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LETTERS

Asbestos: The Arguments for a Fund...

The health effects of asbestos exposure possibly constitute the most enormous occupational disease problem ever to face the United States. It is therefore unfortunate that both Professor Paul MacAvoy in "You, Too, Will Pay for Asbestosis" (Feb. 14) and attorney Robert E. Sweeney in "Asbestosis" (Feb. 21) concentrated more on finger-pointing and rhetoric than on addressing the main issue — how to provide prompt and equitable compensation for genuinely injured workers and their survivors.

Let us take another look.

First, virtually all claimants in lawsuits against Keene and others are now receiving compensation totally apart from the lawsuits. People who had been employed in Federal shipyards are receiving compensation through the Federal Employees' Compensation Act. Other claimants are being compensated under state workers compensation laws.

Second, in the chart accompanying the MacAvoy article, Keene is depicted, along with Johns-Manville, as a "major" asbestos company. While perhaps flattering, the comparison is ludicrous. Keene, which got involved in asbestos-containing products in 1968 through the purchase of Baldwin-Ehret-Hill Inc., had sales of $4 million in asbestos-related insulation products or 1 percent of Johns-Manville's asbestos-related revenues of an estimated $400 million.

Moreover, Keene's former subsidiary — which was disposed of in 1972 — was a processor, not a miner, of asbestos. We believe that the mining companies, including Johns-Manville, were much better positioned to recognize the dangers of asbestos long before their customers, the fabricators.

Third, the United States Government's involvement in the asbestos problem started in the World War II shipbuilding program when the Government specified the inclusion of asbestos for fire protection and thermal insulation in ship construction, and sold asbestos to fabricators, including Baldwin-Ehret-Hill.

It has been established that the Government was fully aware that certain concentrations of asbestos fibers per cubic foot of air were hazardous to workers. Accordingly, the Government established safety standards for its own and other shipyards — but failed to enforce the standards. Then, in a Public Health Service study in 1945, the Government found little or no health risk to shipyard workers as a result of asbestos exposure.

Assuredly, the United States Government is responsible for the actions that have resulted in so many lawsuits.

Fourth, The record to date appears to be that 75 cents of every dollar paid out by Keene and others to settle claims has gone to lawyers (defense lawyers included); 15 cents has gone to insurance companies while only 10 cents has gone to the actual person bring suit or making a claim. A plaintiff lawyer might represent as many as 2,000 such claimants. Using the $1,000 per claim average settlement as has often been our experience, each claimant would receive $500 — but the lawyer stands to gain $1 million (2,000 claims times $500 per claim).

Certainly, the lawyers have an incentive to compound the number of claims. But this type of litigation does not answer the injured worker's needs.

The role of the insurance industry in this matter borders on the incredulous. Over the years, Keene purchased and paid premiums on more than $350 million in comprehensive liability insurance. It was a good faith purchase to provide against an unforeseen risk — no different than the purpose of other insurance coverage in our business and professional lives. But, alas, we now witness the spectacle of insurance companies denying that meaningful coverage ever existed.

As an aside, I cannot resist commenting on Professor MacAvoy's good fortune in having had parents who "warned me against going to work in an asbestos insulation factory." If my parents had possessed such wisdom, I would have been smart enough not to spend $7 million to buy Baldwin-Ehret-Hill and the unforeseen pack of troubles that eventually resulted.

In conclusion, Keene believes that legislation should establish a fund into which all responsible parties — miners, manufacturers, insurance companies, employers and the Federal Government — would pay equitable shares of the cost of compensation.

The fund should be the sole recourse for injured individuals, precluding suits against third parties. It should assure rapid and adequate payment to truly injured individuals. Compensation would be supplemental to and not a substitute for existing workers' compensation. It is time for all sides, including the lawyers who have earned so much from asbestos litigation, to join in seeking an equitable solution that favors the injured partners.

GLENN W. BAILEY
Chairman
The Keene Corporation
New York, N.Y., Feb. 23, 1982

...Against Current Law

Professor MacAvoy provides further proof that economics is a voodoo science. The professor conjures up the spirits of the long dead victims of the asbestos industry which placed profits ahead of people. Instead of shedding crocodile tears for the asbestos manufacturers who knowingly suppressed reports of the dangerous nature of their product the professor should have turned his attention to abolition of the harsh statutes of limitations. These laws provide that an injured worker loses his right to compensation within three years of inhaling asbestos fibers, even though the illness may not manifest itself until 20 years later.

HARVEY WEITZ
New York State Trial Lawyers Association Inc.
New York, N.Y., Feb. 19, 1982

...For Legislation

Mr. Sweeney objects to the fact that the Asbestos Compensation Coalition, union leaders and others are working with concerned members of Congress to develop a more efficient and more just alternative to litigation. But he invites the reader to believe three things which we know are not true.

First, he argues that either the asbestos manufacturers were fraudulent in concealing the asbestos risk from employees, or the insurance industry was incompetent in agreeing to insure the risk. Hindsight is wonderful, but asbestos-related diseases have a latency period of 10 to 40 years, and the plaintiffs in today's lawsuits base their claims on exposure to asbestos that occurred long before the mid-1960's when major scientific research became available. (No Federal health standards for asbestos were set until 1971.)

Second, Mr. Sweeney implies that the adversarial system works well in dealing with asbestos-related disease. It does — for him. There are now over 15,000 claimants in more than 10,000 suits, and that figure is rising, along with legal fees. In short, the present system is an outrageous mess and Federal legislation should be enacted which would provide a better way to get prompt and adequate compensation into the hands of victims.

Finally, Mr. Sweeney warns against the Government engaging in "corporate welfare." In all phases of asbestos use, from stockpiling, to standard setting, to providing the workplace in which substantial exposure occurred, Government involvement can be clearly identified. Is it corporate welfare for Government to contribute to the solution of a problem which it played a large role in creating?

WILLIAM C. MCLAUGHLIN
President,
The Asbestos Compensation Coalition
Washington, Feb. 27, 1982

...For Alternate Materials

To the Business Editor:

Professor MacAvoy contends that in many industrial applications "such as automobile brake linings" there is no substitute material for asbestos. But leading producers of brake linings plan to go asbestos-free as soon as possible. General Motors, whose current output of cars is mostly asbestos-free, has stated that "The objective of General Motors is to deliver, by 1984, all cars with asbestos-free brake linings."

The substitute materials are safer, longer lasting, and give improved performance — at somewhat higher initial cost. Similarly, every major market for asbestos in the United States showed plummeting consumption and a turn toward substitutes.

BARRY CASTLEMAN
Environmental Consultant
Baltimore, Md., Feb. 25, 1982

...Against Employers

Professor MacAvoy confuses asbestosis, a debilitating chronic lung disease, with mesothelioma, a cancer of the lining of the lung.

He correctly notes that the standard for workplace asbestos exposure was reduced in the mid-1970's. However, because of industry pressure, the current standard is still two times that recommended by the National Institute for Occupational Safety and Health. Furthermore, the current standard does not protect workers from mesothelioma, which can result from exposure to as little as one particle of asbestos.

The costs of asbestosis and mesothelioma will be born by the afflicted individuals and the public in many ways other than by higher insurance rates.

According to government studies, 95 percent of all workers who contract occupational diseases are unable to collect workers' compensation. Instead, they are forced to apply for Social Security disability and various forms of welfare. These support programs are funded by payroll deductions and other forms of general taxation costing the taxpayers more than $2.2 billion a year.

By shifting the burden of paying for the effects of occupational diseases from the corporations whose workers are exposed to these deadly substances to the general public, we are subsidizing those employers. In the case of asbestos, whose dangers have been well known for decades, corporations should be made financially responsible for the havoc they have wreaked on the lives and health of their employees and others exposed to their product.

JOEL SHUFRO
Executive Director
New York Committee for Occupational Safety and Health
Feb. 17, 1982

The Times welcomes letters from readers. Letters for publication should include the writer's name, address and telephone number. Letters should be addressed to The Editor, Sunday Business Section, The New York Times, 229 West 43d Street, New York, N.Y. 10036. We regret that because of the large volume of mail received, we are unable to acknowledge or to return unpublished letters.

NYT March 7, 1982