The Asbestos Issue
Johns-Manville Corporation
Presentation before the
Houston Society of Financial Analysts
John A. McKinney
Chairman of the Board and
Chief Executive Officer
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Good afternoon ladies and gentlemen.

Today I will try to cover briefly several aspects of the asbestos issue, and then your questions can lead us into those areas where you would like more information.

If most of what you know about asbestos and asbestos-related disease is what you've heard or read in the media, you may be confused and quite possibly misinformed. Asbestos and health is a very complex subject . . . one that usually isn't well explained in the public media.

First of all, there are three distinctions about asbestos-related diseases that are important for you to know:

First, *when* was knowledge of a health hazard known; second, what are the diseases; and third, *who* was involved? I'll start with a brief summary of the time frames because it will help put the other two distinctions in proper perspective.

Generally, knowledge of the health hazards of excessive asbestos exposure falls into two time periods: 1930 to 1964 and 1964 to today. As far back as 1930, asbestos was known to cause asbestosis, a scarring of the lung tissue, among mill and factory workers who worked continually with the 100% asbestos fiber. However, it was not until 1964 that medical studies identified the health hazards to insulation workers. Keep these time frames in mind. I'll come back to them in a minute.

Now about the diseases. There are three associated with excessive exposure to asbestos. Asbestosis is a disease which can cause disability by interfering with the breathing capacity of a person.

Asbestosis is not cancer and does not develop into cancer. Additionally, dust control and work practice programs, many of which were pioneered by J-M, have eliminated any new excessive occupational exposures to asbestos which would cause new cases of asbestosis among today's workers.

The second disease is lung cancer, the chief cause of death among those occupationally exposed to asbestos. However, medical studies have confirmed that, but for cigarette smoking, there would be no significant lung cancer related to excessive asbestos exposure . . . *virtually none.*

Now, mesothelioma is the third disease and is the most recent one identified as having a relationship to excessive asbestos exposure. It is a cancer of the lining of the chest or abdomen. Medical science is just now learning about this relatively rare and perplexing disease which we know is caused by at least two other environmental sources.

The third important distinction is the types of workers who could have been exposed to excessive amounts of asbestos fiber. Again, there are three:

—Workers in asbestos mines, mills and factories where asbestos was used. They number approximately 250,000.

— Insulation workers, who worked with the products containing less than 100% fiber. There are an estimated 30,000 of them.

— Workers in government-controlled environments, primarily naval or contract shipyards. By the government's own figures, over four million people fall into this category.

So those are the three critical distinctions — the time frame of medical knowledge, the types of diseases and the classes of workers. Now, let me tell you a little more about the state of medical knowledge.

As I said earlier, as far back as the 1930's, there was general knowledge that asbestosis could occur among mill and factory workers. What was not known was at what level of exposure an increased health risk could occur among those workers.

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In addition to implementing dust control procedures, Johns-Manville, in the 1930's — along with others in the industry and our insurance carriers — underwrote medical studies on asbestos-related disease. Seminars were conducted and attended by the chief medical officer of the U.S. Public Health Service and his counterpart in Canada, and then reports were published once the studies were complete.

In 1938, the U.S. Public Health Service published the results of *its* first study, made specifically to characterize asbestosis in textile workers and to identify a safe level of exposure below which one would not get asbestosis. The textile industry was chosen because asbestos was the principal raw material and the dust created was virtually 100 percent pure asbestos. From that study, recommended exposure standards for working environments were established.

It is important to emphasize that there was no awareness at that time that any disease problem existed beyond asbestosis or that any worker group was at risk outside of the miners, millers and factory workers.

The exposure standard adopted was regularly reviewed by the American Conference of Governmental Industrial Hygienists, a group to which industry could not belong and, based upon the medical evidence available, the standard remained unchanged and *unchallenged* for nearly thirty years.

Tragically, this standard for asbestos dust control later proved to be inadequate. During the war and up to the 1960's there continued to be excessive exposure to asbestos . . . but there was no awareness at the time that it was excessive. To the contrary, in 1946, the U.S. Navy undertook and published the results of yet another study which indicated that insulation work in the shipyards was *not* a hazardous occupation.

But in 1964 everything changed. A new dimension was added to our understanding of asbestos-related disease. In that year, Dr. Irving Selikoff of Mt. Sinai Hospital presented findings showing that the accepted level of exposure to asbestos could heighten risk of disease among *insulation workers* and confirmed that there was excess incidence of lung cancer as well as asbestosis and mesothelioma among asbestos insulation workers.

Interestingly, his data also showed that lung cancer was confined to those who smoked cigarettes. But, unfortunately, the key role of cigarette smoking was overlooked for several years.

Since the findings by Dr. Selikoff, Johns-Manville has continued its efforts to assure the safe use of asbestos-containing materials; that includes labeling, cooperating with organized labor, giving instructional seminars, preparing safe handling booklets, and discontinuing the production of inappropriate products. Today, the evidence shows a declining incidence of asbestosis and a plateauing of lung cancer.

All of what I've said so far is by way of background, but it is important background for fully understanding the subject.

Now, I'd like to turn your attention to litigation and its impact upon J-M.

Today, the litigation we face stems from disease having its origins in the years before 1964. We are a defendant in over 3,000 cases involving more than 4,500 individual plaintiffs. The issue in litigation is the finding of fault, and, in this regard, J-M has no fault. That is not to say that we along with government, others in our industry and the tobacco industry were not involved and, therefore, should not accept and share responsibility for resolving the problem. I simply mean that we are not legally or morally to blame for the asbestos problem and will not accept the sole burden of compensating victims on the basis that we *are* to blame.

In the typical case involving an insulation worker with asbestosis, the jury must ultimately resolve two issues:

First, at what point in time was a hazard to the insulation worker reasonably foreseeable, thus giving rise to a duty to warn? Second, after any such duty arose, were reasonable steps taken?

We have tried 19 cases to date and, in 11 out of the last 15 (which represents the period of time in which we took more active direction in our own defense), the judgments have been in our favor.

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Winning 11 in 15 cases clearly demonstrates how, even when disease is proven to be disabling and the need for compensation is obvious, courts and juries still find that J-M acted properly. And, when we do lose a case, it may well be, in part, the result of a jury having the normal emotional need to see the worker receive compensation.

Also of significance is a recent suit we brought against the federal government, asking reimbursement for settlement costs paid to a Norfolk Navy Shipyard worker because of the Navy's blatant disregard of medical directives and its failure to provide a safe workplace. While the judge ruled against us and the other manufacturers in the case, he did cite the government for its negligence in failing to implement the safety practices it knew to be essential at the time.

We are appealing the decision, but suffice it to say that during the wartime years and subsequently:

— The Navy specifically required that asbestos fiber be used for insulation in warships because no other product gave the required fire-resistance or met government specifications.

— The Navy was aware of the U.S. Public Health Service recommended standard for exposure set in 1938 and ignored that standard.

— The Navy sponsored a 1946 study which concluded that asbestos insulation work was not a hazardous occupation.

— The Navy was solely responsible for the shipyard work practices which determined how much dust was created.

— And the Navy had exclusive control of its own employees and responsibility for their well-being as well as the well-being of contract employees.

Well, what does this all mean to J-M and its bottom line?

The typical recovery in tried cases or in out-of-court settlements — where the plaintiff actually receives money — is in the area of $75 to 80 thousand. Most of the cases involve co-defendants, and J-M's portion of these judgments and settlements is averaging around $15 thousand per case.

With respect to compensatory-damage litigation, J-M has in place for exposures prior to 1976 an aggregate of about $350 million in insurance coverage. For post-1976 exposures, we are now basically self-insured for the first $12.5 million loss per year and have insurance for any loss in excess of that amount up to $60 million annually.

You may have heard of our suing our own insurance carriers in San Francisco, so let me touch on that. At the end of March, J-M filed an action seeking a declaratory judgment to define the duties and obligations of our insurance carriers to us. The most significant question we hope to have answered in this case centers on our position that losses from asbestos-related injuries are to be spread over those years when the injured parties were *exposed* to asbestos fiber as opposed to the year when the injury was *discovered.*

J-M is the fourth asbestos company to take this sort of action in the past six months. One previous case was decided in favor of the insured, whose position was similar to ours, and that case is now on appeal.

We expect to win the case we have filed and put to rest any concerns about the extent of our coverage.

Another principal concern you may have has to do with punitive damages, since insurance in many states would not cover them. Plaintiff's lawyers seeking the "big dollars" in punitive damages allege that J-M and others covered up knowledge of asbestos-related disease. But all the evidence, as weighed and considered by juries, shows quite a different picture. It shows J-M sponsoring one medical study after another from the 30's on, adopting the conclusions and recommendations of those studies, and exceeding the requirements of standards established by every authority which acted in this area. In none of the cases proceeding through trial has a jury awarded punitive damages, and we continue to believe that no court will award punitive damages against us.

What I haven't said and what we sincerely feel, however, is that winning a majority of these third party cases in no way addresses a far more desirable goal: that of fairly and equitably compensating those who have suffered from the incomplete knowledge of asbestos exposure in years past.

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I have personally spent a good part of the last six years talking with key senators, congressmen and regulators, explaining the facts of the asbestos situation and our belief that some form of compensation legislation is warranted. J-M will continue to actively promote this solution because:

— It would provide the means for prompt and fair settlement of needy cases without years of delay dragging through the courts.

— It would give our own J-M employees a vehicle for broader participation in benefits beyond those allowed by present worker's compensation laws.

— It would also make more money available for the injured parties, avoiding the high non-compensatory costs of court administration and attorney fees since there would be no need for fault-finding.

— And, while not reducing J-M's total costs or changing insurance carrier coverage, it would allow us to more accurately predict our outlays instead of sporadically paying lump sums to the few awarded judgments.

We have been encouraged lately by the response we are receiving from many legislators in Washington. They generally see the need for a special asbestos compensation bill because of the unusual way in which knowledge of the problem evolved. Also, they are accepting the fact that the government played a critical role in that evolution and excessively exposed millions of people.

We also face one new problem with asbestos. Undoubtedly, you have heard of proposed regulations to restrict the use of or eliminate asbestos in finished products.

We believe those proposals are not supported by the weight of scientific evidence and that our scientific data will almost certainly reduce the likelihood that this regulation will be adopted. Such unwarranted action would deprive consumers of products which have the superior properties asbestos affords and which pose no health hazard when installed and used properly. Further, if these products were banned, it would needlessly put thousands of workers out of jobs.

The proposed regulations have given us an unforeseen benefit, however: They have mobilized some of the rest of American industry, who are also taking issue with the proposed regulation. They recognize it as a test case for future rules on suspected carcinogenic substances and, thus, an issue with consequences far beyond the asbestos industry. It appears now that we will have company in our fight for fair and reasonable asbestos regulation. And this is a welcomed change from years of "going it alone."

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