PLAINTIFF'S EXHIBIT

MET-307

Silicosis Studies

October 27, 1939

Mr. A. B. Root Jr., Chairman,
Occupational Disease Committee, N.E.F.A.
Hunt-Spiller Manufacturing Corporation,
383 Dorchester Avenue,
Boston, Mass.

Dear Mr. Root:

With further reference to my letter of October 13, especially the last paragraph thereof, I enclose some material that has just come to my desk. I might add that when this case was appealed to the Supreme Court, it refused to review it. The Attorney General then stated that in his opinion where a disease was activated, accelerated, or intensified by any kind of working condition, this made it an occupational disease.

Best regards.

Sincerely yours,

A. J. Lanza, M.D.
Assistant Medical Director

"The case of Grain Handling Company, et al., Appellants, v. Charles J. Sweeney And Kenneth G. McManigal, Commissioner, Appellees, recently decided by the United States Circuit Court of Appeals for the Second Circuit, was an appeal involving the construction of the term, "injury", within the meaning of Section 902, subsection 2 of Title 33, of the United States Code (Longshoremen's Act).

"The Claimant, Sweeney, had been employed for twenty-five years as a "grain scooper"; the last twelve years of this term was in the employment of the Grain Handling Company, Inc. His duites exposed him to considerable quantities of minute particles of dust. In 1918 he had contracted tuberculosis but had recovered, the disease remaining dormant until 1934, when he experienced difficulty in breathing, suffering a return of his former tuberculosis. On June 15, 1936, becoming totally disabled, he discontinued his employment and filed claim for compensation.

"Compensation was awarded by the Commissioner on the ground that his employment required him to "work in thick grain dust, causing the latent tuberculosis condition to become active", and that, therefore, the injury sustained was an occupational disease.

"The opinion of the Court, filed by Judge L. Hand, held that the injury complained of was an occupational disease. Judge Swan, concurring, said:

> "Although I am willing to concur in the judgement I cannot refrain from expressing my doubt whether the interpretation we are putting on the statute does not virtually read out of it the adjective "Occupational" which qualifies such diseases as are made compensable. In effect, we are holding that the lighting up of a latent tuberculosis by the breathing of grain dust creates an "occupational disease" in the particular employee so affected, although 99 per cent of the workmen may never get tuberculosis as a result of laboring under the same conditions for equally long periods of time."

"Judge A. B. Hand, in a separate concurring opinion, said in part as follows:

> "I think it is a fair inference from the proof that any condition of latent tuberculosis is likely to become active by working in grain dust. Many persons are subject to this infirmity and if such persons are likely to develop tuberculosis from working in dust the resultant condition would seem to be an occupational disease — that is, a disease peculiar to and arising from the occupation."

In a letter accompanying the memorandum, Mr. Waters says:

> "I feel that this case is the most important that has been decided by our Court upon the question as to what is an occupational disease. Its effect is to make compensable under "general coverage statutes" those cases where the claimant has latent tuberculosis which becomes reactivated by an exposure to any kind of dust. Such construction of occupational disease statutes makes them general health insurance statutes."