PLAINTIFF'S EXHIBIT
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ASBESTOS EXPOSURE

INSURANCE INDUSTRY SAYS IT'S HAD TOO MUCH, SO WHERE DOES THAT LEAVE A MULTI-BILLION DOLLAR MARKET?

"You question who's going to pay for it? I think that for a while there's going to be insurance that's not yet been tapped . . . that would be insurance that's in a different category than the insurance that would cover the personal injury suit.

"The other thing is that the companies do have money. Our primary target is the manufacturers, though we have gone after some of the installers. But I think you're right, that if all 50 states filed suits similar to Maryland's, it would be difficult for them to pay the amount . . . It's going to be a long line."

—Evelyn Cannon, Assistant Attorney General, State of Maryland, commenting on that state's $500 million suit against 47 asbestos producers for the cost of cleaning asbestos out of 3,000 state-owned buildings.

Sometime this year, asbestos abatement — much like hazardous waste cleanup — ceased to be an approachable market for contractors because of the virtual disappearance of liability coverage. This shortage of coverage is tied to the fact that property claims have become, for the insurance industry, unconscionable. For instance, while the total surplus of all property-casualty carriers is estimated at around $60 billion, property claims against Manville Corporation alone are expected to reach $69 billion. The "long line" already forming behind Maryland could expect — assuming all were treated equally — the award of some $25 trillion. Small wonder the insurance industry recoils at the mere mention of the word "asbestos."

An informal polling of insurance executives reveals that today there are probably no more than two established companies willing to underwrite new asbestos removal policies on a regular basis. The terms of these policies — offered only to highly experienced contractors and invaribly on a claims made basis — include liability limits ranging from $500,000 to $1 million, with premiums of 15 to 20 percent of gross revenues. As recently as the last quarter of 1984, however, several companies were writing occurence-based coverage for less than two percent of revenues with limits ranging from $2 to $5 million — available to pretty much anyone!

MARKET SHUTDOWN?

"The situation will virtually shut down the asbestos abatement industry if it isn't solved," says Henry Nozko, Jr., vice president of Acmat Corp. of East Hartford, a leading abatement contractor now in the process of forming its own insurance company. "In this country there's going to be $26 billion of asbestos removal required over the next three years. The insurance available now can't even scratch the surface of what's needed."

Some insurance analysts say the problem isn't so much with the nature of asbestos abatement work as with the tremendously cyclical nature of the insurance business itself. "At the top of the cycle they cut prices . . . ," J. Robert Hunter, head of the National Insurance Consumer Organization told Congress in testimony recently. "At the bottom they cancel everyone, even businesses that never once had a claim, just because of the fear they feel of any possible risk." And according to Nozko, that is exactly what has happened to the asbestos abatement industry: "They are ridiculously overreacting. In the whole field there has yet to be one health-related liability claim made in the United States." Broad statements aside, Acmat's new insurance company will scarcely improve on going rates when it starts up in October, offering claims made coverage for 18 to 20 percent of gross revenues with liability limits up to $1 million — if you're a contractor with five or more years of experience.

The fact is, asbestos related claims are

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underiably costing the insurance industry a lot of money, and this plainly has them spooked. "Most of the major carriers in the U.S. have had claims submitted to them as a result of being involved with either asbestos insulation contractors or manufacturers," explains Joe Walsh, president of Great American Express and Surplus Lines, the most visible company still writing asbestos abatement policies. "Over the years it's accumulated into a pretty serious amount of dollars, and with the reinsurance market generally dried up, companies are simply saying, 'we've had it with asbestos.' It's a kneejerk thing, but you're not going to talk them back into it easily."

Albert Amend, spokesman for Aetna Life and Casualty, takes an even harder line: "Asbestos work is uninsurable." Citing the fact that any health complications linked to current asbestos work would "probably take years to show up," insurance companies, he says, are unable to assess the risk the're being asked to insure.

HIDDEN LIABILITY

Determining where the ultimate risks are for insurance companies, however, is a tricky question. An EPA survey of buildings other than schools estimates that 700,000 commercial, residential apartment, and federal buildings contain friable (crumbling) asbestos, and owners are increasingly concerned that occupants may sue over future asbestos related diseases. That previously cited three-year/$26 billion abatement figure? "The needs will be multiples of that," predicts one insurance industry observer. Says Neil R. Wilson, president of National Environmental Engineering, Inc., an Indiana-based abatement firm: "Look, we're the good guys. Contractors are willing to remove the liability that a building and property carrier has right now but may not be aware of."

In the meantime, abatement contractors with blemished claims records or little experience are unable to find insurance. In Iowa, for example, contractor ranks have been reduced from 17 to 2 since January, while nationwide fewer than 100 are said to be seriously working in abatement. Totally inexperienced contractors, those who have yet to make the requisite $100,000 startup investment in equipment, have only raw market projections — and possibly the EPA — to encourage them.

"There are an awful lot of people who want to do this, but unfortunately, very few who are qualified to do it," says Great American's Walsh. Great American policy applications, in fact, require that a contractor describe in writing the details of his removal operation — type of air filtering machine, which outside monitoring services are used, etc. "If he can describe to us what we think is a credible and properly organized outfit to take this stuff out safely," says Walsh, "then we'll consider him — but obviously, we accept very few."

Outside of Acmat's new insurance company — which hopes to write $30 million to $50 million in premiums the first year — hope for contractors is being held out by at least one other source. The Association of Wall and Ceiling Industries is considering a limited, tightly controlled plan for their members and other experienced abatement contractors. The plan will extend services provided by AWCI's one year old Bermuda-based company, Hereford Insurance and Surety, Ltd., which has been writing workers' compensation for non-asbestos abatement firms. To raise the additional needed surplus, contractors will pay a one time deposit equal to the cost of their premium (as yet unspecified).

Illustration by [illegible] Zepeda.

"We polled our regional EPA offices to find out how much work is being shut down. Some said there was a reduction in activity, but nobody said there wasn't anything happening. I think if the tone of your piece could be more positive . . . that yes, there is insurance . . ."

—Dave Mayer, chief of EPA's Technical Assistance Asbestos Action Program

MOVING TARGET

The greatest difficulty in assessing current insurance availability for asbestos abatement stems from the fact that it's truly, in the words of one insurance executive, "a moving target." Many contractor policies that were in place when the EPA conducted its above mentioned poll are up for renewal by the end of the year. And according to Jim Seaman, insurance operations manager at Master Builders of Iowa (AGC), a number of these are occurence-based policies, unlikely to be renewed in the existing underwriting climate. There are also many companies who have their abatement work covered — temporarily — by general liability policies meant to cover other company activities. Says one Midwest insulation contractor whose policy is up for removal in September: "Our abatement work is covered for now because it was never specifically excluded in our overall policy. We've already been told it won't be renewed."

Furthermore, policy cancellations often have little to do with a company's claims record. Acmat, which does roughly $25 million in abatement work annually, was dropped April 1 by CIGNA Corp., its carrier of four years, even though CIGNA had cited the contractor's operations as state-of-the-art. Acmat has since brought suit against CIGNA for, among other things, lost revenues during the period they were uninsured. Awaiting the debut of their own in-

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surance company, Acmat has obtained coverage from Great American Surplus.

SHRINKING POOL

The prospect of a shrinking pool of abatement contractors, most insured by one or two major carriers, with virtually no new contractors breaking into the field is understandably one the EPA wants to avoid. Their asbestos-in-schools program, which requires school districts to inspect their buildings for crumbling asbestos, drew national headlines recently when EPA threatened Detroit schools with $454,300 in fines for failing to meet those inspection requirements. The agency's regional inspectors said they found crumbling material that could contain asbestos on pipes, boilers, ceiling beams and in air circulation systems at 14 out of 17 Detroit school buildings it inspected.

But according to Acmat's Nozco, the shortage of contractors is already causing problems for the program: "I can name you 15 municipal bid lettings in recent months where Acmat was the only bidder. In 10 of those the job wasn't awarded because statutes required more than one bidder, and the schools — because they can only remove it in the summer — were forced to wait another year."

In fact, schools are faced with an array of problems — administrative, technical, and financial — in carrying out the mandates of the EPA. For instance, tiny Haverford school district near Philadelphia spent $2 million last summer removing asbestos from 2 of its 8 schools. Recently, they were the center of publicity when, along with several other area school districts, they fired an asbestos consultant who had allegedly falsified his credentials. "I don't think there is such a thing as a certified asbestos expert," complained one Haverford school supervisor.

With school abatement work, the problem of high insurance rates has thus far remained with the contractor. "Our biggest challenge," says Nozco, "is getting our price down within a school's budget, most of which were made one or two years ago, but don't include the cost of today's insurance."

However, in private sector abatement work, these increases coupled with diminishing competition among contractors could make removal work prohibitively expensive. As one contractor put it: "I think the private sector is just going to live with it for awhile."

REINSURANCE

Reinsurance is a mechanism which spreads losses and risks by broad participation. Reinsurers provide coverage to insurance companies for excess losses sustained in a certain line or lines of coverage, and thus give carriers an incentive to continue writing policies in "tight" markets. Consequently, conditions in the reinsurance marketplace — currently very constricted — significantly affect the price, amount, and type of primary insurance available.

"Most primary insurers — big or small — couldn't return to the asbestos market even if they wanted to," says one insurance executive, "there just isn't reinsurance available." Indeed, six months ago Great American Surplus was writing liability limits of $1 million with its abatement policies. "Half a million dollars of the reinsurance collapsed," sighs Walsh. "We had to drop our limit back to $500,000."

Essentially, the insurance industry points to three things that have resulted in the collapse of asbestos insurance, as well as most other hazardous waste coverage:

- The lack of actuarial data to establish realistic premiums that adequately reflect risk;
- The lack of universally accepted methods for assessing what risks exist;
- Society's perception that such risks haven't — or can't — be adequately managed.

This third point, the industry contends, will ultimately lead to several costly effects: third party claims for virtually all policies that they underwrite; a subsequent duty to defend against these claims; resultant high litigation costs; and policy losses due to court rulings in favor of the insured for coverage that the insurer did not intend to provide.

Because asbestos abatement and hazardous waste cleanup are urgent national issues, AGC is working with Congress to seek a solution to the insurance problems in these areas. For example, AGC supports provisions in current Superfund reauthorization legislation that would indemnify hazardous waste contractors or exempt them from liability under federal, state, or common law. And while new legislation might also extend such measures to asbestos abatement, any comprehensive solution should include provisions that would:

- differentiate the liability of cleanup contractors from that of responsible parties;
- establish a single standard for third party contractor liability throughout the 50 states;
- hold contractors responsible only for their own negligence;
- develop guidelines specifying what constitutes negligence.

Without such an approach, it is virtually certain that asbestos abatement and hazardous waste cleanup markets will remain off-limits for contractors for the foreseeable future.

—*By Harry Blevins Jr.*

CLAIMS MADE COVERAGE

Claims made coverage is different than traditional occurrence coverage. Occurrence coverage provides permanent coverage for any claims arising out of accidents which occurred during the policy period, regardless of when the claim is actually filed. Thus, if a claim is filed in 2000 for an event which occurred in 1984, the occurrence based insurance policy in force in 1984 would respond to the loss.

Claims made coverage, on the other hand, attaches when the claim is made against the insured, regardless of when the event took place. In the same scenario as above, if the event occurred in 1984, and the claim was filed in 2000 under claims made, the policy issued in 2000 would respond. The problem with claims made coverage is that if the coverage is ever cancelled by the insurance company, the entire period of time which had been covered by claims made insurance now becomes uninsured. From the asbestos abatement contractors' standpoint, therefore, abatement operations could have been undertaken from the year 1985, to, *for example*, 2000. If the coverage is then canceled in 2000 and no "tail coverage" can be obtained or afforded, then the contractor will be uninsured for all claims arising from incidents which occurred between 1985 and 2000.