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Meeting - Asbestos Litigation/Product Liability Insurance

ASBESTOS LITIGATION/PRODUCT LIABILITY INSURANCE

Mr. Harris has indicated the seriousness of the asbestos litigation problems in earlier correspondence addressed to Mr. Nelson, President and to Mr. Drislane, Secretary. He indicated that Mr. Comins' letter of December 16, 1982, which had been circulated to the Board and to the Health and Environmental Affairs Committee, supported his position that the asbestos litigation problem was the most serious problem facing the industry and the Institute's Members. He indicated that one area where the Institute might help in the litigation area would be the gathering of specific information of a medical nature. He felt that some headway had been made in developing a more accurate definition of asbestos-related diseases. Accurate information on how much asbestos disease has occurred in those exposed to asbestos in brake lining factories would be helpful. Information and specific data on asbestos-related diseases for those exposed in brake repair facilities would also help. He suggested that the data could be gathered from the Members by submitting it to a disinterested party to maintain confidentiality. This, he suggested, could be done by an Accounting firm in a manner similar to that for gathering data for the historical sales program.

Mr. Harris indicated that he was interested in gathering factual data which he felt would show that brake lining factories and brake repair facilities did not have the extensive asbestos-related diseases of such groups as the shipbuilding, insulation, and textile industries. He felt the Institute could help in gathering such data, and he was not suggesting joint Legal Defense and items of that nature. Mr. Harris noted that his Firm had engaged the services of Cadwalader, Wickersham & Taft of New York City. Mr. Drislane noted that in a hand-out for this meeting that the Cadwalader Wickersham, Taft Firm, which specializes in hazardous materials, has gathered materials which could be helpful in defending asbestos litigation. Mr. Wendell Alcorn, Jr. is the contact specializing in the asbestos area. They have gathered data such as literature going back to the 1960's, scientific studies on epidemiology, Medical Doctors who may give testimony, etc. Mr. Drislane indicated that these records and papers may be accessed through Mr. Alcorn, and that there would be a fee for inspection.

Mr. Harris advised that he would help in any such information gathering. A Director stated that certain questions would need answers before going into this area. What would be the purpose of gathering this data? What would be the purpose of establishing a statistical data bank of this type? It was stated that in attempting to establish a disease/exposure relationship that there may have been other materials and chemicals to which workers were exposed. It was suggested that if this fact-gathering were to be started, that expertise beyond that of the Institute's Health and Environmental Affairs Committee might be needed—such as Legal, and Medical expertise.

In the discussion of litigation, it was stated that all litigation currently in the courts would have to be settled in the courts even if a Federal Compensation Act were to become law. Most drafts of statutes in this area provide for cutting off litigation and making the compensation provisions the full remedy when and if such an Act becomes law. All litigation in process before enactment of legislation would be settled through the courts and not be covered by the Compensation Act.

The methods and reliability of information gathering were questioned. It was stated that no one now has statistics on actual bonafide asbestos related diseases for the brake lining industry. Would the Members go to the effort of supplying accurate disease data on their workers and the data on worker exposures, assuming they had such information? A question was asked as to whether the Members would group together on anything. It was suggested that if such a program were initiated, the grouped data would be made available only to those who provided data.

Questions were asked about the type statistics to be gathered if the Institute were to proceed with such a program. The data would be of two types: (1) The Workmens Compensation data on settlements for workers in the brake lining factory; (2) Third party liability settlements to those in the brake repair industry and elsewhere.

The Secretary advised that there was a service in the asbestos litigation area entitled the "Asbestos Litigation Reporter." This is published by

Andrews Publications, Inc.
P. O. Box 200
Edgemont, PA 19028

The "Reporter" is published twice monthly and the service now costs \$700 per year. It publishes information on litigation, court rulings, and any legislation which might affect future litigation. This includes litigation among basic asbestos industry figures such as Manville, various asbestos products manufacturers, as well as the insurance industry. See page 7 of these minutes for additional discussion of the "Asbestos Litigation Reporter."

The discussion then turned to the mechanics of litigation. A Director stated that when a plaintiff sues, a Member's in-house legal counsel (if used), outside Counsel and the Insurance Company Lawyers all work on the defense. In most cases there are multiple defendants--usually all the friction materials manufacturers if the allegations are based on exposure in a brake repair facility or in an occupation where the plaintiff claims exposure to asbestos from brake repair work. The Lawyers in most cases are doing the same general exploratory work in attempting to defend the claims. He suggested that it may be costing \$100,000 in legal fees because the defense is fragmented and the lawyers are duplicating work which might be done for \$10,000.

Mr. Comins suggested that the Institute should ballot the Members, and by this he meant the corporate officer responsible for litigation rather than the Delegate and Alternate who may have little or no responsibility in this area. He suggested that the Members be balloted to see if they were interested in different approaches in combatting the costs of tort litigation for disease or disability alleged from exposure to asbestos in brake repair--the third party suits. Several Directors pointed out that they had referred Mr. Comins' letter on product liability and insurance litigation to those in their Company responsible for those problems--legal, insurance, risk management. The reactions expressed in letters to the Institute on this subject were those of individuals responsible in these areas. In general, those from the larger companies would continue to work through their own Legal Departments and their own outside Counsel in defense of asbestos litigation.

Mr. Comins stated that if the larger companies don't wish to join together to control the costs of asbestos litigation, the smaller Member companies may wish to organize themselves in this area. If such organizing cannot be done through the Institute, it could be done elsewhere. He also suggested that while the larger companies may not wish to depart from defending their companies with in-house Counsel and regular outside Counsel, it would still be in their best interests to hear what might be done to control legal costs with some type of united front. He indicated that the type insurance can be tailored to the needs of the insured, such as having the insured pay the claims, but insuring against the legal costs. Deductibles would be tailored to the needs of the insured. If Members could band together for group insurance, the types of coverage could be worked out with the broker and with those participating. It was suggested that if even five or six Members were interested, a program might be feasible.

Mr. Comins had talked with a representative of Frank B. Hall, Insurance Brokers. Mr. Comins outlined the Frank B. Hall questions on product liability insurance as follows:

1. Is there an individual problem in getting coverage for asbestos related health hazards under product liability insurance?
 - 1.1 Currently
 - 1.2 Forseen in the futureBecause of:
 - 1.3 The cost
 - 1.4 Placement
2. Current 1st or 3rd party suits
3. Would banding together for buying power mean anything?

Mr. Comins reiterated his suggestion that a representative of Frank B. Hall be invited to address our annual Membership Meeting. In response to a question, the Secretary advised that he had not been contacted by Frank B. Hall or its representative on this question. Mr. Comins will contact Frank B. Hall on such an invitation. A representative of Frank B. Hall will be asked to contact Mr. Drislane. If there is no good reason not to ask for a presentation, a representative of Frank B. Hall will be invited to attend and address our Annual Meeting. Expenses for such a presentation will not be borne by the Institute.

The Directors then returned to the suggestions Mr. Harris presented earlier in the meeting. Each Director indicated that they would have to go to others in their organization--probably Legal Departments--before having a position on Mr. Harris' suggestions to gather statistics on asbestos related disease experience and submitting such data to disinterested parties (such as an Accounting House) for compilation. Any such participation would have to be supported by higher-ups in these companies. There was some question about the value of such data, and the difficulty in gathering it. This would be particularly difficult in the area of third party suits as there would be little base data on the exposures that were involved. There is also the problem of establishing or estimating levels to which the manufacturers' employees were exposed.

Without seeing specific advantages in gathering such data, it was questioned, with the other problems existing today, whether a company would spend the time and money to gather, organize and present this type data. It was also questioned whether data so gathered could be used against the Member companies who participate.

The Directors asked Mr. Drislane to write to Mr. Harris to support proposed Institute efforts for such a statistical gathering:

1. What specifically would be the benefits of such data gathering?
2. Provide reasons for the Directors to give to those responsible in their companies which might convince them to support such a program.

Mr. Drislane was also directed to provide Mr. Harris a copy of the minutes of this meeting with his letter.

SELECTION OF LEGAL COUNSEL

Based on a mail ballot in January 1983, the Directors voted to terminate Mr. Robert P. Gorman of the Princeton, New Jersey Firm of Durand, Gorman, Heher, Imbriaco & Lynes as Legal Counsel. This termination was due to Mr. Gorman's failure to respond to the Secretary on several items of Institute business since August of 1982. The Secretary advised Mr. Gorman of this termination by certified mail on January 24, 1983.

In reviewing the selection of Legal Counsel with the President, it was suggested that a local firm be retained. Local would be Hackensack, New Jersey, which being the county seat of Bergen County, has several firms which might be suitable. General guidelines were that the Firm have five or more attorneys so that we could be serviced when others might be in court, on vacation or in other fashion tied up on other business. A Director suggested that it would not be necessary to have five partners, but a Firm with two or three partners, but with additional Associate Counsel totalling five could cover our work. The committee meeting work does not require a Senior Partner. The only time we have the need for an experienced Partner is at the Annual Membership Meetings.

The Secretary advised that he had copied pages from a Lawyer Directory (Martindell-Hubbel) which listed several Hackensack firms. This service also includes areas where the firms specialize and in some cases lists major clients.

The Secretary advised that in his search for Counsel in 1974-75, some Law Firms would not give estimated retainers. When they did suggest retainers, it was based on estimated work loads and the level of attorney needed therefor. For this purpose, the following was suggested as a breakdown of legal time each year:

- 3 Days - Annual Meeting - Partner
- 3 Days - Committee Meetings - Associate Level
- 3 Days - General legal service - draw up a trust, review minutes or suggested correspondence, sit-in on deposition - Associate or Partner

The Secretary was directed to interview Firms in the Hackensack area. Mr. Drislane would then advise the Directors on proposed selection of Counsel, and the Directors would be asked to approve or disapprove the choice by mail ballot.

ASBESTOS COMPENSATION COALITION

The Secretary advised the Directors on the status of the Asbestos Compensation Coalition and any federal action on asbestos compensation. The Institute had invited Mr. Dave Pullen of the Asbestos Compensation Coalition to address the June 1982 Membership Meeting. We were to maintain contact with the Coalition, and in the Summer of 1982 distributed to the Members copies of the Coalition's "Occupational Disease Compensation Improvement Act."

The Coalition broke up in the Summer of 1982 after the Manville filing for Chapter 11. A new group was formed, the Committee for Equitable Compensation (ECE). It was organized by most of the same members of the Coalition, but without those which had filed Chapter 11 (Manville, Unarco and Amatex). All activity now centers on the Representative Miller bill. Hearings were being held on this bill in early February 1983.

A new Director was to take over the ECE's activities on March 1, 1983. Other than the Miller bill, there is nothing of substance going on as concerns an asbestos compensation bill.

ASBESTOS LITIGATION REPORTER

The Secretary advised on the availability of the Asbestos Litigation Reporter. This is a service out of Edgemont, Pennsylvania which has reporters sending in updates on asbestos litigation in the courts. While it summarizes individual court actions and settlements, it also touches on decisions on insurance, bankruptcy and similar cases that affect the asbestos decisions. It is quite lengthy, and there is a question as to its value. Because of its nature, the copy is expressly protected by copyright. It cannot be reproduced for distribution to the Members. Copy in the Reporter can be digested for Members' information, but the text cannot be directly copied.

The subscription rate is currently \$350 per six months subscription. The "Reporter" is published twice monthly. The Secretary was advised to subscribe to this service so that its value can be determined.

There being no further business brought to the attention of the Board of Directors,

Upon motion duly made, seconded, and unanimously passed, it was:

RESOLVED: To adjourn

Adjourned at 5:15 P.M.

E. W. Drislane
Secretary