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To Underwriters - Non-Marine Market and Non I.L.U. Companies

Gentlemen,

The matters discussed in this letter concern the most serious claim problem ever encountered by our Industry. I cannot over emphasise that it is essential for you to give active consideration to the issues that are addressed, and more particularly, your support to the efforts that are being made to develop a more practical way of handling the asbestos problem.

You will be aware from the Asbestos Working Party Annual Report which was recently distributed to the Market that the discussions with Producers aimed at the establishment of a Claims Facility were reaching a positive conclusion. Final discussions upon the coverage issue took place in San Francisco on 4th/5th January, 1984, at which the two London Market representatives were in attendance. Subject to minor points which have yet to be ratified, agreement in principle has been concluded upon coverage issues which provides that the signatories endorse and will recommend to their respective principals the proposals. It is unlikely that the terms can be embodied into a formal agreement before April, but meantime the Asbestos Claims Council Resolution Committee has agreed to lift the confidentiality agreement to enable details to be provided to the insurance industry. However, it is important that the London Market respects the need to keep confidential the information provided in this letter in order to prevent premature leakage to the media, which could be counter-productive to the interests of all parties at this stage.

The negotiations extending over a fifteen month period have been complex, and have to an extent been influenced by coverage interpretations handed down by the Courts over that time. The salient issues involved are as follows.

1) Coverage and Funding

Insurance coverage for an "exposure period" will be provided for a period from the first exposure to an asbestos product until manifestation of a disease related to such product. All insurance policies within the "exposure period" shall constitute a block of coverage to be utilised for payment of liability payments approximately 1975 forward, insurance coverage for asbestos diseases was either not available to a Producer or was written very protectively with high per claim deductibles. Therefore, before a Producer has to apply payments to such policies, he will be permitted first to exhaust all of the earlier policy years. This is the so called "accordion" theory which permits a Producer to exhaust his insurance coverage before having to make payments from his own resources.

2) Dismissal of Coverage Disputes

All coverage actions brought by Producers and Insurers seeking declaratory relief for damages, including punitive damages, shall be dismissed. Any disputes that may arise in the future shall be resolved within the Central Claims Facility through an alternative dispute resolution process to be developed.

Certain unique difficulties arising on one account are of such a nature that they could not be resolved prior to the creation of the Facility. It was agreed that in such instances the parties would be permitted to join the Facility with the understanding that they attempt good-faith settlement negotiations or resort to an alternative dispute resolution process if negotiations fail.

In either case, if settlement is still not possible, the parties may submit the matter to the courts for final resolution. However, in such instances, all claims for punitive damages are to be waived.

3) Central Facility

Under the proposed plan, all claims will be handled within a Central Claims Facility. Meetings have been held with the leading plaintiff's attorneies who approve of the Facility method of handling asbestos claims. The procedure calls for an attempt to settle such claims through negotiation; if that fails, to resort to arbitration which may either be binding or non-binding at the choice of the parties and to resort to the courts only if all other efforts towards settlement fail.

The Facility will also establish liability shares to be paid by Producers and insurance shares for each settlement to be paid by Insurers. The Facility will be governed by a board of directors whose membership will principally consist of Insurers and asbestos Producers.

Advice is being provided by business consultants and a special sub-committee has been formed which has been preparing the ground work for the creation of such a Facility. It is proposed that there will be one central office and two regional offices initially. It is estimated that a staff of 150 people will be need to process the claims. At the start, the Facility will be manned by loaned employees from Domestic insurance companies. It is estimated that this "loan" should be for no more than one year during which time in addition to handling claims the loaned employees will also train new employees who will eventually become the full-time staff of the Facility. It is estimated that most of the loaned employees will return to their respective companies at the end of the year, but that some may elect to stay on as full-time employees of the Facility.

4) Scope of Facility

To date, agreement has only been reached in regard to the handling of bodily injury claims. There are still disputes as to the trigger of coverage and the amount of coverage available for property damage claims. A sub-committee exists which is attempting to work out an agreement regarding the existence and extent of coverage for property damage claims, but this may not be possible prior to the start-up date of the Facility which is estimated to be 1st July, 1984. If there has not been a resolution of the property damage question at that time, it is proposed that an interim agreement be worked out to permit the handling of property damage claims within the Facility, whilst the parties attempt to negotiate a final resolution.

5) Facility Costs

The costs of establishing the Facility will be borne by the Primary Insurers. Excess Insurers will participate in operational costs commensurate with their involvement, and a Producer will be required to pay its share of Facility operating expenses after all of its applicable insurance is exhausted.

6) Reimbursement of Payments Under Interim Agreements

Producers and Insurers shall be reimbursed and reallocate in accordance with the proposed agreement for payments and expenses incurred prior to the creation of the Facility, except where interim agreements explicitly provide otherwise. Where a party is required to reimburse another party, such reimbursement may be made over a period of three years with interest accruing.

Claims for fees and expenses incurred in asbestos insurance coverage litigation in which a Producer or an Insurer consider that they can justify a case for equitable relief will be submitted to the Facility for resolution in accordance with standards to be developed. Similar treatment will be afforded to claims by Producers for reimbursement for costs of coordinating Counsel and certain in-house costs incurred in handling of defence which went beyond the duty to cooperate.

7) <u>Non-aggregate Policies and Deductibles Without a Stop-loss</u>

A formula has been developed which puts a cap on payments where a non-aggregate insurance policy which attached in the period prior to knowledge of the asbestos issue has been triggered. The formula involves a multiplier of policy limits which decreases with the face amount of the policy. Where Producers had deductibles without a stop-loss, relief has been afforded under a similar theory where deductibles do not exceed $25,000 per claim or per occurrence. Deductibles or self-insured retentions in excess of that amount must be negotiated between the parties or in the event of a dispute, the parties must resort to arbitration, and if necessary, litigation. However, all punitive damages are waived. Policies written in the knowledge of the asbestos issue will be interpreted strictly in accordance with their terms.

8) <u>Duty to Defend</u>

This subject resulted in one of the more hotly disputed problems in the negotiations. The Producers took the position that in the pre-1966 policy forms, the duty to defend did not end upon exhaustion of the policy limits. Insurers took the opposite position. Unfortunately, during the negotiation process, two different decisions were handed down by courts supporting the Producers' position and indicating that due to the wording in the pre-1966 forms, the duty to defend continued beyond the exhaustion of policy limits for all claims which triggered such policies. Obviously, these decisions weakened Insurers' bargaining position but a compromise was worked out which essentially provides that the duty to defend on a policy on pre-1966 form will expire on exhaustion of indemnity, but be revived on exhaustion of all excess policies. Rather than impose the burden of defence on such a policy which is revived, the Primary Insurers will fund a special defence policy which will pay for the cost of the revived defence in such instances.

9) <u>Gaps in Indemnity Coverage</u>

Subscribing Insurers are now giving consideration to the Producers' request that they cover gaps created by solvent non-subscribing Insurers in the band of coverage provided that the subscription to the Facility by Insurers is heavy and there are few non-subscribers and that the Producer will pursue any non-subscribing Insurer who refuses to pay his share through litigation in court. If such suit is successful, the Producer will reimburse Insurers who have paid money on the behalf of non-subscribing Insurers.

In the event the gap in the band of coverage is created by an insolvent Insurer, Insurers strongly maintain

The items listed above are the principal issues covered in the proposed agreement. There are other issues involving interpretation of insurance policies which have also been resolved, but they are too numerous to mention and do not substantially affect the operation of the Facility.

I hope that the above summary will give you a sufficiently broad indication of the proposals to enable initial consideration of the matter. As I have stated, it is likely to be at least two months before the proposals have been put into a detailed form for presentation to all parties at interest. However, the Working Party considers that it is essential that the Market be made aware of these important developments and be provided with some background to the negotiations and likely developments in the future if endorsement is forthcoming from the Insurance Market. It is therefore proposed that there be a Market meeting at 10.30 a.m. on Monday, 13th February, 1984 at the City Conference Centre, Marine Engineers' Building, 76 Mark Lane. Due to space limitations it is requested that no more than two individuals attend from each underwriting organisation, and that they each sign the attendance form at the entrance.

I must emphasise that your attendance at the meeting is essential in order that the Asbestos Working Party and the various U.S. Counsel involved in these matters can address any concerns that exist within the Market. The formal proposals will be distributed to all sections of the London Market when they are available. However, at that stage a speedy response will be necessary from London, and it is therefore important to address questions that arise now, rather than later.

For your information, you will find attached to this letter a list of the Producers who have been involved in these discussions, and the Insurer members of the Asbestos Claims Council. Those individuals who form the Resolution Committee have been separately identified.

In conclusion, I feel I must record that the Working Party has been closely associated with the initial concept of the Facility and various negotiations that have taken place over the past fifteen months. Now that an agreement is developing, you should be aware that members of the Working Party are unanimous in their support to what they consider to be the only practical solution to this difficult problem.

Yours faithfully,

R.A.G. Jackson
Chairman of the Asbestos Working Party

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	Resolution Committee Member
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Pittsburgh Corning	Jim Restivo John Baldwin
Fibreboard	E. Judge Elderkin
Celotex	Bob Emerton
Lake Asbestos	
Armstrong Cork	Scott Gilbert
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Owens Corning	Dan Phillips
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INSURER GROUP

	Resolution Committee Member
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Firemans Fund	Bob Buell
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I.N.A.	Jim McMahon
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