PLAINTIFF'S EXHIBIT

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Canada Asbestos Firms Blame Problems Mainly on Recession, Rather Than Suits

By Alan Freeman
Staff Reporter of The Wall Street Journal.

MONTREAL—Canada's asbestos-mining industry is in a deep slump, but producers blame most of their misfortunes on the recession rather than on health-related lawsuits that have plagued such U.S. concerns as Manville Corp.

Canadian asbestos mines, concentrated in Quebec, supply over half the Western world's asbestos and most of what is used in the U.S. The Soviet Union is the largest producer of the mineral fiber, but the bulk of its output is used at home.

Canada produced 1,106,000 metric tons of asbestos last year, valued at $589 million (Canadian). That output is 41% below that of 1973, the industry's peak year, and Paul Filteau, executive vice president of the Quebec Asbestos Mining Association, said he expects a further 20% to 25% drop this year. A metric ton is 2,204.6 pounds.

"We're running at 50% of capacity," Mr. Filteau said. Most of Quebec's five producers have laid off workers and resorted to temporary closings to reduce inventories. Employment in the Quebec industry has fallen to 3,500 from 6,400 two years ago.

"The industry is a victim of the worldwide recession," said Thomas Osborne, executive vice president of Asarco Inc., New York, and chairman of Lac d'Amiante du Quebec Ltee., the Asarco unit that mines asbestos at Black Lake, Quebec.

About 75% of world asbestos production is used in construction materials, mainly asbestos cement products such as pipes and wall panels. With construction depressed in such major markets as the U.S., Europe and Japan, demand has softened and prices declined. Substitution of other substances because of health concerns hasn't helped matters either.

And in developing countries, where the producers have concentrated much of their recent sales efforts, customers have foreign-exchange difficulties. Asbestos cement is popular in the Third World because it is a durable and relatively inexpensive building material.

"All of the uses of asbestos are hard hit," said Richard Lister, president and chief executive officer of United Asbestos Inc., Asarco's joint-venture partner in the Black Lake mine. Asbestos also is used in brake linings, vinyl tile, papers and other items sensitive to the business cycle.

The downturn has meant tough times in southern Quebec's small towns that have depended on asbestos mining since the turn of the century. Johns-Manville Canada Inc., the Manville unit that operates the Jeffrey open-pit mine in Asbestos, Quebec, plans to lay off 500 more workers this month when it eliminates a work turn.

That will leave only 1,200 employees at the giant mine, compared with 2,850 in September 1980. Denis Provencher, president of the miners' union, estimates 60% of the town's working population will be unemployed when the latest furloughs take effect. He says many former mine employees are being forced on welfare because their unemployment benefits are running out.

Asbestos Corp., another large producer, announced last week that if demand doesn't pick up soon, it will lay off 250 workers at its operations in Thetford Mines, Quebec, effective Jan. 1. The company has a $3.6 million loss in this year's first half on sales of $45 million.

The Canadian government has reacted by designating both towns as special areas eligible for industrial incentives and allocated extra funds for community jobs, early-retirement benefits and job retraining. It also is considering a request from Johns-Manville for a $35 million grant to resume development work at the Jeffrey mine, a project that would employ about 220 workers for two years.

Last month, the government offered $14 million in loans and loan guarantees to Transpacific Asbestos Inc., a small, Toronto-based concern that plans to reopen a Newfoundland asbestos mine owned by an insolvent company, Advocate Mines Ltd., 31% owned by Johns-Manville. The mine closed last December and 500 jobs were lost.

While the producers say the economy is their greatest worry, they also are concerned about asbestos health claims in the U.S., though they face far fewer than the nearly 20,000 lawsuits filed against Manville. The suits were cited as the main reason for Manville's decision to file for protection under Chapter 11 of the federal Bankruptcy Code.

For one thing, the Canadian companies don't have to worry about health-related liability lawsuits in Canada because Canadian law says employees can claim only provincial workmen's compensation law for work-related diseases.

And some of the companies, including Lac d'Amiante and Brinco Ltd., which operates the Cassier mine in British Columbia, started operations in the 1950s and aren't implicated in the thousands of suits resulting from use of the fiber as an insulator in wartime shipyards.

But the lawsuits remain a financial burden. Norbert Peters, secretary and general counsel of Brinco, said the most worrisome part of it is the legal costs, much more than the settlements themselves." Brinco is named in about 800 U.S. suits.

Some company officials express the hope that Manville's drastic decision will force the U.S. government to act.

"We hope that because of Manville's move, U.S. legislators will understand the seriousness of the asbestos-litigation question and settle it by setting up a fund," said Benoit Cartier, corporate secretary of Societe Nationale de l'Amiante, the Quebec government agency that owns Bell Asbestos Mines, Ltd. and controls Asbestos Corp. Bell Asbestos and Asbestos Corp. each has been named in about 3,000 U.S. lawsuits.

Mr. Cartier believes there are other interim benefits from Manville's bankruptcy-law petition. He says it "helps us by putting more confusion into the whole asbestos-litigation business."

Bell Asbestos paid $750,000 (U.S.) last year to settle 675 asbestos-liability cases in New Jersey, but "we wouldn't do that anymore," he said. Mr. Cartier said he is waiting for a decision from a Quebec court on a petition by Bell Asbestos to shield it from execution of U.S. asbestos-liability judgments in the Canadian province.

Bell Asbestos argues that U.S. courts haven't any jurisdiction over its actions because it shipped asbestos from its Quebec mines and never had any U.S. operations. A successful plaintiff would have to seek execution of a U.S. ruling in Quebec because Bell Asbestos doesn't have any assets in the U.S., Mr. Cartier said.

A decision on the Bell Asbestos petition is expected shortly, and a favorable verdict could be used as a shield by Asbestos Corp. The defense doesn't help U.S.-controlled companies because, in most cases, their parents are named as well.

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Manville may drive Congress to action

Manville Corp.'s surprise filing for reorganization under federal bankruptcy laws startled the dozens of lobbyists and the few members of Congress who have been working quietly for years to devise a compensation system for victims of diseases linked to asbestos exposure. But that unorthodox step by Manville unquestionably dramatized the problems that proliferating asbestos litigation is causing manufacturers, their insurers, the courts, and the injured workers.

The immediate effect of Manville's bankruptcy filing has been to put Congress on notice that the company will not play the "toxic torts" game any more, and it is up to Congress to set new rules. If Manville's move convinces Congress that the victims are being shortchanged by the current system, Manville and its supporters will undoubtedly get what they want. "The timetable for legislation is moved up by 12 months, to 1983 instead of 1984," predicts William E. Bailey, senior vice-president of Boston's Commercial Union Insurance Co., a longtime supporter of compensation legislation.

At least Manville may have won Congress' attention. Representative George Miller (D-Calif.), chairman of the House labor standards subcommittee and chief sponsor of one of two asbestos compensation bills, has scheduled hearings immediately upon Congress' return from recess. Justice Dept. officials have also been considering the question.



McKinney: No-fault compensation for asbestosis victims would be less haphazard.

$40,000 per case. Manville filed a Chapter 11 petition after its consultants estimated that it could be liable for 32,000 asbestos-related claims in addition to the 16,500 that have already been filed against the company by former shipyard workers and others who claim that exposure to the substance gave them cancer or asbestosis, a chronic disabling lung disease. Settlements, Manville says, have been running at $40,000 per case in 1982 for legal fees and payments to individuals. At that rate, litigation could cost the company more than $2 billion over the next 20 years. Manville says that setting up a fund to meet those claims could require the liquidation of the company's $1.1 billion in assets.

The filing freezes the current claims as well as other debts and precludes new lawsuits for the time being. But Manville's use of Chapter 11 is certain to touch off a legal controversy that may reach the Supreme Court and that is drawing fire from Congress. Senator Robert Dole (R-Kan.), chairman of the Judiciary subcommittee on the courts, called the Manville action "dubious" and suggested that the subcommittee might take a special look at the issue as it rushes to meet an Oct. 4 deadline set by the Supreme Court for rewriting part of the Bankruptcy Act of 1978.

Manville claims it was forced into its present position. John A. McKinney, chairman, charges that only Congress can solve the problem facing Manville and other asbestos producers. First, he says, the government must pay for some portion of the asbestos claims as chief contractor for the shipyards and a major employer of asbestos-exposed workers.

Manville says the government, a major asbestos user, should pay some of the claims

In addition, insurers are fighting among themselves about coverage. Meanwhile, he says, Congress has failed to recognize the magnitude of the situation. Manville alone is sued at the rate of 500 new cases per month. "The system is too haphazard," McKinney claims.

'Unfair and inadequate.' What McKinney and other asbestos producers want is essentially a no-fault system that will get rid of layers of litigation and pay claimants directly. They also want the government to pay a share of the compensation. But the proposals now before Congress will not satisfy the industry.

Miller's bill does not call for government participation, although it would eliminate future liability suits that Manville claims could do it in. Another proposal, by Senator Gary Hart (D-Colo.), would reform the current workers' compensation system and provide government participation under a complicated arbitration formula. "Because workers' compensation is so poor, many workers go to court," Hart says, "but this has also proved to be unfair and inadequate" because of time delays and reduced payments to the sick, since court costs and attorneys' fees are taken off the top.

Crying wolf. Neither bill has received enthusiastic support from the industry, unions, commercial insurers, or trial lawyers. Unions, including the AFL-CIO, oppose any attempt to limit liability suits against asbestos manufacturers; one of the largest recent judgments netted a worker $2.6 million. Some insurers, too, are wary of any government compensation system because, explains one carrier vice-president, "we shouldn't start crying wolf to Congress unless we can go to them and say that the costs of these cases are threatening our financial stability."

For now, other asbestos producers seem unlikely to follow Manville or a similar move by Chicago-based UNR Industries in July. They are relying on a ground swell of political agreement that the current workers' compensation system and the tort liability actions are a tortuous route for injured workers and their survivors. "I don't think anybody in Washington gives a hoot for Manville," says Commercial Union's Bailey. "The new sense of urgency is not a reaction to Manville's woes but a new concern for the victims." ■

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