

(Draft)

MINUTES

Asbestos Disability Compensation Claims Committee

of

The New York Academy of Sciences

Meeting Date: January 25, 1982

Present: Tom Brown (U.S. Department of Labor), Esther Foer (Asbestos Coalition), Floyd Knowlton (Travellers Insurance Companies), Robert C. Landess (Iowa Industrial Commission), Tim Means, (representing Victor Schwartz), Barney Ovrut (Commercial Union Assurance Company), Irving Selikoff (Mount Sinai School of Medicine), Robert Sweeney (Plaintiff Attorney), Edwin Weiss (U.S. Department of Health and Welfare), Sidney Borowitz, Henry Lieberman, Donald Straus, and Charles Wolf (The New York Academy of Sciences)

Mr. Straus opened the meeting by presenting his proposed agenda (attached). The group accepted it and the discussion began with the question that had been proposed by Sheldon Samuels of the AFL/CIO: Should the Asbestos Disability Compensation Claims problem be considered in isolation or as part of a larger disability and occupational disease compensation problem?

In the ensuing discussion, the following points were made:

- (1) This group consists mainly of persons with expertise in the asbestos problem. To widen our field of study would require greatly expanding the composition of the group.
- (2) But, any action taken on asbestos would necessarily have an impact on other parts of the larger problem. At best, it could become a prototype for solutions in other areas.

For the above reasons, the group accepted this caveat: "We must take care not to come up with an isolated solution which of necessity remains isolated--the black lung problem was given as an example. This project should therefore undertake to review each considered solution for its impacts on other occupational problems."

85650656

Dr. Selikoff then gave the report of the Medical-Scientific Task Force (attached). The discussion in this report indicated the following: Recent concentration on asbestos related disease has sharpened the ability to diagnose diseases related to asbestos poisoning and to exclude diseases which are not, with high accuracy. Accuracy of mesothelioma diagnosis, for example, is 90-95%. The expertise is widely distributed in the community of pathologists. Accuracy of pin pointing the diagnosis is likely to improve with the more widespread use of monoclonal antibodies.

There are a relatively small number of cases about which there is disagreement, such as: If there were exposure, but no lung scarring and there is dyspnoea, can there be asbestosis? If there is severe corpumonale, and no other findings related to asbestos exposure, is there asbestos disease? Can the primary site of a cancer always be identified?

Some questions require further discussion: Is asbestosis always progressive? Is it always disabling, even when there are no symptoms, but there is x-ray evidence? What about synergisms?

There was consensus that the report represented a distillation of what is now generally known, but that in a final report would have to be filled in by experts.

The Legal Task Force did not report, but Robert Sweeney substituted some remarks which he had prepared after speaking to Dennis Markusson, who was co-chairman of this Task Force.

Mr. Sweeney emphasized the importance of trying to avoid trials and their attendant costs. Arbitration and negotiation are two such devices. Mr. Sweeney described a more elaborate device of this sort, a Summary Jury Trial. This enables attorneys to see how their case would look to a lay jury. Six people are impanelled and the evidence presented in 1/2 to 1 day without cross examination. Lawyers give summations and the six jurors render a verdict which is non-binding. But 93% of the cases heard this way in Ohio were settled out of court. Mr. Sweeney thought this could save 60% of the legal fees, even though asbestos cases have not yet been put before these panels. Some skepticism was expressed inasmuch as considerable preparation is required for the Summary Jury Trial, and only a small percentage of cases do get to trial anyway. Mr. Sweeney insisted on his 60%.

Some other observations arising from the discussion were: A retired member of the judiciary should be a member of the committee. Multidistricting should be tried. The plaintiff attorney Bar would be reluctant to accept any solution and any legislation that would bar or restrict third party rights. The Hart and Fenwick bills should be reexamined. One should assess the advantages to the Bar in various alternative procedures, as well as to other parties.

85650657

Dr. Borowitz then gave the report of the Task Force on Economics (attached). The results of this Task Force's deliberations is that a low estimate of the range of potential costs of compensating victims of asbestos disease in the next 25 years is from \$11 to \$47 billion dollars, and a high estimate ranges from \$29 to \$33 billions. The lower estimates derive from a diminished estimate of cases expected and a small percentage who will be compensated (1/2); the higher estimate derives from a higher estimate of the number of deaths with a higher estimate of the number of those compensated (2/3). Within the low and high estimates, the lower number is related to an "efficient" court and the higher estimate to an "inefficient" one. In this context, "efficient" means that only diseases caused by asbestos will be compensated, and that ways will be found to reduce administrative expenses by about 1/3, in making the awards. It is further assumed that no appreciable large new classes of victims of asbestos disease will be discovered--perhaps a shaky assumption, in view of the fact that some studies show that asbestos workers' families, for example, seem to be coming down with asbestos disease with increasing frequency. The greatest burden of the discussion was on the importance both scientifically and procedurally, to find "efficient" methods of compensation as defined above.

The committee then discussed the next step to be taken. A consensus quickly developed that there should be a workshop to be held between the middle and the end of May, 1982. This step would require the writing of a "Single Text" which Mr. Henry Lieberman was chosen to do.

Mr. Lieberman explained he would prepare a "Single Text" similar to, but modified from the model used by Professor Fisher of Harvard. This document will describe the anatomy of the problem and present alternatives to be considered. An outline of such a text could be: Definition of problem, goals, presentation of evidence, alternative strategies for solution, and pros and cons. Mr. Lieberman emphasized that experts would be consulted and the report he would write would be a distillation of the opinions of experts. The most important skill of the writer of the document would be to establish rapport with the key representative experts, and to develop a document that would aid further creative discussion.

85650658