



5-1996

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#### **Recommended Citation**

Mikulcik '97, Matt (1996) "Killed by Asbestos," *The Park Place Economist*: Vol. 4  
Available at: <https://digitalcommons.iwu.edu/parkplace/vol4/iss1/14>

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## Killed by Asbestos

### Abstract

Asbestos is a fiberlike insulation material that causes cancer and respiratory diseases, namely mesothelioma and asbestosis (Times, 1994). The victims of asbestos, which include people of all occupations, from asbestos-textile workers to secretaries at public schools, have no hope for a cure for their illness which causes extreme pain and possibly death for its victims. It has been estimated that some 200,000 asbestos-related claims have been resolved thus far, with 200,000 more still pending and 50 to 60 new claims being filed each day (Snyder, 1994). This paper will explore asbestos issues by looking at the history of the asbestos problem, recent events in the industry, and how the problem is changing.

# Killed by Asbestos

Matt Mikulcik

*"Tragically, nothing can be done. There is no cure for either mesothelioma or asbestosis, a thickening of the fiber of the lungs. The victims usually feel no ill effects until they suddenly find themselves short of breath. The worst affected waste away and eventually die in an agonizing, choking spasm" (Economist, 1995).*

## I. INTRODUCTION

Asbestos is a fiberlike insulation material that causes cancer and respiratory diseases, namely mesothelioma and asbestosis (Times, 1994). The victims of asbestos, which include people of all occupations, from asbestos-textile workers to secretaries at public schools, have no hope for a cure for their illness which causes extreme pain and possibly death for its victims. It has been estimated that some 200,000 asbestos-related claims have been resolved thus far, with 200,000 more still pending and 50 to 60 new claims being filed each day (Snyder, 1994). This paper will explore asbestos issues by looking at the history of the asbestos problem, recent events in the industry, and how the problem is changing.

## II. HISTORY

While attention to the dangers of asbestos has only occurred relatively recently, asbestos has been around for a long time. The first time that adverse affects as a result of asbestos were noticed and recorded was in the first century. The Greek geographer Strabo and the Roman naturalist Pliny the Elder both noticed a "sickness of the lungs in slaves whose task it was to weave asbestos into cloth" (Brodeur, 1985). They were not concerned with the possibility that asbestos might be a health hazard but were instead enthralled by its "magical properties" that its delicate fibers "not only can withstand the

fiercest heat but are so soft and flexible that they can be spun and woven as easily as fibers of cotton" (Brodeur, 1985). It was these amazing properties that brought asbestos into the modern world. During the industrial revolution, the properties of asbestos led it to be used extensively as an insulator. The fact that it might be dangerous had been long forgotten.

Information on the dangers of asbestos resurfaced in 1900. Dr. H. Montague Murray, a physician in London's Charing Cross Hospital, was able to establish a presumptive connection between asbestos and severe pulmonary fibrosis, a respiratory disease. He had performed a post-mortem examination on a worker who had dealt with asbestos for fourteen years and had found the cause of his death to be linked to asbestos (Brodeur, 1985). In 1924, the first clear case of death due to asbestos was established by Dr. W. E. Cooke. Between 1928 and 1929 an investigation of asbestos-textile workers was conducted by Dr. E. R.A. Merewether that found that the incidence of fibrosis increased in direct proportion to the number of years worked to the point where 81% of those employed twenty or more years had it (Brodeur, 1985).

None of these findings or others like them did anything to interrupt the flow of business in the asbestos industry. It wasn't until 1961, nearly two thousand years after the possible negative effects of asbestos had been first noticed, that the first case was brought against the asbestos industry. Claude J. Tomplait,

who had worked in the asbestos industry about twenty-five years, brought a claim against his employers Armstrong Contracting & Supply Corporation, Industrial Insulators, the Johns-Manville Corporation, and the Aber Company, and thereby brought a claim against their insurers the Travelers Insurance Company, the Texas Employers' Insurance Association, and the Queen Insurance Company of America (Brodeur, 1985). He was filing for workers compensation for the illness he developed due to asbestos, but his claim was denied on the basis that he failed to establish his illness developed on the job. He then filed a lawsuit for disability and asked for the maximum amount of \$14,035. He ended up settling out of court with the insurance companies for a total of \$7,500, a very small amount for his disability. He then proceeded to sue the manufacturers of the asbestos insulation which he had worked with.

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“Since no one knew for sure how great the exposure to asbestos was, no one knew what the damages would be.”

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To win he needed to show that the manufacturers, mainly Fibreboard, should have foreseen the dangers and warned the users of their products (Brodeur, 1985). To support his case, Tomplait had a testimony from Dr. Selikoff that during the span of time that Tomplait worked “literally hundreds of studies on the relation between asbestos-dust exposure and the occurrence of asbestosis were published by independent academic and scientific investigators” (Brodeur, 1985). These studies should have alerted the manufacturers of the dangers associated with asbestos, and they therefore should have warned the users of asbestos. His case fell through, however, when he could not

remember precisely on what jobs he had used Fibreboard products. The same strategy worked in the case *Borel v. Fibreboard* which immediately followed the Tomplait case. The case argued successfully that Fibreboard products were unreasonably dangerous “because they did not carry adequate warnings of the foreseeable dangers associated with them” (Brodeur, 1985). The Borel case set the precedent for many, many cases that were to follow as Fibreboard, and therefore its insurer, had been found liable for the asbestos claim.

### III. RECENTLY

After the success of the Borel case, people who had been sickened by asbestos started to come forward. Case after case came, and in almost all instances the injured person won. The enormous number of these cases that might still come in is not known, but Dr. Selikoff has estimated “that among the twenty-one million living American men and women who had been occupationally exposed to asbestos between 1940 and 1980 there would be between eight and ten thousand deaths from asbestos-related cancer for each of the next twenty years” (Brodeur, 1985). This is a huge amount of potential liability, and that does not even include those who are injured by asbestos but do not die. Paul Brodeur writes that in the 1980's “it was recognized in financial circles that asbestos litigation was going to cause a hemorrhage of serious, if not catastrophic, proportions in the assets of asbestos-insulation manufacturers and their insurers” (Brodeur, 1985) and the main reason for this was uncertainty. It was going to be hard for the insurers to set aside reserves if they did not know what kind of losses to expect. Since no one knew for sure how great the exposure to asbestos was, no one knew what the damages would be.

With this possibility for huge losses comes the desire not to be the one who has to pay the



claims. The manufacturers have been trying to pass the bill on to the insurers, the insurers are trying to avoid getting it, and if they do get it, the insurers are trying to get other insurers to pay for it.

Most of the manufacturers of asbestos insulation had bought insurance to protect them from any potential lawsuits that might occur. As the lawsuits come in, the manufacturers are trying to collect on their policy. They claim that they bought the insurance so that it would cover problems such as these, and so they want to collect. For example, Fibreboard, in attempt to protect the company, "bought two no-limit insurance policies that could save the company" (Forbes, 1993) in light of all the cases brought against it.

The insurance companies are fighting these claims. The insurance companies are trying to argue that there was no way they could have had knowledge about the potential dangers of asbestos, and that when selling the policies, manufacturers withheld information about the dangers. As a result, they claim that the policies are fraudulent and therefore the manufacturers are responsible to pay the claims. Sometimes this argument works. For example, an appellate court has ruled that insurers of Owens-Illinois Inc. (O-I) "may have cause to argue that they were fraudulently misled by the company over its potential future asbestos liability" (Otis, 1993). The courts ruled that O-I's losses were expected and intended due to prior knowledge of the dangers of asbestos, and therefore the insurers are not liable. This is the exception though, not the rule. In most cases, the court has ruled against the insurers. In one extreme case dealing with Commercial Union insurance, Judge Giles is reported to have said "[w]hat is it that Commercial Union could not have discovered using its own research with respect to asbestos? What research could it not have done? What intelligence did it not have?" (Brodeur, 1985). While allegations

such as these may seem rather harsh, generally they are relevant. Many insurers have known for a long time the dangers of asbestos, and Brodeur points out that discovering it was "a simple matter of studying their actuarial tables and discovering that the [asbestos] workers were experiencing premature deaths" (Brodeur, 1985). The insurance companies by and large knew of the dangers when they wrote their policies, which is why their claim of ignorance tends to fail. They had made the decision to collect the premiums from the asbestos insurance, invest, make a nice profit, and have money left to pay the claims when they came in. This strategy was working for years, but after the Borel case, expenses got to be too much as the claims started piling up. As a result, the insurers have made their best effort to get out of the market but have generally failed.

Eventually realizing that they were going to have to pay the claims, insurers changed from pointing the finger at the manufacturers to pointing the finger at other insurers. The insurers came up with two different theories in the 1980's on how to determine who should pay — the exposure theory and the manifestation theory. The exposure theory holds that "all insurers providing coverage to the asbestos manufacturer during the period the injured person was exposed to the asbestos should share the cost of indemnifying and defending the policyholder" (Snyder, 1994). This also meant that the manufacturer would have to contribute if there were periods that the manufacturer was self-insured. On the other hand, the manifestation theory holds that "the insurer covering the manufacturer when the disease became clinically evident must indemnify and defend the policyholder" (Snyder, 1994). This also meant that as there was no coverage at the time of manifestation, the manufacturer would have to pay the required compensation.

Which theory a particular company was in favor of depended on how their asbestos

insurance was written. If the company had written a lot of coverage in the latter part of the century, they were likely to be in favor of the exposure theory. The exposure theory spreads out the burden more, and a late entering company was not likely to get burned. If they had written most of their coverage in the early part of the century, the company was likely to be in favor of the manifestation theory. They were hoping that the late entering companies would have to pay the bulk of the claims. The courts initially favored the exposure theory, but then they switched to a new theory. This new theory, the triple-trigger theory, holds that "all of the manufacturer's insurers during the periods of exposure to asbestos, the subsequent periods of the development of the disease and the manifestation of it should provide coverage" (Snyder, 1994). The courts realized that asbestos was a disease that took time to develop, and therefore felt it was unfair to place the burden of compensation on a single insurer. They felt that the responsibility to cover should be spread out, initially spreading it out to earlier insurers and then recently expanding it to include all the insurers involved.

#### IV. CHANGES

There are three noteworthy changes that are occurring in the asbestos industry. The first change comes in the composition of the bodily injury claimants. Asbestos claims have traditionally come from people who have worked with asbestos, but "while the first torrents of asbestos bodily injury claims have come from workers in shipyards and construction sites who were directly exposed to the deadly substance, this . . . wave could entail claims from just about anyone" (Wojcik, 1993). The type of people claiming damages is changing. There have been more than 250,000 lawsuits filed by people that have been "exposed" to asbestos and there are at

least another 200,000 expected (Wojcik, 1993). These lawsuits are being filed by people who did not work directly with asbestos, but rather were exposed to it as an unknowing side effect of the job they chose. These people can include anyone from a secretary exposed through fibers filtering through the air ducts to maintenance workers exposed to asbestos insulation around leaky water pipes (Wojcik, 1993).

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"There have been more than 250,000 lawsuits filed by people that have been 'exposed' to asbestos and there are at least another 200,000 expected."

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The second change is from a focus on bodily injury to a focus on property. On November 7, 1994, an Illinois appellate court ruled that insurers of United States Gypsum Company were liable for \$600 million in asbestos property claims (Times, 1994). Claims had been brought against United States Gypsum for asbestos removal and damages, and the courts ruled that the insurers would have to pay. The court ruled that "all policies in effect from the date of installation to the date of removal of asbestos-containing products provide coverage" (Times, 1993), in effect following the triple-trigger theory that was applied to bodily injury claims. This is a significant blow to insurers since according to Garry Chandler there seems to be a "shifting to claims regarding property damage and asbestos abatement...where asbestos removal involves possible business interruption and financial loss" (Chandler, 1992). The reason this is significant is that asbestos is a common material found in many buildings. It is used in many building materials such as acoustical



ceiling treatment, "popcorn" ceilings, thermal insulation, plaster, drywall, floor tile, ceiling tile, and 3,600 other building materials (Gaudet, 1995). With asbestos so common, and the concern about health effects so strong, a lot of abatement has occurred and will continue to occur. With this abatement comes significant costs which includes both the expense of getting the work done and the possible loss of resources. If a commercial building has to be closed for a period of time so the asbestos can be removed, this will be expensive in terms of cost of loss of use. To recover these losses, companies are turning to the asbestos companies and manufacturers, which are now turning to the insurers. With the prevalence of asbestos, the insurers are going to have to change their concern from just bodily injury to include property as well in order to prepare for the future wave of claims.

The third change is occurring in the way people are dealing with asbestos. Companies that have an asbestos problem in their buildings are starting to look to means other than property insurance to deal with their risk. They are changing to an asbestos control approach. Asbestos removal is expensive and Joseph Gaudet writes that "the mere existence of asbestos does not mean occupants of the building are in danger" (Gaudet, 1995). If handled correctly and if the asbestos-containing materials are kept in good condition, he feels that "asbestos is a manageable hazard." This is a very delicate situation, however, and must be dealt with extreme caution. Gaudet recommends following an operations and maintenance (O&M) program which should include "employee awareness training, periodic inspection protocols, extensive record-keeping, personnel and air monitoring, maintenance techniques, emergency response and emergency contact" (Gaudet, 1995). The risk managers have to be very careful and make sure that everything is handled correctly to maintain safety and to minimize exposure.

The advantages to controlling the asbestos rather than immediately removing it are two-fold-- 1)it allows time to budget for the removal and 2)"even the EPA has taken the posture that managing asbestos in place can sometimes be better than removing it" (Wojcik, 1993). By removing the asbestos, the particles have the potential to get shaken loose and to start circulating in the air. By controlling it, the company has more time to plan an efficient and effective way to remove the asbestos. John Dietrichs is quick to point out that while an O&M program "allows building owners to put off abatement until a later date" it is important to keep in mind "that while O&M is an inexpensive alternative compared to total abatement, it is only a temporary one" (Chain, 1993). The O&M program is just a means to an end, since eventually all the asbestos will have to be removed.

## V. CONCLUSION

Asbestos is a material that has ruined many lives, yet if any of the major insurers of the asbestos industry "had gone public with their inside knowledge, they might have been able to save tens of thousands of lives and untold suffering and pain" (Brodeur, 1985). The insurers knew of the dangers of asbestos, as did the manufacturers at a later date, yet none of them felt inclined to release this information to the public. To have done so would have undoubtedly resulted in a huge rush of claims as people experiencing adverse affects from asbestos came forth. The insurers decided to take a risk and try to keep things quiet, and now they are regretting their decision as the number of claims filed is well beyond what it would have been earlier. With the hundreds of thousands of liability claims already in, the thousands more still coming in, and the property claims starting to reach respectable levels, the companies that wrote insurance for asbestos liability are not in a good position.

Only time can tell what the uncertain future will hold, but it does not look bright for asbestos insurers.

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Matt Mikulcik ('97) is spending the Spring semester of '96 in Austria. An Economics major, he hopes someday to work for an insurance company as an actuary.

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# Risk Associated With Different College Majors

Dan Scholz

## I. INTRODUCTION

There have been numerous studies to show that students in engineering, and scientifically oriented fields typically have higher average earnings than students in broader studies like the humanities and English (Altonji, 1993; Angle and Wissmann, 1981; Berger, 1988 "cohort"; Reed and Miller, 1970). The question arises as to why there is a difference. While there are probably many different factors for the wage differentials, risk must be considered one of those factors. If different risks are associated with different majors, it would certainly be feasible that wage differentials would arise.

What leads to different magnitudes of risk? Presumably the job-specific training inherent in the field of study would play a large role in determining the amount of risk. Gary Becker has touched on this issue when analyzing the returns to job specific training and general training within a firm. Becker defined general training as "being useful to many firms besides those providing it" (Becker, 1975, p.19), whereas job-specific training is only useful to one firm. This logic can be extended a step further to include types of education. Liberal arts-type educations should provide the equivalent of general training which can be applied to many different fields, while technical-type educations should be useful to only a few fields in the same manner as job-specific training. If a technically educated individual desires to try his/her hand at another field, or is forced to for the lack of job opportunity within his/her own field, it is likely that they will not be as apt as others with broader, more malleable educations. Hence they will suffer "risk" from specific training. In Becker's analysis, he finds that general

training will not result in increased wages paid by the employer, but job-specific training will. This is because the general training can be utilized by other firms, while the specific training cannot. With similar logic it can be hypothesized that those in technical fields should earn a higher wage on average, while those with liberal arts educations should earn less on average. Because of the limited application of technical fields, they are presumed to have more risk. The presence and magnitude of this risk is to be studied here. Does this risk really exist, and if so what fields are considered the least and most risky?

It would be of great interest to determine the relative riskiness of different majors. If there is a significant difference in risk, risk can be considered an important determinant of wages in certain fields of study. From this, students and others will be able to make more informed decisions when it comes to evaluating different career choices. If it is determined that there is no significant risk associated with higher average wages, then alternative explanations for wage differentials can be pursued.

## II. DEVELOPMENT OF THEORY AND RELATED WORK

It has been established in the literature that investment in education will yield a higher return in terms of average earnings. This is consistent with human capital theory developed largely by Becker, which says that increasing one's ability, or human capital, increases one's productivity and thus a higher return on this capital may be demanded by the individual (Ehrenberg and Smith 1991). In fact this has been the case in many recent studies. Joseph G. Altonji (1993) finds that