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In re: Industrial Hygiene Surveys

Mr. Lincoln
Vice President and General Counsel

This comments on Dr. Armstrong's memorandum of November 17th to which Dr. Lanza's of the same date is annexed, and refers specifically to Dr. Armstrong's numbered alternatives.

1. Discontinuance of industrial hygiene surveys is not desirable because it eliminates a valuable service to group policyholders and a valuable contribution to health conservation of industrial workers.

2. Observance of an understanding that our records are not to be used in damage suits, would depend on the good faith of the employer, since I have no doubt that by proper process, production of our records and attendance of our witnesses to give depositions, could be compelled. We do not have the statutory protection given the staff of the United States Public Health Service. Moreover, I should not feel that where a survey of conditions had been made on the good faith request of an employer to determine what his hazard was, and the survey showed a low degree of hazard and a high degree of protection, the employer should be precluded from having the benefit of the survey.

3. (a) I doubt that it is practicable to limit the scope of the testimony of one of our staff. While such a staff member should not go as an expert witness, when he once gets on the stand as a fact witness, I do not see how, if he has expert qualifications, the questions addressed to him in an expert capacity can be prevented. We certainly made an attempt to limit the scope of Mr. Fehnel's testimony in the Charleston case, but I gather that attempt was not successful.

(b) Study should certainly not be made for specific use in law suits, but should be made only for the purpose of assisting the employer to eliminate health hazards, and to create or maintain satisfactory health conditions.

(c) I should suppose we would be in a better position to exercise some control over the situation if the studies were made at our expense. If we make them in whole or in part at the expense of the employer, we are making them in effect, as his hired representatives, and consequently it would seem to me that we should put no restrictions on the availability of the results.

Of the alternatives I favor No. 3, subject, however, to the following restrictions:

1. We will in no case furnish purely expert testimony.

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TRIAL EXHIBIT

2. We will in no way make a survey for a price, and should prefer to make such surveys as we do, at our own expense.

3. We will make no survey when it is known or suspected that the purpose is for use in damage suits.

We could impose a further restriction, such as we attempted to impose in the Charleston case, namely, that we would not send a witness voluntarily to the place of trial, but would permit appearance pursuant to compelling legal process. I think we found this restriction difficult in practice, and I doubt that there is sufficient to be gained by its observance to make an attempt to impose it worthwhile.

November 22, 1933
HCB:W

H Bates
Assistant General Counsel