

Asbestos Awareness Training; Protecting Both Adjusters and Insureds

By Everette Lee Herndon Jr.

Is a lack of training in asbestos awareness resulting in the insured and others being unnecessarily exposed to the dangers of asbestos? Are adjusters being exposed to potential asbestos-containing materials by insurance companies that should know better? These are questions every property adjuster should be concerned about.

Adjusters are often among the first people on the scene of a loss that may involve asbestos-containing materials (ACM) - any material containing more than one percent asbestos - or potential asbestos-containing materials (PACM), found in many commercial and residential buildings constructed prior to 1981. An Occupational Safety and Health Administration (OSHA 29CFR 1910.1001(j)(1)) regulation states that "*Employers and building owners are required to treat installed TSI [thermal system insulation] and sprayed on and troweled-on surfacing materials as ACM in buildings constructed no later than 1980 for purposes of this standard.*" (TSI, in this instance, refers to ACM applied to pipes, fittings, boilers, breeching, tanks, ducts or other structural components to prevent heat loss or gain.)

In other words, according to OSHA, buildings built before 1981 are presumed to contain asbestos unless tested and proven otherwise.

Under OSHA requirements, commercial building owners and managers have the responsibility to determine the presence, quantity and locations of ACM and PACM in their facilities. However, at the onset of a loss adjustment, such information may be overlooked or not immediately available to the adjuster. Homeowners, not governed by OSHA regulations, are not charged with the same responsibility, and the adjuster should not expect the homeowner to provide any alerts of possible asbestos. Health hazards may exist in both types of structures.

In order to properly protect the insured and others, and to properly determine the extent of the covered loss, the adjuster should have an awareness of ACM and PACM. If the covered loss involves ACM, the insurance policy will probably have to cover the added costs and efforts needed to properly abate the damage and the resultant contamination. Unfortunately, it appears that few insurance companies or claims companies are conducting any asbestos awareness training for their claims personnel.

Training materials available

According to OSHA Fact Sheet 93-06, "**Better Protection Against Asbestos in the Workplace**":

Asbestos is a widely used, mineral-based material that is resistant to heat and corrosive chemicals. Typically, asbestos appears as a whitish, fibrous material

which may release fibers that range in texture from coarse to silky; however, airborne fibers that can cause health damage may be too small to see with the naked eye. ... Exposure to asbestos can cause asbestosis (scarring of the lungs resulting in loss of lung function that often progresses to disability and to death); mesothelioma (cancer affecting the membranes lining the lungs and abdomen); lung cancer; and cancers of the esophagus, stomach, colon, and rectum.

Symptoms of these diseases generally do not appear for 10 to 30 years after the exposure.

In August 1994, OSHA issued revised regulations covering occupational exposures to asbestos in all industries covered by OSHA, which became effective on Oct. 1, 1995. OSHA regulations, e.g. 29CFR 1910.1001 (asbestos in general industry) and 29 CFR 1926.1101 (asbestos in the construction industry), were put in place primarily to protect certain large categories of workers whose job requirements placed, or potentially placed, them in contact with asbestos on a regular basis: shipbuilders, construction workers, automotive brake workers and building maintenance and custodial personnel.

Asbestos training is mandated by OSHA and relates to the type and level of exposure expected. Class I asbestos work is the most serious exposure, encompassing activities involving the removal of TSI and surfacing ACM and PACM, and requires Level I training. Class III asbestos work involves activities in which small amounts of ACM or PACM are disturbed; 16 hours of training is required. Class IV asbestos work involves maintenance and custodial activities - during which employees come into contact with, but do not disturb, ACM or PACM - and activities to clean up dust, waste and debris resulting from Class I, II and III activities. Class IV work requires only Level IV training in asbestos awareness, which is a minimum of two hours.

While adjusters are not specifically mentioned in these regulations, work requirements often place adjusters in situations and loss locations where they will encounter asbestos on a fairly regular basis, usually at a contaminated site at which ACM may have been severely disturbed. As such, adjusters should receive some training (at least Level IV awareness training, if not Level III training) in order to educate them concerning PACM and to make them aware of when to expect the presence of asbestos and when to have a contractor or an asbestos expert check for the presence of asbestos.

The U.S. Environmental Protection Agency (EPA) has an Internet web site listing 46 PACMs that potentially exist in any structure constructed prior to 1981 (see <http://www.epa.gov> for details). The most commonly encountered items are acoustical and decorative materials on walls and ceilings, sheet rock and pipe and boiler insulation. Adjusters should be aware of PACM and it should be part of their training and duties to request that a qualified contractor check for or test for asbestos whenever it appears that one or more of the materials may be involved in the loss and may require demolition, removal or reconstruction.

OSHA also provides, free of charge, software that can be downloaded and used to assist contractors, building owners or employers in determining their responsibilities in relation to asbestos. The program, called The Asbestos Advisor, Release 2.0, is interactive and easy to use.

Not just a law, a duty

Whether the OSHA regulations, or any state or local regulations, legally require insurance companies or claims companies to train their claims personnel in asbestos awareness may be debated. Attorneys may argue that the OSHA regulations do or do not require every employer whose employees may be exposed to asbestos to educate those employees about asbestos hazards and possibly to even provide protective clothing and medical exams to employees subject to asbestos exposure.

However, whether the law requires it or not, good claims practice, common sense and a proper concern for employee safety should mandate that insurance companies and claims companies provide training in asbestos awareness and minimize the chances of exposure. Good claims practice requires that insurance companies and adjusters be aware of the potential asbestos hazards in pre-1981 buildings and take proper affirmative steps to have qualified personnel check for the hazard and deal with the contamination, if found. This is especially true in homeowners and residential claims where the policyholder may not have any asbestos awareness or experience.

An insurance company or claims company that either knows or should have known of the potential for asbestos contamination at a loss scene, and has not trained its personnel to at least properly inquire about the possible hazard, is violating its duty to the insured property owner or tenant. The insurance company has a duty to its policyholders to properly train and educate adjusters to be aware of well known potential hazards, such as asbestos, that may be encountered in connection with covered losses. The training should include the steps needed to have the hazard properly contained and disposed of by a qualified and capable contractor or asbestos consultant.

The insurance company may encounter asbestos problems on an almost daily basis. However, the residential policyholder will probably only encounter asbestos contamination once in a lifetime, and then in a stressful situation such as major damage to a home. The insurance company and the adjuster are the professionals that the policyholder relies on to deal with the loss properly and safely. The adjustment of a loss involving ACM in which the asbestos is not detected or abated may leave the homeowner with a contaminated structure, contaminated clothing and a living environment that is potentially life threatening. The liability exposure, not to mention the bad faith potential, is enormous.

The practice of some insurance companies of selecting and hiring the contractor does not relieve the insurance company of the responsibility of inquiring about possible asbestos contamination in pre-1981 buildings. In those cases, the company-selected contractor may be considered an agent of the insurance company. The insurance company should train its adjusters to inquire about the presence of asbestos and mandate that the selected contractors be asbestos-qualified as required by law.

In cases in which the policyholder selects the contractor, the insurance company and the adjuster still have a duty to at least question the contractor concerning the possible presence of asbestos, for the safety of the policyholder and the adjuster, if nothing else.

Physical, financial cleanup costs

The presence of asbestos will affect the cost of demolition, removal and disposal of debris. The determination and verification of this covered cost is a responsibility of the adjuster. If the original loss (fire, water, etc.) is covered, the additional cost due to asbestos contamination from the damaged ACM is probably also covered.

The presence of ACM will necessitate special precautions and methods in the demolition, cleanup, removal and disposal of affected materials. OSHA, state and local regulations mandate very specific and controlled work and disposal methods. Asbestos may be handled only by personnel specially trained in asbestos abatement. The existence of asbestos in the damaged property will result in an increased claims cost for the structures involved.

An additional hazard is the possible contamination of any clothing or soft goods exposed to airborne asbestos fibers or in direct contact with the ACM. Remediation or cleaning of soft goods is problematic and depends on the nature of the goods themselves, the extent of the contamination and the cleaning process used. Remediation of contaminated soft goods must also be done by an expert. Potentially, all soft goods may have to be replaced if they cannot be safely cleaned.

For residential properties, the adjuster must also take into account the possibility that cleanup and repair may take longer than usual, necessitating a larger expenditure for additional living expense. For commercial properties, there is a corresponding business interruption or extra expense consideration. Early identification of the asbestos exposure, prompt engagement of qualified asbestos consultants and abatement personnel, and coordination with the contractor doing the repairs are essential to getting the loss taken care of quickly and correctly.

In addition to the possible health hazard to the insured, there is the health hazard to the adjuster. When an unaware adjuster inspects a damaged building, whether it be for a first-party property loss or a third-party liability claim, the adjuster may be unknowingly exposed (as well as unknowingly allowing others to be exposed) to unhealthy, excessive and often potentially dangerous levels of asbestos fibers.

An employer who knows, or should have known, of the dangers of asbestos and requires the unaware employee to become exposed to the hazard, is not only dealing unfairly with the employee, he may be breaking the law.

The dangers of exposure to asbestos and the increased loss payments due to mandated remediation have become common knowledge in the past 10 or 15 years - so much so that insurance companies and claims companies cannot reasonably plead ignorance. Such common knowledge, coupled with the promulgation of OSHA regulations in 1994 that presume that all

buildings constructed before 1981 contain ACM, makes it imperative that insurance companies, claims companies and adjusters educate themselves about asbestos. A lack of asbestos awareness is a danger to oneself and to others and may be an open invitation to litigation.

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