Asbestos, Health and Johns-Manville

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Overview	4
No Future Hazard	7
Litigation	11
Financial Impact	16
Regulation	19
Fair Compensation	21

September, 1981

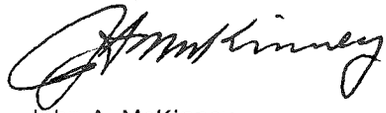
Johns-Manville is willing to talk about asbestos and health. Although the facts are readily available, it is a complex subject that is often confused and misunderstood. Each day we witness both the distortion of facts and the omission of facts that tend to generate a false perception of asbestos.

Hundreds of years ago, asbestos was hailed as a miracle fiber; today, there are those who regard it as one of the most hazardous substances in existence. These extreme views are easy to create, but at Johns-Manville we believe a more accurate perception, based on fact rather than emotion, is a better guide for the future.

Those who are willing to take a rational and reasonable approach to asbestos and health deserve to know all the facts. We believe awareness of the facts will be useful to eliminate undue public concern and to move involved parties toward a resolution of the issue.

Johns-Manville is a company of honor and integrity. We are confident that asbestos can be used safely. We will continue our commitment to both protect health and encourage the safe and productive use of asbestos.

For all of the above reasons, we are presenting you with the facts on Asbestos, Health and Johns-Manville.



John A. McKinney
Chairman of the Board and
Chief Executive Officer
Johns-Manville Corporation

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Overview

Asbestos is a naturally occurring mineral found in various concentrations across the earth's surface. It finds broad use in many essential applications because of its high tensile strength, superior flexibility and durability, and because of its resistance to fire, heat, and corrosion. This unique combination of properties remains unmatched by any other natural or man-made fiber.

Asbestos, we now know, is only one of many substances that can, with excessive exposure, cause disease in humans. However, most of these materials, including asbestos, can be used safely without any increased health risk to either workers handling the product or to the general public.

There are three key elements to the asbestos and health issue: the diseases involved, the workers at risk and the state of medical knowledge.

The Diseases
Excessive exposure to asbestos can lead to three types of disease: asbestosis, a scarring of the lung tissue which affects breathing capacity; lung cancer, a disease confined almost exclusively to those who smoke cigarettes; and mesothelioma, a rare and fatal cancer of the lining of the chest or abdomen.

There are conflicting reports on increased risk to gastro-intestinal cancer following excessive exposure to asbestos. Johns-Manville believes that the data does not support the conclusion that a causal relationship exists.

Johns-Manville, Asbestos, Health and Johns-Manville (1981)
ACL Doc 24532 · Page 4 of 24
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The Workers
Occupational groups which may have been exposed to excessive amounts of asbestos in the past fall into three categories: workers in mines, mills and factories where raw asbestos was used; insulation workers who worked with non-bound or non-encapsulated asbestos-containing products; and, the largest group, workers exposed to asbestos while working in government-controlled environments, primarily naval shipyards.

The State of Medical Knowledge
Medical knowledge relating to asbestos and health can be divided into two time periods: from the 1930s to 1964; and from 1964 and beyond.

In the 1930s knowledge was limited to the fact that asbestos could cause asbestosis among mill and factory workers. During this time, Johns-Manville initiated action to expand this knowledge. Along with insurance carriers and others in the asbestos industry, J-M underwrote medical studies and sponsored seminars on asbestosis. Upon completion of those studies, reports of the findings were presented at scientific meetings and were published in medical and scientific literature.

In 1938 the U.S. Public Health Service conducted a study, of which one aspect was to identify a safe level of exposure below which one would not be at risk to asbestosis. Results from this study recommended a standard for asbestos exposure, one which was followed by Johns-Manville. Throughout this period, there prevailed in the medical and scientific community a belief that if dust levels in the mills and factories could be reduced, the problem of asbestosis would disappear.

Consistent with this evolving knowledge, J-M acted promptly and responsibly to protect its employees by pioneering the development of improved ventilation and dust-control techniques in its workplaces.

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The recommended exposure standard was regularly reviewed by the American Conference of Governmental Industrial Hygienists, a group to which industry could not belong. Based upon the medical evidence available, the standard remained unchanged and unchallenged for over twenty-five years.

There was no awareness at the time that any disease problem existed beyond asbestosis or that any worker group was at risk other than those in the mills and factories. In fact, in 1946 results of a study conducted and published by the U.S. indicated that asbestos insulation work in the shipyards was not a hazardous occupation. Tragically, the standard for asbestos dust control later proved to be inadequate.

It was not until 1964 when Dr. Irving Selikoff of Mt. Sinai School of Medicine in New York reported the results of a study of insulation workers that changed our understanding of the extent of potential health problems from excessive exposure to asbestos. Dr. Selikoff's findings showed that exposure to asbestos from friable products such as asbestos insulation, even though below the accepted standard, heightened the risk of disease among insulation workers. In addition, he showed that there was a markedly increased risk of lung cancer in asbestos insulation workers who smoked cigarettes. Studies since then have supported Dr. Selikoff's findings.

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No Future Haza

Johns-Manville is convinced that asbestos can be and is being used safely. Today's disease problem is a legacy of the past. It stems from the fact that asbestos-related disease is characterized by a long latency period, the time between onset of exposure and appearance of disease. Accordingly, we know that the asbestos-related diseases of today are not an indication of present conditions, but a result of past exposures when the state of medical knowledge concerning asbestos was inadequate.

In the past two decades great strides have been made in reducing exposures to asbestos. This has resulted in a declining incidence of disease. We are confident at J-M that today's industrial hygiene and environmental control efforts are effectively controlling new cases of asbestos-related disease.

J-M believes and evidence shows, that the present OSHA workplace standard of two fibers per cubic centimeter of air is adequate for the protection of workers. All J-M asbestos-using facilities meet or surpass this standard except for isolated instances where technology is not yet available. In those cases employees are provided with and must use protective respiratory equipment.

Despite J-M's firm conviction that asbestos use today need not pose significant hazards to either workers or the general population, we believe unnecessary exposure to asbestos should be avoided and have been active in continuing efforts to minimize exposure. It is company policy to equip our plants for the highest degree of personal safety. When technology is not available to adequately assure personal safety, an operation will be discontinued.

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Employees handling asbestos and asbestos-containing products must follow specific safe work practices. They are provided protective equipment when necessary and are offered comprehensive annual physical examinations. Employees are informed of results of the exam and may, at their discretion, have their personal physician review their medical records.

Johns-Manville reserves the right to refuse to sell asbestos fiber to customers who do not take serious and planned efforts to achieve compliance with appropriate health standards and, thereby, endanger the health of their employees, and expose J-M to unwarranted liability. In addition, J-M has available for its customers work practice information appropriate to assure non-hazardous usage of asbestos and asbestos-containing products.

There is now clear evidence indicating that, but for cigarette smoking, lung cancer would not be a significant occupational disease problem among asbestos workers. Based on this data Johns-Manville has promoted no smoking programs at all asbestos-using locations and has sponsored clinics to assist employees in changing their smoking habits. These programs are an example of J-M's continuing commitment to take whatever steps are necessary to provide a safe working environment.

J-M led both government and industry in labeling asbestos products and today, asbestos-containing products are labeled in conformity with present OSHA standards. Additionally, bags of raw fiber carry a warning message in six languages as well as the international symbol for asbestos.

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Asbestos is used in thousands of products where it serves essential functions that cannot be duplicated on a cost/performance basis. It is a vital component in asbestos-cement pipe, architectural building panels, vinyl flooring, roofing sealants, packings and gaskets and friction material such as brake linings and clutch facings. In virtually all applications the asbestos is locked-in or encapsulated in other materials that bind the fibers within the product so that they cannot escape during normal end use.

There is no valid reason for the public to be concerned about the modern applications of asbestos fiber when it is used in compliance with federal regulations and following appropriate work practices. Both the form in which products are received and the way in which they are used preclude fibers from becoming airborne. In this way, exposure to asbestos fiber is controlled and need not present a hazard to health and safety.

Many products have been examined to determine if their use entails a potential health risk to the general public. For example, studies of potential fiber released from asbestos brake linings in motor vehicles have been conducted by federal agencies, by industry and by independent testing facilities. In no case was there any evidence of a health risk to the public from this use of asbestos.

Questions have been raised on the possible health hazards associated with drinking water conveyed through asbestos-cement pipe. These questions have arisen because the workplace experiences in the past have created a perception of risk about the ingestion of asbestos. Scientific measurements have shown that this perception has no basis in fact. Despite extensive testing there is no supportable evidence that asbestos in drinking water at any level causes cancer.

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Like other asbestos-containing products, the fibers in asbestos-cement pipe are not free. Instead, like reinforcing rods in concrete, they are locked-in by the cement binder. Tests have consistently shown that the amount of asbestos, if any, contributed to drinking water supplied through asbestos-cement pipe is minimal.

Studies on populations exposed to asbestos in drinking water from natural sources (in areas where asbestos is part of the earth's crust) and on populations receiving drinking water through asbestos-cement pipe have uniformly failed to demonstrate any risk associated with the ingestion of asbestos.

In addition, animal ingestion studies support and confirm the epidemiological findings that there is no causal relationship between the ingestion of asbestos in drinking water and the incidence of disease. States that conducted tests have reached the same conclusions and determined there was no need to change water distribution policies.

The potential health hazards associated with asbestos in all areas have been extensively studied and are well defined and manageable. Industry has been unable to identify adequate substitutes for asbestos in many essential applications. Although a few of the substitutes are being studied, the potential adverse health effects for many of these materials have not yet been determined. Johns-Manville believes that eliminating asbestos from the majority of non-hazardous products would not generate any offsetting public health benefits.

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Litigation

Johns-Manville is a defendant or co-defendant in a substantial number of asbestos-related lawsuits. The majority of these claims allege that the company and other defendants failed in their duty to warn of the hazards of inhalation of asbestos fiber and dust originating from asbestos-containing products. In the opinion of management, the company has substantial defenses to these legal actions, resulting in part from prompt warnings of the possible hazards of exposure to asbestos fiber emitted from asbestos-containing insulation products following the 1964 publication of scientific studies linking pulmonary disease in insulation workers to asbestos exposure.

More than 7,000 lawsuits involving over 12,000 plaintiffs are now pending against J-M in the occupational health area. It is clear that for some, a serious disease and disability problem exists; but it should not be assumed that every plaintiff, in fact, has an asbestos-related disease or is disabled even though they may have been exposed to asbestos. This is clearly demonstrated in some of the recent jury verdicts favorable to J-M.

An overriding issue in all asbestos health litigation is the finding of legal fault. We believe that the evidence supports the conclusion that the company acted responsibly, positively and progressively, consistent with medical and scientific knowledge, and accordingly, is not at fault, and has substantial defenses to these claims.

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In the typical case involving an insulation worker with asbestos, the jury must ultimately resolve two liability issues other than existence of an asbestos-related disease. First, at what point in time was a hazard to the insulation workers reasonably foreseeable, thus giving rise to a duty to warn? Second, after any such duty arose, were reasonable steps taken to warn and deal with the products in a responsible fashion?

In numerous cases, courts and juries have found that J-M acted properly. In the cases decided against us, we believe the judgment was greatly influenced by an emotional need of the jury to see the injured worker receive compensation.

A majority of the lawsuits facing J-M are brought by insulation workers who were employed in federal or government-contract shipyards. It is J-M's position that, since the government specified the product and had exclusive control over its employees and their working environment, J-M is clearly not at fault.

Further, as medical information developed, the federal government knew better than anyone of the potential hazards of these products and knew of the appropriate means to control those hazards. However, the government chose to ignore the medical knowledge and, in fact, failed to adopt and enforce uniform standards for providing a safe workplace.

To date, one case has been tried where J-M and other manufacturers have sought recovery from the government for payments made to an injured government employee. The trial court cited the government for its negligence but ruled under Virginia law against J-M and the other manufacturers. The decision is being appealed.

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Punitive Damages

Punitive damages have been sought by plaintiffs in a majority of cases pending against J-M. In many trials the court has not allowed the question to go to the jury. Of the times when the question has gone to the jury, several have not awarded punitive damages while some other juries have returned with punitive damages. In each case, the evidence introduced by the plaintiff during the course of the trial was essentially the same evidence which had been submitted by plaintiffs in previous trials with jury verdicts in the company's favor.

In Cleveland, a jury awarded $350,000 compensatory and $500,000 punitive damages to the widow of a former insulation worker who died of lung cancer. It clearly is a cigarette-smoker lung cancer case. If the deceased had not smoked two packs a day for most of his life, his chances of contracting lung cancer would have been remote—even with his asbestos exposure. The jury has, in effect, punished J-M for a habit that our entire society has condoned for over two centuries. Every smoker knows that he is placing his health in jeopardy by continuing to smoke, a fact known since the late 1950s. Johns-Manville will appeal the decision.

In Philadelphia, a jury hearing one case representing 15 plaintiffs found that all fiber suppliers including J-M were liable for compensatory damages. In addition, the jury found Philip-Carey, as the employer, and J-M liable for punitive damages. Philip-Carey also was cited for conduct aggravating the injured which resulted in some of the compensatory damage awards being reduced by a percentage determined by the jury. J-M will appeal the verdict.

Johns-Manville, Asbestos, Health and Johns-Manville (1981)
ACL Doc 24532 · Page 13 of 24
Published by AsbestosClaims.Law
asbestosclaims.law/library/24532/13

These decisions have very limited precedential value. Therefore, an award in one court cannot be introduced as evidence to another jury. Subsequent to the Cleveland and Philadelphia cases, a case was tried in Jacksonville, Florida, in which the punitive damage question was submitted to the jury. The jury decided the case in J-M's favor on all issues, including that of punitive damages.

Typically, in these type cases, the plaintiffs charge that Johns-Manville tried to restrict the release of medical and scientific information concerning asbestos-related disease. Clearly, the evidence shows the opposite. J-M's extensive support of medical research on the potential health hazards of asbestos has continued on an ever increasing scale since the 1930s. The company sponsored one medical study after another, adopting their every conclusion and recommendation. Results of those studies were published and shared with the medical community, government, industry and the unions.

J-M undertook immediate action to reduce and control exposure levels as recommended by known authorities. In some cases, the company pioneered in the development of unique ventilation and dust-control equipment and shared this technology with other manufacturers.

Johns-Manville's long history of commitment to the elimination of asbestos-related occupational disease is unparalleled in industry, labor and government. We continue to believe that the allegations seeking punitive damages are unfounded and unjustified.

In the future, Johns-Manville will raise an issue in every instance where punitive damages are allowed to be considered. That issue is whether or not these damages can be considered or assessed more than once for the same thing. We believe that the objective of punitive damages has already been met.

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The theory behind punitive damages is to punish, to deter a course of action, and to bring into awareness a course of conduct. Many legal authorities concur that in cases involving multiple torts, the defendant cannot be punished in every single case. If the notion is to punish, then at some point it goes beyond punishing and becomes an abuse of due process or at least nonsensical. If the intent is to deter, then that does not apply in asbestos cases since the previous conditions in asbestos-using plants are no longer in existence and most of the products are no longer manufactured. If the purpose is meant to call attention to an action, then that is also pointless since it has been dealt with to excess by the media. At J-M, we feel these are very strong arguments that once is enough.

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Financial Impact

Johns-Manville's potential liability for asbestos-related disease falls into two major categories: liability under workers' compensation laws and third-party lawsuits brought against the company.

Workers' Compensation Claims
Federal and state workers' compensation laws provide the primary remedy for J-M employees occupationally exposed to asbestos. Many J-M manufacturing locations have self-insured workers' compensation up to certain retention levels, with excess levels covered by insurance. Virtually all claims at these locations are settled or adjudicated within the company's self-insured retention.

For each claim where the employee has been diagnosed to have an asbestos-related disease, an actuarial reserve from past earnings has been established. Charges to future earnings may be required by revised compensation benefit schedules, medical evidence of new disease or disability on existing claims, and any new claims which may arise.

For non self-insured locations potential workers' compensation liability is covered by insurance policies.

In the Province of Quebec, Canada where J-M's asbestos mine is located, the Provincial government has established a fund for injured asbestos workers. Each asbestos company operating in the Province was assessed an amount based on an actuarial determination of employees injured. In 1978, Johns-Manville paid into the fund the full amount of the assessment.

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Third-Party Lawsuits

Most of the third-party lawsuits involve workers exposed to asbestos-containing insulation, usually while employed by the government in wartime shipyards. The majority of these cases are filed against multiple defendants. In 1980, J-M's portion of settlements and judgments averaged $23,000 per plaintiff. In numerous cases plaintiffs have recovered nothing. Substantially all of the disposition costs to date have been covered by insurance.

J-M's possible financial liability for claims arising from third-party suits is covered by policies of insurance. These policies, both primary and excess, provide coverage of approximately $600 million for the applicable periods.

In March 1980, J-M filed suit in San Francisco seeking a declaratory judgment to define the duties and obligations of our insurance carriers to us. The most significant question to be answered in this case centers on J-M's position that losses from asbestos-related injuries are to be spread over those years when the injured parties were exposed to asbestos (exposure theory) as opposed to the year when the injury was discovered (manifestation theory).

J-M is only one of several in the industry to take this sort of action. Recently, the J-M suit in San Francisco was consolidated with three other similar actions in California. This consolidation should not adversely impact J-M's position. In other areas of the country cases have already been decided in favor of insureds whose positions are similar to ours.

Travelers has agreed that all its primary coverage policies from 1947 through 1976 shall apply to the period during which the injured party was exposed to asbestos. However, as of April 1981, Travelers alleges that their aggregate limits have been exhausted. Johns-Manville disputes such allegations.

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A resolution of these issues by the courts will provide J-M and its insurance carriers with an improved ability to assess the impact of the cost of insured events. While any litigation involves uncertainties, the company believes that its position in these issues is sound and in accord with the weight of judicial precedents.

It is the company's belief that the claims and lawsuits pending and which may arise in the future relate to events and conditions existing in prior years. More specifically, we believe that with the positive actions taken to substantially reduce exposure, no significant new potential liabilities are being created for J-M in the asbestos health area.

Because of a rapid increase in the number of asbestos-related lawsuits being filed against J-M, the potential number of future cases cannot be predicted with a reasonable degree of certainty.

Therefore, the company cannot project the extent, if any, to which disposition costs may exceed insurance coverage. This caused J-M's independent accountants to issue a "subject to" qualification in their report on J-M's financial position for the years in 1979 and 1980.

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Regulation

Proposals to further regulate the use of asbestos in the United States are currently being reviewed by various federal regulatory agencies. It is J-M's contention that more stringent regulations are unwarranted. Manufacturers already provide safe workplaces. Industry has willingly developed and actively promoted safe work practices for the protection of workers. In addition, industry has voluntarily discontinued virtually all product lines in which the asbestos could not be locked-in or encapsulated.

Many of the regulatory proposals would largely equate to a ban on the entire use of asbestos with no obvious beneficial impact on asbestos-related health problems. In fact, these regulatory efforts may generate negative health benefits by subjecting the public to the possible health and safety risks of inadequately tested and less effective substitutes.

Medical evidence indicates that low dose exposure to asbestos poses no significant health risk to workers or to the general public. The biological effect of asbestos is in full accord with fundamental principles of biology, including dose response and no-adverse-effect level. This is demonstrated by a decline in occupationally-related disease as workplace exposures to asbestos have been reduced. Furthermore, studies by the National Cancer Institute and others, of populations exposed to asbestos naturally in air and water through erosion from the earth's crust have shown no increased health risk.

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The Occupational Safety and Health Administration (OSHA) first regulated asbestos in 1971. Since then, OSHA has progressively lowered the permissible exposure level for asbestos from 12 fibers per cubic centimeter of air to the current 2 fibers per cubic centimeter level. In 1975, OSHA proposed a further reduction to 0.5 fibers. This proposal ignores the fact that it is not feasible to effectively monitor such levels consistently. J-M believes a decrease from the current standard cannot be justified. Based on the medical evidence to date, the 2 fiber limit is a safe level of exposure.

The Environmental Protection Agency (EPA) has authority to regulate emissions of asbestos into the air and water as well as the disposal of asbestos waste material. Johns-Manville is in compliance with these regulations. The EPA is now considering several alternative regulatory actions for asbestos. By submitting comments to the Agency on these proposed actions, the asbestos industry is seeking to identify areas where agreement could be reached on the need for further regulation.

Initiatives to control the growth of federal regulations has caused a shift in the focus of many special interest groups toward state legislatures and regulatory agencies. Since actions on the part of individual states most likely will not be uniform, Johns-Manville is encouraging states proposing any action on asbestos to defer to federal initiatives.

The objective of the asbestos industry is to assist government in achieving a regulatory environment that both protects health and encourages the safe and productive use of asbestos and asbestos-containing products. Johns-Manville is confident that industry can successfully cooperate with the agencies to develop and implement workable alternatives that are reasonable, meaningful and cost-effective.

Johns-Manville, Asbestos, Health and Johns-Manville (1981)
ACL Doc 24532 · Page 20 of 24
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asbestosclaims.law/library/24532/20

Fair Compensa

Johns-Manville believes Congress must enact a uniform, equitable and comprehensive system for the compensation of asbestos disease victims. The Asbestos Health Hazards Compensation Act is expected to be introduced during the 97th Congress. The goal of this proposed no-fault bill is to promptly and equitably compensate those who are disabled and have suffered from the past incomplete knowledge of the hazards of asbestos exposure and to apportion costs for such compensation among all responsible parties including industry and government.

The company strongly believes that existing systems and institutions are unable to compensate asbestos disease victims fairly and efficiently. This belief is supported by segments from the business, labor and medical communities. J-M is committed to working with responsible legislators and others to develop and refine a progressive and effective program such as the Asbestos Health Hazards Compensation Act.

Key provisions of the proposed Bill are:

- The program would be administered through the existing state and federal workers' compensation system so that no new bureaucracy would be created.
- Compensation under this law would become the exclusive remedy for occupational asbestos-related disease claims.
- Comprehensive, equitable benefits would be established to provide disabled workers and their dependents with adequate income.
- The program would establish uniform medical criteria for determining disability and disease, thus avoiding the alleged runaway excesses of other occupational disease programs.
- Costs would be apportioned among all responsible parties in industry, government and any other groups deemed responsible in a particular case.

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The provision for collective responsibility is vital because of the role other groups played in asbestos-related disease. In this regard, the federal government has a responsibility to share the cost since it helped create the problem. In fact, the majority of workers exposed to asbestos were employed by the government to install asbestos-containing insulation in ships. It was the government that set the standard and specified the product. It was the government's responsibility to provide a safe workplace for those employees; it was the government that failed to do so. Johns-Manville contends that all responsible parties, including the federal government, should pay their responsible share.

At present there are but two means of compensation for occupational disease: the products liability lawsuit and workers' compensation. Both methods have proven to be incapable of delivering fair and adequate compensation to those who need it.

In a products liability lawsuit there must be a determination of fault for there to be a recovery. The finding of fault in asbestos-related cases is a highly complex exercise where juries often reach different results. In some cases the plaintiffs prevail while in others the verdict favors the defendants. The amounts received by plaintiffs in successful suits are small compared to the excessive legal fees and court costs spent in trying them. These substantial non-productive dollar amounts could be more effectively used to pay benefits under the proposed legislation. Further, with the large number of workers exposed, our judicial system is simply not suited to handle all claims in a timely fashion.

Johns-Manville, Asbestos, Health and Johns-Manville (1981)
ACL Doc 24532 · Page 22 of 24
Published by AsbestosClaims.Law
asbestosclaims.law/library/24532/22

The workers' compensation system also has proven to be unfair and inadequate. Statutes differ from state to state resulting in wide disparities in the amount and duration of workers' compensation payments. In many instances, the payments are clearly insufficient. Many laws contain statutes of limitation that are highly unrealistic in light of the long latency period of asbestos-related diseases. A legislative remedy is clearly required to eliminate the current deficiencies.

Often, this type of legislation has been criticized as an industry "bail out." Nothing could be further from the truth. Such a program would, in all probability, entail as great or greater cost to J-M than continuing litigation. Besides, the concept of a "bail-out" assumes that liability for asbestos-related diseases belongs only to the industry. This assumption is false.

It should be realized that the public is already paying for deficiencies of the existing system. This happens when disabled employees receiving inadequate workers' compensation must turn to welfare, social security disability insurance, Medicare and Medicaid. The Labor Department estimates the cost to taxpayers is $2.2 billion annually. In addition, the public pays for the operation of the courts where the costs are dramatically rising because of the increase in asbestos-related litigation.

Johns-Manville actively supports the proposed Bill and is committed to its passage. This is the only way in which the injured will be fairly compensated without extraordinary delay and expense. The Bill is designed to place the burden for compensation on the shoulders of those responsible. Finally, while not reducing J-M's total costs, it would allow the company to more accurately plan for its future.

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For more facts about the asbestos and health issue write:

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