startribune.com Close window

Last update:

Health studies drew little action

Greg Gordon
Star Tribune Washington Bureau Correspondent
Published 11/09/2003

WASHINGTON, D.C. -- Gerrit Schepers, a scholar from South Africa, was examining the records of one of America's lung-disease experts three years after his death in 1946 when he stumbled on some troubling data.

A set of slides of 11 mice exposed to asbestos dust showed nine with cancer. And a file labeled "Quebec Asbestos Workers" listed nine miners and mill workers with lung cancer and two more with mesothelioma, a rare and even deadlier cancer, Schepers wrote later.

Jolted by the research done at the Saranac Laboratory in upstate New York, Schepers said he traveled to Canada and told his discovery to the medical directors of Johns-Manville Corp., an asbestos industry giant. When he returned, according to Schepers, Saranac director Arthur Vorwald said he had been scolded for not telling Schepers to keep the information quiet. Soon, the cancerous mice slides disappeared from Schepers' files.

Schepers, then a doctoral student at New York University (NYU), wrote of his discoveries in his thesis, which he also sent to the South African government, he recalled in a 1995 article in the American Journal of Industrial Medicine.

As he made an oral presentation of his thesis, Schepers questioned the secrecy surrounding the studies. When he did so, Schepers wrote, he was pulled aside by Dr. Anthony Lanza, an NYU official who had just retired from Metropolitan Life Insurance Co. and who still oversaw the Saranac lab for several years.

Lanza took Schepers to the office of Vandiver Brown, the chief attorney for Johns-Manville. Brown, holding a copy of Schepers' thesis, asked him to withdraw it. Schepers said he told Brown that he could not and that he already had mailed a copy to Johannesburg.

"Mr. Brown flew immediately to South Africa to retrieve my report," Schepers wrote.

In 1951, the mouse research that Dr. LeRoy Gardner had conducted at the lab, which was funded in part by Met Life and asbestos companies, was published. The report did not contain any reference to the 82 percent rate of lung cancer among the 11 mice.

Philip Enterline, a biostatistics professor at the University of Pittsburgh who wrote a book summarizing the medical literature on asbestos, said in a 1991 affidavit that he believed early, uncensored publication of Gardner's findings "would have accelerated in this country the acceptance of a causal relationship between asbestos and cancer."

Schepers chronicled just one of a number of incidents over several decades in which U.S. insurers had research signaling the dangers of asbestos but did not act aggressively to protect workers.

In briefs filed in response to recent suits filed by asbestos victims and their families, insurers have argued that they had no obligations beyond the companies they insured.

Spokesmen for Met Life and several other insurance companies, citing ongoing litigation, declined to comment for this story on documents emerging in those suits.

Dr. Lanza's role

As long ago as 1899, asbestos was blamed for lung diseases. In 1918, Prudential Insurance Co. executive Frederick Hoffman observed in a Labor Department publication that because of its "injurious" effects, few underwriters would take on the risk. At the time, a relatively small number of workers were exposed to asbestos.

When the heat-resistant mineral became an industrial staple, insurers began writing life, health and liability policies for hundreds of companies that sold asbestos or used it in their products. All the while, documents show, insurers compiled data on asbestos' dangers.

In 1929, Boston-based Liberty Mutual monitored the Multibestos Co.'s use of asbestos in making brake, clutch and transmission linings. A study of its plant in Walpole, Mass., reported one employee dead, apparently of an asbestos disease, a number of others so sick they were unable to perform "even slight exertion" and three with "hemorrhages from the lungs." There's no record of the study being published.

In 1931, a study partly funded by Met Life found asbestosis in 42 Canadian asbestos miners and mill workers. The results were closely held.

Despite the 1931 findings, Lanza, Met Life's assistant medical director, said he saw no need to warn workers. In 1933, when Lanza met with managers at a Johns-Manville plant in Waukegan, Ill., a plant doctor asked whether employees should be told about the asbestos hazard. The doctor recommended posting signs warning about the danger of asbestos dust and urging workers to take precautions.

According to a company transcript, Lanza replied: "I doubt if the hazard is sufficient to justify warning posters[,] as might be used where lead, benzol or carbon monoxide are concerned. This is especially true in view of the extraordinary legal situation."

As chronicled in company documents, Lanza's correspondence and a book by Baltimore researcher Barry Castleman, Lanza emerged as a leading figure in occupational health -- and in the asbestos saga.

Lanza co-wrote a study published in 1935 under the auspices of the U.S. Public Health Service. At the suggestion of manufacturers, the study stated that asbestosis was "milder than silicosis," a lethal lung disease caused by silica dust. Brown, Johns-Manville's chief attorney, said in a letter to another major asbestos company that this wording change would be "beneficial from the industry viewpoint." Lanza's report also said that asbestosis had not resulted in a single case of "marked disability" among the workers studied.

That same year, a researcher linked asbestos to a lung cancer case.

As the medical knowledge grew, insurers began alerting their safety inspectors to monitor the asbestos situation.

A 1937 internal manual for Commercial Union Insurance Co. stated: "It is established that asbestos may cause disability and death, and that any well-defined case of asbestosis is very likely to progress to a fatal conclusion. . . . When dust in the area is visible, we know a hazard exists, when not visible, dust counts should be employed."

In the 1940s, in the absence of a federal agency to regulate workplace toxins, a volunteer group of industrial hygienists began to set recommended exposure limits for various substances. In 1946, that group recommended an average daily dust exposure limit of 5 million particles per cubic foot to protect workers from asbestos. Some companies defended themselves against asbestos claims in later years by contending that they abided by the standard.

In a 1995 research paper, David Egilman, a Brown University professor of community health, said the volunteer group did not review research before recommending the 1946 standard. Egilman wrote that the panel recognized the standard's weak scientific basis by cautioning that it "is not to be construed as recommended safe concentrations."

'We had no authority'

In celebrating its 100th anniversary in 1964, Travelers said in an internal publication that it had spent nearly $175 million in the previous 60 years on a "ceaseless campaign to save lives and limbs." Travelers said its engineers invented hundreds of safeguards, including "instruments to 'smell' toxic gases and to 'see' harmful particles in industrial atmospheres."

But when it came to asbestos, Travelers, based in Hartford, Conn., did not give its clients ultimatums on safety, even when dust counts exceeded the recommended standard set in 1946, a former Travelers manager said.

Harry Rapp, who headed a Travelers industrial hygiene unit during 30 years with the insurer, said in a deposition that upon joining the company in 1952, he was informed that breathing asbestos fibers could cause asbestosis.

When Travelers inspectors measured asbestos levels that exceeded the standard, they would inform the policyholder of the counts and urge some action, Rapp said in his 1982 testimony. "Now, we had no authority to make them do it. . . . We had to be salesmen for this thing," he said, referring to safety precautions.

Lawrence Madeksho, a Houston attorney who has instigated much of the litigation against the insurers, said that his review of tens of thousands of industry documents revealed few instances prior to the early 1970s where an insurer refused to write policies for an asbestos company -- and none where it canceled coverage because workers were being exposed to asbestos hazards.

Chris Placitella, a Woodbridge, N.J., lawyer, said records from a New Jersey insulator's 1957 suit against Johns-Manville underscored Travelers' knowledge of asbestos risks and its lack of enthusiasm toward disclosing them.

The worker, 51-year-old Fred LeGrande, had toiled 20 years applying Johns-Manville's asbestos-laden products for an insulation company before becoming severely ill with asbestosis.

At the 1959 trial, Brown, Johns-Manville's chief lawyer, was among the courtroom observers. LeGrande, brought in by wheelchair, testified in a barely audible voice interrupted by coughs. Assessing him as a figure likely to win the jury's sympathy, Travelers claims supervisor F.C. O'Connor settled the case for $35,000. Afterward, a lawyer Travelers had hired to represent Johns-Manville wrote O'Connor that a major concern was LeGrande's assertion that five of his co-workers also had the disease.

In a company memo, O'Connor noted that Travelers had intended to "present a top underwriter" to testify that asbestos exposure was not hazardous. But, he said, he "would not dare," given that the company official knew of other insulators, including a LeGrande coworker, with asbestosis.

'Disaster has struck!'

The insurers' potential asbestos liability came into focus in 1971. A Texas jury awarded $79,000 to Clarence Borel, a southeast Texas insulation worker, for asbestos makers' failure to warn him of dangers from their products.

Dying of mesothelioma, Borel achieved what no asbestos victim had before -- beating an asbestos manufacturer in court in a product liability suit. Borel's lawyer, Ward Stephenson, persuaded a jury that Johns-Manville knew of the hazards.

When the Fifth U.S. Circuit Court of Appeals upheld the award in 1973, it sent a shock wave through the industry.

"Disaster has struck!" wrote H.D. Hunter, a Houston claims manager for Travelers, which insured Johns-Manville. ". . . A precedence [sic] has now been made, and we will have to live with asbestos lawsuits for years to come."

In 1975, the Eighth U.S. Circuit Court of Appeals embraced the Borel precedent in the case of John Karjala, a Minnesota insulation worker from 1948-66 who was afflicted with asbestosis and had a tumor removed from his lung. The court upheld a $200,000 jury award to Karjala, based on evidence that Johns-Manville knew by the 1930s that asbestos plant workers were exposed to a health hazard.

Travelers formed an asbestos subcommittee of its "catastrophe committee" to map strategy. The panel projected that insurers would be defending massive numbers of claims and said "punitive damage potentials are extremely large because of the apparent failure to adequately warn workers and the public of the hazards known to makers and large distributors of asbestos," according to the minutes of one meeting.

Options the panel discussed as ways to limit its risk of losses included raising rates so sharply that asbestos companies would cancel their policies, or simply excluding asbestos diseases from coverage.

"We do not believe Travelers can afford to wait until catastrophe loss is evident to pass this business and social risk to

others," the minutes said.

In 1976, the American Insurance Association convened a meeting with 14 insurance companies to plan legal defenses. Minutes of the meeting stated: "In 1900 medical research linked the mineral asbestos with asbestosis and 1935 brought the first direct linkage of asbestos to cancer."

At a meeting of a similar committee in March 1977, the insurers contended that the federal government, through medical studies, had full knowledge of the problem and perhaps Congress would support a "white lung" bailout bill.

Ultimately, the insurers coalesced around what became known as the "state-of-the-art defense," a reference to the state of medical and scientific knowledge about asbestos before the 1960s. The insurers asserted that their clients didn't fully know of asbestos' dangers until the mid-1960s.

Travelers and Liberty Mutual each set about educating attorneys in how to defend asbestos suits.

During one such session with lawyers on Dec. 12, 1979, Lively Wilson, an attorney retained by Travelers, said the strategy was proving to be "viable," despite the recent court rulings holding companies to tougher product safety standards.

" . . . When we first got into this litigation and we began to talk about this as a defense, my reaction was, 'It'll never wash,' " Wilson said, according to a transcript of the session. "And I remained of that opinion until we tried the first case and I was amazed that not only did it wash, but it worked well and it was convincing and the jury bought it."

The strategy's success, he said, hinged on persuading juries that published medical and scientific research did not definitively show asbestos to be dangerous before researcher Irving Selikoff's 1964 study showed patterns of asbestosis and lung cancer among tradesmen.

If asbestos companies didn't know of the particular dangers to insulators and textile workers, he said, "what could we warn about? . . . If we knew [that asbestos was hazardous, then], obviously, the state-of-the-art is no defense."

Greg Gordon is atggordon@mcclatchydc.com.