

April 24, 1979

TO: BOARD OF DIRECTORS

SUBJECT: FEDERAL LEGISLATIVE DRAFT "ASBESTOS HEALTH HAZARDS
COMPENSATION ACT"

An Institute member has forwarded me a draft copy of the "Asbestos Health Hazards Compensation Act." This draft was prepared by an industry legislative drafting committee for which Johns-Manville coordinated most of the work. Other asbestos manufacturers such as Unarco Industries and Jim Walter participated in this drafting. In most cases, it was probably legal counsel for the various corporations who worked on the draft in consultation with their technical people. The draft that we are enclosing is patterned after a House Bill, called the Fenwick Bill in the last Congress (HR8689). No action was taken on the Fenwick Bill at that time. The draft legislation proposes an asbestos type compensation plan perhaps patterned after the coal miners compensation bill. As I do not have the legal know-how as to where the act was drafted from or patterned after, I will confine my comments to an area that would impact the manufacturers of friction materials if it were to be enacted into law. I am not commenting on the possibilities of it being enacted in the form in which it is now drawn.

After seeing the draft of the legislation I talked with Mr. Jim Reis of Johns-Manville concerning industry viewpoints on this legislation. It is difficult to quote exactly what we discussed but Johns-Manville is familiar with this and has been advocating some type of a compensation act of this nature. The main pressure along this line may be the growing number of product liability suits which are being aimed at producers and manufacturers of asbestos products. It would be the intent of such legislation to have a fund supported by the asbestos industry, the tobacco industry, and the US government with payments based on certain formulas for those who suffer disability or death from employment-related diseases caused by asbestos. Mr. Reis indicated that there was no overall industry consensus concerning such legislation.

I then called Mr. Bob Pigg at the Asbestos Information Association concerning the AIA and its members' attitudes towards this legislation. Mr. Pigg indicated that the AIA has no position. It is leaving to its individual members discretion as to whether they should or should not support such legislation. The AIA, as with the FMSI, is a tax-exempt organization and as such cannot lobby directly for or against legislation. However, I believe we can send in our views on legislation and the individual members would, of course, be encouraged to. If we were to comment to the industry legislative drafting committee we would probably direct our remarks to Mr. Dennis Markusson of Johns-Manville or Mr. Bob Emerton of Jim Walter Corporation. Mr. Markusson is Chairman of the drafting committee and Mr. Emerton has coordinated some of the recent work.

This industry legislative committee had a meeting on April 10, 1979. In order to identify what will be termed "Class I" products, as described on page 9 of the draft, the committee recommended that "Exhibit A" listing the type of manufacturer be incorporated as the "Class I" type party. At the end of the draft you will note that

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"Exhibit A" (which would then become Class I parties) includes, on the bottom line, "Friction materials, automotive."

Then if you will refer to page 26 of the draft, you will find that Class I parties would be assessed a contribution amounting to \$325 per ton of asbestos fiber purchased and used 15 years ago. Had friction materials manufacturers not been included on Exhibit A, which has never before been part of the legislative draft, they would then be considered a Class II party for which the assessment would be \$32.50 per ton. In other words, if a certain Class I manufacturer used 10,000 tons of asbestos in his products in 1965 he would be assessed \$3,250,000 in 1980. Had the friction materials manufacturer not been included in Exhibit A (which becomes Class I) the assessment would be \$325,000 for the 10,000 tons of asbestos. This, of course, can be scaled down proportionately where the consumer of 1,000 tons would be assessed \$325,000 under Class I and \$32,500 under Class II.

There are other parts to this suggested legislation which may be of concern to members. Products imported into the United States might be somewhat difficult to control where the imported changes for a certain foreign manufacturer. In other words, the entire burden would most probably be born by a domestic manufacturer even though they attempt to write the importer into the regulations. In the proposed legislation there are provisions made for those who acquired certain entities who were manufacturing asbestos products in the past. Based on the draft, a company like Lear-Siegler would be responsible for the World-Bestos usage and the old Krasne products.

I am circulating this draft to the Asbestos Study Committee as well as to the Board of Directors. Where appropriate, this legislation draft should be referred to legal staffs. Some members of the Institute who are also members of the Asbestos Information Association may already be reviewing this work prior to expressing opinions. I don't believe the Institute at this time can take any position on this legislation as it must have input from the Membership.

It is, of course, interesting to note that the mining and the production of asbestos is not assessed. Obviously most mining is done in Canada and United States legislation could not reach that producer. The burden is to be born by those manufacturers who use asbestos and turn it into a finished product.

It would appear that the listing of Friction Materials in Exhibit A (Class I) groups our manufacturers with others who are distributing products primarily to the construction industry. It is known that the construction industry (shipyards) was where the first significant asbestos disability appeared. I don't believe there have been any significant claims on the part of friction materials installers concerning asbestos related disability. It would appear that the grouping of friction materials manufacturers with construction materials manufacturers is out of place. I would think that friction materials should more likely be grouped with the Asbestos Cement Pipe, Floor Tile, Paints Coating and Sealants, Gaskets and Packing and similar type production lines. While there have been several epidemiological studies run in the construction area, the first of any significance with auto mechanics or garage repairmen working with brake linings is that which Mount Sinai is now conducting for NIOSH. While granting

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that a survey by Mount Sinai may have bias, we should at least see the results of this study prior to grouping friction materials manufacturers with those manufacturers supplying the building trades.

I would welcome any comments and suggestions on a course of action for the Institute. Individuals might also make their viewpoints known to this industry legislative drafting committee. I don't believe there is time enough to respond quickly to the detailed items which appear in this proposed legislation. I think that the most important item in the document is that which appears on the last page of the proposed bill (Exhibit A). The addition of "Friction materials, automotive" to this list of asbestos users seems out of place. I can even see opposition from members included as any type of party subject to this assessment. I believe that it will be very difficult for the Friction Materials Standards Institute to take a position on this draft legislation. This is somewhat like the attitude that the Asbestos Information Association has taken according to my conversation with Mr. Bob Pigg.

I would be most receptive to any comments, suggestions and recommendations by the Board of Directors and Members of the Asbestos Study Committee.

E. W. Drislane
Executive Director

Underlined items are changes from H.R. 8689.

~~A BILL~~ ~~OF FIRST DRAFT~~

To provide equitable, comprehensive, and exclusive benefits to

(a) persons who are disabled as a result of employment-related diseases caused by the inhalation or ingestion of asbestos, and/or the inhalation of asbestos coupled with the inhalation of cigarette tobacco smoke, (b) members of such person's household, and (c) the surviving dependents of such persons whose death was due to such disease.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Asbestos Health Hazards Compensation Act".

1 TITLE I—GENERAL PROVISIONS

2 FINDINGS AND PURPOSE

3 SEC. 101. (a) The Congress finds and declares that—

4 (1) there is a significant number of persons who
5 suffer disability or death from employment-related dis-
6 eases caused by the inhalation or ingestion of asbestos,
7 and/or the inhalation of asbestos coupled with the in-
8 halation of cigarette tobacco smoke;

9 (2) members of households of persons who are
10 occupationally exposed to asbestos may suffer from as-
11 bestos-related diseases;

12 (3) lung cancer at rates dramatically and substan-
13 tially above the general average occurs in persons who
14 inhale asbestos coupled with the inhalation of cigarette
15 tobacco smoke;

16 (4) there is a substantial number of surviving de-
17 pendants of affected persons whose deaths were due to
18 such diseases;

19 (5) the diseases arising out of occupational situa-
20 tions and caused by the inhalation of asbestos and/or
21 the inhalation of asbestos coupled with the inhalation of
22 cigarette tobacco smoke constitute a substantial burden
23 upon interstate commerce and have an adverse effect
24 upon the general welfare;