

More Schools Expected To File Suits To Recover Cost of Asbestos Removal

By Susan Walton

At least one school district's lawsuit was among the "overwhelming" number of legal actions that led the Manville Corporation, a leading producer of asbestos, to file for bankruptcy last week.

But unlike most of the suits, in which plaintiffs sought compensation for asbestos-related medical problems, Philadelphia's suit against 61 asbestos firms, *School District of Philadelphia v. Johns-Manville Corp. et al.*, seeks to recover the nearly \$7 million that the district expects to spend to remove the hazardous substance from its buildings.

Risk of Health Hazard

Philadelphia is one of a handful of districts that have filed suit against manufacturers and processors of asbestos, which school officials are now in the process of tearing out of all areas where the fibers, if airborne, might pose a health hazard to students and employees.

Widely used for fireproofing and sound insulation between 1948 and 1978, asbestos has been banned since 1978 because in its "friable," or crumbling, form, the substance has been linked to a variety of respiratory diseases.

According to attorneys and school officials concerned with the problem, lawsuits aimed at recovering the costs of asbestos removal may become more common as budgets become tighter and pressure to eliminate asbestos grows. So far, none of the cases filed has been decided, and attorneys speculate that a successful suit by a school district could have a powerful impact in encouraging others to take legal action.

In addition, they say, a report issued a year ago by the Justice Department may gradually lead to more suits. That report, *The Attorney General's Asbestos Liability Report to the Congress*, recommended that local and state officials take legal action to recover the costs of asbestos abatement.

"I think it's an area of great promise for school districts that are pressed for money," said Martin Dies, a Texas attorney with the firm of Stephenson, Thompson, and Dies in Orange, Tex., which is working on numerous cases. "It seems a natural place to put the liability for the simple reason that they [the manufacturers] knew that the asbestos would become friable."

"In my opinion," he added, "it's a very fertile ground for product-liability litigation."

"This area is just beginning to open up," said Terry Richardson, an attorney with the firm of Blatt and Fales in Barnwell, S. C., which is also working with school districts. "We see it as a tremendous opportunity for local school systems" to recover costs.

For school officials, the issue of asbestos removal has become more urgent since June, when the Environmental Protection Agency (E.P.A.) issued its long-awaited regulations (See *Education Week*, June 2, 1982).

Those regulations require schools to inspect for asbestos and analyze substances suspected of containing it. If they find asbestos, schools must notify parents and employees that the substance has been found and advise them of ways to avoid exposure to it. The inspections and notification must be done by next June.

Recovering Removal Costs

Given the public pressure to remove the asbestos, which school officials suggest may become considerably stronger as parents learn of its presence, attorneys anticipate that more and more districts may turn to the courts to recover their costs.

"We are extremely optimistic and think that if a school district had to pay taxpayers' money to remove the asbestos because the manufacturer didn't warn them, they should be reimbursed," said Mr. Richardson.

So far, according to attorneys, about six such suits have been filed. However, they say, school officials from all over the country have sought advice about litigation.

Philadelphia's suit, filed in Pennsylvania's Common Pleas Court in July, is the latest of such actions. The district has so far spent nearly \$1 million, and expects to spend a great deal more, to control the fibers, according to district officials.

The suit names 61 manufacturers and processors as defendants, and lawyers for the schools are currently sorting out those who may be liable from those who are not, according to Arthur Raynes, a lawyer with Raynes, McCarty, Binder and Mundy, the firm hired by the district.

The lawyers plan to delete Manville from the defendants, since the bankruptcy action has frozen all suits against the firm, and expects to proceed with the suit against the

firms that appear to be liable.

They plan to use the Justice Department's report in their arguments, Mr. Raynes said, and also to argue that the asbestos companies maintained a "conspiracy of silence" about the potential hazards of the substance. No trial date has been set, and attorneys are unsure when the suit might be heard.

Mr. Dies, the Texas lawyer, has already filed two suits on behalf of Texas districts and expects to file two more in the near future. But perhaps as many as 30 districts, in Texas and elsewhere, have expressed interest in the possibility of litigation, and Mr. Dies said that he may end up filing about a dozen suits on behalf of school districts.

He said that the Justice Department's report may be encouraging some officials to file, although he pointed out that there is a natural "lag time" before the effect of the report will be felt.

First Suit Heard

A suit filed in New Jersey in the spring of 1980 may be the first to be heard, according to lawyers working on the case. The Cinnaminson Township Board of Education filed suit against National Gypsum Co. and U. S. Gypsum Co., seeking to recover the more than \$1 million that the district spent to remove three ceilings. The suit was filed in the Superior Court of New Jersey and subsequently moved to the U. S. District Court in Trenton.

The case may be heard in November or December, according to Michael Vassalotti, a member the law

firm hired by the school district. He said the district's argument will hinge on basic product-liability law: If you manufacture a product that is unsafe, you are responsible for compensating the innocent purchaser. The district will also argue that this responsibility extends to economic loss as well as injury.

Other New Jersey school districts have considered filing suit, Mr. Vassalotti said, but so far none has been "really anxious to jump in."

Christine Weger, associate counsel for the New Jersey School Board's Association, said that the association has told its members that the Justice Department report is available and that it would work with any boards that were interested in filing suit. But so far, she said, the association "didn't get an overwhelming response."

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In South Carolina, Mr. Richardson said, two districts have filed suit and several more have considered doing so. Attorneys are gathering evidence for several more cases, he said, and have consulted with many large districts in other states.

Districts may be reluctant to sue for any of several reasons, attorneys speculate. Some districts may be uneasy because most school lawyers are unfamiliar with product-liability litigation. Mr. Richardson said that many with whom he has spoken have not been aware that the avenue is open to them.

Others may be waiting to see how the cases now pending turn out. "It may be that the litigation is so extensive [time-consuming] that districts are going to wait," Ms. Weger suggested.

Others may be concerned that they may not be able to prepare

their cases before the statute of limitations runs out, several attorneys speculated.

Officials in some districts, however, may simply want to get rid of the asbestos and forget about it. "I think they've gone through a nightmare in the past few years getting it out," one legal advisor said. "Now, they don't want to throw bad money after good."

'World of Difference'

In a number of districts, school officials have already inspected and removed asbestos from many buildings. E.P.A., however, has no national statistics on how far states have progressed in their asbestos-inspection programs. A federal official said that significant variations exist: "You go from one state to another and there's a world of difference," he said.

Some districts began removing asbestos several years ago after parents became concerned about possible health hazards.

In New York City, for example, the issue was "forcibly brought to our attention" in 1978, when parents closed two Manhattan elementary schools where there was friable asbestos, according to a spokesman for the district. Subsequently, the district embarked on a comprehensive asbestos-abatement project and finished most of the work this summer.

And in Los Angeles, school officials began inspecting for asbestos several years ago, according to Ralph Johnston, director of maintenance for the district. In compliance with the E.P.A. regulations, the district has finished inspecting about one-third of the 11,000 structures

for which it is responsible.

So far, inspectors in Los Angeles have found asbestos at three sites, and they expect to remove or "contain" it (by sealing, walling, or otherwise controlling it) before school opens.

In the Midwest, E.P.A. regional officials in Chicago say they have received notices from about 19,000 of 23,800 schools in the area for whose inspections the regional office is responsible. Of those inspected, about 12 percent have contained the substance. Some 750 schools in the six-state region have carried out "abatement" procedures.

In Boston, school officials have inspected all buildings once and will inspect them again in the near future to comply with the regulations, according to Paul W. Mooney, senior structural engineer for the department of planning and engineering of the Boston public schools.

So far, they have found asbestos in about four buildings, Mr. Mooney said, and have removed, encapsulated, or otherwise controlled the substance when it was crumbling.

However, he noted, the E.P.A.'s requirement that school officials notify parents and employees of the presence of any asbestos—friable or not—makes it quite possible that the district will end up removing the intact asbestos as well.

Parents and teachers, he said, are very concerned about exposure to the substance and have brought in samples that they believe to be crumbled asbestos. Sometimes they are; sometimes they're not, he said, adding that only laboratory tests can definitively identify the substance.

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