

**EXHIBIT 3**

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

HONORABLE IRA A. BROWN, JR. DEPARTMENT NO. 9

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COORDINATION PROCEEDING ) Judicial Council Coordination  
SPECIAL TITLE [Rule 1550(b)] ) Proceeding No. 1072  
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)  
ASBESTOS INSURANCE )  
COVERAGE CASES )

TRIAL TRANSCRIPT  
Volume 136  
March 4, 1986  
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A P P E A R A N C E S

MANUFACTURERS:

For ARMSTRONG: ROBERT M. SAYLER, ESQ.  
DAVID M. ZOLENSKY, ESQ.  
Covington & Burling

For GAF CORPORATION,  
GAF INSURANCE LTD,  
NICOLET: GRACE CARTER, ESQ.  
Paul, Hastings, Janofsky & Walker

For JOHNS-MANVILLE parties: ROBERT T. HASLAM, ESQ.  
Heller, Ehrman, White & McAuliffe

For FIBREBOARD: WILLIAM R. IRWIN, ESQ.  
L. CHRISTOPHER VEJNOSKA, ESQ.  
Brobeck, Phleger & Harrison

INSURERS:

For PACIFIC INDEMNITY: ROSS R. RYDER, ESQ.  
NANCY HINDLE, ESQ.  
Bledsoe, Cathcart, Boyd, Eliot &  
Curfman

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"ANSWER: No.

"QUESTION: Do you recall any substantive unhappiness with that memorandum?

"ANSWER: No.

"QUESTION: Let me just see if this jogs your memory; and if it does not, we'll adjourn for the night.

At some point there was an exclusion A, which happens to match up pretty well in time with this letter which had to do with the subject. See if this refreshes your recollection:

'This policy does not apply to bodily injury or property damage resulting from deliberate acts or omissions of the insured which with reasonable certainty may be expected to produce injury or damage.'

Does that ring a bell as to what your letter may have had to do with?

"ANSWER: I would say that was the exclusion which we concluded was too rough to inflict upon our insureds and would lead to the demand of its deletion.

"QUESTION: Why is language of that sort too rough to inflict on your insureds?

Can you recall what it was in 1962 that led you to oppose the adoption of exclusion A?

"ANSWER: I think it was because it tries to spell out the fortuitous nature of the word 'accident' and caused more problems than it resolved. See, one of the original reasons for using 'accident' was -- 'caused by accident' --

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1 was it was fortuitous from the point of view of the insured.  
2 "QUESTION: I'm sorry?  
3 "ANSWER: That the injury was fortuitous, caused by  
4 accident. We obviously did not want to cover the intentional  
5 results of intentional act, such as murder. We didn't want  
6 to cover that. That is an intentional act with an  
7 intentional result.  
8 When we tried to spell it out, although it was in  
9 the concept of accident, it caused problems for everyone and  
10 we agreed that it be deleted.  
11 "QUESTION: I'm sorry. At no point did you ever  
12 advocate adopting an exclusion that would oust an insured  
13 from coverage if it was merely true that the act complained  
14 of was foreseeable; am I right about that?  
15 "ANSWER: You are right.  
16 "QUESTION: You had a concern that if an exclusion  
17 were so prescribed, that the very facts necessary to prove  
18 the underlying case brought by an injured party against an  
19 insured would perforce serve to oust the insured of coverage?  
20 "ANSWER: Which was not our intent.  
21 "QUESTION: Which was not your intent at all?  
22 "ANSWER: Sure."  
23 This is a good breaking point.  
24 THE COURT: Yes, it is. Thank you, Mr. Saylor.  
25 We'll reconvene at 1:30.  
26 (LUNCH RECESS)  
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