

MANVILLE PERSONAL INJURY SETTLEMENT TRUST

MEMORANDUM

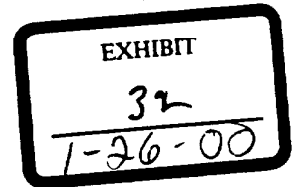
ATTORNEY WORK PRODUCT
PRIVILEGED AND
CONFIDENTIAL

TO: TRUSTEES, MANVILLE PERSONAL INJURY
SETTLEMENT TRUST

FROM: DAVID T. AUSTERN

RE: MANVILLE DOCUMENTS

DATE: FEBRUARY 8, 1988



This memorandum concerns certain documents which have come to my attention the contents of which threaten the survival of the Trust. In addition, the documents are potentially very embarrassing to the trustees and the Trust employees through no fault of their own. For all Trust employees, information concerning this matter has been treated on a need-to-know basis. Marianna Smith is the only Trust employee (other than me) who knows (in general terms) the contents of the documents. Except for my secretary, other employees are mostly unaware of the documents.

For many years, in response to discovery requests in cases in which plaintiffs sued Manville for personal injuries suffered as a result of exposure to asbestos and asbestos products, Manville stated it was unaware until approximately 1964 that exposure to asbestos could cause injury. In addition, in response to Requests For Production of Documents in many of the same cases, Manville stated there were no documents in existence that would establish the corporation was aware (prior to 1964) of the harm caused by exposure to asbestos and asbestos products.

In 1980 Manville sued eleven insurance carriers which had refused to defend and pay judgments in asbestos cases against the corporation despite insurance policies which named Manville as an insured. During that litigation (referred to herein as the insurance litigation), Manville was ordered to

1625 Eye Street, N.W.
Suite 300
Washington, D.C.
20006-1202
Phone: 872-9044
Fax: 872-9144

CRMC 0133213

February 8, 1988
Page 2

search for and produce every document in its possession which showed what the company knew about the effect of exposure to asbestos.

In addition, in 1982 Manville sued the United States government, alleging the government knew of the dangers of asbestos exposure and thus was partially responsible for many of the asbestos health claims which Manville had paid pursuant to either judgment or settlement. During this litigation (referred to herein as the government litigation), Manville was required to produce for inspection essentially the same documents the company was required to produce in the insurance litigation.

In complying with the production requests in both the insurance and the government litigation, Manville conducted a corporation-wide search. The company spent millions of dollars locating, identifying, and producing for inspection a large number of documents. Appendix A to this memorandum describes the scope of the production.

The documents in question are discoverable in personal injury and codefendant litigation against the Trust. Even if the material were not discoverable, Manville has denied the existence of much of it in responses to discovery requests previously filed in courts throughout the United States. At the very least, the Trust will be forced to amend the discovery responses previously filed by Manville.

Finding a facility large enough to permit lawyers, law clerks and paralegals to inspect and copy the documents described in Appendix A is difficult, and the cost, while not prohibitive, does not appear to be a prudent investment of Trust funds. The time this inspection would take is prohibitive. Assuming lawyers representing asbestos health victims pooled their resources in order to conduct an inspection, based on the time it took the government to complete its inspection, it would take twenty people one year to inspect the documents in question. For reasons stated below, I do not believe the Trust can settle any case, including pre-bankruptcy cases, until the Asbestos Victims Plaintiffs' Bar has had at least some opportunity to inspect the Manville documents.

Considering the cost of production and inspection, as well as the time it would take, I propose, in the alternative, that the Trust permit the plaintiffs' bar to purchase copies of the microfilms described in Appendix A to this memorandum. I have investigated the cost of microfilm reproduction and it is not

prohibitive. For instance, if the plaintiffs' bar wanted to purchase all of the government microfilm (642 rolls) and the microfilm made by Travelers, it would cost less than \$7,000 (for one set). In short, microfilm reproduction, which would be paid for by the plaintiffs' bar, is much less expensive for the Trust and can be accomplished by the plaintiffs' bar in much less time than a complete document inspection.

With respect to the question of whether an inspection of only the documents microfilmed by the Government and by Travelers would reveal to the plaintiffs' bar substantial evidence of what all the documents contain, I have been informed by lawyers and paralegals who are knowledgeable about the documents that a review of the microfilm in question would present the viewer with approximately 95% of the information contained in the total collection. Note, however, that even this "limited inspection" would require the examiner to inspect over two million documents.

Based on the forgoing, I recommend that when the Trust has custody of the microfilm described in Appendix A, the Trust send a letter to all plaintiffs' lawyers representing victims who have claims against the Trust informing them of their opportunity to order copies of the microfilm.

In reading the following paragraphs, you may wish to keep in mind that (1) I have personally read in their entirety only six of the documents described below, (2) I have read a 209 page memorandum which describes in summary form approximately 1,000 of the documents in question, and (3) those people who are most familiar with the documents do not agree as to which of the documents are the most embarrassing to Manville and the most threatening to the Reorganization Plan, i.e. there are so many embarrassing documents that people disagree as to which group of any ten documents is the worst.

In the light most favorable to Manville, the bulk of the documents in question were discovered by the corporation after August 1982, when the Chapter 11 proceeding was commenced. In August 1986, the corporation filed a First Amended Disclosure Statement which was the basis upon which creditors, including asbestos health victims, voted for or against reorganization. Some parts of the Reorganization Plan suggest (some might say, "argue") that Manville was correct in denying liability for asbestos health claim injuries on the grounds that it was unknown prior to 1964 that exposure to asbestos dust could cause injuries. For instance, Exhibit III-A-1 to the Reorganization Plan, the 1985 Annual Report and Form 10-K, states, "(D)uring the periods of alleged injurious exposure,

medical and scientific authorities, government officials and companies supplying products containing asbestos fiber believed that the dust levels for asbestos recommended by the United States Public Health Service did not constitute a hazard to the health of workers handling asbestos-containing insulation products. Accordingly, the company has maintained that there was no basis for product warnings or special hazard controls until the 1964 publication of results of scientific studies linking pulmonary disease in asbestos insulation workers with asbestos exposure. (Page M-467 of the Reorganization Plan) Similar language appears in the Disclosure Statement itself.

The documents noted above, however, show corporate knowledge of the dangers associated with exposure to asbestos dating back to 1934. In addition, the plaintiffs' bar will probably take the position -- not unreasonably -- that the documents are evidence of a corporate conspiracy to prevent asbestos workers from learning that their exposure to asbestos could kill them. (One employee of Manville, who co-authored a 30-year-old document which is among the group of documents described above, was told by Manville's Chief of Litigation to hire his own lawyer after the document came to light because it was the opinion of the Chief of Litigation that the employee could be indicted for manslaughter.)

It is impossible in summary form to describe even the few documents I have seen or the summaries I have read. Subject to a later correction based on my review of further documents, it is my present opinion that at the very least the documents in question will result in a) substantially higher values for all personal injury claims made against the Trust, and b) potentially much higher values for all co-defendant claims made against the Trust. Post-Consummation there may be an attempt by the plaintiffs' bar, following their review of the documents, to (1) amend the Reorganization Plan to permit the addition of punitive damages for asbestos health claims against the Trust, and (2) require Manville to contribute substantially more funds to the Trust.

More seriously, an argument could be made that the Reorganization Plan was procured by fraud and, therefore, should be set aside. While it is true that many of the documents in question are eluded to in Outrageous Misconduct, and while it is true that many of the documents were revealed in open court during Manville's litigation against the Government, the fact remains that the Reorganization Plan did not disclose to those who voted for it that Manville's previously asserted positions concerning its knowledge of the danger of asbestos had been shown to be false. (I have asked

February 8, 1988
Page 5

Manville representatives why the "new evidence" was not disclosed in the Reorganization Plan. On February 10, 1988, I am meeting with Richard Von Wald, General Counsel of Manville, and Stephen Case, a partner in Davis, Polk, the law firm that represented Manville and continues to represent it in the Bankruptcy, concerning this matter.)

Note that the appeal of the Plan pending in the Second Circuit argues, among other things, that the Trust is under-funded. In light of the newly discovered documents, the contents of which are apparently unknown to appellate counsel, there is even stronger evidence the Trust is under-funded.

Nothing in this memorandum is intended to address the issues associated with what may have been false statements filed by Manville in 10-Ks submitted to the SEC after the documents were discovered. Nothing in this memorandum is intended to address the issues associated with the Trust's responsibility to defend and to indemnify 109 present and former employees of Manville (mostly former) who have been sued individually by plaintiffs in asbestos health cases. In that regard, based on at least one document I have seen, there is the possibility one or more private civil rights actions will be brought against Manville employees by plaintiffs who were injured as a result of exposure to asbestos. These issues will be the subject(s) of a future memorandum.

The success of the Trust depends, at least in part, on our ability to settle before Consummation a substantial number of the 17,000 cases stayed by the bankruptcy. We had been planning to start negotiating such settlements this month. I do not believe we can settle any of these cases until the documents described above have been disclosed. Thus, because of the appeal, the timing of the disclosure is important.

If we settle cases prior to disclosure of the documents, we run some risk that Post-Consummation, some plaintiffs' lawyers will ask to have the settlements set aside on the ground they were procured by fraud, i.e., had the lawyers known of the documents in question, they would not have settled the case for the amount originally agreed upon.

More seriously, settling cases before disclosure of the documents destroys all of the trust we are trying to establish with asbestos health victims and their lawyers. Marianna Smith has made a number of speeches, and has had numerous telephone conversations with lawyers, in which she has stated that the Trust never made asbestos, is separate from Manville, and is not and never will be guilty of the kinds of tactics Outrageous

CRMC 0133217

February 8, 1988

Page 6

Misconduct describes. Failure to disclose the existence and the contents of the documents before settling any cases, including pre-bankruptcy cases, will go a long way towards destroying any confidence and goodwill that Marianna has succeeded in establishing. Stated differently, if Manville (in concert with others or absent such concert) has been guilty of a failure to disclose the existence and the contents of the documents to both the Bankruptcy Court and the SEC, and if, as the documents suggest, Manville may have conspired with others to defraud its creditors, the Trust will want to disclose the documents.

Again, I have read only a very small number of the documents in question, and Manville and its attorneys may have sound arguments (none occur to me at this time) as to why the documents were not disclosed. One could argue, for instance, that many of the documents are cumulative, i.e., Outrageous Misconduct and other sources have revealed that Manville and other asbestos manufacturers apparently knew for many years that exposure to asbestos was detrimental to the health of asbestos workers. To me, at least, this is not a persuasive argument, particularly when Manville, as a debtor, failed to file the kind of Disclosure Statement that is required by Section 1125 of the Bankruptcy Code.

While it is not my intention to be an alarmist, I believe the documents evidence corporate irresponsibility of a magnitude which is understated in Outrageous Misconduct. The content and tone of the documents demonstrate that Manville officers, directors, and employees -- including some present employees -- held secret information that had it been revealed, would have prevented the deaths of thousands of people.

CRMC 0133218

APPENDIX A

At its corporate headquarters in Denver, Colorado, Manville produced for inspection and copying 5,411 boxes of material. Each box is one foot square (12" x 12"). At Manville, New Jersey, the corporation produced for inspection and copying 10,471 boxes. At Waukegan, Illinois, the company produced 4,682 boxes, and at Lompoc, California, the company produced 122 boxes.

In addition, following its own inspection of the material described in the preceding paragraph, the corporation claimed attorney/client or attorney work product privileges with respect to 933 boxes of material. Thus, there are 21,619 boxes containing documents produced (or claimed as privileged) during the insurance and government litigation.. This material is approximately 4.1 linear miles long. Each box is estimated to hold approximately 1,000 pieces of paper. There are, therefore, approximately 22 million pieces of paper.

(During the course of both the government and insurance litigation, Manville requested its own production and inspection from both the government and the eleven insurance carriers. These productions resulted in Manville copying approximately 25 million pieces of paper contained in either government or insurance carrier files. The documents produced in the insurance litigation are subject to a Protective Order, and Manville is not permitted to turn over or to show these documents to the Trust. The documents produced in the government litigation are also subject to a Protective Order. It is unclear whether this latter Order prevents Manville from showing representatives of the Trust the documents in question, and it appears this Order will terminate when the government litigation is concluded. The case is pending on appeal before the Federal Circuit.)

Manville's counsel believe the government's inspection and copying of documents was more complete than the inspection and copying undertaken by the insurance carriers. The government employed fifteen people for six months (plus two full-time microfilm processors) to complete its inspection and copying of the material in Denver, Colorado. Thereafter, fifteen government representatives spent three months examining and copying the material in Waukegan, Illinois. Finally, twenty government representatives spent six months inspecting and copying the material in Manville, New Jersey. Stated differently, the government inspection employed approximately seventeen people full-time for over one year.

February 8, 1988
Page 8

Each page of every Manville document the government requested was microfilmed. The Manville documents copied by the government are contained on 642 rolls of microfilm. Each roll contains approximately 2,500 pages. Thus, there are slightly over 1,605,000 pages of material copied by the government.

The insurance carriers inspected essentially the same documents the government inspected. The insurance carriers microfilmed 822 rolls of material. Because these documents were copied by eleven different insurance carriers, there are many duplications, i.e., the Travelers Insurance Company and Aetna Casualty microfilmed more or less the same documents. Of course, there is also some duplication between the documents copied by the government and the documents copied by one or more insurance carriers. Among the insurance carriers, the Travelers Insurance Company copied the greatest amount of material: this production totaled approximately 220 rolls of microfilm. Approximately 2,055,000 pages of material (822 rolls x approximately 2,500 pages per roll) were microfilmed by the insurance carriers.