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Attention: Mr. Thomas A. Dougherty, President
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Mr. B.J. Pigg, Executive Director

RE: Responses to Regulatory Initiatives

Gentlemen:

This letter responds to your request for a written follow-up of our meeting last week. It concerns the response of the Asbestos Information Association/North America ("AIA/NA") to the anticipated regulatory initiatives of the Environmental Protection Agency ("EPA"), the Consumer Product Safety Commission ("CPSC") and the Occupational Safety and Health Administration ("OSHA").

The regulatory initiatives of EPA and CPSC will soon be upon the AIA/NA. On the surface, such initiatives appear more immediate and formidable than the ever present rumblings at OSHA. A coordinated response to all regulatory initiatives is essential if the asbestos industry is to put forth the best possible presentation of its case.

*CPA
CPSC
OSHA
Possible Ban
Regulatory Initiatives
500
Kirkland & Ellis
to be returned*

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In the past, the AIA/NA has funded certain technical studies directed exclusively to the OSHA proposed standard and the regulatory process surrounding that proposal. Before additional expenditures are made for technical studies, the legal framework of the regulatory process must be analyzed to include the proposals of EPA and CPSC.

With regard to the proposed Advanced Notice of Proposed Rulemaking ("ANPR") issued by CPSC and the expected ANPR of EPA, the first step should be a careful review of the regulatory power of EPA and CPSC. I remain of the view that I expressed to you on Tuesday -- that the best chance is an attack on the agencies' power to promulgate the regulations(s). If the ultimate issue is merely the calculation of an exposure standard, the courts will show great deference to the agencies charged with administering the statutes. No deference is shown to an agency action which falls outside its statutory power. The three statutes which EPA* and CPSC** will use in this regulatory function have not yet been subject to strict judicial scrutiny. What is more, the proposed ANPR being circulated at CPSC recites the need for General Accounting Office ("GAO") clearance under the Federal Reports Act before the CPSC can even begin its data collection process. The possibility of challenging the CPSC request at the GAO level, though remote, should at least be explored. Even mere delay, as an end result of such challenge, may be beneficial to the AIA/NA and its member companies.

The ANPR also sets forth CPSC's views on the regulatory approach to asbestos in consumer products. CPSC appears to be headed in the direction of adopting a zero tolerance approach. The CPSC does acknowledge that it must, by statute, consider the effect of its regulatory action on the utility, cost and availability of the product. These regulatory requirements must be analyzed to determine the possibility of a legal challenge to the whole regulatory action. This analysis will include a survey of the legislative history of the acts as well as an exhaustive search for decisions construing the acts. The project should include an explication of the judicial review provisions applicable to each. It should not involve a major expenditure. I believe that it can be accomplished for somewhere between \$5,000 and \$10,000.

* Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.

** Consumer Product Safety Act, 15 U.S.C. § 2051 et seq.;
Federal Hazardous Substances Act, 15 U.S. & 1261 et seq.

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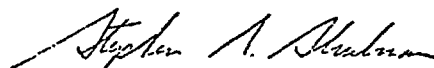
After the legal analysis is made, the AIA/NA, in conjunction with counsel, can then plan the outlines of the factual presentation best suited to each regulatory initiative. The factual record made at the agency hearing must be as complete as possible. It is that record which will determine the facts presented in the reviewing court. Moreover, the agency's compliance with statutorily required findings will be judged solely on the facts presented to the agency at the hearing before it.

Also of importance is a realization of the political climate as it affects both administrative and legislative actions. No defense of the asbestos industry can ignore the possibilities of legislative or executive redress or review of agency orders. For example, the Carter administration is seriously considering legislation which would permit an executive veto of agency regulatory actions. On the legislative side, the Committee on Agriculture of the House of Representatives has approved a legislative veto provision for rules and regulations passed under the Federal Insecticide, Fungicide and Rodenticide Act which is administered by EPA. Similar legislative redress for products, or product groups, attacked under EPA's Toxic Substances Control Act is a very real possibility.

As I indicated on Tuesday, the law firms you are considering can all perform the necessary legal analyses. As major firms, each of them, like we, has experience in the administrative arena. Cadwalader, Wickersham & Taft has served as counsel to the asbestos related trade associations since 1940 and has been involved in asbestos disease litigation since 1974.

You have met both Ron Eastman and myself. In addition you are familiar with Wendell Alcorn and Joe Artabane. If you decide to have Cadwalader, Wickersham & Taft undertake the role of counsel to the AIA/NA in this matter, the project will be directed by Ron Eastman or myself, whomever you prefer. I can assure you that your project will get priority treatment in view of the September time frame of the ANPR's.

Sincerely yours,


Stephen N. Shulman

/mb