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October 28, 1937

Mr. John J. Cuneo
921 Bergen Avenue
Jersey City, N.J.

Fetzel v. National Asbestos
Manufacturing Company

Dear Mr. Cuneo:

I have been out of the city for the last three weeks and am just getting an opportunity to reply to your letter of October 8.

The United States Gypsum Company has had a great many suits brought against it by former employees claiming injury from dust created in gypsum operations. The disease or ailment claimed has been described either as silicosis or pneumoconiosis, the latter being simply a general term for a condition of the lungs brought about by inhaling dust, but not necessarily a disabling condition. We have now tried six of these cases and have been successful in defending all of them with the exception of one in which a small verdict was brought in by the jury, and that case is now pending on a motion for new trial which we expect will be granted.

Our defense to these cases has been based, first on the fact that there was no negligence or breach of statute in the operation of the plant, and, second, that there was no injury. In connection with the injury question, we have had examination of the plaintiffs before trial and have also been able to prove by experts that the dust created in gypsum operations is not injurious.

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We have not had occasion to defend any case brought for asbestosis, which is one of the two recognized diseases resulting from the breathing of dangerous dust, the other being silicosis. There is, however, considerable disagreement among the experts with regard to asbestosis, and there is a special study now being made by Dr. Leroy U. Gardner of the Saranac Laboratories, Saranac Lake, New York, at the instance of a number of the asbestos manufacturing companies. I think, by all means, that you should talk to him and his associate Dr. Sampson with regard to the medical phases of your case. It would be especially valuable for them to have an X-ray of your plaintiff Mr. Wetzel, and if under your New Jersey law you have a right to physical examination before trial, you should by all means get that examination as soon as possible and then take the matter up with Drs. Gardner and Sampson.

Shortly after United States Gypsum Company took over the National Asbestos plant, Dr. Gardner and his staff made a study of the conditions at that plant with reference to possible dust hazards. They found certain conditions which they recommended be changed, and those changes were made. No particular study was made of the office force, as it was not considered that people working in the office would be subjected to any conditions that could be considered hazardous from a dust standpoint, and from my experience with the cases we have tried, I would not anticipate that any real authority on the question would consider that infrequently passing through other parts of the plant could possibly produce a case of asbestosis.

There is a great deal about the trial of these cases that I could not hope to write in a letter, and of course our client United States Gypsum Company is interested in seeing this case successfully defended. I am wondering whether you plan to be in Chicago in the near future and, if so, suggest it might be well if you plan to spend some time with me and discuss the details of the case. We have a great deal of information here on these dust cases, and I should be very glad to discuss it with you.

Yours very truly,

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