PLAINTIFF'S
EXHIBIT
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Policy Fight: Suits Over Asbestos Touch Off a War Among Insurance Firms Over Who Will Pay Billions

Continued From First Page

has refused to decide between the conflicting theories of liability. This leaves standing a series of often contradictory state and federal court decisions. Lawyers say that the insurers probably will have to slug the issue out in state and federal courts case by case. In U.S. circuit courts of appeals, just below the Supreme Court level, three cases have been decided: Two backed the exposure doctrine, and one not only backed the exposure but also ordered it applied to periods when the asbestos company, a unit of Keene Corp. of New York, may have let its insurance lapse.

Typical of the pending cases is one now before the federal district court in Philadelphia. It involves the 7,600 claims against Pittsburgh Corning Corp., which made asbestos insulation between 1962 and 1972. The main combatants are Travelers Corp. and Commercial Union Insurance Cos.

Travelers, Pittsburgh Corning's primary insurance carrier, paid $12 million in asbestos claims and legal costs under the exposure theory, thereby fulfilling the limits of its policy. But Commercial Union, an excess carrier, refused to pick up its share of the liability. Its prime argument is that Travelers should have used the manifestation theory; if it had done so, it would have paid many claimants left instead to Commercial Union and thus would have reduced Commercial Union's potential payout.

That part of the case has been decided for now. The court, in a ruling certain to be appealed, rejected Commercial Union's argument. Court documents show that the company, the U.S. unit of Britain's Commercial Union Assurance Co., could be liable for up to $64 million of Pittsburgh Corning's asbestos-settlement costs.

U.S. Schools Are Facing the Costly Task Of Locating, Fixing Asbestos Hazards

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By a WALL STREET JOURNAL *Staff Reporter*

Among those with an asbestos problem are many of the nation's schools.

The Environmental Protection Agency recently ordered all elementary and secondary schools to conduct inspections for possible health hazards from building material containing asbestos. The mineral was widely used for fireproofing, insulation and architectural decoration in schools built between 1945 and 1972, a period of major school construction in the U.S.

The agency estimates that up to 14,000 public and private schools may have potential asbestos hazards. What particularly concerns environmental experts is asbestos that was either sprayed on or loosely packed so that it can be easily released into the air as minute fibers.

Local school officials in New York City closed two Harlem public schools in 1978 because of parents' fears about asbestos hazards to their children. Students had dislodged ceiling tiles and exposed pipes coated with asbestos. Since then, New York officials have confirmed the presence of materials containing asbestos in 258 of the city's more than 1,000 school buildings.

Estimates of the cost of either removing or covering up potential asbestos hazards in the nation's schools run as high as $400 million to $900 million, says an Education Department official. Instead of these costly approaches, many school officials are chosing to "monitor" hazardous areas for dust release.

New York City, which has already done significant remedial construction work, expects to spend $10.5 million on the problem. California officials put the total bill in that state at $20 million.

In 1980, Congress authorized the federal government to provide federal grants and loans to aid local schools in detecting and removing asbestos hazards. However, Congress hasn't yet appropriated any money for the task, an EPA spokesman said.

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survivors of 1,000 asbestos victims, found that only 30% filed for death benefits under workers' compensation. One reason: Workers'-compensation awards don't match the hefty awards made by some juries.

Some publicized awards have been substantial; one Texas jury awarded a worker $3 million. But insurers say that most claims have been settled out of court for much less. Mr. MacAvoy's $38.2 billion estimate for future asbestos payments is based on an average of $232,000 per victim. But Johns-Manville, to take one major defendant, says that 2,500 judgments and out-of-court settlements have averaged $50,000 to $60,000, counting the amount paid both by J-M and codefendants.

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Mr. [illegible]'s estimates may or may not be good ones, but they are the only estimates around. None of his critics come up with their own figures, and the individual insurers wrap their asbestos liabilities in a veil of secrecy. "Nobody on the outside knows what the companies' liabilities are," says John Head III, a principal of Morgan Stanley & Co., the securities firm. Even when an insurer such as Commercial Union is known to face extensive asbestos claims, Mr. Head notes, analysts can't be sure "how much went out the back door" to reinsurers.

In a sign of regulatory interest, the New York State Insurance Commissioner recently asked 20 major insurers for information on the extent of their asbestos claims, available reserves and reinsurance coverage. Insurance executives privately suggest that the most likely candidates for trouble are some policy capitalized reinsurance companies. Failure of a reinsurer would send its liabilities bouncing back to other companies, an arrangement that one insurer describes as "a house of cards."

Looking to Washington

To ease their burden, insurers hope to find other defendants to share it. Commercial Union, for example, is suing the federal government and the tobacco industry. It is suing the government on the ground that the government is the prime source of business for, or in essential control of, the nation's shipyards, which use asbestos for fireproofing and heat insulation. Shipyard workers form the largest single group of asbestos victims. Commercial Union is suing the tobacco industry because research indicates that smoking sharply increases the health risk among asbestos workers.

Asbestos manufacturers are lobbying for a federal bailout. One bill in Congress would set up a federal fund to cover asbestos and similar claims. Insurers expect, however, that Reagan-administration budget cutters will reject a costly federal role.

Some insurance-company lawyers fear that the asbestos litigation has already undermined their defenses in future product-liability cases. By adopting the exposure doctrine, they say, some judges have forced insurers to reopen their books on policies that expired 10 to 20 years ago. Many insurers say that if this doctrine takes hold and is applied to other substances besides asbestos, it could destroy an insurer's ability to project future losses and therefore its ability to price policies with any reliability.

The workers'-compensation system of the states was designed to handle job-related injuries, disease or death. But a University of Connecticut researchers, who studied the

Talk of Doom

Insurers typically assert that they have adequate reserves to handle the huge asbestos bills, but that view has been challenged by a Yale University economist, Paul W. MacAvoy. Mr. MacAvoy, who was a member of the President's Council of Economic Advisers in 1975-76, predicts in a study that payments to asbestos disease victims by employers and their insurers are likely to total $38.2 billion—and possibly as much as $90 billion—over the next 35 years. Some insurers, he says, may well face financial ruin.

Others call such talk nonsense. "As far as I know," says Floyd H. Knowlton, a Travelers vice president, "no carrier, major or minor, is threatened by insolvency." Some outside observers, too, tend to dismiss talk of doom. In the 1970s, they recall, insurers were screaming that medical-malpractice insurance and product-liability insurance were drying up because of an upsurge in payments. In both cases, the "crisis" disappeared.

Mr. MacAvoy's study, published by the Yale School of Organization and Management, was partly financed by Commercial Union, a circumstance that causes some critics to discount it. Commercial Union, alone among major insurers, has been waging a public-relations campaign that depicts asbestos litigation as a major threat to the property- and liability-insurance industry, although William F. Bailey, the company's senior vice president, says that Commercial Union's own liabilities, "on a worst-case basis," are "substantially less" than $135 million and don't pose any financial danger to the company.

Role Wasn't Concealed

But the study made no secret of Commercial Union's financial support, and Mr. MacAvoy says that it wasn't cleared with the insurer before its publication.

MacAvoy critics also cite the fact that he is a director of Combustion Engineering Inc., which used to make insulation products containing asbestos and has had 5,000 claims filed against it. Mr. MacAvoy says: "My only position is that of a university professor. I can't be billed as a Combustion Engineering director or a Commercial Union consultant."