

NEWS & NOTES

June 29, 1984

OSHA'S INFORMAL PUBLIC HEARING ON PROPOSED
STANDARD FOR ASBESTOS NOW IN SECOND WEEK

of studies used in OSHA's risk assessment and said that, at current asbestos exposure levels, no asbestosis related impairment is expected to occur.

Dr. Ogden basically stated that monitoring at low levels of exposure can be reliably monitored based on British experience, but acknowledged that enforcement is different in the U.K. from that in the U.S.A. Ms. Stasikowski reviewed EPA's planned regulatory initiatives affecting the asbestos industry. She said that a proposal which would ban certain asbestos-containing products was currently undergoing review by the Office of Management and Budget; however, the outcome of OSHA's current rulemaking on asbestos would be considered before any final rule would be issued.

The principal focus of labor representatives was in opposition to the flexibility of respirator usage in the OSHA proposal and an explanation and defense of a separate standard for the construction industry as developed by the Building and Construction Trades Department, AFL-CIO.

An overview of this Association's comments which were submitted on OSHA's proposal was included in News & Notes of May 31. AIA/NA witnesses are scheduled to present testimony on July 8, 9 and 10. The most recent schedule of witnesses indicated that Dr. Irving J. Selikoff, Mount Sinai School of Medicine, will appear on July 2. It is expected that the informal public hearing will conclude on July 12.

AIA/NA'S NINTH INDUSTRY-GOVERNMENT CONFERENCE SCHEDULED FOR SEPT. 18-19

The Association has scheduled an industry-government conference for Sept. 18-19, 1984, in conjunction with its 14th annual meeting and third quarter meeting of board of directors. The conference and meetings will be held at the Twin Bridges Marriott Hotel, Washington, D.C.

Program format for the industry-government conference is similar to that followed in previous years. The industry-government conference will be integrated with annual meeting. In addition to Association officials, a number of distinguished speakers have already accepted an invitation to participate. This year's conference is of special significance in view of the ongoing and prospective regulatory initiatives by OSHA and EPA which have major impact on the U.S. asbestos industry.

The conference begins with a reception and dinner on Tuesday, Sept. 18; the invited speaker is Alvin L. Alm, Deputy Administrator, U.S. Environmental Protection Agency. Speakers at breakfast and lunch on Sept. 19 will be acting OSHA Head Patrick R. Tyson, and Nancy Harvey Steorts, Chairman, Consumer Product Safety Commission, respectively. During the conference on Wednesday morning, Sept. 19, guest speakers include Jim E. Lapping, Director, Safety and Health, Building and Construction Trades Department, AFL-CIO, Malcolm Ross, Ph.D.,

U.S. Geological Survey, and to-be-determined speakers on the asbestos and health relationship and current perspectives from the Asbestos International Association.

Details regarding this important event in the Association's work year will be provided to member and other interested parties in the near future. In the meantime, inquiries to AIA/NA Executive Director are welcome.

As related item, regular meetings of AIA/NA's Executive Committee are scheduled for Aug. 14 and Sept. 18 in Association office and Twin Bridges Marriott Hotel, Washington, D.C., respectively.

SEN. PERCY INTRODUCES ASBESTOS COMPENSATION BILL

On May 23, Sen. Charles H. Percy (R-IL) introduced a bill, S.2708, entitled "Asbestos Workers' Recovery Act." According to Sen. Percy, as quoted in the Congressional Record, "this legislation is intended to address the extremely serious problem of how to provide compensation for workers who have been injured through exposure to asbestos." Sen. Percy's co-sponsors on the bill are Sen. Clairborne Pell (D-RI) and Sen. Daniel K. Inouye (D-HI).

S.2708 has a number of important provisions designated to address the concerns and incorporate the views of those who have criticized prior effects to establish an asbestos compensation system. It would cover only occupationally related asbestos diseases. To determine what injuries fall within this category, it would establish a national medical panel of scientists. All those who have been exposed to asbestos in their occupation would be eligible under the system, including those whose injuries arise from the occupational exposure of a spouse or parent.

Instead of creating a wholly federal workers' compensation system, proposed Asbestos Workers' Recovery Act relies on existing state compensation programs to adjudicate causality and disability issues. Benefits paid under the act would be additional to state workers' compensation benefits which presently cover payment of medical expenses, lost wages, and survivor benefits. A supplemental payment equal to 92 times the state average weekly wage would be made for total disability or death. This amount would be reduced proportionally in the same degree as the disability is less than total.

Financing for the program established under the act would be provided by defendants in asbestos tort cases, their insurers, and the U.S. government. Costs would be allocated according to a percentage share based on the payment experience of the contributors. The allocation formula would be reviewed at least every three years to fairly reflect sources of exposure reported by successful claimants.

Sen. Percy emphasized that enactment of his program could result in actual savings to the U.S. government. A study by the Urban Institute has estimated that each asbestos lawsuit costs the government an average of \$4,000 per year, or a total of more than \$48 million. According to the Department of Justice, these costs could exceed half a billion dollars in the next decade alone. Such costs go simply for running the court system needed to try the cases, and never reach the disease victims.

In addition, the bill would make benefits provided under the act a claimant's exclusive remedy for personal injuries arising out of occupational exposure to asbestos. Although S.2708 would not apply to litigation that has already matured to full judicial determination, it would apply to other claims currently before the courts and prospectively to all claims for asbestos injury. However, tort remedies would remain available against corporations and other defendants failing to participate and pay their fair share of the expenses involved in funding the system established under the act.

Meanwhile, in the House of Representatives, Rep. Austin J. Murphy (D-PA), joined by 28 co-sponsors, on June 28 introduced H.R.5966, a bill also entitled "The Asbestos Workers' Recovery Act." Except for some changes in the wording, this proposal is virtually identical to S.2708.

Although probably introduced too late to be considered before Congress recesses for the 1984 elections, both of these measures demonstrate an ongoing Congressional interest in finding an equitable solution to the problem of compensation for occupationally-related disease.

SUPERFUND BILL APPROVED BY HOUSE COMMITTEE

On June 20, the House Energy and Commerce Committee voted 38-3 to approve H.R.5640, the "Superfund Expansion and Protection Act." The proposal represents a five-year, \$9 billion dollar reauthorization of the Superfund, created in 1980 to clean up inactive and abandoned hazardous waste sites.

Chief sponsor of H.R.5640 is Rep. James Florio (D-NJ), chairman of the Commerce, Transportation and Tourism Subcommittee of the House Energy and Commerce Committee. Rep. Florio's plans to reauthorize Superfund, which is due to expire late in 1985, this year suffered a setback in April when his own subcommittee voted against approving H.R.4813, his original proposal. Besides increasing Superfund by expanding the list of chemicals to be taxed, that bill would have created a federal cause of action for injuries claimed to result from exposure to chemicals from hazardous waste sites, and would have shifted the burden of proof in such cases from the plaintiff to the defendant.

While no longer shifting the burden of proof, H.R.5640 still would establish a federal court cause of action for injuries claimed to result from hazardous wastes. However, an amendment was added to the bill by Rep. Norman Lent (R-NY) in order to clarify cases when citizens can file lawsuits for health or environmental damages. Lent's provision limits individuals to suing the EPA administrator when he fails to perform non-discretionary duties under the Superfund law, any governmental unit that violates the law, and any individuals who have, or are contributing to, disposals that endanger health or the environment.

H.R.5640 is designed to derive \$1.45 billion a year from a chemical feedstock tax, including a tax of \$13.92 per ton on asbestos fiber, and \$600 million a year from a waste-end tax. Fertilizer feedstock, copper, pig iron and coal coke would be exempt from taxation. Mining wastes would only be taxed if found to be hazardous and Congress later legislated a tax on them.

Although approved by the Energy and Commerce Committee, the Superfund reauthorization must also be reviewed and approved by the Public Works and Transportation Committee and the Ways and Means Committee of the House. A floor vote cannot take place in the House before these committees complete their deliberations on the bill.

Although no action has yet taken place in the Senate, the Environment and Public Works Committee of that chamber is expected to begin its Superfund review process soon.

FEDERAL CHEMICAL CARCINOGENS DRAFT POLICY PUBLISHED

In the Federal Register of May 2, the White House Office of Science and Technology Policy issued its final draft of a report intended to serve as a guide to federal agencies in regulating cancer-causing substances. According to the notice, the principles outlined in the document cover short- and long-term carcinogenicity testing, epidemiological methods, exposure assessment methods, and risk assessment methods.

Prepared for the White House science office by scientists from nine federal agencies, the document does not suggest one method cancer risk assessment; rather, it offers a six chapter review of the science of chemical carcinogenesis and a set of "general principles" concerning cancer risk assessments. Ronald Hart, director of the National Center for Toxicological Research, directed the two-year effort.

The general principles, according to the document, "were developed to provide interim guidance in areas of uncertainty until such time that additional scientific experimentation provides the required information needed to improve estimations of risk in human populations."

According to the document, the authors attempted to leave the majority of policy decisions and scientific judgements inherent in risk assessments to the regulatory agencies. However, the document does acknowledge that several of the "general principles" do include policy judgements. For example, under long-term animal tests, the document stated, "Agents found carcinogenic in animal studies... are considered suspect human carcinogens."

In addition, the new guidelines abandon the possibility of a "threshold" approach to carcinogens on the ground that science is still unable to determine for regulatory purposes those thresholds at which each cancer-causing substance presents a risk to human health. The new guidelines continue to assume that any exposure to a cancer-causing substance, no matter how low, conveys a measureable risk of cancer. Unlike an earlier version of the draft, the final draft did not propose to differentiate between agents that change the genetic properties of the cell and those that cause cancer by other means.

The general principles are based on the six-chapter review of the science of chemical carcinogenesis. According to the document, "common themes within each chapter are the uncertainty, the gaps in data, and the questions of interpretation associated with some aspects of the scientific information used in the risk assessment process."

Comments on the draft document will be accepted until Aug. 1 and should be submitted to Ronald Hart, NCTR, Jefferson, Ark. 72079.

SENATE ADOPTS ASBESTOS IN SCHOOLS ACT

On June 6, an amendment offered to the Education for Economic Security Act, S.1285, by Sen. James Abdnor (R-SD) was adopted by the Senate. The amendment, entitled the "Asbestos School Hazard Abatement Act," places responsibility for an asbestos in schools abatement program with the Environmental Protection Agency rather than with the Education Department.

The amendment is identical to one introduced by Sen. Abdnor on March 29 to S.757, a bill to reauthorize the Solid Waste Disposal Act. Sen. Abdnor states in the June 6 Congressional Record that, "the concerns raised by representatives of the asbestos industry in response to the original amendment filed on March 29 of this year have been given careful consideration. The final section of the original amendment has been adopted in its entirety, and the liability provisions have been altered in response to industry's concerns."

Jim Walter Corp. Agrees To Settle Asbestos Suits #187 mil

By MITCH BORETZ

Staff Writer for Tampa Bay Business

TAMPA—Two Jim Walter Corp. subsidiaries have agreed to join a system to settle thousands of asbestos-related lawsuits.

Sixteen manufacturing firms and a dozen insurance companies will form an office to handle asbestos-injury claims by the fall, says David Townsend, Jim Walter vice president for public relations. Celotex and Carey Canada Inc., part of the Tampa-based building-products conglomerate, faced 15,600 such suits as of last August, the company's 10-K report to shareholders says.

The office would evaluate claimants'

work and medical histories and settle cases privately, Townsend says. Roughly 25,000 suits claiming disability or illness from asbestos, believed to cause cancer, are pending against asbestos companies, according to *The New York Times*.

In addition, many of the companies, including the Jim Walter subsidiaries, are suing their insurance companies for failing to settle claims.

Forming the claims office would nullify the insurance suits and probably would lead many claimants to drop their court fights, Townsend says. "It would effectively eliminate the litigation," he says, although a claimant still could opt for a trial rather than an office settlement.

"Any central claims facility would allow

quicker processing," Townsend says, and legal costs would dwindle. "The whole situation as it's presently dealt with is a nightmare."

Each insurer and asbestos firm would contribute to the office's fund based on the costs of its past suits, Townsend says. Actual amounts haven't been calculated yet, he says. Other companies could join the system by contributing their share.

According to Jim Walter's 10-K, 1983 asbestos settlements averaged \$7,500 per person. Insurance companies paid most of the legal and settlement expenses, and "the company's actual costs have not been material," the report says.

Center Publishes Report on Asbestos Litigation

Williamsburg, Va. — The Judicial Administration Working Group on Asbestos Litigation has published its Final Report with Recommendations, according to John M. Greacen, deputy director for programs, National Center for State Courts. The group assembled by the Center consisted of 56 representatives of the Judiciary, the bar, manufacturers, law-related organizations, and insurance companies, plus two staff members of the Center.

The year-long study by the working group found that although asbestos litigation amounts to a small percentage of all civil cases, it is concentrated in certain areas, creating massive bottlenecks. Other factors complicate such cases: the long latency period of asbestos-related disease; the difficulty of locating and evaluating evidence; the marked tendency of asbestos cases to go to court, in contrast to settlements by insurance companies in most other tort litigation; and the higher legal costs and complexities result-

ing from the large number of parties in a single case.

Among the group's recommendations for simplifying pre-trial and trial procedures were the use of standard pleadings, a consolidated pleadings file, consolidation of cases within areas or geographical regions, use of liaison counsel, and strong management by judges.

The report notes that a voluntary dispute-resolution process is being studied by representatives of the plaintiffs' bar and of the asbestos producers and their insurers under the auspices of the Center for Public Resources.

The major part of the report consists of a model standing order of court for the handling of asbestos litigation, along with detailed interrogatories for plaintiffs, defendants, and third parties. The Working Group on Asbestos Litigation stressed that its recommendations had been approved by the members of the group but that it was impractical to secure formal approval by all the organizations represented.

(Judicial Working Group on Asbestos Litigation, *Final Report with Recommendations*. National Center for State Courts, 300 Newport Avenue, Williamsburg, Va. 23185. 62 pages; \$8.00 plus \$2.25 postage and handling.)

Texas Lawyer To Be Tapped As OSHA Chief

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — President Reagan announced that he will nominate Robert Rowland, a former Texas lawyer and Reagan political activist, to head the Occupational Health and Safety Administration.

Mr. Rowland, 52 years old, will be nominated to be assistant secretary of labor for occupational safety and health, making him also OSHA administrator. If confirmed by the Senate, he will succeed Thorne Auchter.

Currently, Mr. Rowland is chairman of the Occupational Safety and Health Review Commission, an independent panel.

The Health Research Group, which has brought several lawsuits against OSHA in recent years, sharply criticized Mr. Rowland, saying it is inappropriate for someone without a serious, competent scientific background to direct a scientific regulatory agency. "He doesn't know very much from a scientific standpoint about occupational safety and health," said Dr. Sidney Wolfe, director of the group.

But business groups called Mr. Rowland an excellent choice. The U.S. Chamber of Commerce applauded his work on the Occupational Safety and Health Review Commission. "We didn't see him as a jurisdictional expansionist," said Mark de Bernardo, a Chamber official, referring to cases Mr. Rowland reviewed. "He didn't make law," he added.

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Workers blame an asbestos substitute for disabling ailments

By Michael A. Barber
P-I Reporter

A chemical compound designed to replace asbestos as a fire retardant is embroiled in an industrial poisoning controversy all its own.

Members, families and friends of the Insulators and Asbestos Workers union are trying to link Thermo-Lag, a fire retardant and asbestos substitute, to recently discovered ailments.

Men and women who have worked with Thermo-Lag are being asked by Ron Stultz of Bothell, an asbestos worker who has filed a class action suit over the product in King County Superior Court, to volunteer information about any effects of exposure. About 40 workers and family members of the asbestos workers union met at Seattle's Labor Temple recently to begin gathering information.

In all, 75 people who say they suffered disabling medical symptoms after working with Thermo-Lag at Washington Public Power Supply System's plant No. 2 in Hanford nearly two years ago are participating in the suit, said Jerald Pearson, the Seattle attorney who filed the suit in February.

State tests

The workers are up in arms because they don't know what kind of chemicals they were exposed to, despite repeated requests for the information. Although it has national legislation in the works to make companies reveal more of their secret chemical recipes, the U.S. Occupational Safety and Health Administration said companies currently don't have to tell all.

Tests conducted by the Washington Division of Industrial Safety and Health have identified one of the main ingredients in Thermo-Lag as methylene chloride, a widely used solvent that can turn to carbon monoxide when absorbed into the bloodstream.

Stultz, who worked at the WPPSS plant from October 1962 to April 1963, claimed the project was the first ever in which Thermo-Lag had been used, and that workers therefore were "guinea pigs."

He said up to 2,000 workers at WPPSS troweled the pasty, fibrous Thermo-Lag onto walls to protect electrical systems from fire.

None of them, Stultz charges in the suit, was warned of the alleged dangers.

In addition to WPPSS, the suit names the maker of Thermo-Lag, TSI Inc. of St. Louis, Mo., as a defendant, as well as subcontractors Bechtel Corp. and Brand Insulations Inc. of Park Ridge, Ill.

TSI officials in St. Louis did not return Post-Intelligencer phone calls. John Britton, WPPSS spokesman in Richland, said, "We really have no comment on it. It's pending litigation. The details will come out in court."

Bechtel, headquartered in San Francisco, declined comment because of a corporate policy not to talk about pending litigation, said spokesman Larry Miller.

Richard Keeley, treasurer of Brand Insulations, which hired the workers who later filed the suit, said it has turned the matter over to its insurance company.

Keeley said Brand's role was a minor one.

"All we did was install the material supplied to us by either WPPSS, Bechtel or TSI," Keeley said.

Executive director

Meanwhile, Stultz, who recently underwent major surgery for breathing problems and says he subsequently was declared by doctors to be disabled due to chemical poisoning, said one reason he filed the suit was to get TSI Inc. to provide a complete list of chemicals contained in Thermo-Lag.

Joe Schilling, executive director of the Injured Workers Organization, said that except for a few chemicals gleaned from a state examination, Thermo-Lag's contents have not been revealed.

Schilling said the suit is tied to one of his pet projects, the right-to-know issue, being fought in Olympia. Essentially, he said, workers want the right to know, in clear English, what kind of substances they are working with. A right-to-know bill passed both houses of the state Legislature last session but portions of it were vetoed by Gov. John Spellman.

Chris Graybill, spokesman for OSHA in Washington, D.C., said that while some chemicals are subject to regulation, "there is no national requirement that manufacturers tell workers or anybody what's in a product," although certain states,

excluding Washington, have right-to-know laws.

"Who brewed this batch?" asked an angry Rod Sullivan of Ferndale at the recent union meeting. He said he installed Thermo-Lag at the WPPSS plant and "not a week went by that

we didn't ask, 'Hey, what's in this?'"

In a memorandum alerting workers to the possible toxic effects, lawyer Pearson warns that "the effects can be bizarre: numbness, fever, breathing changes, brain damage, changes in blood circulation, impotency, sensitivity to light, weakness and fatigue are only a sampling."

Sullivan, 42, said his joints began to ache several months ago and he began to develop unusual symptoms all over.

"At first I thought it was old age, but then I had trouble reaching into my pocket and couldn't get my hands to grab the change."

Stultz, who wears sunglasses indoors because he says his eyes have weakened, claims doctors recently scraped an inch of chemical residue from his lungs. He said his whole system seems affected, his joints ache, he breathes heavily, and he has lapses of thought.

Said Schilling: "If it's not already, this is going to become as bad or worse than asbestos."

Harborview screening

"Perhaps by this action (the lawsuit), we can keep our kids, or our grandkids, or our friends from being exposed to this."

Pearson said Harborview Medical Center's occupational medicine unit has screened several workers who claim to suffer from Thermo-Lag poisoning.

At Harborview, industrial hygienist Nick Heyer said, "We've seen people who were exposed to Thermo-Lag in Eastern Washington."

While the hospital is conducting no formal study into possible Thermo-Lag poisoning, "we would be interested in seeing more workers with complaints who were exposed," Heyer said.

As a result of documentation from his case, Stultz says he now can claim workmen's compensation payments. But others might not be able to do so until the Thermo-Lag issue is fought and won, said Schilling.

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Pearson warned that the workers are in for a long fight. The companies "have a lot of attorneys in suits," he said jokingly.

"Somebody should be in jail," Sullivan said. "I could care less about the money. . . . It all makes you a . . ."

Pearson said although the suit was filed in King County, chances are that it will be heard by a court in Benton County, site of the WPPSS plant.

JUN 8 1984

Asbestos Accord Faces Obstacles

By JOHN RILEY

National Law Journal Staff Reporter

MAJOR asbestos producers and insurers have unveiled an unprecedented accord to settle years of internecine legal conflict and establish a "one-stop" claims facility for speedy compensation of asbestos victims.

The May 18 public announcement of the agreement climaxed 19 months of complex negotiations among representatives of 16 large asbestos producers and 12 leading insurers.

Noting the role that disputes between those two groups have played in clogging the courts with more than 24,000 asbestos claims, negotiators

hailed the accord as a historic achievement that could make major inroads on relieving the congestion by settling most asbestos cases out of court.

"If it works, in its first six months this facility could pay out more than the entire Agent Orange settlement," said one negotiator, referring to the recent \$180 million settlement of a class action against producers of Agent Orange. (NLJ, May 21.)

Before that happens, however, the asbestos settlement faces some major obstacles.

It calls on asbestos manufacturers and insurers to drop all their litigation against one another over the allocation of asbestos liability; make major compromises on legal issues worth millions of dollars; and agree to a complicated formula for dividing up the costs of settling cases with asbestos claimants under the umbrella of an "asbestos claims settlement facility."

The Manville Factor

So far, however, no companies — including those that sponsored the negotiations — have committed themselves to joining the proposed facility. Two potentially key participants, the Manville Corp. and Travelers Insurance Co., have distanced themselves from the plan.

Manville, the nation's largest asbestos producer, entered Chapter 11 bankruptcy proceedings in August 1982. Its insurance disputes with Travelers,

currently the subject of a \$600 million lawsuit in San Francisco, were one of the triggers for that filing. *In re Asbestos Insurance Coverage Cases*, Coordinated Proceeding 1072 (San Francisco Superior Court). (NLJ, May 7.)

The draft agreement for the insurance claims settlement facility began circulating last week. Spokesmen for both the insurance and producer negotiators conceded that, while participation by Manville and Travelers is not essential, the plan will work only if a substantial number of key players on both sides agree to the major compromises required by the plan.

Copies of the proposed plan have been sent to about 200 major insurers and asbestos producers, who have been asked to subscribe conditionally by July 15.

"Many have been reluctant until they see more details," noted John F. Shea, vice president and claims counsel for Aetna Life and Casualty Co. and the head of the insurance industry negotiating team.

"The next two months will be very important," added Claude E. Glaser, Jr., a negotiator for the Hartford Insurance Group.

For insurance companies, the major concession is an agreement to use the broadest possible definition of the "trigger date" for insurance coverage. Under the proposed agreement, producers will have the benefit of all policies between the date of first exposure to asbestos and the date an asbestos-related disease was diagnosed.

In litigation, many insurance companies — including Travelers in its suit with Manville — have argued for a narrower interpretation of standard policy language, imposing liability only on the policies in force at the time of a victim's first exposure or at the time of manifestation of asbestos-related disease.

Another major issue in asbestos insurance litigation has been the "duty to defend," with producers arguing that under standard pre-1966 policy language an insurer's duty to foot the defense costs in asbestos suits continued even after a policy's liability limits were exhausted. Insurers have taken the opposite position.

The settlement cuts a middle road, upholding the insurance industry position but providing that once a producer exhausts all of its insurance policies the insurers as a group will fund a "lifetime" defense program.

For producers, the agreement calls for two major concessions. They will have to give up all claims against their insurers for indemnification of punitive damages, and also agree to aggregate limits on policies that were written without any such limits.

In addition, asbestos producers joining the facility will have to agree to settle their disputes with one another over how liability is to be allocated in situations where a victim was exposed to asbestos produced by more than one company. Typically, lawsuits name 15 or more defendant producers.

Rather than adopting a "market share" approach, the agreement allocates liability among producers based on a formula derived from its past claims experiences and the number of pending open claims.

Appearing at a May 18 press conference, Mr. Shea and James J. Restivo of Pittsburgh's Reed Smith Shaw & McClay, who represented the Pittsburgh Corning Co. in the negotiations, stressed that savings in legal expenses would be the key incentive for producers and insurers.

They predicted a "net savings" on litigation costs because the settlement facility will end suits between and among producers and insurers who join; significantly reduce the number of asbestos claims that go to trial or are settled only on the courthouse steps; and consolidate defense efforts in cases that do go to trial.

Under the plan, asbestos victims will submit medical and employment histories to the claims facility. If the injury is determined to be compensable, contributions will be assessed against all producers and passed along to their respective insurers based on the allocation formulas.

The facility will not pay punitive damages, Mr. Shea and Mr. Restivo said, but will make offers based on the "market" rather than a predetermined schedule of benefits and will employ arbitration mechanisms to resolve differences.

Although victims will not have to waive their right to a jury trial before seeking a settlement offer from the facility, they said, details of when such a waiver — or a waiver of punitive damages claims — may be required have not yet been resolved.

Plaintiffs' attorneys, reacting to the proposal, said that while such details could be important they did not feel the unavailability of punitive damages would be an insurmountable barrier to settling cases in the facility.

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"These darn antibiotics are ruining the environment."

GSA Is Battling Worker 'Hysteria' About Asbestos

By Myron Struck
Washington Post Staff Writer

In March, the Justice Department's senior safety official wrote to the General Services Administration expressing concern about the asbestos ceilings that were flaking in the department's offices in the Safeway building.

More than 400 Justice employees work in the building at 521 12th St. NW. And, Joseph A. Sanchez wrote to James G. Whitlock, GSA public buildings commissioner, "concern for the safety of our employees... has been one of our highest priorities."

How much, Sanchez wanted to know, would it cost to seal off, or encapsulate, the asbestos; how soon could the GSA contract for the work, and when could it be completed?

GSA said that there were no plans to encapsulate or remove the asbestos because of plans to move out of the building in a year or so. Moreover, GSA officials stressed, to the apparent satisfaction of senior Justice officials, employees in the Safeway building face no danger.

The incident, GSA officials say, is typical of the uphill battle they fight against the real and imagined fears about asbestos in the government work place.

"Like many letters, this one reflects a degree of hysteria that we have to face and deal with," said Whitlock. "Since then, we have been able to assure Justice that no employees working in the Safeway building face any dangers whatsoever from asbestos. We are not going to encapsulate or remove the

asbestos because we plan to move out of the building in a year or so."

"We are using whatever resources we have at our disposal to dispel the fears that employees have and to correct potential problems associated with asbestos," said William R. Lawson, GSA's assistant commissioner for design and construction. "It is most important to have a program to combat the fear people have. People have to believe that it is safe. That means prudently spending some taxpayers' dollars and incorporating a capital program that is logical and sensible."

Asbestos, widely used as a fireproofing agent and insulator in commercial office buildings, was banned in 1972 because scientific evidence showed that certain types can cause cancer and a number of lung and respiratory diseases.

GSA began studying ways to distance government workers from asbestos in 1980, and in May 1983 it released a nationwide survey listing 36 public buildings that had the most severe potential asbestos problems. And, senior GSA officials said, no life-threatening conditions would be allowed to remain in any government-owned or federally leased building.

A year later, GSA has decided that the problems were grossly overstated, that all airborne asbestos lev-

els are well below national standards set by the Occupational Safety and Health Administration, and that a long-range plan will suffice to protect government workers from the dangers of crumbling, damaged and water-logged asbestos.

"There is not one building nationwide that we have to do anything about," said Charlene Keith, a senior Public Buildings Service staff member. "The [air sampling] readings for asbestos particles everywhere are so low that there is no need to worry."

But, in a precautionary move, GSA has removed or encapsulated asbestos in five of the 36 buildings. Asbestos in five others will be taken care of this year, and one building will be dealt with in 1985.

GSA plans to spend the bulk of a \$201.6 million budget for asbestos removal and encapsulation projects in fiscal 1986 through fiscal 1988.

Generally, GSA safety officials have discounted scientific evidence indicating that even low-level exposure to airborne asbestos particles, as in the work place, for example, can be dangerous. The National Research Council, an arm of the National Academy of Science, released a study in February showing that low levels of asbestos can cause many cancer deaths.

However, Lawson said, the GSA is guided by a 1982 survey of asbestos-related literature by the U.S. Geo-

logical Survey, an agency generally responsible for mapping and mineral research. According to that study, the "common white asbestos" that generally is used in insulation and fireproofing federal buildings "has had the least effect on those occupationally exposed. There is no evidence that the very frequent non-occupational exposure to this form of asbestos has caused any harm." Nonoccupational exposure occurs when a person enters or passes by a building with asbestos.

Despite the conflicting literature on what constitutes safe levels of exposure, most GSA officials say scientific and medical evidence has shown that three potentially fatal diseases can result from asbestos: asbestosis, cancer of the lung, trachea or bronchial tube; and mesothelioma, cancer of the lung membranes and abdominal cavity. At the same time, they say asbestos levels in government buildings meet OSHA standards.

To combat the perceived fear, GSA is planning "a public relations campaign," according to Public Buildings Commissioner Lester L. Mitchell.

"What needs to be emphasized most forcefully," Mitchell said, "is that there are no dangers at all to federal employees working in federal office buildings, based on the standards set by OSHA."

"We could say we have a safe environment and we're going to leave it [asbestos] alone, but that's not what we're doing," Lawson said. "We have a major communications problem that is causing employees to be fearful of their work environment."

"If people want to get emotional about asbestos, that is a problem as much as the asbestos," added Mitchell. "It is as much our responsibility to communicate to them why it is safe as it is to make the buildings safe."

Meanwhile, some asbestos-related work in the Washington area has been postponed because of budget problems, contracting delays and the need for other nonasbestos-related work, according to Commissioner Whitlock.

A project to remove asbestos from three elevator lobbies in Federal Office Building 2 in Arlington will not be completed until May 1985, even though GSA safety officials said in 1983 that the asbestos is "exposed and accessible" to pedestrian traffic.

Asbestos removal from the lobby of the National Courts Building in Washington is scheduled to be completed in November. But no contractor has been hired for the cleanup, which originally was to be completed this month.

And at the 160-year-old Tariff Building, a \$250,000 asbestos removal project has been shelved because of legislation pending in Congress to transfer the building to the Smithsonian Institution.

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