

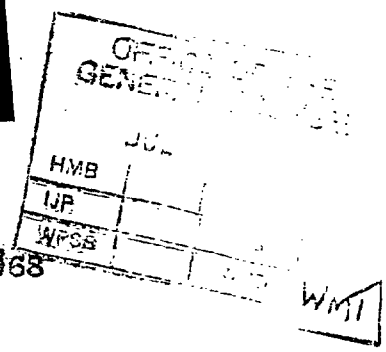

CONFIDENTIAL AND PRIVILEGED
ATTORNEYS' COMMUNICATION

July 25, 1968

Herbert Morton Ball

Common Law Asbestosis Claims

Pursuant to your request, I write to summarize my observations and recommendations:

A. With respect to the Tomplait litigation:

1. Mr. Pate is a single practitioner and does not have any lawyers in his employ. Accordingly, the amount of effort he can individually expend on the case is necessarily limited. Perforce, he is constrained to rely on the work of some of the other defendants' attorneys.

2. The relationships of the defendants' lawyers vis-a-vis one another and of that group vis-a-vis the judge, considered in conjunction with the posture of the case at this time, are such that it would not be "politically" wise to replace Mr. Pate with either another local lawyer or an "outside" attorney.

3. I would recommend that we secure the consulting services of a highly competent lawyer very experienced in Federal Court litigation, preferably with some background in cases involving alleged pulmonary disability. This lawyer should have available to him the time and effort of capable junior attorneys for research and brief writing. If such a man is available on Travelers' staff, we should utilize him. Otherwise, I would suggest the retention of such a lawyer from Davis Polk or some other first grade firm. This lawyer should aid and guide Mr. Pate.

The above recommendation is not meant to belittle Mr. Pate's competence in any respect, but this case is of tremendous consequence in terms of potential future actions and we should assure ourselves of the highest caliber of representation possible (consistent with the dictates of the local political situation). In my opinion, the risks involved justify the possible duplication of effort and additional expense.

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B. With respect to potential common law asbestosis claims generally:

1. We should proceed on the assumption that we shall be faced with an increasing number of these claims. This assumption is based not only on the general situation but on specific advice I have received that:

   (a) the Tomplait case is being extensively followed in the trade;

   (b) the consensus of opinion of all the defendants' lawyers with whom I have spoken is that Mr. Tomplait will obtain a judgment; and

   (c) Mr. Tomplait's attorney, Mr. Ward Stephenson, presently has in the works at least one more asbestosis case and probably more. This lawyer is seeking to make a name for himself in this field.

   Thus, while the furor may abate, I think that the better part of valor here would be to proceed on the assumption that we will be defending common law asbestosis cases in increasing numbers during the next decade.

2. Since we will have little or no control over the locales of litigation of these cases, and as we shall probably have to rely on different local lawyers in most instances, an "Asbestosis Defense Task Force" should be instituted. The goals of this Task Force would be:

   (a) to educate the various local lawyers that we shall have representing us (i.e. through our insurance carrier) as to the factual background (the genesis, symptoms, diagnosis and prognosis of asbestosis, the nature of our products, the environmental control programs that we have instituted, the constitution of the industry, our cumulative legal experience in these matters, etc.); and

   (b) to provide the most persuasive "expert" testimony that we can muster for the defense of each case.

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This Task Force should consist of the following individuals:

(1) A highly competent and experienced Federal trial lawyer, preferably with and extensive background in pulmonary disease litigation.

(2) A qualified and recognized medical expert on the disease of asbestosis.

(3) A person with extensive knowledge of the environmental control efforts of this company and of the industry generally with respect to this hazard.

(4) A person from our Insulation Division who possesses knowledge of the asbestos insulation industry and of our insulation product lines, including the general chemical make-up of such products.

(5) A member of the J-M Legal Department to act as liaison and coordinator. It may be that in time, as experience is gained, this internal lawyer may be able to supplant the lawyer described in subparagraph(1)above.

R.R. Standel, Jr.

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