the state compliance operation for which we see little if any return in terms of worker protection. We urge you not to make this change.

General Comments

1. Why are the proposed changes a unique problem in California?

It has been noted several times that the proposed changes would make the California standard the same as the Federal standard which is administered by the Federal Government in 26 states. The very legitimate question has been asked as to why a standard which has been in effect for seven years will present a serious problem if it is now adopted in California. The answer is basically very simple; although the Standard has been in effect for seven years there has been almost no Federal enforcement in the asbestos product user areas that would be most seriously impacted by the 0.1 fiber/cc

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action level. This would no longer be the case in the more comprehensive California state industrial health activities, so we believe that the compliance and enforcement problems described earlier would soon become clearly evident.

The statement on Federal enforcement is based on a computer printout of all Federal asbestos inspections over a 30 month period from October 1976 through January 1979 that was supplied by OSHA to the Asbestos Information Association/North America. Details are included in Attachment I. In this 30-month time period there was a total of 17 inspections, of brake repair operations basically on large auto dealerships, relative to asbestos. There are about 250,000 brake shops in the country with roughly half estimated to be in states where Federal OSHA is the primary compliance enforcement.

The construction industry has also been mentioned in connection with enforcement and potential impact. The U.S. Department of Commerce published a census of the construction industry for 1972 which showed a total of about 430,000 construction establishments with an employment of about 3,500,000 construction workers.

It is not well defined how many of these establishments use asbestos-containing materials and at how many locations per year they work. Considering that over 60% of the asbestos used in the U.S. is in construction products, the number of both people and work locations could be substantial. The printout mentioned earlier shows a total of 173 asbestos-related inspections in the construction industry in the 30-month period. Considerably more time has been spent in the construction industry than in brake shops to make general inspections but it is clear that only a minute fraction of possible asbestos containing locations has been inspected.

It should be emphasized that the information presented is not intended to be a criticism of the Federal activities or the allocation of the resources

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that have been made available to them. OSHA has statutory priorities to consider. It is provided to document the fact that regardless of the reason, the brake repair industry has been subject to virtually no enforcement of the 0.1 fiber/cc action level requirement for monitoring and medical examinations, and the situation is little different in the construction industry. There is no evidence that these provisions are reasonable and workable in the states under Federal administration since they have not been actively enforced on a wide basis.

In contrast to this, the State of California has supplemented their OSHA activities with the Carcinogenic Substances Control Act, a registration provision, a Carcinogens Control Unit, an active consultation program and an experimental voluntary labor-industry joint program. We believe that the incorporation of a 0.1 fiber/cc triggering level into this comprehensive compliance program would soon reveal the gross impracticality of such a level and urge that it not be done.

Concluding Statement

In conclusion, we wish to make certain that the Board has not been left with the impression that Union Carbide is opposed to monitoring and medical surveillance. Union Carbide strongly supports the need for both of these activities where significant asbestos exposures occur. Our plant employees have been provided with regular medical examinations since the plant opened in 1963.

Although it is admittedly controversial as to what exposure is "significant" we believe that the present California level of one fiber/cc TWA, or some level in that general vicinity, such as the 0.5 fiber/cc level adopted by the Board at the April 26, 1979 hearing, is reasonable and meets the California objective of a standard which is enforceable and makes a positive contribution to employee health. To lower this level to the extreme of 0.1 fiber/cc TWA will

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extend monitoring and medical examination requirements to about 20,000 brake shops and quite probably an even larger number of construction sites where exposures are generally low. The return, in terms of worker health, on the large new investment of time, money and people by both the employer and the state compliance operation is very questionable and limited technical resources are diverted from more urgent higher risk situations. We urge you to retain your present well written standards for asbestos and not to make the proposed changes that would return them to an outdated Federal requirement.

Thank you for the opportunity to express our concerns.

/dal 8/27/79

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BAKER BOTTS L.L.P.

ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS
77002-4995
713.229.1234
FAX 713.229.1522

AUSTIN
BAKU
DALLAS
HOUSTON
LONDON
NEW YORK
RIYADH
WASHINGTON

November 21, 2002

002696.A048

Cynthia Crawford
713.229.1458
FAX 713.229.2758
cynthia.crawford@bakerbotts.com

Mr. Scott L. Frost
Baron & Budd
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219-4281

Re: All Baron & Budd asbestos cases in Texas

Dear Scott:

We have conducted a search for the documents requested in your October 8, 2002 letter and attach the following documents which may be responsive to your request:

UCASB00658612 – 21

UCASB00889028 – 32

UCASB00113389 – 96

UCASB01287463 – 70

UCASB00521247 – 49

UCASB00704422 – 29

If you have any questions, please do not hesitate to contact me.

Sincerely,

Cynthia Crawford

:3089
Enclosures
cc: Siobhan Handley
Gary Elliston
Tina Stamps

HOU02:904120.1

ITEM F

(G)

PLAINTIFF'S EXHIBIT

UC-5435b

ORAL PRESENTATION BEFORE THE

CALIFORNIA STATE OCCUPATIONAL SAFETY

AND HEALTH STANDARDS BOARD

AUGUST 30, 1979

TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
(Asbestos)

Held in San Diego, California

on

August 30, 1979

John L. Myers
Union Carbide Corporation
Metals Division
Niagara Falls, NY 14302

UCASB00889028

My name is John Myers and I am employed by Union Carbide Corporation as Marketing Manager of its "Calidria" asbestos products. I have been involved with our asbestos business for 13 years. We produce about 30,000 tons per year of asbestos fiber from a mine and mill located in the King City area of California. We instituted air monitoring and medical surveillance programs with the startup of the plant in 1963 and have invested the necessary funds to remain in compliance with existing regulations.

We produce and market raw asbestos fibers for industrial use only. We do not manufacture any finished asbestos-containing products. Our interest in your proposal to change the "action level" for monitoring and medical examinations is because these changes can have a massive impact on the users of asbestos-containing products with little or no gain in worker protection.

The question of the appropriate "action level" to trigger monitoring and also medical examinations was discussed at the Standards Board hearing on April 26, 1979. At that time, there was general agreement among labor, industry and some state governmental representatives that an action level of 0.5 fibers/cc was reasonable, practical and enforceable. This level was based on considerations of worker protection, ability to measure, and an efficient allocation of professional resources. This level was adopted unanimously by the Board.

Soon after the Hearing and before the Board meeting to finally approve the new action level, Federal OSHA advised Mr. Vial by letter that the Board's action was - I am quoting - "unacceptable -- your asbestos exposure language will need to be identical to Federal OSHA" - close of quote. He quoted OSHA Program Directive #300-16 as the basis for his statement. California has a state plan approved "as effective as" the Federal regulation. There has been no change in the Federal Asbestos regulations which would require a change in the California regulations in accordance with section 18 of the Occupational Safety & Health Act. Following is a summary of an opinion from a Union Carbide attorney who specializes in OSHA matters. The complete text of his opinion is available to the Board. (Copy given to Hearing Recorder.)

He makes these points:

1. Program Directive #300-16 is an administrative interpretation only and has no regulatory or statutory authority.

2. California is under no statutory requirement to modify their regulations.

3. Failure to conform to such an Administrative interpretation does not provide the "substantial evidence" required under Section 18(g) of the OSH Act to sustain a withdrawal of certification.

4. The authority delegated to the Regional Administrator under paragraph 1953.4 (a)(2) relates to inconsistent interpretations of existing standards. It does not require standards which have been certified to be modified to conform identically.

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To summarize, California is not required to change their present regulations to conform to the Federal wording. The choice is up to the Standards Board.

There are two basic reasons why the Board should retain the present action level of 1 fiber/cc.

1. One is the very large burden on resources to attempt to comply with, and enforce, an action level of 0.1 fiber/cc.

2. The second is the inability to measure the airborne concentration at this very low level.

Under your current standard, it is fairly easy for a knowledgeable employer or state compliance officer to determine if monitoring is required. If monitoring is required at a suspected level of 0.1 fiber/cc, virtually every place of employment where asbestos is present in any form or product must be monitored.

Brake repair shops provide a specific example of the scope of the problem. Airborne fibers can be released when brake linings are changed and reworked. But it has been shown that airborne asbestos concentrations can be controlled by training workers and using proper work practices. There are over 20,000 brake repair shops in California, the majority of which are service stations. If the proposed action level is adopted, all of these shops would be required to monitor or they could be subject to a citation and/or fine for non-compliance.

A conservative estimate for a simple initial monitoring is $400. This times 20,000 shops is $8,000,000, added to the operating expense of the brake repair industry in California. It would take an average of 2 man-days for trained personnel to conduct each test. Using 200 working days in a year, it would take the full-time activity of 200 trained technicians to monitor the brake shops in a one-year period. The people and equipment are probably not available - and what would be learned from this massive program? That brake shop TWA's are generally above zero and below 1 f/cc - this is already well established.

I have discussed brake shops because they are a well-defined entity, already registered in the state of California. A more difficult problem exists in the construction industry because of many more work locations, most of them constantly changing. We have not attempted to determine the cost or number of technicians which would be required for initial monitoring at a 0.1 f/cc action level in the construction industry, but they would obviously be very large.

Changing the initial monitoring action level to 0.1 would increase operating costs and require a massive mis-use of limited technical resources. And would worker protection be improved? We think little, if any at all.

The second reason not to change to a 0.1 action level regards the technical problems involved with measuring this concentration. With your permission I would like to have Dr. Rhodes discuss this aspect.

Response to Mr. O'Hara's Request for Comments on 5208 (j)(1), p. 8 of 11 -

John Myers - Union Carbide Corporation. We can continue to use brake shops as an example of the potential impact of the proposed change in action level for medical surveillance. A filling station is likely to have 2 or 3 mechanics

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who handle brake repairs along with other general work. Larger specialty shops may have a dozen or more people who repair brakes with some frequency, and other workers could be in the general vicinity of the work. Let's assume there are only two mechanics in each of the 20,000 registered brake shops, or a total of 40,000 persons requiring pre-employment and annual medical examinations under the proposed regulations.

Dr. Clark Cooper, who supervises the joint union-employer medical surveillance program for the Western States Conference of the Asbestos Workers Union, has provided an estimate of $60-75 per man for a minimum physical examination to satisfy OSHA requirements. This is on a large-scale contract basis conducted by well qualified personnel. Examinations of an individual or small groups, as would probably be the case for brake repair shops, would increase the costs to at least $100 each. These costs do not include time spent away from the job to obtain the examination. At a very conservative $50 each, for only 2 employees per shop, the medical examinations could cost $2,000,000 annually. Using the higher unit cost and more workers per shop would increase the total cost by millions of dollars.

The construction industry is faced with the additional complications of a much larger and very transient workforce and many more workplaces, most of which change several times per year. Although this is clearly a potential cost burden, the fundamental question is not the cost, but what is really accomplished in terms of worker protection. Dr. Cooper will speak to this issue.

We believe that the present California level of one fiber/cc is reasonable and meets the California objective of a standard which is enforceable and makes a positive contribution to worker health.

We have been asked why a standard which has been administered by Federal OSHA in 26 states for seven years would now be a problem if adopted in California. The answer is very simple: although the Standard has been in effect for seven years there has been essentially no Federal enforcement in the asbestos product user areas that would be most seriously impacted by the 0.1 action level. Since California's industrial health activities are much more comprehensive, the compliance and enforcement problems described earlier would soon become clearly evident.

The statement on Federal enforcement is based on a summary of Federal asbestos inspections from October 1976 to January of 1979. In this 30 month period (that's 2-1/2 years), there were 17 inspections of the estimated 125,000 brake shops in the states where primary enforcement is by Federal OSHA. Seventeen of 125,000 - and 16 of these were the result of complaints. This means that one inspection may have been conducted to determine if the shop exceeded 0.1 fibers/cc - in 2-1/2 years.

Over 60% of the asbestos used in the U.S. is in some type of construction product and the U.S. Dept. of Commerce has estimated there are 430,000 construction workplaces and 3-1/2 million workers (this is based on a 1972 census). There were only 173 asbestos-related OSHA inspections of this type work location in the same 2-1/2 year period. It is clear that only a minute fraction of workplaces which may emit over 0.1 f/cc has been inspected. I want to emphasize that this information is not a criticism of Federal activities or the allocation of resources which Congress has made available to them. They have many statutory priorities and other committments. We simply want to document the fact that, regardless of the reason, there has been essentially no enforcement of the 0.1 action level for monitoring and medical surveillance.

UCASB00889031

Since this provision has not been enforced on a national basis there is absolutely no evidence that it is reasonable or workable. Why should California "follow the leader" and adopt a provision that in all probability will not be complied with or enforced.

In addition to practical and enforceable asbestos standards, the state of California has supplemented their activities with the Carcinogenic Substances Control Act, a registration provision, more restrictive repeat monitoring, a Carcinogens Control Unit, an active consultation program, and an experimental, voluntary labor-industry joint education program. We believe that the California overall program is easily "as effective as" and probably "more effective than" the Federal activities.

In conclusion let me state emphatically that Union Carbide is not opposed to monitoring and medical surveillance. We strongly support the need for both of these activities where significant exposures occur - or where they have occurred in the past. We have strongly supported California's limited asbestos education program and would support a more active program. We believe training and education are vitally important for improved worker protection and a safe working environment. We urge you to retain your present standards and not adopt changes that would make parts of them impractical to comply with and enforce.

Remember that it is your decision - you have no legal or statutory obligation to adopt the Federal OSHA language in your regulations.

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BAKER BOTTS LLP

ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS
77002-4995
713.229.1234
FAX 713.229.1522

AUSTIN
BAKU
DALLAS
HOUSTON
LONDON
NEW YORK
RIYADH
WASHINGTON

November 21, 2002

002696.A048

Cynthia Crawford
713.229.1458
FAX 713.229.2758
cynthia.crawford@bakerbotts.com

Mr. Scott L. Frost
Baron & Budd
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219-4281

Re: All Baron & Budd asbestos cases in Texas

Dear Scott:

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Sincerely,

Cynthia Crawford

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Enclosures
cc: Siobhan Handley
Gary Elliston
Tina Stamps

HOU02:904120.1

PLAINTIFF'S EXHIBIT

UC-5435c

PREPARED TEXT -

ORAL PRESENTATION BEFORE THE

CALIFORNIA STATE OCCUPATIONAL SAFETY

AND HEALTH STANDARDS BOARD

MAY 29, 1980

TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
(Asbestos)

Held in Fresno, California

on

May 29, 1980

A 19133

J. L. Myers
for

Asbestos Information Association/North America
1745 Jefferson Davis Highway
Crystal Square 4, Suite 509
Arlington, VA 22202

UCASB00113389

(1)

My name is John L. Myers and I am employed by Union Carbide Corporation as Marketing Manager for its "Calidria" asbestos products. I am speaking today for the Asbestos Information Association/North America (AIA/NA). The AIA/NA is an association of more than 50 companies engaged in the mining and processing of asbestos and asbestos-containing products.

Changes in Section 5208(c)(2) - (Housekeeping)

The DIR has solicited comments from the Ad Hoc Advisory Committee on three proposed changes in wording for this section:

Proposal #1: Asbestos spills and debris shall be cleaned up promptly.

Proposal #2: Asbestos spills or debris generated from any process or handling procedure shall be cleaned up promptly.

Proposal #3: All surface concentrations of asbestos shall be cleaned up promptly.

It appears that the intent of these changes is to make it clear that not only spills of raw commercial fiber but also the debris generated from the processing or handling procedures applied to asbestos-containing products are included in the cleanup requirements. The first two proposals would appear to do this as long as the word "asbestos" is taken to modify both "spills" and "debris". This simple extension to "debris", however, fails to recognize that it is not the debris per se but its potential as a source of airborne fiber that is the real basis for special treatment.

The third suggestion is similar to, but much broader than the present Federal requirement, i.e. it contains no limitation regarding the airborne fiber potential of the surface concentrations. This would mean that a construction site where moderate amounts of asbestos-containing products are used would have to be operated dust-free in the manner of a pharmaceutical factory. We do not believe that this is practical, reasonable, or necessary.

A19134

UCASB00113390

This kind of problem was considered at length several years ago by the Advisory Committee that developed the reporting requirements now contained in Paragraph (f) of Section 5208. The following wording based on (f)(1) is proposed:

"Asbestos spills or debris generated from any operation or process requiring reporting under Paragraph (f)(1) of this Section shall be cleaned up promptly."

Good housekeeping is important on any job but there should be a ~~solid~~ sound justification for the extensive additional requirements of "prompt" cleanup that this regulation imposes. We believe that the wording suggested will provide appropriate limitations that are consistent with the other parts of the California Asbestos Standard. It will also meet the criteria of reasonable, enforceable, and "positive benefit in protecting worker health" that we understand the Board wants in ~~likes to apply to the~~ Standards that it develops.

A19135

UCASB00113391

Repeal Subsections j(1)(A) and (B) and Adopt New Wording for these Subsections

Subsection (j)(1)(B):

The DIR has proposed to add requirements for sputum cytology, oblique X-rays, and reading of X-rays by the ILO classification to this subsection. With regard to sputum cytology, the appropriateness of the addition of this test to the medical examination requirements was discussed in great detail at the Ad Hoc Advisory Committee meetings. Substantial documentation from independent experts was presented to show that it has not been demonstrated that the use of sputum cytology has any significant impact on longevity. The current situation is well summarized in a report of a "Consensus Conference on Screening for Lung Cancer" held in September 1978. The report (Attachment I) is signed by Diane J. Fink, M.D., Director, Division of Cancer Control and Rehabilitation and Arthur C. Upton, M.D., Director, National Cancer Institute and is attached for the record. The conclusions are both directly relevant and brief as follows:

1. Current prospective studies of asymptomatic individuals who have been screened for lung cancer by chest X-ray examination and sputum cytology do not at present show any evidence of a significant reduction in mortality from the disease. These studies must be continued for several more years before the accumulated information will be sufficient to allow a relationship between screening and mortality to be determined. Results of these studies should be kept under continuing review. (Emphasis supplied)
2. Until the value of screening for lung cancer by these methods has been demonstrated, mass screening programs should be limited to well-designed, controlled studies, with provision for analysis of results, and for further diagnostic work-up and treatment, when indicated. (Emphasis supplied)

A19136

UCASB00113392

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3. While some screening programs for lung cancer have been initiated among workers in certain industries, caution is strongly recommended in starting any new ones. Screened workers cannot be assured of an overall benefit on the basis of existing data. (Emphasis supplied)

4. None of the above recommendations on the application of chest radiography and sputum cytology in screening is intended to apply to their diagnostic use in individuals who present to physicians with signs or symptons that suggest lung cancer.

5. Continued research on better methods of screening for lung cancer, including improvements in the methods now under trial, should be strongly supported. At present, no other techniques appear to be ready for clinical application.

6. Whether for screening or diagnosis, the control of quality in performing and interpreting chest radiography and sputum cytology is essential. (Radiographic quality can be assured through supervision by qualified radiologists. Accuracy of interpretation in screening can be enhanced through double reading of chest X-rays by appropriately trained individuals. Qualifications of cytopathologists should like-wise be assured through such measures as competency examinations and continuing education programs. Standards of performance of cytopathological laboratories should be determined by an appropriate accrediting body.) (Emphasis supplied)

In view of these unambiguous and clear-cut recommendations by the National Cancer Institute that it is not appropriate to institute widespread cancer screening programs using sputum cytology as well as extensive confirming information from a variety of other sources, it is very surprising that the DIR has recommended that it be included at this time in the California program. We

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UCASB00113393

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urge you very strongly not to take an action which goes against the recommendations of the National Cancer Institute.

Regarding oblique X-rays and Reading by ILO Classification. . .

If Dr. Kotin considers these to be important a short statement to the Board and more detailed comments for the record must be supplied by him.

Call Reis

A19138

UCASB00113394

Adopt a new Subsection (n) Covering Employee Information and Training

The content of this section was developed by the Advisory Committee and represents a consensus position. The committee discussions, however, were in the context of persons who regularly worked with asbestos and consequently could effect the level of exposure by their own actions. Such workers would also be subject to daily exposure over extended periods of time.

The question of the inclusion in the training requirement of large numbers of persons who do not work with asbestos but are only subject to occasional low exposures was not examined in any detail. Several people* have pointed out the extent of this problem at the hearings today. It is suggested that a possible workable compromise could be reached by limiting the requirement to those who actually work with asbestos or to set the triggering level at 0.5 fibers/cc in accordance with the regular monitoring requirement in Section 5208(e)(A). It should be emphasized that this would in no way alter the employer's obligation to provide medical examinations.

A19139

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Extension of Medical Surveillance Requirements to "Previously Exposed" Workers

This question was discussed extensively by the Ad Hoc Advisory Committee. Based on these discussions it is our understanding that the DIR is considering two quite different groups of "previously exposed employees":

1. Those who have been exposed to high levels many years ago before extensive controls were required.
2. Those who work under the present standards and have quite limited exposure, i.e. as little as a year, in excess of 0.1 fiber/cc >5μ.

We believe that medical surveillance for the first group is a reasonable idea provided that a practical and equitable way to conduct and finance it can be devised.

The value of medical surveillance in the protection of the health of workers who spend many years exposed at the levels set by the present standard is marginal at best. To require it for workers with only short exposures above 0.1 fiber/cc is not useful and may present more risk than the asbestos exposure itself.

Medical surveillance for workers who are no longer employees also presents huge, practical, logistical and cost problems. It is controversial whether meaningful monitoring can even be done to determine the exposure at a particular place and time at the very low level of 0.1 fiber/cc. The new requirements would make it necessary to expand monitoring efforts to determine not only the level but the cumulative exposure. Detailed records, maintained for many years would also be required. The problem of a reasonable, practical, and equitable way to administer such a program for non-employees would also need to be worked out.

A19140

UCASB00113396

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BAKER BOTTS LLP

ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS
77002-4995
713.229.1234
FAX 713.229.1522

AUSTIN
BAKU
DALLAS
HOUSTON
LONDON
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RIYADH
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November 21, 2002

002696.A048

Cynthia Crawford
713.229.1458
FAX 713.229.2758
cynthia.crawford@bakerbotts.com

Mr. Scott L. Frost
Baron & Budd
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219-4281

Re: All Baron & Budd asbestos cases in Texas

Dear Scott:

We have conducted a search for the documents requested in your October 8, 2002 letter and attach the following documents which may be responsive to your request:

UCASB00658612 – 21

UCASB00889028 – 32

UCASB00113389 – 96

UCASB01287463 – 70

UCASB00521247 – 49

UCASB00704422 – 29

If you have any questions, please do not hesitate to contact me.

Sincerely,

Cynthia Crawford

:3089
Enclosures
cc: Siobhan Handley
Gary Elliston
Tina Stamps

HOU02:904120.1

PLAINTIFF'S EXHIBIT

UC-5435d

PREPARED TEXT -

ORAL PRESENTATION BEFORE THE

CALIFORNIA STATE OCCUPATIONAL SAFETY

AND HEALTH STANDARDS BOARD

MAY 29, 1980

TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
(Asbestos)

Held in Fresno, California

on

May 29, 1980

Asbestos Information Association/North America
1745 Jefferson Davis Highway
Crystal Square 4, Suite 509
Arlington, VA 22202

UCASB01287463

My name is John L. Myers and I am employed by Union Carbide Corporation as Marketing Manager for its "Calidria" asbestos products. I am speaking today for the Asbestos Information Association/North America (AIA/NA). The AIA/NA is an association of more than 50 companies engaged in the mining process of asbestos and asbestos-containing products.

Changes in Section 5208(c)(2) - (Housekeeping)

The DIR has solicited comments from the Ad Hoc Advisory Committee on three proposed changes in wording for this section:

Proposal #1: Asbestos spills and debris shall be cleaned up promptly.

Proposal #2: Asbestos spills or debris generated from any process or handling procedure shall be cleaned up promptly.

Proposal #3: All surface concentrations of asbestos shall be cleaned up promptly.

It appears that the intent of these changes is to make it clear that not only spills of raw commercial fiber but also the debris generated from the processing or handling procedures applied to asbestos-containing products are included in the cleanup requirements. The first two proposals would appear to do this as long as the word "asbestos" is taken to modify both "spills" and "debris". This simple extension to "debris", however, fails to recognize that it is not the debris per se but its potential as a source of airborne fiber that is the real basis for special treatment.

The third suggestion is similar to, but much broader than the present Federal requirement, i.e. it contains no limitation regarding the airborne fiber potential of the surface concentrations. This would mean that a construction site where moderate amounts of asbestos-containing products are used would have to be operated dust-free in the manner of a pharmaceutical factory. We do not believe that this is practical, reasonable, or necessary.

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This kind of problem was considered at length several years ago by the Advisory Committee that developed the reporting requirements now contained in Paragraph (1) of Section 5208. The following wording based on (1)(1) is proposed:

"Asbestos spills or debris generated from any operation or process requiring reporting under Paragraph (1)(1) of this Section shall be cleaned up promptly."

Good housekeeping is important on any job but there should be a solid justification for the extensive additional requirements of "prompt" cleanup that this regulation imposes. We believe that the wording suggested will provide appropriate limitations that are consistent with the other parts of the Asbestos Standard. It will also meet the criteria of reasonable, enforceable, and "positive benefit in protecting worker health" that we understand the Board likes to apply to the Standards it develops.

UCASB01287465

Repeal Subsections j(1)(A) and (B) and Adopt New Wording for these Subsections

Subsection (j)(1)(B):

The DIR has proposed to add requirements for sputum cytology, oblique X-rays, and reading of X-rays by the ILO classification to this subsection. With regard to sputum cytology, the appropriateness of the addition of this test to the medical examination requirements was discussed in great detail at the Ad Hoc Advisory Committee meetings. Substantial documentation from independent experts was presented that it has not been demonstrated that the use of sputum cytology has any significant impact on longevity. The current situation is well summarized in a report of a "Consensus Conference on Screening for Lung Cancer" held in September 1978. The report (Attachment I) is signed by Diane J. Fink, M.D., Director, Division of Cancer Control and Rehabilitation and Arthur C. Upton,M.D., Director, National Cancer Institute and is attached for the record. The conclusions are both directly relevant and brief as follows:

1. Current prospective studies of asymptomatic individuals who have been screened for lung cancer by chest X-ray examination and sputum cytology do not at present show any evidence of a significant reduction in mortality from the disease. These studies must be continued for several more years before the accumulated information will be sufficient to allow a relationship between screening and mortality to be determined. Results of these studies should be kept under continuing review. (Emphasis supplied)
2. Until the value of screening for lung cancer by these methods has been demonstrated, mass screening programs should be limited to well-designed, controlled studies, with provision for analysis of results, and for further diagnostic work-up and treatment, when indicated. (Emphasis supplied)

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Union Carbide trial exhibit UC-5435: John L. Myers Oral Presentations to the California Occupational Safety and H... Published by AsbestosClaims.Law
ACL Doc 19870 · Page 32 of 48 asbestosclaims.law/library/19870/32

Adopt a new Subsection (n) Covering Employee Information and Training

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BAKER BOTTS LLP

ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS
77002-4995
713.229.1234
FAX 713.229.1522

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DALLAS
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LONDON
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RIYADH
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Cynthia Crawford
713.229.1458
FAX 713.229.2758
cynthia.crawford@bakerbotts.com

Mr. Scott L. Frost
Baron & Budd
3102 Oak Lawn Avenue, Suite 1100
Dallas, Texas 75219-4281

Re: All Baron & Budd asbestos cases in Texas

Dear Scott:

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If you have any questions, please do not hesitate to contact me.

Sincerely,

Cynthia Crawford

:3089
Enclosures
cc: Siobhan Handley
Gary Elliston
Tina Stamps

HOU02:904120.1

(c)

PLAINTIFF'S EXHIBIT

UC-5435e

ORAL PRESENTATION BEFORE THE

CALIFORNIA STATE OCCUPATIONAL SAFETY

AND HEALTH STANDARDS BOARD

MAY 29, 1980

TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
(Asbestos)

Held in Fresno, California

on

May 29, 1980

By: John L. Myers - Representing:

Asbestos Information Association/North America
1745 Jefferson Davis Highway
Crystal Square 4, Suite 509
Arlington, VA 22202

UCASB00521247

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RESPONSE TO MR. O'HARA'S REQUEST FOR COMMENTS ON TITLE 8: GENERAL INDUSTRY SAFETY ORDERS (ASBESTOS), page 3 of 5: "Adopt new subsection (n) into Section 5208"

My name is John L. Myers of Union Carbide Corporation. I am speaking on behalf of the Asbestos Information Association of North America (AIA/NA). The AIA/NA is an association of over 50 companies engaged in the mining and processing of asbestos and asbestos-containing products.

We have always endorsed an employee information and training program and Union Carbide conducts such a program at its asbestos mine and mill near King City.

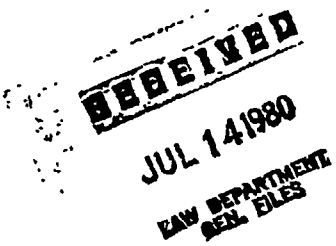
We feel that the wording in (n)(1)(A), which describes the employees to be trained, should be slightly modified. As it reads, the training program could apply to office personnel, casual or infrequent visitors, and other employees who would not be exposed to 0.1 f/cc on a continuing basis - perhaps very infrequently.

We, therefore, suggest that paragraph (A) be revised as follows:

(A) Within 60 days of the effective date of this subsection, the employer shall institute a training program for, and assure the participation of, all employees ~~exposed to asbestos~~ assigned to work with asbestos or asbestos-containing materials and employees assigned to work in areas where such materials are being used, provided that such materials are being used in a manner in which exposures to asbestos may reasonably be expected to exceed the level such that medical examinations are required pursuant to Section 5208(j)(1). (Underlined words are our proposed addition.)

Dr. Greenberg responded to the above by stating that the Ad Hoc Advisory Committee had considered the problem of infrequently exposed persons. They decided that their wording, crossed out above, would "encourage" companies to prohibit or minimize the admission of "non-asbestos workers" to areas where they may be exposed to greater than 0.1 f/cc. I obviously made no rebuttal to his comments.

UCASB00521248



UCASB00521249

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ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TEXAS
77002-4995
713.229.1234
FAX 713.229.1522

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DALLAS
HOUSTON
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Cynthia Crawford

:3089
Enclosures
cc: Siobhan Handley
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HOU02:904120.1

PLAINTIFF'S EXHIBIT

UC-5435f

PREPARED TEXT -

ORAL PRESENTATION BEFORE THE

CALIFORNIA STATE OCCUPATIONAL SAFETY

AND HEALTH STANDARDS BOARD

MAY 29, 1980

TITLE 8: GENERAL INDUSTRY SAFETY ORDERS
(Asbestos)

Held in Fresno, California

on

May 29, 1980

Asbestos Information Association/North America
1745 Jefferson Davis Highway
Crystal Square 4, Suite 509
Arlington, VA 22202

UCASB

Published by AsbestosClaims.Law
asbestosclaims.law/library/19870/40

My name is John L. Myers and I am employed by Union Carbide Corporation as Marketing Manager for its "Calidria" asbestos products. I am speaking today for the Asbestos Information Association/North America (AIA/NA). The AIA/NA is an association of more than 50 companies engaged in the mining process of asbestos and asbestos-containing products.

Changes in Section 5208(c)(2) - (Housekeeping)

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Proposal #1: Asbestos spills and debris shall be cleaned up promptly.

Proposal #2: Asbestos spills or debris generated from any process or handling procedure shall be cleaned up promptly.

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It appears that the intent of these changes is to make it clear that not only spills of raw commercial fiber but also the debris generated from the processing or handling procedures applied to asbestos-containing products are included in the cleanup requirements. The first two proposals would appear to do this as long as the word "asbestos" is taken to modify both "spills" and "debris". This simple extension to "debris", however, fails to recognize that it is not the debris per se but its potential as a source of airborne fiber that is the real basis for special treatment.

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"Asbestos spills or debris generated from any operation or process requiring reporting under Paragraph (1)(1) of this Section shall be cleaned up promptly."

Good housekeeping is important on any job but there should be a solid justification for the extensive additional requirements of "prompt" cleanup that this regulation imposes. We believe that the wording suggested will provide appropriate limitations that are consistent with the other parts of the Asbestos Standard. It will also meet the criteria of reasonable, enforceable, and "positive benefit in protecting worker health" that we understand the Board likes to apply to the Standards it develops.

UCASB00704424

Repeal Subsections j(1)(A) and (B) and Adopt New Wording for these Subsections

Subsection (j)(1)(B):

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2. Until the value of screening for lung cancer by these methods has been demonstrated, mass screening programs should be limited to well-designed, controlled studies, with provision for analysis of results, and for further diagnostic work-up and treatment, when indicated. (Emphasis supplied)

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UCASB00704427

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910 LOUISIANA
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77002-4995
713.229.1234
FAX 713.229.1522

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LONDON
NEW YORK
RIYADH
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UCASB00521247 – 49

UCASB00704422 – 29

If you have any questions, please do not hesitate to contact me.

Sincerely,

Cynthia Crawford

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Enclosures
cc: Siobhan Handley
Gary Elliston
Tina Stamps

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