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Documents show insurance industry downplayed asbestos data

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WASHINGTON, D.C. -- Some of the nation's largest insurance companies knew for decades that asbestos could kill but didn't warn workers or take other measures that might have averted the nation's worst workplace health disaster, industry documents show.

For years, dating to the 1930s, Metropolitan Life Insurance Co. did not make public or downplayed research indicating that asbestos could cause lung cancer and other diseases. Travelers Insurance and other carriers measured asbestos levels in factory air samples for years and pooled data on the mounting numbers of claims on behalf of workers dead or sick from asbestos illnesses.

The insurers did urge asbestos companies to reduce dust levels. But attorneys now suing the insurers contend the insurers should have required asbestos companies to protect their workers or to put warnings on asbestos products long before the companies began to do so in the mid-1960s.

In thousands of suits in Ohio and Texas, dozens of insurers, including the St. Paul Companies, are being accused of concealing or negligently failing to disclose the asbestos hazard. Separately, two class-action suits accuse a dozen insurers of fighting victims' claims with deceptive defenses that asbestos companies didn't fully know the perils of breathing the fibers.

Health experts project that asbestos could kill 500,000 U.S. workers and result in 3 million injury claims from an estimated 27 million people exposed to it.

In Minnesota, workers across the state were exposed to asbestos -- at a ceiling tile plant in Cloquet, in northeast Minneapolis factories that made insulation and during construction of Twin Cities skyscrapers such as the IDS Tower. State health officials say that thousands of Minnesota workers have died.

The suits could test whether insurers can be held accountable if they conceal or fail to disclose knowledge that a policyholder's product is a health hazard. If the suits were to result in major awards for victims, consumer costs for other insurance products could soar.

Insurers, along with asbestos companies, are lobbying Congress for legislation to create a trust fund that would settle all asbestos litigation and limit their liability.

Craig Berrington, general counsel of the American Insurance Association, contended that the group's more than 400 casualty insurers had no special knowledge about asbestos diseases -- illnesses that typically take 10 to 40 years to produce symptoms. Rather, he said insurers had access to the same medical studies as everybody else -- and no duty to alert workers.

The insurers' "critical, but limited, role in society is to cover the costs of accidents and injuries," he said.

Arthur Caplan, the director of the University of Pennsylvania's Center for Bioethics, said that the insurers' only legal duty is to their shareholders and that he would not expect them to alert lawyers to "sue us or make claims against us and drive us into bankruptcy."

However, Caplan said, "you can't just say that the company's interest is always paramount. At some point, when the bodies, the cancers and the failing lungs begin to pile up, you've got to take that information and move it out to public health authorities, government officials or doctors . . . You should be letting people know that there is a massive public health problem, if you have any ethics at all."



Bob Bertrand at cancer center

Judy Griesedieck
Star Tribune

Dr. Henry Anderson, who is the chief medical officer for the Wisconsin Department of Public Health and who worked on pioneering asbestos research during the 1970s, said the insurers "had a moral obligation [to warn], both from the standpoint of protecting the workers as well as the companies employing them."

Researchers and plaintiffs attorneys have asserted for years that some of the biggest asbestos manufacturers engaged in a 40-year coverup of the fibers' hazards. Now, thousands of documents coming to light detail what the insurance industry knew and what it did about the threat.

A Star Tribune review of hundreds of those documents found that:

- In 1931, a medical screening financed in part by Met Life found 42 of 195 Canadian asbestos miners and millworkers to have asbestosis, a slowly progressive lung disease that can be fatal. The study was never published. In 1935, three Met Life officials prepared a federal government study that found 64 U.S. workers with asbestosis, but at the suggestion of manufacturers, the researchers made revisions to minimize the disease's gravity.
- In 1932, Travelers rated asbestos exposure a significant enough hazard that it instructed its agents to decline to sell life insurance to asbestos workers after age 56.
- In the 1940s, the director of the Saranac Laboratory in upstate New York researched whether asbestos exposure would give laboratory mice asbestosis. But nine of the 11 mice in one study got a more deadly disease: lung cancer. Through the efforts of a Met Life official who oversaw Saranac, that finding and similar results were concealed.
- In 1952, a British health official presented data to a Saranac conference that linked asbestos to lung cancer, a finding that suggested asbestos workers could be facing early deaths. E.R.A. Merewether, Britain's chief inspector of factories, said that in tracing the deaths of 306 workers over a quarter-century from asbestos-related diseases, he found at least 48 who had lung cancer. The conference was attended by manufacturers, government officials and representatives of Met Life, Travelers, Liberty Mutual and an insurance industry association. Unlike six prior Saranac dust-disease conferences, the transcript of this conference was not published.
- During World War II, insurers performed 65,000 safety inspections at shipyards under contracts with the Navy. Lawyers suing the insurers say they've seen no evidence that the inspectors warned the Navy that asbestos could harm the shipyard workers -- among them thousands of insulators who labored to cover boilers and pipes with asbestos products. In the ensuing years, hundreds of thousands of those workers and Navy personnel were stricken with asbestos diseases.

In mid-1975, after an appeals court opened the gates for a torrent of injury suits against asbestos manufacturers, Travelers formed an asbestos "catastrophe" subcommittee in an attempt to limit its liability. A year later, more than a dozen insurers began meeting to brainstorm tactics for defending the surge in injury suits against the companies they insured. The insurers, who for years had paid death and disability claims to victims of asbestos exposure, adopted a defense contending that manufacturers could not have foreseen before the late 1960s that asbestos fibers would sicken workers, particularly those handling finished products.

"What you've got here is basically a gigantic, systematic coverup," said ethicist Caplan, contending it could "rank along with the greatest scandals of industry public health coverup ever. The only thing I can think of like that is tobacco."

Breathing asbestos

Asbestos became a manufacturing staple in the early 1900s. The auto industry put the heat-resistant, fire-retardant mineral in brake linings and gaskets. Construction companies found it ideal for use in insulation and roofing materials. The mineral soon became a component in 3,000 products. In many cases, no substitute materials were available.

Year after year, miners, plant workers and tradesmen -- insulators, pipe-fitters, plumbers and electricians -- gulped breaths of asbestos without knowing it could shorten their lives. By the 1950s and early 1960s, droves of them suffered from asbestosis, lung cancer or mesothelioma, a rare and deadly cancer of the lung lining or abdominal cavity.

Public health officials project that the annual number of deaths and illnesses from asbestos will not peak until about 2009, before starting to taper.

Among the thousands of afflicted Minnesotans are brothers Bill and Lawrence Sawatzke, who worked as pipe and boiler insulators. Bill Sawatzke, 63, of Waverly, got a diagnosis of asbestosis shortly after retiring from a 40-year career in 2000. Last spring, doctors discovered he had an unusual abdominal form of mesothelioma that afflicts only about 100 Americans a year.

"It's like winning the lottery the wrong way," he said.

In April, he underwent a nine-hour operation for removal of his spleen, appendix, part of his pancreas and tumors on his abdominal lining.

Lawrence Sawatzke, 78, of Cross Lake, who worked in the trade for only a few years before taking an office job, was recently found to have asbestosis.

"I'm angry. I'm angry at the whole system," said Bill Sawatzke, married and a father of four. "If I had known what I know now, I'd have had a whole different career."

Dr. Wilhelm Hueper, who was a senior scientist at the National Cancer Institute, offered an explanation for the industry's sluggish response to the cancer threat from asbestos and other toxins in a 1943 medical journal article. He said commercially interested parties were "not particularly anxious" to disclose illnesses that might tarnish their images, force expensive equipment upgrades or bring worker suits "with extravagant financial claims."

Thus, he said, it is not unusual for "financially interested" parties to exert pressure "to keep information on the occurrence of industrial cancer well under cover."

The industry's actions also occurred in a different era, long before workplace safety rules became commonplace.

The insurance association's Berrington said it is an inherent part of the American legal system that a defendant cannot be found to have been negligent if "based upon what a reasonable person knew at the time, you did a reasonable thing."

Class-action suits in West Virginia and Massachusetts accuse Travelers, Aetna, Liberty Mutual, CIGNA, ACE, One Beacon and half a dozen other insurers of fraudulently depriving victims of rightful compensation by denying their clients knew of asbestos' dangers. The insurers have argued that asbestos companies couldn't have fully known asbestos' dangers until after 1964, when researcher Irving Selikoff of New York's Mt. Sinai Hospital released a study tracing patterns of asbestosis and lung cancer among tradesmen.

Suits 'outrageous'

Berrington said he could not speak to the conduct of individual insurers, but he dismissed the class-action suits as "outrageous." He said evidence of asbestos' risks "was in the medical literature" and in the hands of federal agencies in earlier years, arguing it was the government's job, not the insurers', to bring it to public attention.

In the Ohio and Texas suits, individual victims charge asbestos manufacturers and dozens of insurers, including the Minnesota-based St. Paul Companies, of concealing for decades that asbestos is hazardous.

St. Paul Companies spokeswoman Joan Palm said: "We believe the cases are without merit, and we are contesting them vigorously."

Like spokesmen for Liberty Mutual, Met Life and One Beacon, a Travelers official declined to comment on the allegations in the suits.

But Travelers spokesman Keith Anderson alleged in a letter to the Star Tribune that disclosure of insurers' internal documents is driven by "trial lawyers who hope to personally pocket millions of dollars from ongoing litigation and

who hope to derail efforts to correct an out-of-control asbestos litigation system." Pointing to the need for a national settlement of all asbestos injury suits, he noted that Travelers has already paid billions of dollars in claims and put \$3 billion more in reserve.

Houston attorney Lawrence Madeksho, a onetime insulator, initiated the class-action suits against insurers after watching his co-workers die. "How many funerals of these victims have these insurers ever been to?" Madeksho asked. "How many wives have they had to comfort?"

Those suits and all other insurance industry legal liability for asbestos injuries would largely disappear if Congress passes the proposed \$100 billion-plus comprehensive settlement of asbestos injury claims. The concept of a trust fund to pay all claims has bipartisan support because the current system has created inequities among victims and has driven 67 asbestos-related companies into bankruptcy. But negotiations are stalled. Insurers balked at a bill calling on them to pay as much as \$74.5 billion over 27 years. The insurers say they will pay no more than \$46 billion.

Members of a loose network of attorneys who are bringing the suits contend the insurers bear a big onus for the asbestos tragedy.

"The worst workplace disaster in American history was 100 percent preventable," said Cincinnati lawyer Bruce Carter, a member of the American Bar Association's asbestos task force. "What the insurance companies knew about the risks of cancer was never disclosed to either the physicians responsible for plant safety or the unions who tried to maintain safe workplaces."

Carter contended that the insurers' involvement is "much deeper than the manufacturers'," because insurers kept extensive claims data and, through plant inspections, set the standard for safety.

He said insurers could have taken myriad steps, including threatening to cancel policies unless asbestos companies took safety precautions and warned their workers and customers. They also could have ensured that government and private medical studies on asbestos were accurate "by providing the information that they had about the true nature of the harm" it could cause, Carter said.

More recently, it was an insurance company that alerted federal regulators to a problem with Firestone tires that resulted in dozens of fatalities. In 1998, a researcher for State Farm Mutual Insurance Co. in Illinois noticed a pattern of insurance claims by owners of Ford Explorers after the tread on certain tire brands had separated. The researcher notified the National Highway Traffic Safety Administration and fed the agency data as the number of accidents grew, eventually prompting an investigation that led to a voluntary recall of 6.5 million Firestone ATX and Wilderness tires.

Carter, calling the argument that manufacturers could not have known about asbestos' effects until 1964 "a farce," said they were in position to observe a similar pattern.

"The manufacturers' own employees who were installing products had been getting sick for decades before that," he said. "And the insurers had been paying those death and disability claims from the 1930s on."

Berrington responded: "I think it would be a grossly inaccurate thing to say that collection of information about claims was in any way related to the insurance industry having more medical information about asbestos than was in the general literature."

Lawyers for Travelers and Aetna -- both now owned by Citigroup -- argued in a dismissal motion that the class-action suit interferes with the judiciary because it seeks to reopen victims' claims already settled.

And, they said, the suit mistakenly contends that insurers "owed an essentially open-ended duty to their policyholders' adversaries and to the world at large to publish confidential and privileged information."

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