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TO: Dr. N. E. Bradbury
FROM: E. J. Denson
SUBJECT: Insurance Coverage

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By request of your memo of 1 February 1946, an examination of Project Y accident insurance files and further requests from insurance companies for interpretation of policy provisions, specifically with respect to travel in Army Aircraft, reveals the following:

With respect to the so-called Employees Benefit Fund, the University of California under its contract W 7405 - eng 36 with the Government, covering Project Y, "the contractor has been authorized to use certain monies advanced by the Government for voluntary lump sum payments in certain cases of disability or death of employees as a result of certain hazards incident to the operation of this Project, subject to the concurrence of the Government that the disability or death is one of the specified hazards.

"Any such payment will be wholly discretionary on the part of the contractor and will be paid only if money is available for that purpose from the Government; and the contractor may require as a condition of any payment that the recipient execute a release of all claims of the recipient against the contractor and the Government arising out of such disability or death to the extent of the payment so made, except claims under Workmen's Compensation laws or occupational disease statutes.

"No right to any such payment shall arise out of any contract of employment and no person is authorized to make any representations with respect to any such payments other than as expressly stated herein."

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L. M. Redman
AUG 27, 1979

SIGNED: For the Contractor
R. M. Underhill, June 1, 1945
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Under Contract No. W 7405 - eng 36, Article XVII, EMPLOYEES' BENEFIT FUND the following appears:

"1. Recognizing that the performance of Contractor's operations hereunder, and under Contract No. W 7405-eng-36, will subject employees to serious and unusual hazards with respect to which it is impossible to provide adequate protection, and that the Contractor has been unable, despite extended efforts with the assistance of the Contracting Officer, to obtain satisfactory insurance coverage therefor, the Government agrees that the Contractor shall have the right and is authorized to establish, maintain and utilize as herein-after set forth, a benefit fund from which payments, in addition to those provided for by Workmen's Compensation Laws or other statutes or under the terms of Contractor's employee welfare plans and policies may be made to or on account

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of employees who become disabled or die as a result of such hazards. The Contractor, therefore, is authorized to withdraw from time to time from the sums advanced to the Contractor by the Government, pursuant to Article X hereof, amounts sufficient to establish, maintain and replenish an Employees Benefit Fund, hereinafter referred to as the "Benefit Fund" of One Million Five Hundred Thousand Dollars (\$1,500,000).

"2. The Contractor shall have the right to establish said Benefit Fund immediately upon the execution of this Contract and to maintain and utilize the same for a period of ten (10) years after the termination of Contractor's operations hereunder or under Contract No. W-7405-eng-48, whichever may be the later date.

"3. In the event of termination of Contractor's operations under this Contract or under Contract No. W-7405-eng-48, the Contractor is further authorized to request and receive advances under Article X hereof in such additional amounts in excess of the then aggregate of securities and cash constituting the Benefit Fund then in its hands, as it may estimate and as the Contracting Officer may approve, as reasonably necessary to provide payments for cases of death or of disability to employees then known but for which no award or appropriation has been made and for cases which may subsequently arise after such date of termination and during the period the fund is to be held.

"4. Whenever the Contractor shall determine, with the approval of the Contracting Officer, that any employee has become disabled or has died as a result of any of the hazards specified in the Secret Letter to be delivered by the Contracting Officer contemporaneously with the execution hereof, (a copy of which is on file in the office of the District Engineer, Manhattan District), the contents of such letter constituting a part of this contract to the same extent as if fully set forth herein, the Contractor shall have the right to pay, from the amount available in the Benefit Fund, to such employee or to his dependents or legal representative, a sum not to exceed the sum of Ten Thousand Dollars (10,000), provided that when any such payment has been made to an employee who has become disabled, no further payment under this Article shall be made by reason of the death of such employee. It is expressly understood and agreed that the Contractor assumes no obligation hereunder to make any such payment from the Contractor's own funds. No such payment shall be made except upon securing a release in form approved by the Contracting Officer, relieving the Contractor and the Government, to the extent of the payment so made, from all claims of the recipient on account of such disability or death, except claims under Workmen's Compensation laws or occupational disease statutes."

COMMENT:

The provisions of the Contract hereinabove written, in my opinion, mean that, evidence of injury to or death of any employee ~~sustained~~ ^{incurred} in the performance of his duties can be submitted to the Contractor for payment and that it is "wholly discretionary" on the part of the Contractor to make payment. The Contractor specifically provides that such payment shall "not arise out of any contract of employment." The experience, thus far, a limited one, is that the Contractor has paid immediately upon presentation of competent and expert evidence.

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In my opinion the Contractor will continue to do so upon such evidence. It must be recognized that the Contractor is in the nature of a trustee of such a fund and can only use it under strict instructions of ^{the} ~~these~~ agencies ^{which} ~~who~~ supply the fund, in this case the Contracting Officer ^(Asst. Asst.) of the United States Government. The Contractor is not chartered to do an insurance business and neither is that agency of the Government which supplies the fund. For that reason no contract of insurance can be held out to the employee by ~~this~~ Contractor. The arrangement is rather a protection to him resulting from the unusual hazards involved which are or were not admissable as good risks by duly constituted insurance companies.

9 June 1945

Dr. J. R. Oppenheimer
P. O. Box 1663
Santa Fe, New Mexico

Dear Dr. Oppenheimer:

[Statement Quoted in part 3 Pgs of this memo]

With reference to our conversation of yesterday, I wish to inform you that the statement issued by the Contractor under date of June 1, 1945, to all concerned regarding insurance is not satisfactory to me. I have directed Lt. Colonel Stewart to take such steps as are necessary so that a satisfactory statement from the Contractor will be forthcoming.

Pending the receipt of a new statement which is satisfactory, it is my intention to authorize the Contractor, and to exert such influence as I may have upon him, to insure the prompt payment under the Benefit Fund of any proper claim in case of disability or death of employees as a result of certain hazards which have been previously enumerated.

As I pointed out to you, the contract provides "...the Contractor shall have the right to pay from the amount available in the Benefit Fund to such employees or his dependents or legal representatives..."

Sincerely yours,

Signed - L. R. Groves
L. R. GROVES
Major General, C. E.

cc: Lt. Col. S. L. Stewart
The District Engineer

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COMMENT:

It is known that the Contractor and General Groves do not see eye to eye on the statement quoted by the Contractor under Underhill's signature. General Groves would make the statement stronger but Mr. Underhill states that the Regents of the University of California under the provisions of their prime contract cannot indicate a contractual obligation to pay.

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specific hazards

The ~~items~~ which will be considered for payment by the Contractor upon application are listed specifically as follows:



- (a) Exposure to radiant energy or emitted particles from radioactive materials or from high voltage sources or machines, including ingestion, inhalation, or other bodily uptake of radioactive materials.
- (b) Exposure to explosions due to atomic disintegrations or to explosions in the course of experimental work with or using high explosives or propellants.
- (c) Experimental high voltages as differentiated from ordinary high voltage lines functioning as a routine service facility.
- (d) Exposure to toxic materials comprising uranium, plutonium, fluorine, any compounds of these, or phosgene.
- (e) Exposure to explosions due to experimental work with high pressure equipment involving gases and/or liquids under high pressure.
- (f) Work assignments of such a nature as will invalidate the employees' personal insurance in effect at the time of performance of the assigned duties. Payments under this provision will be made in the amount of the voided insurance policies but in no event to exceed \$10,000.00.
- (g) Work assignments requiring performance in active combat zones or theatres of war.
- (h) Exposure to hazards incident to flights in military aircraft in the course of which necessary experimental work is conducted. Where a release of liability has been signed, such release will in no way bar the employee from receiving any benefits which such employee would have received in the absence of the release.
- (i) Exposure due to hazards from the fall of bombs or mock-ups from planes as opposed to hazards due to explosion



- Letter 15 May 1944 from Col. K. V. Nichols to Contractor

Letter to J. R. Oppenheimer from Robert M. Underhill (not signed as an official but on Regents of University of California stationery) stating that Mr. Underhill received a letter dated 15 May 1944 which reads as follows:

- (j) Exposures incident to authorized flights in military aircraft, when necessary as transportation between certain designated localities. The prior written authorization for such flights shall be obtained from Lt. Col. S. L. Stewart, authorized representative of the Contracting Officer. In the absence of Lt. Col. Stewart such written authorization shall be obtained from Major P. DeSilva.

It is now the practice, whether authorized or not, to notify the Fiscal Office of Project Y of such flights as described hereinabove. The Fiscal Office promptly (and may I insert, efficiently), transmits the information to the Los Angeles Area Contracting Officer's representative, Lt. Col. Stewart.

- Letter of duty 1944
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(This procedure is being set up for acceptance in writing. Travel orders signed by the Director should be sufficient notice to the Fiscal Office of an authorized flight).

CONCLUSION:

In my opinion, any employee (or his dependents) who can present competent and acceptable evidence of injury or death while in performance of his duty will recover an amount up to \$10,000.00 from the Fund.

However, it is to be carefully noted that in case of death it is not contemplated that any payment will be made to persons who are not actual dependents of an employee of the Contractor killed as the result of one of the special hazards enumerated hereinabove.

WORKMAN'S COMPENSATION ACT OF NEW MEXICO

BENEFITS THEREUNDER ARE IN ADDITION TO THE CONTRACTOR'S BENEFIT FUND.

Benefit

"In addition to the special fund payments referred to above, all employees of the Contractor are covered by the Workmen's Compensation Act of the State of New Mexico. This Act provides that an employer shall become liable to and shall pay certain sums to any workman injured by an accident arising out of and in the course of his employment, and in case of death certain other payments shall be made for the benefit of his dependents. The Contractor is insured with a reputable insurance company, (Globe Indemnity Co.) for such payments and a number of them have been made in the past. The extent of the payments depends (1) upon the salary received by the employee, (2) the extent of the injury, and (3) in the event of death, upon the relationship of the employee's dependents. Maximum payment in the event of death is \$150.00 for funeral expenses plus \$18 a week for 300 weeks. This applies to an employee who dies and leaves children. In the event of total disability the maximum payments to the employee amount to \$18 a week for a period of 550 weeks."

Summary by David Dow January 4, 1945
Re-checked by E. J. Denson February 1, 1946

It is still an undecided question whether or not an employee has a choice to claim under the Workman's Compensation Act of New Mexico or California. He cannot claim under both. The California Act is more liberal in money amounts paid than is the New Mexico Act.

INSURANCE COMPANY COVERAGE

Added to the two coverages stated above, an employee of Project Y can apply for term Occupational Accident & Disease insurance with the Indemnity Insurance Co. of North America in Philadelphia, (a stock company). The insurance application is made through the Fiscal Office of Project Y, (Mr. Muncy). The Fiscal Office can accomplish the coverage in a matter of hours.

The arrangement includes the following understanding:

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<u>Principal Sum</u>	<u>Annual Premium</u>
\$ 5,000.00	\$ 31.00
10,000.00	62.00
20,000.00	124.00

"Any individual insured may likewise cancel his certificate of insurance by written notice to this office stating when such cancellation shall be effective. In the event of cancellation, the earned premium which the company is entitled to receive shall be the pro-rata portion of the annual premium from the inception date of coverage to the effective date of cancellation, subject, however, to the minimum premium of ten dollars (\$10.00) per certificate.

In the event of termination of any insured employee, his certificate must be returned for cancellation. If an insured employee for whom premium is reimbursable to the contractor, ceases to be engaged in the special activities for which such insurance coverage was authorized, his certificate must be terminated. If any insured employee who qualified for this insurance by engaging in certain research activities for the Manhattan District has a change in status so that he does not qualify, cancellation of such insurance is required. In all cases when cancellation is effected, original certificates will be returned to this office immediately."

Letter from Stanley L. Stewart
Lt. Col., Corps of Engineers
Area Engineer

Dated 15 August 1945

the foregoing
Under the following provision of ~~the~~ policy it was asked whether travel while in the course of occupation of the project in army aircraft was covered:

"Wherever the words "Occupational injuries" are used in the policy they shall mean bodily injuries caused by accident and arising out of and in the course of the Insured's duties in connection with war research undertaken by or on behalf of an Agency."

A query to the Indemnity Insurance Co. of North America, 729-15th St. N. W., Washington, D. C., Attention J. E. Harris, brought this reply on 1 February 1946.

"Travel on army aircraft in course of occupation covered by policy
J. E. Harris"

CONCLUSIONS:

It is not only possible but definitely probable that dependents of an employee of Project Y killed while engaged in the performance of his duties, if he is covered fully by available insurance, could recover about \$35,500.00 and if injured, amounts downward from this sum.

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Research is going forward to find if a person's insurability becomes impaired because he accepts a job here or now works here, specifically with respect to his life, annuity and other such policies. As soon as this is determined the Director will be informed.



E. J. Demson
Personnel Director

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