

FILE NAME: Newspaper & Magazine Articles (NMA)

DATE: 1970

DOC#: NMA162

DOCUMENT DESCRIPTION: Trial Lawyers Forum - Death and Injury from Inhalation of Asbestos Dust

Apr - June 1970

Trial Lawyers Forum

*File -
Here it is
yours, etc.
: Al*

K.D.

DEATH

AND

INJURY from inhalation of asbestos dust

By
WARD STEPHENSON
Orange

Asbestosis is an insidious disease, the victims of which cry out for help from members of the bar and the medical profession, as well.

This is a disease of the lungs, incurable, irreversible, terribly disabling, often fatal, which in a sly way, comes about gradually and usually manifests itself ten to twenty years from exposure. Asbestos, once inhaled, is virtually indestructible and continues to cause reaction for the balance of one's lifetime.

Asbestosis is caused by the inhalation of asbestos dust and fibers. The disease has been known since ancient Greek times and has been extensively studied beginning in the late 1800's, and continuing to its highest point of study at the present time.

Asbestos is mined principally in Canada and in South Africa, and it is a variety of mineral having its origin millions of years ago in the earth's interior. It has significant industrial and commercial use, and it is estimated that asbestos is used in over 3,000 products, ranging from the nose cone of a missile, brake linings for automobiles, ironing board covers, draperies, insulation, and many, many other things. It can be woven into cloth and can withstand high heat temperatures. It is virtually indestructible. It cannot be frozen or burned unless the temperature goes to approximately 900° or more. Once asbestos fibers are in the human body, due to their indestructibility and due to the fact, of course, that the body temperature cannot be

APRIL, MAY, JUNE, 1970



raised to 900°, they then become objects of infinite life.

It has been estimated that approximately a million individual fibrils of chrysotile asbestos can lie side-by-side in a linear inch, whereas only approximately 3,800 glass fibers of 600-odd human hairs can be aligned in the same distance.

In the early 1960's, 300 tons of asbestos was produced. It is now estimated, however, that over a million tons a year are used in the United

WARD STEPHENSON received a B.A. degree in 1943 and an LL.B. in 1947 from Southern Methodist University. A member of the American Bar Association, he serves as President of the Orange County Bar Association in 1952-53. A Director of the Texas Trial Lawyers Association, 1953, member of the American Trial Lawyers Association, he is currently President of the Southern Methodist Trial Lawyers Association. Mr. Stephenson follows of the Texas Bar Foundation, Manager, Board of Directors, Labor Law Section, State Bar of Texas, practices in Orange.

States, and that total world output is over four million tons a year. It is not to be unexpected, therefore, that exposure to asbestos among professional workers and laymen alike is very rapidly increasing. There does not appear to be any direct relationship between the length of exposure and the severity.

It has been the writer's observation in studying this disease and working on asbestosis cases for a period of approximately seven years that a major difficulty exists among the medical profession in distinguishing asbestosis from other diseases such as silicosis and emphysema. Asbestosis is readily distinguishable by the skilled physician trained in this field from other diseases of the lungs, and this can be done by X-ray. Asbestosis causes peculiar X-ray indications that enable, short of autopsy, almost certain positive diagnosis.

A study of the Workmen's Compensation Laws of the various states of the United States indicates that beginning with the year 1913, asbestosis has been recognized as a compensable workman's compensation occupational disease. The principal studies, however, have concerned themselves with workers in mines and in asbestos factories where products such as insulating materials have been manufactured. Only until recently, and even now certainly on a minimal scale, has there been any study by the manufacturers of asbestos insulating materials of the effects of their products on the insulating workers using their products.

We recently handled in the United States District Court a lawsuit on behalf of an asbestos insulating worker who had the disease of asbestosis. This case was filed against the principal manufacturers of asbestos insulating materials with whose products the plaintiff had worked over a period of approximately twenty years. So far as we have been able to tell, this is the first case of its kind. Our principal contention of liability lay in the total negligence on the part of the manufacturer's branch of exposure

and impaired warranties, and that no warnings were given workers of the dangerous nature of the products, as well as the failure to devise a safe method of handling their products. Our position was that the existence of this disease had been known about for many, many years, had been written about extensively for over fifty years, and the states, since 1913, had recognized the disease as a compensable occupational injury, that the manufacturers of the insulating products used by the plaintiff knew of the disease and knew that their products contained asbestos, and that asbestos could cause the disease asbestosis. We further contended that the manufacturers were at fault for not testing and for not devising safe techniques for application of products containing asbestos.

Medical testimony in the trial was horrifying, to say the least. A patient with this disease can in likelihood be expected to experience a very tragic death. Once a patient has reduced pulmonary sufficiency, there is little that can be done even to relieve the pain and discomfort. Pneumonia is a great hazard. If a patient has pneumonia and the treating doctor does not know about the existence of asbestosis, a normal course of Demerol might very well suppress respiration to a point causing death. The use of oxygen over a prolonged period of time might have a drying effect on the lungs and in turn lessen the adequacy of the lung capacity. So, the end result from the patient's viewpoint is indeed dismal.

Evidence was produced on the trial that one of the manufacturers in 1941 constructed a plant to manufacture asbestos insulating materials, and recognizing the serious nature of inhalation of the products, and recognizing the need to design a factory which would minimize the exposure of the workers to the inhalation of the dust, designed their factory with the idea in mind of reducing the possibility of inhalation of the dust among their workers. Even in spite of this knowledge, which was known by the management of the company and was recognized by the engineering department in its design of the plant, recognized by the legal department because on occasion workers would contract the disease which came within the state Workmen's Compensation Act; nevertheless, the manufacturer did not place any warnings on any of the buses of their products indicating the danger

(Continued on page 19)

Texas Lawyer Forum

•

Judges march at times in pitiful conclusions. . . . They deplore the sacrificial rite. They perform it nonetheless with averted gaze, convinced as they plunge the knife that they share the burden of their offense. The victim is offered up to the gods of independence on the altar of regulation. □

The following is a list of selected readings concerning the problem of Contemporary Negligence vs. Compensatory Negligence.

The following is a list of selected readings concerning the problem of Contemporary Negligence vs. Compensating No Fault.

Source: An Illinois Appellate, L. H. Pearson, Vol. 2, p. 96-99 E. 1964.

Jr. TR Ltr Q 216, Winter 1975.
 Commissioned April 1975.

Act. XI L. Class. Fed. B. I. 26-42. Winter 1956.

Alfred C. Turner, 21 Broadway Ave. D. J. 46-457, 1940

Comparative Literature, 2 - New York: The
the Atlantic City, Maine Law Review 1964, 1956

Comparative Linguistics - Vol. 11, No. 1, 1956
 Linguistics - Vol. 11, No. 1, 1956

DATE 1962
COURT-ROOM

The Rise and Fall of Comparative Negligence in Torts

From (lu. 249 N.E. 20, 204).

Effect of Mississippi Comparative Negligence
Statute on Out-of-State Drivers in La. Sup. Ct. 99-0994,
2001 WL 174

I encourage you to never forget - it is our common duty to
 keep the flag flying. S. R. Sullivan, Jr., AIA

26.744. 1900.
Comptroller of the Treasury, Department of the Treasury, Wash. D. C.

Journal of American Studies, 1970, 4, 1, 1-10.

in Illinois, U. Illinois L. T. 351, November 1947.
The story of Social Evolution, Illinois, Commercial
Negotiations between the United States and the

Consideration: Negligence, Consideration of 19

positive Negligent Character, At 1. Habet. Worness
has Bulletin 19 11, Dec. 1962

Comparative Negligence, John William Proctor, St
Johns Law Review 46, 46 (1994).

that should be abolished, 44 ABA 92, 99 (1957).

Received from Mrs. [Name] [Address] [City] [State] [Zip]
 [Name] [Address] [City] [State] [Zip]
 [Name] [Address] [City] [State] [Zip]

11. A. Gar, N Y & B. J. 33-392, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 88

APRIL, MAY, JUNE, 1970

(Continued from page 10)

After the beginning of our litigation, certain of the manufacturers began to place a small warning sign on boxes of their insulating products, which read:

Other than placing this small warning sign on certain of the boxes, few, if any, of the manufacturers did anything else and have not done anything significant even to this date to prevent the workers from contracting the disease.

There exists a direct relationship between the length of time exposure to the inhalation of asbestos dust to the time at which the disease of asbestosis manifests itself. Studies made by Dr. Irving J. Selikoff, of Mount Sinai Hospital in

New York, who is perhaps the world's leading authority on this subject as it pertains to asbestos insulating workers, indicates that in those workers exposed to the dust for a period of ten years, 44.1% of such workers have abnormal lung findings; 72.8% of those exposed twenty years have abnormal lung findings; and 87.1% of those exposed for as long as thirty years have abnormal lung findings.

There have been reported cases of a wife whose only contact with asbestos was in cleaning her husband's clothes which contained asbestos dust, and after a number of years, the disease of asbestosis manifested itself in her. Cases indicate that some children in kindergarten using asbestos cement to make play toys were found in later years to have the disease with the only indicated contact with asbestos dust being that contact while in kindergarten.

In addition to the disease of asbestosis itself, it is now believed that inhalation of asbestos dust increases significantly lung cancer, as well as mesothelioma, and that frequently the death of workers who have asbestosis is oxygen starvation, cancer of the pulmonary, all of which are considered to be a direct result of inhalation of asbestos dust. There is also an indication from medical studies that those workers who smoke cigarettes have a greater susceptibility to the disease than those who do not.

It has been suggested that in future decades, with the accumulation of asbestos and in increased use, the public will be subjected to higher concentrations of asbestos fibers and the diseases associated therewith. Drs. Selikoff, Churg and Hammond published in the Spring of 1964, in the *Journal of the American Medical Association*, an article on the biological effects of asbestos. There are many articles now available in the legal and medical professions dealing with this subject. Extensive studies are an absolute necessity in the prosecution of any type of litigation and even to consultation with medical authorities on this subject.

An excellent article appeared in *The New Yorker* magazine, October 12, 1964, written by Paul Brodeur. This article is scientific in nature, thoroughly authenticated, and we recommend it to anyone interested in the subject as the beginning point of their studies.

If an attorney has any client in his office who is suffering from lung disease, we feel that in the light of current medical knowledge, it is imperative that the attorney require a full investigation into the history of the client, his

possibility of association with asbestos, and that medical consultation of the highest order be sought.

More and more doctors, we feel, are becoming familiar with this disease. At the time of our initial studies, approximately seven years ago, we found it quite difficult to locate physicians experienced in the study of the effects of asbestos, in the diagnosis of the disease of asbestosis or associated diseases connected with the use or exposure to asbestos.

We suggest that the attorney for his beginning research see:

Annals of the New York Academy of Sciences, Vol. 132, Art. 1, Pages 1-766, "Biological Effects of Asbestos,"
The Wall Street Journal, November 7, 1964.

Hearing before the Select Subcommittee on Labor of the Committee on Education and Labor, House of Representatives, Ninetieth Congress, Second Session on H. R. 14616, pages 349-369.

Cases which might help these attorneys studying the question are:

(1) Supreme Court of the United States, *Urie v. Thompson*, 377 U.S. 161, 24 AFTR2d 60-1099, 30-2 USTC ¶10,000, 1964-1 CB 161, where a worker developed asbestosis after a number of years of employment. (There are four main theories in the United States to determine when a cause of action accrues or when the statutes of limitation begins to run, to-wit:

- (a) When the defendant commits his wrong;
- (b) When the cause of action accrues is the last contact by the plaintiff with the substance;
- (c) From the time of discovery or notice of disease, and;
- (d) From the time of discovery of the causal relationship.

Urie held that the cause of action did not accrue until the discovery of the disease.)

(2) *United States of America v. Wilroy*, 251 F.2d 691 (Fifth Circuit, Jan. 31, 1957), which says:

"But it is not the wrongful, i.e., negligent act, which gives rise to the claim. For there must be damage caused by it. Until there is some damage, there is no claim and certain of course precluding the time in which suit must be filed (whether as a condition of right or remedy) can never operate prior to the time of suit would be permitted."

(3) *Wright v. Carter Products*, 244 F.2d 93, U.S. Court of Appeals, Second Circuit, May 1, 1957. This was an anticipatory

TRIAL LAWYERS FORUM

... When the fact is once established and demonstrated by experience that a certain commodity apparently harmless contains undetectable dangers, and when distributed to the public through the channels of trade, and used for the purposes for which it was made and sold it is sure to cause suffering to, and injure the health of, some innocent purchaser, even though the percentage of those injured be but large, a duty arises on a responsibility rests upon the manufacturer and dealer with knowledge to the extent, at least, of warning the ignorant consumer * * *.

Gerkin v. Brown & Seibert Co., 1913, 177 Mich. 45, 60, 143 N.W. 66, 53 A.L.R. 252.

- (4) Title 19, Section 1261, United States Code Annotated, defining hazardous substances required to be labeled and interstate shipment pronounced under certain circumstances.
- (5) Title 19, Section 1262, United States Code Annotated, which says:
- "The following acts and the causing thereof are prohibited:
- "(a) The introduction or delivery for introduction into interstate commerce of any misbranded package of a hazardous substance."

It appears that the legal economy can render a substantial benefit to mankind by alerting the public to the dangers of this product and requiring, through more stringent or such means as might be appropriate, that those who manufacture products containing asbestos do more than they have done in the past, that safe systems be devised to use the products, and that studies be made by the manufacturers to enable one to use the products without exposure to such serious consequences. Certainly, with the advance in our scientific knowledge, standing men in space, and all of the technological knowledge available there seems to be no justification for the manufacturers of this product to use it as a principle defense against lawsuits that they have done all that might be expected when they put on their boxes a sign, in little warning, "Avoid breathing the dust." □

DON T. HACKWORTH
TEXARKANA DEPOSITION SERVICE
Don T. Hackworth
2000 North Dixie Street - Box 248
Texarkana, Texas 75501
OFFICE PHONE (214) 792-5561 RESIDENCE PHONE (214) 792-6732

APRIL, MAY, JUNE, 1978

(Continued from Page 20)

off arteries during surgery, causing internal hemorrhages; and a variety of unusual acts or omissions of careless treatment and surgery. The lawyer often encounters "tight cast" cases in which fractured legs or arms are encased in casts so tight they cut off blood circulation and result in amputations. Occasionally, the doctor removes wrong organs or leaves sponges, catheters, clamps or other hardware within the body during surgery. They may transfuse wrong blood types into the patient, causing a bloody bloodcase and death.

• Children are maltreated by obstetricians who try to juggle several births at a time and don't watch each case carefully. Doctors arrive late while nurses or interns try to delay the birth until his arrival. The results can be disastrous.

Ductus and foramen may administer excessive oxygen, improper or excessive drugs to premature infants or expectant mothers, causing bilirubin, brain damage or death of the infant or mother. Some factors may induce births prematurely or the excessive drug to induce birth, causing death, malformation, etc.

A high public medical official has readily stated that in New York City alone a necessary average of two deaths occur from incompatible blood transfusion—the wrong blood type—which causes kidney shudders, uric acid and nephrosis of the kidneys. The patient dies a miserable death after fits and convulsions resulting from uric poisoning of his brain and other organs. The kidneys become blocked by clots formed by mixing his blood with the incompatible blood.

The Medical Examiner in New York and elsewhere who performs coroner's autopsies is not required by law to inform the family of the cause of the uremia and nephrosis discovered upon autopsy. The mistake is buried with the deceased.

In the case of David M., his young widow was told by the doctor that "complications" and cancer caused her young husband to die. She was told that in that cancer when she entered the hospital for minor surgery to remove polyps of the colon—small benign growths—his widow gazed at the doctor's