NEW YORK

December 13, 1949

Mr. W. W. Hedges

Mr. R. J. Hall

JOHNS MANSVILLE CORPORATION - ASBESTOSIS CLAIM- VINCENT PALOMAR

Dear Mr. Hedges:

Since our exchange of wires on the 6th and 7th, I have talked this case over a little further with the Industrial Indemnity Company, and to give you a summary of my analysis of the situation, I am submitting the following partially established and partially assumed outline of facts:

1. The record of this man's employment by your client is as follows:

First employed, November 17, 1942
Left employment, February 19, 1943
Re-hired, May 7, 1943
Left employment, July 1, 1944
Re-hired, November 4, 1946
Left employment, August 23, 1948, account present disability.

2. Insurance against liability under the California Compensation Act was carried in the Industrial Indemnity Company from January 1, 1943 to January 1, 1947, under the following policies:

1943-1944	- Policy	430221A
1944-1945	- "	440864
1945-1046	- "	459011A
1946-1947	- "	446009

None of these policies provided for any surcharge premium for pneumonoconiosis exposure.

3. The employer became a self-insurer under the California Compensation Act as of January 1, 1947, and has so continued continuously since that date.

4. Sometime subsequent to August 23, 1948, this man made application to the California Industrial Accident Commission, Department of Industrial Relations, for a hearing on his claim for disability due to occupational asbestosis. The case was set for hearing under Docket #116-616. The employer appeared before the Commission at a duly noticed hearing and entered into certain stipulations as to fact, including a stipulation to the effect that the employer had been a self-insurer for the entire period of the applicant's employment by them. The Industrial Indemnity Company as the insurance carrier was not named as a defendant in these proceedings, nor given any notice of the hearing or hearings, nor apparently brought into the matter in any manner until after conclusion of these hearings.

5. On evidence produced at hearing or hearings before the Commission, the Commission's Award was issued March 14, 1949, making the finding of fact that the applicant was then and continuously had been totally disabled as a result of occupational asbestosis incurred in the employment of this employer and that such disability was continuous. This Award contained the Order that the self-insured employer should pay disability benefits at the rate of $30.00 per week for the full period of prior disability and continuing indefinitely, together with an Order requiring the employer to provide all necessary medical service for the treatment or relief of the man's condition.

6. The claimant was born June 25, 1883. This would give him a life expectancy as of the date of his disability of approximately ten years, discounted, no doubt, by some undeterminable amount by reason of his pulmonary ailment. The full future value of this case, therefore, would seem to be $30.00 per week for 240 weeks of temporary total disability, and the probability of a 100% total disability rating, which would entitle him to a life pension of $15.40 per week, beginning after expiration of the 240 weeks of temporary total disability. To this would have to be added the cost of necessary medical attention. It seems unlikely that in the man's present condition there is any particular medical attention other than an infrequent check-up examination which would serve to relieve or cure his condition. There is the hazard that he might develop tuberculosis. With his present impaired pulmonary condition it, of course, is likely that this would detract still further from his normal expectancy, which would serve in part or in whole to offset the added cost of medical attention for a tuberculosis attack.

7. On the basis of the foregoing facts, a very rough estimate of the future value of this case would appear to be somewhere between $7,500.00 and $9,000.00. Without making an exact calculation of the periods of time for which the man was employed in an asbestos particle laden atmosphere, during the period of Industrial Indemnity Company's insurance and during the period of self-insurance (and this calculation could be greatly complicated by the fact that he was employed in varying occupational classifications, in some of which the exposure existed and in others it may not have existed), it is estimated that approximately 45% of the exposure was during the insured period and 55% during the period that the employer was self-insured. Assuming the total future value of the case to be $9,000.00, it would appear that the insurance company's proper share, therefore, would be $4,050.00.

8. Had the silicosis surcharge applied, it is understood that it would have been applicable to approximately $1,000,000.00 in payroll. The average manual rate for the period insurance was effective would have been somewhere between 70¢ and 76¢, or estimated premium of $7,500.00. To what extent this would have been reduced by application either of experience or schedule rating credits, it is difficult to calculate. It is probable that there would have been some reduction. In this connection, it is understood that at one time an engineer made a dust count at the plant and in the department where Palomar was employed at least part of the time. I am told that this count showed a content

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With the foregoing recital of fact, I have discussed informally with the Industrial Indemnity Company either one of two methods of procedure. They are--

First - The suggestion that the calculation be made of what the proper pneumonoconiosis surcharge would have been and this premium charged to the assured, and Industrial assume their full pro rate for this and any other pneumonoconiosis claims which later may develop.

Second - That rather than going through this complicated process, Industrial should make some contribution toward their estimated pro rata of the Palomar case and recognize that they will be responsible for their full pro rate of any future cases which may come before the Department of Industrial Relations. This proposal contemplates no premium payment to offset their failure to make a surcharge in addition to premiums already charged and paid.

Industrial have suggested that on this basis they might contribute some nominal amount, such as $500.00, to the Palomar case. I think it quite possible that this figure is only a tentative suggestion and that the company would listen to any reasonable counter-suggestion.

I am furnishing a copy of this letter to the Industrial Indemnity Company and to Messrs. Pillsbury, Madison & Sutro, so that everyone interested may have before them the same recital of facts and of assumptions for consideration of the best solution to this present question. My recommendation would be that the simpler and more satisfactory solution would be to arrive at a mutually agreeable contribution by the insurance carrier to the Palomar case, with the understanding that full coverage will apply to future cases to the extent of the Industrial's exposure pro rate, and conclude the matter. It is a moot question whether in the present proceedings before the Commission, the Industrial will be held in as a responsible insurer for their pro rate in the Palomar case. It is my opinion that they likely will be so held. Competent counsel, however, have the reverse opinion, and I presume the net result is that that question is anyone's bet.

I would suggest you think this over and discuss it with the appropriate Johns Manville people and let me have your suggestions as to whether you would like to carry negotiations along this line further.

Yours very truly,

R.J.Hall
scm

cc - Messrs. Pillsbury, Madison & Sutro
225 Bush Street, San Francisco

cc: V. Brown, Esq. 12/16/49
cc: P.V.Dybdal "