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Testimonies by
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Executive Vice President
and
G. Earl Parker
Vice President
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Presented to
House of Representatives
Committee on
Education and Labor
Subcommittee on
Compensation
Health and Safety

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Testimony by Francis H. May
Executive Vice President
Johns-Manville Corporation

Mr. Chairman, Members of the Subcommittee:

My name is Francis H. May: I am Executive Vice President of Johns-Manville Corporation, headquartered in Denver, Colorado. With me this morning are: G. Earl Parker, Vice President, General Counsel and Secretary; Dennis H. Markusson, Associate General Counsel; and John S. Autry, Director of Public Affairs.

We are pleased to be here today as the subcommittee continues its important work in addressing the issue of asbestos-related occupational disease and, most importantly, compensation for occupational illness.

For the past three and one-half years I have been involved in the litigation of asbestos disease-related product liability lawsuits. From this experience I think I have gained some insight into the complex nature of the issues presented, the viability of existing methods for addressing these issues, and the present need for innovative measures. It is to these areas that I shall direct my primary remarks this morning.

Following my remarks Mr. Parker will discuss some considerations in legislative approaches to provide uniform, comprehensive and equitable compensation for occupational illness.

Before proceeding further I must first address the growing propensity of some to try legal issues in non-judicial forums. While I personally deplore the practice of law by press conference, the issuance of half statements and the calculated use of selected facts, these practices, upon reflection, serve to graphically demonstrate the inability to adequately resolve the complex issues in asbestos products liability cases within the traditional judicial structure.

Charges categorically false

While I am mindful of Representative Heftel's statement that these hearings are not intended to fix fault or blame, public accusations have been made and a response is appropriate. In recent hearings before this subcommittee attorneys for various plaintiffs made some rather rash statements, and I am sorry to say some of them may have been accepted all too quickly at face value.

There seem to have been three basic theses in what I will call the San Francisco accusations:

1. That early knowledge of the biological effects of asbestos in mining, milling and manufacturing operations equates to knowledge that asbestos-containing insulation products could present a hazard to insulation workers—those primarily concerned in today's lawsuits.
2. That industry and specifically Johns-Manville failed to respond in a reasonable and responsible manner to developing medical and scientific information.
3. That there existed some conspiracy to manipulate and suppress information and that it is somehow related to present litigation.

These theses are categorically false.

While it would be unwarranted for me to comment in these proceedings on every conceivable evidentiary fact, I would like to bring some perspective to these accusations; and I'd like to comment on each of the subjects I've outlined.

When was hazard foreseeable

The issue is not whether asbestos exposure under certain conditions can constitute a possible health hazard. On this there is no longer debate. Nor is the issue the existence in the 1920's and

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1930's of medical and scientific information relative to asbestosis, among workers exposed to continual and high concentrations of asbestos fiber in mines, mills and manufacturing plants.

The paramount issue in virtually all the litigation including shipyard cases is: when was there adequate medical and scientific knowledge of a possible hazard to workers *outside* the mines, mills and factories using already manufactured products, such as insulation products which contained small amounts of asbestos, to constitute a basis for action? In other words, when was the hazard reasonably foreseeable.

There was a conscious effort in the material submitted at the San Francisco hearings to imply that by 1930 there existed an abundance of knowledge of a potential health hazard from asbestos. This simply is not true. By 1930 there were but a handful of so-called asbestosis cases reported in the English literature, all from asbestos textile plants.

It was not until 1927 that Dr. Cooke in England, reporting on one single case involving a textile worker, coined the term "Asbestosis" to describe a type of fibrotic occupational disease.[1, 2]

However, by 1930 and based in large part upon the world's first large scale survey undertaken by Dr. Merewether asbestosis was being found with some frequency in the asbestos textile mills of England.[3]

The first major medical work in the United States was the study of asbestos textile factories by Dr. Anthony Lanza which was published by the United States Public Health Service in 1935.[4] This publication was the culmination of research in this country sponsored *not* by the Public Health Service, but by Johns-Manville and Raybestos-Manhattan. Since this article has become a matter of some contention I will come back to it in a few moments.

In 1938 the Public Health Service did another study of the asbestos textile industry and took a step which was to dramatically impact on asbestos-related occupational disease issues for the next twenty-five years. The 1938 Dreessen Study established a recommended standard or threshold limit value for asbestos dust exposure of five million particles per cubic foot, eight hours per day, forty hours per week for a working lifetime as a safe level of exposure.[5]

It is to be noted that throughout the literature of this period there prevailed in the medical and scientific community a feeling that asbestosis was a limited problem, and that if dust levels in the mills and factories could be reduced, the problem of asbestosis would disappear.[6]

In 1946 the first epidemiological study of insulation applicators (as opposed to mine, mill or factory workers) was published by Fleischer-Drinker, et al.[7] The study was done in shipyards, and it was undertaken on behalf of the Navy. Two significant findings came out of that report; first, that the measured exposures to asbestos dust for the insulation workers were, with one exception, below what the U.S. Public Health Service/Dreessen article had established as a "safe level" (five million particles per cubic foot standard) and, second, that pipecovering was deemed to be *not* a hazardous occupation. That insulation worker exposures were generally below the U.S. Public Health Service standard is a fact subsequently documented by other investigators.[8]

Studies conclude: no hazard

It is appropriate to reflect for a moment on this state of the medical art in the United States in 1946 with reference to insulation workers. At this time we were faced with a U.S. Public Health Service standard of 5 MPPCF; actual measured exposures well below that "safe level", and an epidemiological study concluding that insulation work *was not* a hazardous occupation. Was there, then, in 1946 any basis for action on the grounds that asbestos-containing insulation products constituted an occupational hazard to workers? I think not. This conclusion seems eminently justified by the fact that there were no cries to the contrary from government, labor, medicine or academia.

[1]Cooke, W. E., "Pulmonary Asbestosis," *British Journal of Medicine*, Volume II, pp 102425

[2]It is to be noted that the document entitled "Asbestos, Chronological Highlights" and submitted to the subcommittee in San Francisco is replete with errors. For example, dates are erroneous, the numbers of cases are misstated, and the document implies the existence of Workers' Compensation laws specifically addressing asbestosis up to thirteen years before the term asbestosis was coined.

[3]Merewether, E. R. A., "Report On Effects Of Asbestos Dust On The Lungs And Dust Suppression In The Asbestos Industry," H. M. Stationery Office (1930).

[4]Lanza, A. J., McConnell, W. J. and Fehnel, J. W., "Effects Of The Inhalation Of Asbestos Dust On The Lungs Of Asbestos Workers," *Public Health Report*, Volume 50, pp. 1-12, (1935).

[5]Dreessen, W. C., Et Al, "A Study Of Asbestosis In The Asbestos Textile Industry," *Public Health Bulletin*, Number 241, (1938).

[6]Dreessen, *ibid.*, Merewether, Supra., (1930), Lanza, Supra., (1935)

[7]Fleischer, Walter E., Viles, Jr., Frederick J., Gade, Robert L. and Drinker, Philip, "A Health Survey Of Pipe Covering Operations In Constructing Naval Vessels," *Journal Of Industrial Hygiene And Toxicology*, January 1946.

[8]Selikoff, I., Infra., at p. 142.

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I want to emphasize that there were no recognized epidemiological studies between the time of Fleischer-Drinker in 1946 and Dr. Selikoff's study in 1964, along with those of Marr and Balzer covering West Coast shipyards at about the same time—a span of almost twenty years during which the findings of Dreessen and Fleischer-Drinker were gospel.

The popular rhetoric now is to assert that the 5 MPPCF standard and the Fleischer-Drinker report were wrong. Of course they were wrong, but when was this error discovered—certainly not until the landmark 1960's work of Dr. Irving J. Selikoff, a physician well known to this subcommittee.[9] It will be of interest to this subcommittee that in the American medical literature there is not a *single* criticism of the Fleischer-Drinker conclusions *or* the 5 MPPCF standard until Dr. Selikoff's work. This is very important.

While attempts are made by plaintiffs' lawyers to extrapolate mining, milling and manufacturing data, and apply it to the insulation workers who are the subject of most present lawsuits, the facts simply do not support such an extrapolation. Two quotes from Dr. Selikoff's writings place the development of knowledge of any insulation worker hazard in proper perspective.

In *1965* he wrote:

> "We may conclude that asbestosis and its complications are significant hazards among insulation workers in the United States *at this time.*"[10] (emphasis added) Again, please remember this is the first study since Fleischer-Drinker in 1946.

And in *1970* he concluded:

> "In the asbestos mining and manufacturing industry, the risk of heavy exposure to the occupational dusts had been recognized for some years. And this primary industry has understood the need to install ventilation systems and other dust control devices to reduce the hazard. Experience had indicated that reduction of dust levels and exposures could result in greatly improved health experience among asbestos factory workers.
>
> But the extrapolation of that experience to another classification of workers—specifically those who fabricate and install insulating materials—was a more sophisticated task for clinical medicine and epidemiology."[11]

While I have generally tracked the medical literature with respect to asbestosis, the situation is virtually the same as to cancer. Early isolated case reports of lung cancer in association with asbestosis in factory workers were followed by years of uncertainty and scientific disagreement. The 1960's brought general agreement that there was an excess of lung cancer among those workers exposed to asbestos including insulation workers. However, this association has been complicated by the fact that almost all cases of asbestos worker lung cancer involve cigarette smokers, and there remain honest differences as to whether cigarette smoking is the determinent or the modifier of the lung cancer. As to mesothelioma, there is no serious difference of agreement that this rare tumor was first associated with asbestos exposure by Dr. Wagner's South African studies published in 1960, and that by the mid-1960's it too had been associated with insulation workers by Dr. Selikoff.[12, 13]

[9]Selikoff, I. J., "The Occurrence Of Asbestosis Among Insulation Workers In The United States," *Annals New York Academy of Sciences*, 1965.

[10]Ibid., 1965.

[11]Selikoff, I. J., "Partnership for Prevention —The Insulation Industry Hygiene Research Program," *Industrial Medicine*, Volume 39, Number 4, April 1970.

[12]Wagner, J. C., Sleggs, C. A. and Marchand, Paul, "Diffuse Pleural Mesothelioma and Asbestos Exposure in the North Western Cape Province," *British Journal of Industrial Medicine*, 1960, 17, 260.

[13]Selikoff, I. J., Churg, J. and Hammond, E. C., "Asbestos Exposure and Neoplasia," *Journal American Medical Association*, April 1964.

Selikoff, I. J., Churg, J. and Hammond, E. C., "Relation Between Exposure to Asbestos and Mesothelioma," *The New England Journal of Medicine*, March 1965.

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This review hopefully will serve to give the subcommittee some feel for the "foreseeability-of-hazard" issue.

This admittedly brief review is not intended to be all inclusive. It does not, for example, attempt to deal with the complex matter of individual case reports and their effect on the state of the medical art. My purpose in presenting this review is to give the subcommittee some perspective with respect to the medical literature, the concepts of dose, the pitfalls of attempted extrapolations. Only in this way can the subcommittee appreciate and evaluate the complexity of the foreseeability-of-hazard issue which is at the very heart of most of the past and pending litigation, and the continued futility of attempting to deal equitably and effectively with this issue within existing judicial structures.

Johns-Manville acted responsibly

Next I want to comment on the inference that Johns-Manville failed to act in a responsible manner to developing medical and scientific information of possible asbestos exposure hazards. This subcommittee and its media audience were led to believe that nothing was done and that lives were sacrificed for profits. While such invective makes for good copy and a rousing jury argument—it simply is not true.

Johns-Manville's long history of commitment to the resolution of asbestos-related occupational disease probems is unparalleled in industry, labor or government. It is that commitment that brings us here this morning.

Let's turn to some specifics. As you will recall from my earlier testimony, by 1930 the British medical literature was suggesting a possible occupational disease hazard of asbestosis in asbestos textile factories. Did Johns-Manville respond? It did. In conjunction with Raybestos-Manhattan Corporation, Johns-Manville commissioned the Metropolitan Life Insurance Company to commence a survey to ascertain the existence of any asbestos disease hazards in North American mining, milling and manufacturing operations. The scope of the Johns-Manville response is conceded by a plaintiff's lawyer, Robert E. Sweeney, Esq., who represents many insulation workers in lawsuits throughout the United States. Writing in the October 1978 issue of *Trial* magazine, he states:

> "Alerted by the work of medical and scientific investigators throughout the world, the asbestos industry, led by Johns-Manville, commissioned the Metropolitan Life Insurance Company in the early 1930's to investigate and determine the relationship of asbestos exposure to the high rate of pulmonary disease encountered among workers in the asbestos mines and factories.
>
> These studies were conducted under the leadership of the medical director of the Metropolitan Life Insurance Company, Dr. Anthony J. Lanza.
>
> The project ran from October 1929 to January 1931. It included study of dust conditions in asbestos mines and mills in Canada and the United States.
>
> Physical examination of asbestos workers included x-rays, films, and studies of dust exhaust systems.
>
> The conclusions of the industry's own research proved that prolonged exposure to asbestos dust caused pulmonary fibrosis and that cases of definite cardiac enlargement were frequently found to be associated with asbestosis.
>
> The study recommended that the industry face seriously the problem of dust control in asbestos plants and sponsor studies on known cases of asbestosis."[14]

Based upon the limited medical and scientific information available in the 1929 to 1930 period, one may ask whether this was a responsible and responsive course of action for two corporations to take, and I think the answer is yes. At this juncture, in 1930, no action on this subject had been undertaken by any agency of the federal government. Several more years would pass before the government first acted.

Johns-Manville took immediate action

Johns-Manville undertook immediate and concerted efforts to implement dust control procedures at its mines, mills and manufacturing facilities, and the company has been an acknowledged leader in the development of dust control devices. Since appropriate dust control devices were not available in the marketplace, the company undertook development of in-house dust control engineering expertise and design of dust control devices. Unique applications of fabric filters, as the most effective asbestos dust control device, and which today are universally used, were developed by Johns-Manville.[15]

[14]Sweeney, Robert E., "The Asbestosis Time Bomb," *Trial*, October 1978, p. 17. It should be noted that the cases of disease to which Mr. Sweeney makes reference were in the asbestos textile industry, and among individuals who had experienced long periods of continually heavy exposure to 100% raw asbestos fiber.

[15]The world's largest fabric filter is maintained at Johns-Manville's Jeffery Mine in Asbestos, Quebec.

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Let me cite one example of the kind of effort made to control asbestos fiber dust in our plants in the process for the manufacture of asbestos/cement pipe, fiber bearing asbestos fibers, from the forming mandrel pipe large dust clouds, is airborne through movement of positive air flow—blowing off dust developed a pressure blown under area immediate plant the—and requiring handling—the air asbestos large concentrations were actual pressure. This dertain their occ system leaks dust sucked into the sea former con modifications dollars in 1956 wet new plants system negative pressure dust asbestos of the method con our pro mers the pipe, both in To world-wide. ev further ra company's his quick dust control

installations at three Johns-Manville manufacturing facilities. I learned that between 1931 and 1970 approximately 160 major dust control devices were installed at these three plants. I stopped my survey at 1970 as I wanted to cover a period when there were no mandatory governmental standards or requirements. In other words, these were 160 voluntary projects. As an aside, we might ask where the public health agencies of the government were during this thirty-nine year period.

In terms of money expended for dust control equipment in Johns-Manville plants, it is conservatively estimated that between 1931 and 1970 $25,000,000-$30,000,000 was spent. If viewed in terms of 1978 dollars, this sum would no doubt be four to five times that amount.

In addition to dust control equipment, the company has had safety meetings, respirator programs, and employee physical examination programs in effect for several decades.

These programs continue to the present time, and today's worker receives ever increasing amounts of asbestos and health literature.

Because of the dramatic effects of cigarette smoking among individuals occupationally exposed to asbestos, Johns-Manville has banned smoking at all asbestos using locations, although this is not required by existing federal standards. It is noteworthy that unions have forced litigation opposing implementation of this policy at two locations.

With respect to asbestos-containing thermal insulation products, Johns-Manville undertook a voluntary labeling program in September of 1964 contemporaneous with the Selikoff revelations that the 5 MPPCF Public Health Service recommended standard was not a safe exposure level and that a hazard did in fact exist. Johns-Manville led the industry in caution labeling, and led the federal government by six years as it was not until July 1972 that a federal standard for labeling became effective.

There is an interesting contrast between the Johns-Manville labels from 1964 to 1972 and the federal label mandated in 1972 and still in use today:

J-M Label, 1964-1970
CAUTION

This product contains asbestos fiber.

Inhalation of asbestos in excessive quantities over long periods of time may be harmful.

If dust is created when this product is handled, avoid breathing the dust.

If adequate ventilation control is not possible, wear respirators approved by the U. S. Bureau of Mines for pneumoconiosis-producing dusts.

J-M Label, 1970-1972
CAUTION

This product contains asbestos fiber.

Avoid breathing the dust. Inhalation of asbestos in excessive quantities over long periods of time may be harmful.

If dust is created when this product is handled, use proper protection.

If proper dust control cannot be provided, respirators approved by the U. S. Bureau of Mines for protection against pneumoconiosis-producing dusts should be worn.

Federal OSHA Label, 1972- present
CAUTION
Contains asbestos fiber.
Avoid creating dust.
Breathing asbestos dust may cause serious bodily harm.

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I think even the most biased observer would concede that the Johns-Manville label voluntarily implemented in 1964 is far superior to present federal requirements.

In addition to the warning labels, the record is clear that Johns-Manville undertook a variety of other affirmative measures in the 1960's:

1. Seminars were conducted for insulation contractors to explain possible hazards and safe handling techniques.
2. In cooperation with The National Insulation Manufacturers Association and The National Insulation Contractors Association, a booklet entitled "Recommended Safe Practices for Handling and Applying Thermal Insulation Products Containing Asbestos" was prepared and 10,000 copies were circulated to insulation contractors throughout the United States.
3. In cooperation with Mount Sinai Hospital, Dr. Selikoff and the Asbestos Workers Union, the "Insulation Industry Hygiene Research Program" was formed. Activities of this organization resulted in material on asbestos and health, and safe work practices going directly to the homes of insulation workers in the form of "green sheets" which were inserted in the union magazine.
4. Substitute thermal insulation products were developed, and by 1973 the company ceased production of asbestos-containing insulation materials, with the exception of a few accessory items.

In the area of medical research, Johns-Manville's extensive support of medical research on the biological effects of asbestos has continued on an ever increasing scale since 1929. More than thirty major projects, at a cost in excess of $2.0 million, were funded by Johns-Manville—including an electron microscope given to Mt. Sinai Hospital in 1967.

There was some effort at the San Francisco hearings to cast in a negative light the company's payment of workers' compensation claims to factory workers with asbestos-related illnesses. Johns-Manville has indeed paid workers' compensation to factory workers on asbestos claims. To my knowledge, no bona fide claim has ever been contested. In fact, there have been instances where the company has waived available statute of limitations defenses and allowed the claim.

Johns-Manville's record of voluntary commitment to the resolution of asbestos-related occupational disease problems is clear. Today, employee health care expenses are at a rate of $2.14 million per year. Johns-Manville has responded to medical and scientific knowledge in a prompt, reasonable and responsible fashion.

No conspiracy

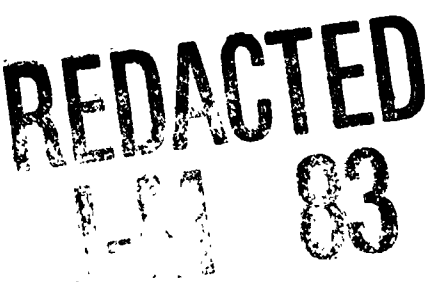
Now I would like to comment on the expressed belief that Johns-Manville conspired to manipulate and suppress information concerning asbestos. In recent weeks much attention has been focused on some very old correspondence between employees of Johns-Manville and Raybestos-Manhattan. This correspondence set much of the tone for this subcommitee's San Francisco hearings. It is a tribute to the plaintiff's lawyers that they have been able to make so much of so little.

In any objective consideration of this correspondence two factors become paramount; first, the age of the documents, and, second, the nature of the problem being addressed.

The correspondence at issue is more than forty years old and was written at a time when the world's body of knowledge concerning possible asbestos-related health problems was in its infancy. It was written at a time when legitimate questions far outnumbered available answers; at a time when any potential hazard from asbestos was thought to be mild compared to other problems such as silicosis; at a time when it was thought any problem was confined to mines, mills and manufacturing plants, and would be readily solved with some additional dust control. An objective review of the entire body of documents confirms these facts, and further indicates consistency with the then state of medical and scientific knowledge. It is inconceivable that reasonable persons would base today's crucial policy judgments on these ancient letters, separated from the environment in which they were written.

The fact that the health issues addressed in this correspondence are entirely different from those in most of the present litigation has been conveniently ignored. Simply stated, the correspondence had nothing whatsoever to do with asbestos-containing insulation materials or insulation applicators.

The correspondence relates to possible hazards in mines, mills and manufacturing plants to which Johns-Manville then and thereafter responded with leadership. As indicated in my earlier comments, in the 1930's asbestos-containing insulation materials were not known to present a problem to insulation applicators. Just as Dr. Selikoff has indicated that the mine, mill and factory experience cannot be extrapolated to the insulation worker experience, likewise correspondence



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relative to factory situations cannot be extrapolated to present cases involving exposure to insulation products.[16]

Let me review some specifics:

A document that has been ignored to date is the minutes of a meeting of January 5, 1934, wherein a decision was made by Johns-Manville and Raybestos-Manhattan to "have the Metropolitan Life Insurance Company bring up to date the survey with respect to dust conditions in their respective factories." This is *not* an irresponsible course of conduct. Quite to the contrary, and remember too that at this time the federal government had still done nothing.

The January 5, 1934, minutes go on:

> "The policy of the two companies concerned is that they desire through the operation of this committee and the resulting investigations to obtain, each for itself, the best practice possible for the elimination of dust and the protection of employees."

Subsequent 1934 correspondence confirms the employment of Otto L. Binder, an industrial hygienist, to do dust counts, and the purchase of x-ray equipment. Again, this is not irresponsible conduct.

We come now to the review of the galley proofs of Dr. Lanza's 1935 article. This is a significant item because it has generated accusations that Johns-Manville and Raybestos-Manhattan somehow manipulated, dictated and even impeded the development of asbestos medical and scientific knowledge in the United States. An examination of the facts shows the inaccuracy of such accusations:

1. A letter from V. Brown to Dr. Lanza, December 10, 1934:
   (a) Brown indicates two clerical points where material from the original report was not picked up in the galley proofs.
   (b) The remainder of Brown's comments also relate to clerical omissions or questions of clarity.
   (c) Nowhere does Brown suggest any substantive alterations. This letter to Dr. Lanza does not represent a manipulation of Dr. Lanza's independent conclusions.
2. A letter from Hobart to Brown, December 15, 1934. Hobart was an attorney in private practice, who apparently was asked to review and comment on the Lanza article.
   (a) Hobart suggests deletion of the sentence "It might well be assumed that similar variables would influence the occurrence of asbestosis." That sentence *was not* deleted from the article as published.
   (b) Hobart refers to the defense of lawsuits. This is a reference to actions arising out of the Manville, New Jersey plant at a time before asbestos occupational disease claims were covered in New Jersey by workers' compensation.[17]
   (c) Hobart next suggested that some material appear in the body of the article rather than in a footnote. In the published article the material *remained* as a footnote on Page 3.
   (d) Hobart next suggested deletion of the words "was unnecessarily dusty" from a portion of the report with reference to a description of Plant E. In reviewing the actual Lanza article, it does appear that in the section on dust studies there is no reference to the words "was unnecessarily dusty". However, on Page 5 and the top of Page 6 of the actual Lanza article it is indicated that at Plant E there was excessive dust. Accordingly, it can hardly be argued that the deletion of the words "was unnecessarily dusty" changes any way the scientific import of the Lanza study.
   (e) As did Brown, Hobart points out that the galley omits from conclusion 1 the sentence "Clinically, from this study, it (asbestosis) appears to be of a type milder than silicosis.", which had appeared in the original report. Hobart does add that such an addition should be made to the conclusions only, *if the doctors are satisfied that such is the facts.*" These are hardly the words of a manipulator of medical science.
   (f) With respect to conclusion Number 5 Hobart points out that the galley indicated that asbestos did not add to the mortality in tuberculosis cases, and that such an inference did not seem justified. Dr. Lanza did reword his conclusion so as not to negate the hazard to individuals with tuberculosis. This certainly is clear evidence of openness, objectivity and honesty in the review of the Lanza article.
   (g) Hobart criticizes conclusion Number 6 and a reference and inference concerning granite dust, and in the final article we see that Hobart's suggestions were adopted by Lanza. However, this is not a departure from a sound scientific conclusion. It appears that all Hobart was seeking was to avoid an unnecessary parallel being drawn between asbestos and granite dust.

[16]Selikoff, I. J., "Partnership for Prevention—The Insulation Industry Hygiene Research Program," Supra.

[17]A settlement of this type claim is referred to in the minutes of a 1933 meeting of the board of directors of Johns-Manville.

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(h) With respect to recommendation Number 4, Hobart asks to have inserted the word "possible" as to future studies of the "possible" effects of asbestosis on the heart and circulation. It should be noted that in Item 4 of Dr. Lanza's recommendations, set forth on Page 11 of the actual report, that Dr. Lanza obviously rejected this suggestion as the word "possible" does not appear prior to the word "effects."

3. Letter from Brown to Judd, December 18, 1934. Brown transmits a copy of the galley proofs of the Lanza article to Raybestos-Manhattan.
4. Letter from Brown to Lanza, December 21, 1934. Brown returns the galley proofs to Dr. Lanza, together with Mr. Hobart's comments. The following is in this letter:

"I trust that you will give his comments and suggestions, as well as those mentioned in my letter of December 10th, your most serious consideration. *I am sure that you understand fully that no one in our organization is suggesting for a moment that you alter by one jot or tittle any scientific facts or inevitable conclusions revealed or justified by your preliminary survey.* All we ask is that all of the favorable aspects of the survey be included and that none of the unfavorable be unintentionally pictured in darker tones than the circumstances justify."

5. Letter from Brown to Judd, December 24, 1934. A letter indicating that Hobart and Brown had "together canvassed fairly thoroughly the points in the proof to which we could *justifiably* suggest additions, omissions, or changes in phraseology that will be beneficial from the industry viewpoint. The use of the word "*justifiable*" is certainly consistent with Brown's letter to Lanza of December 21, 1934, and the entire objective review of the Lanza article.

This then is the entire record of the review of the Lanza article by Raybestos-Manhattan and Johns-Manville. The article was then published by the United States Public Health Service, and subject to that agency's critical review.

Some additional observations are in order with respect to the Lanza article. If Johns-Manville and Raybestos-Manhattan were conspirators, manipulators and suppressors in the 1930's, then they were poor ones, for who interested in suppression or manipulation would promote a study to be published by the U. S. Public Health Service and which recommended:

1. That the industry seriously face the problem of dust control in asbestos plants.
2. That new employees be examined physically, including x-ray examination of the chest, and rejected for employment if they show tuberculosis or pneumoconiosis.
3. That employees be examined physically, preferably every year, but at least every two years, this examination to include an x-ray examination of the chest.
4. That the industry sponsor studies on known cases of asbestosis, as well as studies on effects of asbestosis on the heart and circulation.[18]

It would further be a poor suppressor who would have Dr. Lanza in the course of his study work with eleven other physicians including a physician of the United States Public Health Service.[19]

Finally, as indicated earlier, all of the recommendations of Dr. Lanza were implemented by Johns-Manville.

Quick accusations false

I realize my comments with respect to the Lanza article have been quite long and detailed, but it is only through this type of detailed review that the falsity of the quick accusation and self-serving conclusion can be revealed.

There have been other unwarranted and exaggerated statements concerning this correspondence. Clearly, it would neither be possible nor appropriate for me to address each such contention or allegation in this forum. Generally this material can be summarized as indicating a continuing concern and involvement in research as to the possible biological effects of asbestos. Almost all of the correspondence in 1936 and subsequent years relates to industry financed studies undertaken by Dr. Leroy Gardner at the Saranac Laboratories. The correspondence confirms Johns-Manville and Raybestos-Manhattan as taking the lead in the financing of such research, and ultimately obtaining contributions from several other companies.

Rather than speculate further on the import of these statements or strain to apply them to today's issues, I prefer to deal with the truly relevant facts.

I do know that the entire record makes it abundantly clear that Johns-Manville and Raybestos-Manhattan went forward with the first medical research done in this country; I do know that such research was published for all the world to see in the public health reports of the United States Health Service; I do know that industry continued to finance research; I do know that the findings of such research were consistent with other developing medical information; I do know that these actions were voluntary; I do know that industry's efforts antedated by several years any action by the federal government; I do know that Johns-Manville was promoting and has continued to promote basic medical research; and I do know that but for industry's efforts, which I suspect were unparalleled in the 1930's, the state of

[18]Lanza, Supra., pp. 6, 11.
[19]Lanza, Supra., p. 11.

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asbestos medical knowledge in this country would have lagged for years. I don't understand the contention that manipulation and suppression and total lack of concern for individuals were basic motives of industry. If that were so, why did industry bother to do anything at all? And yet, the record is clear this was not the path chosen.

Fair compensation needed

I would like to turn now to the basic issue faced by this subcommittee: Whether there is a need for legislative action to provide compensation for occupational disease, and in particular, asbestos-related occupational disease.

In seeking an objective resolution of this issue, there are several preliminary questions which must first be answered.

Is the assurance of fair compensation for occupational disease a desirable and necessary social objective? Johns-Manville's President, John A. McKinney, clearly answered this question in his testimony before the Senate Committee on Human Resources on S.3060, The Williams-Javits National Workers Compensation Standards Bill, stating:

> "Comprehensive, equitable, and uniform compensation for occupational disease is a worthy and proper social goal. On this there can be no debate."

The next question to be answered is whether such a goal can be achieved with existing systems, remedies and mechanisms. From my personal experience I tell you, in all sincerity, that absent innovative and decisive action, compensation for asbesto-related occupational disease under present structures will never be comprehensive, equitable or uniform.

At present there are but two means of compensation for occupational disease: Workers' compensation and the products liability lawsuit. At your recent hearings in San Francisco you heard testimony on the inadequacies of workers' compensation. Suffice it to say that at present there are wide disparities in the amount and duration of workers' compensation payments, and in many instances both are woefully inadequate.

Turning to the occupational disease product liability lawsuit, it must be understood at the outset that exposure, disease and causal relationship do not equate to liability, or culpability or fault in the world of civil products liability law. Lack of understanding of this basic fact has created great frustration in the minds of many in consideration of the problems of compensation for occupational disease.

In the products liability lawsuit, for there to be a recovery, there must be a determination of liability, culpability, or, if you will, fault. It is an adversary situation, and we must recognize that as presently constituted the American civil adversary system has deliberately chosen to resolve contested matters by the clash of mutually inconsistent and divergent viewpoints. Unfortunately, such a system only frustrates our socially desirable goal of comprehensive, equitable and uniform compensation for occupational disease.

The fly in the ointment is the matter of fault. In the typical case involving an insulation worker with asbestosis, the jury must ultimately resolve two issues. First, at what point in time was a hazard to the insulation worker reasonably foreseeable, thus giving rise to a duty to warn? Second, after any such duty arose, were reasonable steps taken toward its satisfaction?

Resolution of these issues, particularly the former, in an asbestos-related occupational disease case is a highly complex exercise. Unlike other types of product liability cases where there is physical evidence such as a broken casting or a ruptured tire to serve as a focal point, in the asbestos case the evidence is far more esoteric. From the body of medical and scientific literature a determination must be made as to when, on a reasonable basis, there was or should have been knowledge of a hazard to insulation workers. It is an exercise in hindsight.

As the subcommittee will appreciate from my earlier testimony, and other testimony received, the interpretation of the state of the medical art has become in the truest sense of the American adversary system, a clash of mutually inconsistent and divergent viewpoints. The clearest evidence that legitimate but divergent viewpoints exist is the fact that each case is individually handled by the courts, and that juries do indeed reach different results. In some cases the plaintiffs prevail while in others the verdict favors the defendants. While such a state of affairs might well be consistent with American judicial tradition, we must ask if it is achieving anything toward attainment of the goal of comprehensive, equitable and uniform compensation for occupational disease.

For so long as liability and fault are the cornerstones upon which attempts to resolve the issue of compensation for occupational disease are based, there will, in fact, be no resolution.

Mr. McKinney in his testimony on S.3060, to which I referred earlier, outlined many specific shortcomings of the present product liability system for fairly and equitably dealing with the issue of compensation for occupational disease. That testimony has previously been submitted to this subcommittee, and, therefore, I will not reiterate the points raised in that testimony. I do urge the subcommittee to consider carefully Mr. McKinney's testimony.

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Collective responsibility

I want to turn briefly to what I will call a concept of collective responsibility. I emphasize collective responsibility—not collective liability or fault. Any equitable resolution of the issue of compensation for occupational disease must include all who are involved. Due to factors such as the immunity from suit provided by workers' compensation laws, and variations in state law on contribution, indemnification and joinder, all parties to the equation are not included in present proceedings. For example:

1. What of the employer and his responsibility for health and safety considerations in the workplace of his employees? This is a particularly troublesome question in insulation worker cases where subsequent to knowledge, warnings and instructions, working conditions with respect to asbestos exposure remained, at best, marginal. Should a product manufacturer rather than the employer be responsible for occupational disease attributable to deficient working conditions? From early discovery in shipyard cases it appears that this may be a particularly acute problem in Naval shipyards.
2. What of the federal government and its public health responsibility? The history of the government's attention to asbestos-related health issues is one of non-involvement, erroneous standards, and a constant lagging behind industry and academia. Yet, our experience tells us there are great procedural obstacles to directly involving the federal government in civil litigation.
3. What of other contributing factors to occupational health burdens, such as cigarette smoking?

Within a framework of collective responsibility, all should share in the comprehensive, equitable and uniform compensation for occupational disease.

The problems of compensation for asbestos-related occupational disease under existing systems are clear. Returning to the original question raised, I submit to the subcommittee that a goal of comprehensive, equitable and uniform compensation for asbestos-related occupational disease cannot be achieved within existing structures, and that legislation is required.

The issues presented at these hearings merit the subcommittee's most serious attention. A great deal rests on your decisions. Personally, I am fearful that if we fail to join together to take dramatic and innovative action, the number of lawsuits will continue to grow, millions of dollars will be spent for attorneys' fees, court costs and expert witnesses, court backlogs will grow, inconsistent results will continue, and in future years we will look back and regret our failure to resolve the basic question of comprehensive, equitable and uniform compensation for occupational disease. This subcommittee has the opportunity to take innovative, progressive, and effective action. The status quo is no longer acceptable.

We sincerely hope that these two days of hearings on this complex subject will remove the cloud of "hostility" that surrounds the issue, as expressed so well by Representative Heftel in his opening remarks yesterday morning.

In closing I would like to offer the services of Mr. Markusson and others of our staff, who are now working with the staff of the Senate Committee on Human Resources, to this committee to work in cooperation on this vital issue.

I now ask Mr. Parker to complete our presentation by discussing some considerations in legislative approaches to provide uniform, comprehensive and equitable compensation for occupational illness. After his comments we will be happy to entertain questions.

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Testimony by G. Earl Parker
Vice President
General Counsel and Secretary
Johns-Manville Corporation

Mr. Chairman, Members of the Subcommittee, my name is G. Earl Parker; I am Vice President, Secretary and General Counsel of Johns-Manville Corporation.

I appreciate the opportunity to be with you this morning, and I further appreciate the subcommittee's continuing efforts to seek solutions to the many problems asbestos-related occupational disease claims, and in particular the matter of compensation.

From our prior submissions to the subcommittee you are well aware that Johns-Manville believes the present system for addressing occupational disease claims and compensation to be inequitable, uneven, haphazard, wasteful and incapable of delivering fair and adequate compensation to those who need it.

Johns-Manville has a long history of commitment to the resolution of asbestos-related occupational disease problems, and an awareness of the shortcomings of the present system to adequately address the issue of compensation. For these reasons we have encouraged and supported efforts to develop innovative legislation, which would establish a uniform, equitable and comprehensive means of providing compensation for asbestos-related occupational disease. It is towards the development of such legislation that I want to direct my remarks this morning.

Responsible legislation needed

In full partnership with the International Association of Heat and Frost Insulators and Asbestos Workers, Johns-Manville has attempted to assit in the development of responsible legislation.

In this regard I would like to reiterate the remarks of our President, John A. McKinney, which were submitted to the subcommittee at your San Francisco hearings:

> In another effort to develop a uniform, comprehensive, and equitable statutory means of compensating for asbestos-related occupational disease, Johns-Manville and the International Association of Heat and Frost Insulators and Asbestos Workers worked together to provide assistance to Representative Millicent Fenwick (R-NJ) in her drafting of the Asbestos Health Hazards Compensation Act. This legislation was introduced by Representative Fenwick and nineteen other sponsors on August 2, 1977, as H.R. 8689. I would point out that H.R. 8689 was formally endorsed by Andrew T. Haas, general president of the Asbestos Workers Union in his Executive Newsletter of November 15, 1977. That Bill has been referred to the House Committee on Education and Labor, and I regret that to date no hearings have been conducted on H.R. 8689. I would hope that hearings on this important legislation will be scheduled in the near future.

Attorney George Kilbourne, who represents several plaintiffs, in his oral testimony in San Francisco commented upon interminable delays in processing workers' compensation claims and securing compensation; the need to ultimately reduce attorneys' fees, and provide for medical care and medical research. I agree with Mr. Kilbourne, and would point out to the subcommittee that the Fenwick Bill addresses all these needs.

1. Sec. 302(f) requires speedy determination of all claims and forbids the board of the Asbestos Health Hazards Compensation Fund from adjourning any meeting of the board until a determination is made of all claims properly before the board for disposition.
2. Sec. 201 attempts to streamline and minimize the volume of information necessary to process a claim, thus eliminating red tape and delay.
3. Sec. 203(b) provides for compensation for medical and legal expenses although legal expenses would normally not be necessary as Sec. 308 authorizes the secretary to provide assistance necessary to process claims.
4. Sec. 307 authorizes grants for facilities for the analysis, detection, examination and treatment of asbestos-related disease.

I think this is an excellent example of how the problems identified by Mr. Kilbourne can be met by collective, responsible legislative action.

It is appropriate to correct some misunderstandings which surfaced in San Francisco with respect to the Fenwick Bill.

> The cost would not be borne 100% by the taxpayer. Funding would come from both industry and government.
>
> There is no "socialization" of an employer's obligation for workers' compensation payments. The compensation payable under the bill would be exclusive of and in addition to workers' compensation benefits. In fact, workers presently barred from even bringing a product liability case because of workers' compensation exclusivity provisions would be entitled to receive benefits under the Fenwick Bill. This is another example of how responsible collective action can, in fact, broaden the base of eligibility for compensation for occupational disease.

I have no illusions that the Fenwick Bill is perfect, but it is an example of how comprehensive, equitable and certain compensation can be provided for occupational disease. It also indicates that answers are available if we would spend more time seeking solutions, and less time seeking to fix legal fault where none exists.

In addition to the Fenwick Bill, our President, John A. McKinney, on September 19, 1978, appeared before the Senate Committee on Human Resources and testified as to methods whereby S.3060 (National Workers' Compensation Standards) might be modified to provide a uniform, comprehensive, and equitable means of providing compensation for occupational illness. A copy of that testimony has been furnished to the subcommittee, and I commend it to you as undoubtedly companion legislation to S.3060 will be before you for action.

It is my understanding that the Department of Commerce is also drafting legislation which will provide for equitable workers' compensation to be the means of recovery for claims for occupationally related injury and illness. This legislation shall be of great interest.

Legislative criteria

Johns-Manville is not committed to any particular piece or type of legislation, but rather to an approach which would provide an effective, equitable and comprehensive means of dealing with compensation for occupational disease. Again, to reiterate from Mr. McKinney's submission of October 23, 1978, to the subcommittee any such legislation should meet certain criteria:

Provide quick, certain and equitable compensation.

Compensation under such legislation would be the exclusive remedy.

The federal government should pay a substantial portion of the compensation.

Employers, suppliers of products, such as asbestos-containing products and suppliers of agents contributing to disease in the workplace, such as tobacco, should pay appropriate shares of the compensation.

Elimination of inconsistencies attributable to variations in state law.

In addition, provisions should be made whereby moneys potentially available under liability insurance policies might be made available to assist in the funding of compensation for occupational disease.

Finally, I want to correct the mistatements and misunderstandings that any legislation such as we have suggested would provide a "bail out" for corporations. Nothing could be further from the truth. In the first place, the concept of a "bail out" implies a legal culpability which does not exist. Secondly, Johns-Manville has on many occasions publicly announced a willingness to share responsibility in achieving a reasonable solution to asbestos-related occupational disease problems. Third, the Fenwick Bill would save money for employers only to the extent that it is successful in reducing legal and adminstrative cost. The amounts received by injured parties would, in our estimation, generally exceed average recoveries in typical asbestosis lawsuits.

Johns-Manville concern genuine

As we have indicated in the past, our concern is genuine and our interest real, and we stand ready to assist the subcommittee in the development of uniform, comprehensive, exclusive and equitable legislation to meet the demands of compensation for occupational illnesses.

One additional subject needs to be addressed. This subcommittee has wrestled with the program to pay people who worked in coal mines for specified numbers of years. You will be hearing from people afflicted with cotton dust disease, from coke workers, uranium miners and others. As technology becomes more complex, you may expect the human body to be assaulted by other as yet unknown agents.

Why, then, single out asbestos for separate consideration? Simply this, the health effects of past exposure to asbestos are known. They are here and now. They are wide spread geographically and industrially. The number of injured people is great. The disease is diagnosable without resort to presumptions based on years of exposure.

While no one can deny that other occupational diseases equally merit your attention, hundreds, perhaps thousands, of families of asbestos workers in virtually every state and congressional district are waiting anxiously for action. Now, while the need is greatest, this subcommittee can help industry and labor, working with medical and technical experts, forge a compensation scheme which will be as good a model for coping with these tragic circumstances as the black lung experience is bad.

The opportunity should be grasped and not frittered away in acrimonious debate on what should have been known and done by whom forty years ago.

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