



NEWS & NOTES

~~SECRET~~
~~WPA~~
WHB/FILE

February 29, 1984

PLAINTIFF'S EXHIBIT

CAP-1694

OSHA PROPOSED STANDARD ON ASBESTOS EXPECTED IN MARCH

As reported (N&N Jan.), OSHA's draft proposal on asbestos was reviewed Jan. 11 by the agency's Advisory Committee on Construction Safety and Health. Subsequent to this meeting, the proposal, without any major modifications, was submitted to the Office of Management and Budget (OMB) on Feb. 10 for review as required by Executive Order 12291.

At this writing, it is understood that OMB has completed its review and the proposal is expected to be published in the Federal Register next week. Assuming the above is correct, the schedule of rulemaking on the proposal will be as follows:

- . Notices of intent to appear at hearing submitted within 30 days after publication.
- . Comments concerning the proposal submitted within 45 days after publication.
- . Parties submitting documentary evidence at the hearings must submit text of their testimony within 45 days after publication.
- . Informal rulemaking hearing will begin at 10:00 AM first Tuesday after 60 days from publication (date is likely to be May 15, 1984). Hearing will be held in the U.S. Department of Labor auditorium, Third St. and Constitution Ave., N.W., Washington, D.C.

AIA/NA is proceeding with its preparations to file comments and participate in the hearing. As a related matter, OSHA's emergency temporary standard (ETS) remains in a stayed status and a final ruling on the ETS is awaited from the Fifth Circuit Court of Appeals.

ASBESTOS INFORMATION ASSOCIATION

1745 Jefferson Davis Highway, Crystal Square 4, Suite 509
Arlington, Virginia 22202 • (703) 979-1150

CAPCO JEN 0013279

CANCER SOCIETY ELECTS TO BROADEN ITS SCOPE TO ENVIRONMENT AND WORKPLACE

The American Cancer Society, yielding to pressure from consumer and labor groups, has broadened its agenda to advocate strong measures by the government to reduce human exposure to environmental and occupational carcinogens. ACS had received appeals from the various groups to extend its scope beyond its traditional concern for smoking and cancer and take more positive positions on control of environmental carcinogens.

At a meeting of its board of directors, ACS adopted resolutions to support government efforts under Superfund, and to prevent exposure to ethylene dibromide. The board also expressed, for the first time, positions on asbestos and benzene, which it will file as comments with OSHA.

"We are encouraged by ACS's long-awaited policy reversal and are hopeful that it will now become a leading cancer-prevention organization," said Dr. Michael Jacobson, Director of the Center for Science in the Public Interest. "ACS should now follow through with the resources and staff to vigorously advocate these policies in Congress, the Environmental Protection Agency and OSHA. The ACS can now be a powerful ally of citizens groups that have long opposed the introduction of cancer-causing chemicals into the environment."

FIRST QUARTER AIA/NA DIRECTORS MEETING SCHEDULED FOR MAR. 14

The regular first quarter meeting of the Association's Board of Directors will be held Wednesday, Mar. 14, at Stouffer's National Center Hotel, Arlington, VA. The meeting will commence at 8:00 AM in the James Room. A reception and dinner are scheduled for Tuesday, Mar. 13, starting at 6:30 PM in the James Room. Dr. Fred Hoerger, Director, Regulatory and Legislative Issues, The Dow Chemical Company, and representative of the Chemical Manufacturers Association, will be the dinner speaker.

The AIA/NA Executive Committee will meet on Tuesday, Mar. 13, at Stouffer's National Center Hotel, commencing at 9:00 AM.

ORC SYMPOSIUM DEALS WITH ASBESTOS IN THE INDUSTRIAL ENVIRONMENT

A symposium is scheduled for Mar. 27-28 at the Marriott Key Bridge Hotel, Arlington, VA, by Organization Resources Counselors, Inc., on asbestos in the industrial environment.

Purpose of symposium is to examine practical methods whereby asbestos found in the workplace can be safely handled, removed, and disposed of.

Topics to be covered by authoritative speakers include: respiratory protection; monitoring; disposal; medical surveillance; legal problems; regulatory agencies; estimating risks; asbestos in office buildings; plant and building demolition; and dealing with contractors. Symposium is designed primarily to meet information needs of persons who have responsibility for asbestos removal operations.

For more information contact: Organization Resources Counselors, Inc., 1625 I. St., N.W., Suite 802, Washington, D.C. 20006; (202) 872-1080. Registration fee for non ORC members is \$250.00.

EPA AND NCI PUBLISH REPORT ON CANCER RATES

Environmental Protection Agency (EPA) and National Cancer Institute (NCI) have published a reference report on cancer mortality rates spanning a thirty-year period for counties in United States. Entitled, "U.S. Cancer Mortality Rates and Trends: 1950-1979," three-volume reference provides researchers with data that could help in design of studies exploring environmental factors which may contribute to cancer causation.

Report's data, based on death certificates and county population information, were obtained from National Center for Health Statistics and Bureau of Census. Death rates per 100,000 population were computed separately for whites and nonwhites by sex. Average annual death rates were calculated for all cancers combined and separately for each of 34 cancer sites for three decades: 1950-1959, 1960-1969, and 1970-1979. Rates were computed for 3,065 counties in 49 states. Rates for Alaska are given for entire state but not by county. Data were adjusted to correspond with age distribution of U.S. population in 1970 to provide for comparability with NCI's network of population-based cancer registries.

Report shows that overall cancer death rates would have declined over years 1950-1979 for most of U.S. male population, if it weren't for increases in lung and other smoking-related cancers. Overall rates for females decreased in spite of a large increase in lung cancer, because of decreasing death rates for other types of cancer.

Over three decades, lung cancer death rates for white males rose 116 percent; for white females, rate went up 199 percent; for nonwhite males, up 185 percent; and for nonwhite females, up 188 percent. There were also increases in death rates for other smoking-related cancers such as esophageal and laryngeal cancers.

Excluding lung cancer, death rates for all other cancers decreased 5 percent for white males, 12 percent for white females, and 13 percent for nonwhite females. The rate for nonwhite males increased 15 percent. These trends are consistent with other statistical analyses on cancer death rates.

Dr. Thomas Mason of NCI's Environmental Epidemiology Branch and a co-author of report emphasized that "the data need to be interpreted cautiously. The summary statistics such as percent changes or percentile rankings do not, by themselves, tell scientists or the public what is happening to a cancer rate. Changes in death rates over time as well as rates for counties are influenced by many factors. Regional differences in diagnostic accuracy and reporting practices as well as changes in incidence rates, earlier detection, and improved treatment and survival all affect death rates for cancer."

Dr. Wilson Riggan, a scientist with EPA and investigator for study stated, "The report is an excellent statistical reference tool for medical and scientific researchers because it provides a historical data base for comparing past and present cancer death rates. It also provides a method for screening large amounts of data to select geographic areas most suitable for further study."

However, users of report should bear in mind that population migration patterns, long time period between exposure and appearance of most cancers, and medical advances in knowledge, detection, and treatment of cancer are not considered in this study. Dr. Riggan also explained that although report does give trends in cancer death rates, it does not include cause and effect relationships. No hypotheses are tested in this publication; thus, inference on cause of geographic variations in trends or rates will require additional investigation and data.

Copies of report are available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Telephone: (202) 783-3238. When ordering, refer to publication number 055-000-00234-7. Price of three-volume report is \$45.00.

ACADEMY ISSUES REPORT ON NONOCCUPATIONAL HEALTH RISKS OF ASBESTIFORM FIBERS

A committee of the National Research Council - National Academy of Sciences issued a 334-page report earlier this month on "Nonoccupational Health Risks of Asbestiform Fibers." This study was conducted under a contract from the Environmental Protection Agency. Lester Breslow, School of Public Health, University of California, served as chairman of the committee.

The report is replete with stress on the highly uncertain extent of risk from nonoccupational exposure to asbestiform fibers in air to human health. For example, at one juncture the statement is made that estimating the extent of health risk from such low exposures is "fraught with uncertainty." The committee then proceeds to make a quantitative estimate of the risk of excess lung cancer and mesothelioma that "might" occur in persons breathing low levels of asbestos in the air. Based on the committee's estimated level of exposure to 0.0004 f/cc for a 73-year lifetime, "approximate" risk of 10 excess deaths in a million is predicted (nine mesotheliomas and one lung cancer). The committee then emphasized: "Because of the great reliance on assumption and on clearly deficient exposure and effects data, the committee views these risk estimates as guides to the qualitative assessment of non-occupational health risks from asbestos and asbestiform fibers - not as definitive estimates of the amount of disease to be anticipated."

A part of the committee's mandate from EPA was to also evaluate the public health risk from fibrous minerals other than asbestos and from the man-made substitutes, such as rock wool and fibrous glass. The concern is that the asbestos look-alikes also might be carcinogens because they have many of the same physical properties as asbestos. The term "asbestiform fibers" includes all of them for purposes of the study.

Results of scientific studies of the man-made asbestiform fibers, mostly fibrous glass, have been "equivocal," the report pointed out. These materials have not been in use nearly as long as asbestos; concentrations in the workplace have been lower, and fewer workers have been exposed. Studies done before 1980 did not, in fact, suggest any serious health risks at all. But the studies done after 1980 begin to tell a different story. Most of them report "excess" lung cancer deaths; that is, more lung cancer deaths than one would expect to find if the fibers were not implicated. The evidence is neither clear nor consistent, however, and the results of long-term mortality studies are not yet in.

Copies of the Academy's report may be obtained from the National Academy Press, Room 700, 2100 Pennsylvania Ave., N.W., Washington, D.C. 20418/(202) 334-3113 at a cost of \$22.50 each.

FRIABLE ASBESTOS IN SCHOOLS ADDRESSED BY EPA

In a notice expected to be published in Federal Register early Mar., EPA outlines its future program regarding friable asbestos-containing materials in schools and other public buildings. Agency notice is in response to a petition filed by Service Employees International Union (SEIU), AFL-CIO, under section 21 of Toxic Substances Control Act (TSCA), to initiate rulemaking proceedings under section 6 of TSCA concerning abatement of friable

asbestos-containing materials in public and private elementary and secondary schools, and inspection and abatement of these materials in other public and commercial buildings.

SEIU petition sought to have EPA take action in following areas:

- . Establish standards for determining when friable asbestos-containing materials in schools are hazardous.
- . Establish requirements for corrective action when friable asbestos-containing materials are determined to be hazardous.
- . Establish requirements for inspection and abatement of friable asbestos-containing materials in public and commercial buildings.
- . Establish standards for performance of abatement activities, including standards for protection of persons performing such activities.

EPA has granted three of petition's four requests and has partially granted fourth.

As first step in initiating proceeding under section 6 of TSCA, EPA is soliciting written public comments and will convene a public meeting not only on issues raised in petition but on other regulatory and technical options as well. At same time that public input is solicited, Agency will continue to develop data which can support additional action.

With respect to unreasonableness of risk from asbestos-containing materials in schools, EPA response to SEIU petition stated a number of factors must be considered. In some cases, asbestos-containing material is undamaged, potential does not exist for future release, and cost of removing asbestos is extremely high. In such cases, removal could increase, rather than decrease exposure to asbestos, therefore, risk resulting from leaving asbestos in place would not appear to be unreasonable, and best option would be to leave asbestos in place as long as it remains undamaged. On other hand, some schools may contain damaged or deteriorating asbestos-containing material which readily releases fibers, thereby increasing likelihood of exposure. According to Agency, such risks could be called unreasonable and costs that may be incurred in removing or otherwise abating asbestos would be outweighed by risks presented.

Alternatives which EPA is developing to address problem include additional training programs for schools, contractors, states, parents and teachers; requiring asbestos abatement contractor certification; and requiring abatement of friable asbestos-containing materials in buildings through use of administrative mechanism and independent inspections or certification of appropriate abatement actions taken.

Canada's bid to regain U. S. asbestos markets

The use of asbestos, a mineral known to be carcinogenic, has been declining yearly as governments, particularly the U.S. government, continue to restrict its use. Now Canada, the non-Communist world's leading asbestos supplier, is anxiously looking for a way to regain some of its markets. The Societe Nationale de l'Amiante (SNA), an asbestos firm owned by the province of Quebec, will start up a 1-metric-ton/day pilot plant in April to produce a "safe" phosphate-treated asbestos fiber. SNA claims that its treated fiber dramatically reduces dust emissions, lowering the risk of asbestos-related diseases.

Canada has a lot at stake. Consumption of asbestos in the U.S., the largest market for Canadian asbestos, has plummeted from a 1973 peak of 795,000 m.t. to 335,000 m.t. in 1981, according to Gorham International (Gorham, Me.). The Canadian government is pressing the U.S. to relax its regulatory position

on asbestos. But Gorham projects that, even without any further regulatory strictures, U.S. demand will continue to fall, to 250,000 m.t. in 1985 and 170,000 m.t. by 1990.

Confidence. SNA, meanwhile, is so confident that its pilot plant will produce a marketable product that it already is planning for full-scale production. "By the end of the year, we hope to have the information available to proceed to construction of a proper factory," says Jean-Marc Lalancette, SNA vice-president of research and development. Industrial production using the patented process could begin by 1986, he adds.

SNA's technology converts the terminal hydroxyl groups of magnesium in chrysotile asbestos—the most commonly used asbestos and the only kind produced in Canada—into phosphate groups. These phosphate-treated asbestos fibers are considered less carcinogenic than untreated asbestos because they reduce cancer-causing asbestos dust.

Conversion is accomplished by exposing agitated asbestos fibers to circulating phosphorous vapors, a reaction that is carried out in an inert, dry atmosphere. Lalancette says that such phosphate treatment will result in a "slight" price increase of about \$100 (Canadian)/m.t. of asbestos, most grades of which currently sell for \$400-600 (Canadian)/m.t.

SNA claims that its treated asbestos can be substituted for all grades of asbestos fiber in virtually all industrial and construction applications. And the company also claims that its treatment method, unlike other physical and chemical modifications, leaves the chrysotile's fibrous structure intact.

Competition. But SNA's modified asbestos will have to compete with a number of substitutes. Glass fiber priced competitively with asbestos dominates the asbestos substitute market, according to Alvin Keene, vice-president and director of marketing services for Gorham International. Silica and other mineral products also compete in the lower end of the market. In some high-performance applications, higher grades are being replaced by aramid fiber.

While the provincial government of Quebec is focusing on modifying asbestos to make it safer, the Canadian government is directing its efforts toward

influencing Washington's asbestos policies. Canada's concern is not surprising: During 1983, Canadian asbestos mines operated at only 55-60% of capacity, according to Oliver Vagt, a mineral economist with the country's Energy, Mines and Resources Dept. Production dropped from 1,492,000 m.t. in 1979 to 820,000 m.t. in 1983. "The outlook is for an improvement in 1984, but it all depends on the regulatory front in the U.S.," Vagt says.

Departure. Canada exports 90% of its asbestos, much of it to the U.S., where the Environmental Protection Agency is threatening to ban the use of a variety of asbestos products sometime this year and to establish a staged production cap on remaining uses. In a recent speech delivered in Washington, Allan E. Gotlieb, Canadian ambassador to the U.S., charged that the direction of U.S. policy is an "apparent departure from the mainstream international approach that has implications for the general principle of international harmonization of regulations on asbestos supported by both our governments."

"There is no doubt that the recent economic recession has had a large bearing on the poor performance of both our asbestos industries," Gotlieb continued. "But there is also no question that the public concerns about health have taken their toll." □

Chemical Week/February 22, 1984

U.S. Is Considering Rules to Clean Up Asbestos in Schools

By ANDY PASZTOR

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — Federal environmental officials are considering mandatory rules to protect schoolchildren and other groups from exposure to asbestos fibers from crumbling insulation.

The Environmental Protection Agency, acknowledging that current voluntary guidelines may be inadequate, announced that it is formally reopening the question of whether to issue legally binding standards for the cleanup and removal of asbestos insulation.

Asbestos, considered by the government to cause cancer and respiratory problems, was used for insulation in thousands of buildings after World War II; it has been detected at unsafe levels in certain schools and public buildings.

Although the agency didn't propose specific rules, the announcement indicates a sharp turn from previous federal policy, as it could pave the way for a more aggressive strategy to deal with the problem, agency officials said. Development of new rules, however, could take as long as two years.

Since May 1982, the EPA has required school officials to inspect classrooms and inform parents and employees about possible asbestos dangers. But it's currently up to local school officials and parent groups to decide what, if anything, should be done to correct problems.

A recent internal agency report concluded that hundreds of schools with serious asbestos pollution haven't done anything to alleviate the danger, and it suggested that tougher regulations may be necessary. The National Education Association and the Service Employees International Union also have asked the EPA for more stringent regulations.

By some estimates, nearly 14% of the nation's elementary schools may have asbestos problems requiring some protective measures. Currently, the agency doesn't even require routine inspections of public and commercial buildings for asbestos fibers.

It isn't clear what the EPA will require to control asbestos fibers pollution, and much will depend on public feedback. But after agreeing to consider a mandatory program, it's unlikely the agency will decide to continue voluntary cleanup guidelines. EPA officials previously asserted mandatory rules would be too expensive, cumbersome and technically difficult to formulate, but the agency said it currently is searching for ways around those obstacles.

Specifically, the agency granted most of the demands of the service employees union to initiate formal regulatory action under the Toxic Substances Control Act. But at the same time, the EPA rejected union requests for new regulations to protect school employees and other workers who remove and repair crumbling asbestos insulation.

THE WALL STREET JOURNAL
Thursday, February 23, 1984

UNR Seeks to Recover \$6.2 Million in Losses From Asbestos Cases

By a WALL STREET JOURNAL Staff Reporter
CHICAGO—UNR Industries Inc. said it filed claims with nine federal agencies, seeking reimbursement for \$6.2 million in losses from defending itself against asbestos-related lawsuits.

UNR, a steelmaker, said the claims involve 11,400 cases settled before the company filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code in July 1982. Under Chapter 11, a company is protected from creditor lawsuits while it tries to work out a plan to pay debt. The company currently is operating under that protection.

The nine agencies UNR filed with are the departments of Justice, Defense, Labor, Navy and Health and Human Services; the Maritime Administration, a unit of the Transportation Department; the General Services Administration; the Office of the Surgeon General, and the Public Health Service, an HHS unit.

Last month in a separate action, the company sued the federal government for \$60 million, charging that the government shared liability for millions of dollars in asbestos-related injury claims against UNR. The claims arise from the production and use of asbestos during U.S. shipbuilding efforts in World War II and thereafter.

"Our company's aggressive litigation will establish that the government at best ignored the hazards of shipyard asbestos exposure or at worst even concealed them," an attorney for UNR said. "We feel the government should be a partner in paying the enormous costs that resulted from the product use."

Asbestos has been linked to cancer and lung disease in humans.

THE WALL STREET JOURNAL
Thursday, February 16, 1984

NO-FAULT ASBESTOSIS COMP FUND PROPOSED

WASHINGTON, DC — A draft of proposed federal legislation to establish a no-fault system of compensation for asbestos related disease has been developed by the Committee for Equitable Compensation, comprised of 13 asbestos manufacturers. The draft also has been endorsed by the three asbestos manufacturers that have filed for reorganization under federal bankruptcy laws — Manville Corporation, UNR Industries and Amatek Corporation. The proposal calls for the federal government to contribute one half of the payments to the compensation fund, which would be the exclusive remedy for asbestosis claims. The balance of the fund would be contributed by manufacturers and then insurers. State workers' compensation rules would apply. A maximum of 92 times the statewide average weekly wage in compensation is proposed subject to reductions for partial disability. //

43A-19 INSURANCE WEEK
WEEKLY 8,000

JAN 20 1984

Asbestos

It's time for Congress to enter the fray

The Manville Corp.'s bold gambit to evade responsibility for asbestos-related illnesses in the workplace through bankruptcy begs for a congressional remedy.

Congress must deal this session with the immediate prospects that Manville might succeed before the bankruptcy court in insulating itself from lawsuits by individuals claiming health damage from exposure to Manville-made asbestos. There are more than 16,000 such claims pending, including about 350 by Electric Boat workers who handled insulation material that was used extensively aboard submarines until the early 1970s. When it filed for bankruptcy last August, Manville claimed it faced at least 35,000 additional suits.

Congress must also deal with the possibility that, if things go well for Manville, other companies will use the threat of bankruptcy as a bargaining chip against claims of this sort.

The federal bankruptcy code was never intended to protect a solvent company in Manville's predicament. The corporation is in sound financial health, with a net worth in June 1982 of \$1.1 billion, short-term debt of \$102 million and long-term debt totaling \$493 million.

"No company should be able to cloak itself in the judicial processes of the U.S. to evade all responsibility," says Rep. George Miller of California, who is chairman of the House Committee on Labor.

The Manville case is not entirely one-sided. The company claims, possibly with some justification, that litigious lawyers may be partly at fault for the mess before the bankruptcy court, hampering serious negotiations in an effort to enlarge their clients' claims and beef up their own fees.

This is all the more reason for Congress to take a leadership role in dealing with the asbestos claims and not wait for courts to settle the matter. Sen. Gary Hart, a Colorado Democrat, has appealed for passage of legislation to create a method of compensating white-lung victims through a joint government-industry fund to pay asbestos claims. The approach is similar to the one taken by the government to deal with the problem of hazardous wastes.

Whether this is the solution remains to be debated. But it is preferable to denying the rightful claims of American workers that Manville has begun to do in its bankruptcy petition.

CT-D18 NEW LONDON DAY
(E)38.000

JAN 31 1984

COST HIGH FOR ASBESTOS REMOVAL

Removing friable asbestos from the walls and ceilings of the nation's schools would cost \$1.4 billion according to a report completed by the

Department of Health and Human Services.

The draft report, which was leaked to the press, said that more than 14,000 school buildings contain flaking asbestos particles that could pose a health risk to students, teachers and workers in the schools.

Rep. George Miller, D-Calif., said the draft report brings attention to a problem that has been a concern for a long time. He criticized both the Environmental Protection Agency and the Department of Education for not doing enough to deal with the asbestos situation.

The House recently voted \$50 million to provide no-interest loans to schools to help with the asbestos removal, but the measure did not pass the Senate. A House-Senate Conference Committee will determine whether the money will be in the final appropriations measure.

50A-174
OCCUPATIONAL HEALTH & SAFETY
TO TIMES/YEAR 37,000

JAN 1984

Rulings on future claims favor asbestos firms

By STEPHEN TARNOFF

NEW YORK—The fortunes of asbestos producers that have filed for bankruptcy due to overwhelming asbestos litigation appear considerably brighter following two recent court decisions.

This optimism stems from decisions involving future asbestos claimants by U.S. Bankruptcy Court Judge Burton R. Lifland in Manville Corp.'s bankruptcy and by the 7th U.S. Circuit Court of Appeals in the bankruptcy of UNR Industries Inc. in Chicago.

Both courts have indicated that it is conceivable that claims of future victims of asbestos-related disease could be included in bankruptcy proceedings.

Judge Lifland's opinion especially says that future claimants have a "cognizable interest" that must be considered in the bankruptcy proceedings because they are a "central focus" of the litigation.

In the UNR case, the appeals court dismissed UNR's appeal of a lower-court ruling that future claimants were not entitled to a legal representative. However, the appeals court said that future claims could possibly be considered in bankruptcy proceedings.

The rulings are significant, attorneys say, because other courts hearing the novel legal question have ruled that future claimants could not be represented in the bankruptcy proceedings.

Besides benefiting asbestos defendants that have filed for bankruptcy, the decisions also could benefit other asbestos defendants by furthering a global settlement of all asbestos cases, some attorneys say.

"It is the first time that any bankruptcy court has speculated along those lines (to include future claimants)," says Stephen J. Shimshak, an attorney for Keene Corp. with the New York firm of Anderson Russell Kill & Olick.

"What we're seeing at the very minimum is another view," or perhaps a rationale developing to include future claims.

Keene is the Manville co-defendant that sought a ruling that future claimants be included in the bankruptcy proceedings.

Manville, UNR and Amatek Corp. of Norristown, Pa., all filed for reorganization under Chapter 11 of the Federal Bankruptcy Act because they could not deal with the thousands of pending and future claims and still remain solvent. Manville and UNR say they are facing between 30,000 and 120,000 additional lawsuits from asbestos-disease victims.

However, Judge Lifland's decision could complicate things for Manville because, while it initially asked the bankruptcy court to rule on future claims, it did not include them as part of the reorganization plan it recently filed.

Instead, Manville is seeking the establishment of a claims-handling facility to deal with future claims without seeking a ruling that they are necessarily dischargeable in bankruptcy.

"From our perspective, we have always said we believe a vehicle must be found to take care of future claimants in one way or another," said Lowell Gordon Harris, a Manville bankruptcy attorney with the New York firm of Davis Polk & Wardwell.

"We believe we have achieved that end."

But Mr. Harris, who emphasized that he was not speaking for Manville management, also said he saw "no drastic change" in the company's approach due to Judge Lifland's decision.

While that decision supports the need for a legal representative for future claimants, attorneys say the impact the representative will have on the bankruptcy proceedings will depend on the type of representative that is appointed and the power he or she has.

Judge Lifland, who said a hearing will be scheduled to determine the function of the representative, suggested that the future claimants' representative might be an amicus curiae (friend of the court), a guardian ad litem or an examiner.

Some attorneys believe Judge Lifland's decision on a legal representative could contribute to a global settlement of asbestos litigation.

"We now have a second opportunity for all parties to try and come up with a global settlement" that would be in all the parties' best interests, said another attorney close to the Manville litigation.

The future claimants include persons who were exposed to asbestos products prior to the companies' bankruptcy petitions but who have not yet manifested an asbestos-related disease or filed a lawsuit.

Beginning with the UNR bankruptcy and then in the Amatek case, the courts denied representatives for these future claimants because they said their claims could not be dischargeable in bankruptcy.

Judge Lifland in the Manville case, however, said it was not necessary at this time to determine whether future claims are dischargeable in bankruptcy but that they are "parties in interest" under Section 1109(b) of the bankruptcy code, which he said must be taken into consideration.

"While the precise contours of Code Section 1109(b) have yet to be fixed, they are certainly broad enough to embrace the interests of future claimants as affected parties," the court said.

"Because none of the existing committees of unsecured creditors and present asbestos claimants represents this key group, a separate and distinct representative for these parties in interest must be established so that these claimants have a role in the formulation of such a plan."

In footnotes to the opinion, Judge Lifland said that future claims may very well be dischargeable in bankruptcy proceedings.

"It is the view of this court that the declarations by Judges Hart and King (the judges in the UNR and Amatek cases) that these future claims are non-dischargeable in bankruptcy are based on superannuated and considerably narrow notions of what constitutes a claim dischargeable in bankruptcy," he said.

"These notions are at odds with the expanded definition of 'claim' contained in Section 101(4) of the Code."

"In enacting the Bankruptcy Code, Congress specifically intended to afford the broadest possible scope to the definition of 'claim' so as to enable Chapter 11 to provide pervasive and comprehensive relief to debtors."

Future claimants also are considered "parties in interest" because they were exposed to asbestos prior to Manville's reorganization filing and for insurance purposes virtually all courts have deemed them to have suffered injury, pointed out Judge Lifland.

"It follows logically that if exposure triggers a sufficient interest on the part of future claimants to warrant insurance coverage, then this same exposure should justify a declaration that they are parties in interest to be impacted by these proceedings," he said.

Language in the opinion by the 7th U.S. Circuit Court of Appeals in the UNR case also indicates that future claimants may be includable in bankruptcy proceedings.

"A bankruptcy court's equitable powers just might be broad enough to enable the court to make provisions for future asbestosis claims against the bankruptcy when it approved the final plan of reorganization," the court says at one point.

"Could it not be argued, therefore, that a bankruptcy court can and should use its equitable powers, which traditionally have been invoked to the end that... substance will not give way to form, that technical considerations will not prevent substantial justice from being done?"

An attorney for UNR said that while the company was disappointed that the court did not rule on the issue of a legal representative, language in the decision and Judge Lifland's opinion was encouraging.

"It's very encouraging," said Malcolm Gaynor of the Chicago firm of Schwartz, Cooper, Kolb & Gaynor. "It (Judge Lifland's decision) was exactly what we asked for."

UNR is considering asking Judge William Hart to reconsider the matter, taking into consideration Judge Lifland's and the 7th Circuit's opinions, Mr. Gaynor said.

Amatek, which filed for reorganization in November 1982, will include the court arguments in favor of future claimants in legal briefs it files with the 3rd U.S. Circuit Court of Appeals. That court is considering a ruling by a district court judge that said a guardian ad litem, to represent future claimants could not be part of the bankruptcy proceeding.

"We will definitely do that," said J. Gregg Miller, an attorney for Amatek with the Philadelphia firm of Pepper, Hamilton & Scheetz. "They (the decisions) definitely help our case."

the Manville case, also said that Judge Lifland's decision is wrong, noting that plaintiffs have filed an appeal.

bankruptcy court's equity powers shouldn't enable it to deal with future claimants. Robert Rosenberg, an attorney

An attorney close to the UNR litigation, however, said that the decision was "unfortunate and further delays and complicates the case."

43A-5 BUSINESS INSURANCE
SEMI-WEEKLY \$7,000

FEB 6 1984