

V. ASBESTOSIS

The committee undertook consideration of problems arising in these cases at the request of the Alliance Board, noting that there had never been a full scale review of the area by the committee. Reference was made to the continued monitoring of this area by the Joint Medical Subcommittee and to the one meeting held by the Asbestosis Discussion Group, April 21, 1977.

Among matters to be treated are such questions as who owes a defense, proration of loss and defense costs, the interests of the insured and utilization of arbitration procedures. A member pointed out that because of the large sums of money involved and that paucity of decisional law in most jurisdictions, obtaining a consensus in any of these areas, would be extremely difficult. Mention was made of informal attempts to achieve same and the lack of significant results.

A member expressed the view that even as regards the basic coverage question the companies followed various theories. The majority view is that coverage exists for each carrier throughout the period of time the asbestosis condition developed, that is from the first exposure through the discovery and diagnosis. This view agrees with the case of *Borel v. Fiberboard Paper Products Corporation*, 493 F.2d 1076 (1976) cert. den. 43 LW 3132 that the injury was cumulative and that with each exposure, the plaintiff suffered an injury.

Minority views are that the event which triggers coverage is either the discovery or diagnosis of asbestosis. This viewpoint was followed in the case of *Porter v. American Optical Corporation* in Louisiana Federal District Court.

In view of the feeling of the committee that the subject would entail considerable discussion and research, Chairman Warren appointed a committee consisting of Lumbermens Mutual Casualty Company, Chairman, American Mutual Liability Insurance Company, Employers Insurance of Wausau and Liberty Mutual Insurance Company to formulate recommendations for consideration by the full Claims Committee.