

Your Back Yard Can Kill You - Insecticides
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Transcript of tape from Loyola Law School
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Toxic Torts Panel -
Comments of Chris Angelo, Esquire \

"Well, I'm going to talk quite literally - 'Your backyard can kill you,' and I'm going to talk a little bit, not so much about the Mobil litigation, but about insecticides because I think that's an area where we have the least amount of knowledge. And one of the reasons why we have the least amount of knowledge is because there's a very close kindred relationship between insecticides and chemical warfare. Most of the information on insecticides is classified top secret in every government in the world, starting from Nazi Germany.

When I was an insurance defense lawyer, before there was a pollution exclusion in comprehensive general liability (CGL) insurance policies, I found toxic cases and toxic insecticide cases very easy to defend for the defendant because judges were then, and today, very very sympathetic to the business position on relevancy in a trial. How can you introduce evidence of toxic exposure and toxic injury if most of the experts are relying upon animal studies, non-human animal studies? You cannot use animal studies to determine that if a rat comes down with cancer, so would a human being. Most times, therefore, the evidence is excluded. Unfortunately, plaintiffs' lawyers never really went beyond animal studies.

In the late 1930's, I think it was in 1937, there was a doctor by the name of Gerhard Schrader, a German, who invented the first organophosphate insecticide. That organophosphate insecticide, if any of you are World War II buffs, was chosen by I.G. Farben during the beginning of World War II as the chemical of choice to make poison gas. That poison gas was applied in the death camps, Taubin and Sarin, the same poison as has been sold by Swiss companies and German companies for the last ten years to Iraq and Libya where, apparently, they have lots of insects in the desert. It was the chemical of choice because organophosphate insecticides which are now the primary chemical of choice in household insecticides was found not only to kill insects by eating but also to kill insects by touch and by inhalation, and was also found to kill innocent civilians, Jews and non-Jews, by touch, inhalation, without any ingestion.

Most of those scientists after World War II went into the private sector, the insecticide business in Swiss companies and German companies and took that knowledge with them. Three months before the allies invaded Germany, by the order of Himmler, all documentation concerning the adverse effects on humans, not animals, not rats, on humans, of organophosphate insecticides, were destroyed. Army physicians went to Switzerland and said to these Swiss companies which are now in the top ten in the world in business, "We want that correspondence." The response was "We are, and were, neutral. We don't owe you that correspondence. We don't care if it was destroyed before you allies entered Berlin. You're not going to get it." And, we never have.

Doctor Schrader was cross-examined by allied physicians right after World War II, and testified to his knowledge about the adverse effects on humans of organophosphate insecticides. Many of those clinical signs now we'll see today. Someone who thinks he has chronic fatigue syndrome, someone who thinks that he has dysentery, or constant bowel problems, is actually in a paralysis, a paralysis caused by cholinesterase inhibition. The same cholinesterase inhibition caused many people to die in World War II death camps when exposed to Taubin and Sarin.

The Russians got the German inventors of Sarin and as they did with rocket scientists, took them to the eastern block. The allies took Doctor Schrader, and took his information and classified it as top secret. Of the three organophosphate insecticide experts with World War II knowledge as to the effects of organophosphate insecticides on human beings, which we only know from the Nazi atrocities, one of those three has been assassinated in Canada at a seminar, one other has died of natural causes, and one remaining [Schrader] refuses to testify by order of the U.S. Department of the Army because it is considered classified information as part of our chemical warfare arsenal. So what we know about insecticides is very difficult to get at. Trying to get information on what it has done to people is very difficult to get at. The courts do not allow us to introduce into evidence what it does to animals and, of course, we don't have, since World War II, thank God, any other atrocities where insecticides have been purposely applied to human beings to see what kind of neurological implications and developments have occurred in those human beings.

So then you're stuck with people who try and commit suicide with organophosphate insecticides and those studies are very remote. What it does to their blood, what it does to their neurological system, those studies are not reliable in many respects; oftentimes, are isolated reports based upon just one person. There have been no studies that have tried to coordinate the adverse effects on human beings by human suicide attempt reports and putting them together.

So the insecticide business has in their material safety data sheet finally a statement that says "cholinesterase inhibition is a complication when exposed to organophosphate insecticides." But that's all they say. They say that you should have a pest control operator apply it. If you buy it in its 100% liquid form and decide to mix it with water to apply to an apartment complex, you better have a pest control operator do that. No where does it say a licensed pest control operator.

In California no one can call himself or herself a pest control operator unless they have had a two day long written and oral exam, then they are licensed. And by being licensed they are now called a pest control operator, but that is not a federal law.

The insecticide industry says that anyone who owns land and has an interest in maintaining land, like an apartment complex owner, is therefore a pest control operator, that licensing is not required. A landlord may go, and still goes, to a retailer and says "I want 100% liquid Diazanone, Parathion, and I will mix it." And, if he does not mix it appropriately you're going to have very very concentrated organophosphate insecticide applied, usually to apartment complexes where the tenants have no idea what's being applied. And, if its in high enough concentrations it will cause neurological-nerve dysfunction and blood disorders, one of which can be thrombocytopenia, a diminishment in the blood platelet count that can require a \$100,000 bone marrow transplant.

Now, if you are in those areas of Los Angeles that are slumlord facilities that do not care because no CGL carrier will issue insurance to them, you have heavy amounts of organophosphate insecticides being applied, and all of a sudden you find that there are tremendous incidence of thrombocytopenia, leukemia and anemia. And I don't mean within a mile radius, I mean in a 50 person occupied apartment complex. Somehow we're going to have to change our laws on the definition of relevancy, because just discovering that which I had to, or did disclose today, cost \$30,000 of going through archives in Washington, D.C., that are not computerized -- World War II interrogation testimony of Doctor Schrader, not computerized. Studies done by Major Leo Alexander, only four copies of which are in private libraries in the United States.

There was a wonderful archives division in Elkhardt, Indiana owned by Myles Laboratories that had all the chemical atrocities that were committed on human beings by/through insecticide use by the Nazis - something that could have provided some knowledge for us to know what these World War II companies like I.G. Farben and its insecticide manufacturer, Bayer of Bayer aspirin fame, that is still selling insecticides all over the world - what knowledge they had from these studies that they have refused to disclose.

Unfortunately, Bayer purchased Myles Laboratories in 1978 and all of those chemical archives have returned to Germany and are not allowed for purposes of discovery, and, of course, its beyond our subpoena power. So we need more knowledge, knowledge is power, until we have more knowledge we are going to be blind and we are not going to be able to even get into the courts, particularly with organophosphate insecticides.

(more)

Q & A

Q:

I read an article a while ago that kind of touches on the kind of things you were talking about with respect to I.G. Farben. I'm wondering if you might recall from your research about this that they were pretty much untouched after World War II for their involvement in the use of chemicals in concentration camps, that later on they hooked up with Rockefeller. This was an article written by a pharmacist who did some research on this and apparently, according to this, they virtually had a lock on the pharmaceutical industry - what was ^{taught} ~~thought~~ and how it was taught in pharmacy school. Do you have any information on that?

A: Chris Angelo

Yes. During World War II there was a cartel agreement between I.G. Farben, Ciba, Ltd., Gigy, Ltd. and Sandoz. After World War II, in 1950, this cartel, by order of the UN War Commissions trial, was ordered to be broken up. Shortly after that there were also pharmaceutical divisions (I hope this is getting to what you are asking) that were developed, that started to make drugs that would treat the very blood disorders that were being caused by the insecticides. A double profit. First you cause disorder, then you try to cure it. But you don't have to disclose how its caused because our laws don't allow it. Our laws instead say that you cannot use animal studies and since you have no studies in terms of how it affects human beings, other than isolated suicide attempts, there is no way you can go to a jury, and so far, the courts have bought that.

The companies that have split off of I.G. Farben are now the same companies that we hear of all the time. I.G. Farben is still a very successful operation, Ciba-Gigley have merged, Hoffman-LaRoche and Sandoz have developed their own pharmaceutical divisions - have developed into giants. All of those are within the top ten.

The Germans were the first to make organophosphate insecticides, then thought that the Americans had it, but never put a patent on it. Well, it turns out the Americans never had it, the Americans first learned about organophosphate insecticides after entering Germany immediately at the conclusion of World War II. It was from the Germans that they not only got rocketry, but also organophosphate insecticides. Tabun, a poisonous chemical warfare gas, Sarin. Most of our chemical warfare arsenal now is derived from organophosphate insecticides. That has been found, because of the World War II experience, by all countries that have developed these arsenals since then, to be the chemical of choice. It kills quickly, it kills with neurological defects. It kills with blood disorders.

The defense on the insurance industry side, and I was an insurance lawyer as well, and it's the same defense now, is that whatever information the military has, it's a top secret piece of information, and we the private sector have never been exposed to it. So therefore, we do not have to say that if you apply a liquid pure organophosphate insecticide you should use a respirator, you should use gloves. We do not have to require that because we really don't know. We have not had access to these military secrets. So that could be true with some countries, like Australia and New Zealand, but it is not true with regard to the Swiss companies who had a boom insecticide business with Nazi Germany during World War II. It is not true with the German manufacturers of insecticides. And, those companies are not required to disclose what they learned in World War II to the Environmental Protection Agency.

They only have to disclose what they learned through their own internal studies after World War II. Well, after World War II they were broken up and they formed different corporations. Same German scientists that they hired, but because they were different corporate enterprises, they went by what they knew when their new corporations opened and that's why, when you ask them, "Well, in your material safety data sheet you say, 'You do not know what these organophosphate can cause since you opened in 1952?' [They say] "We don't know." 'But what about before 1952?' "We don't know." It's always 'since 1950 or 1952' when organophosphate insecticides were first patented after World War II. Nowhere will you see anything about knowledge such as, '...since 1937, since 1944..' It's always "since the early '50's we are unaware of any such knowledge concerning the toxic effects on humans."

Moderator: Any other questions?

Q:

How can any insurance industry allow the civilian production of these insecticides for civilian use not in a warfare use, with that potential risk behind them?

A: Chris Angelo

You're getting, you're seeing since 1983, and this is how the insurance industry handles it - a pollution exclusion. And insurance companies, and I did too when I was an insurance defense lawyer, will describe contamination by a pesticide as pollution and therefore its excluded. Therefore, they don't have to worry about it as a loss. Okay, now there's a case that I have, this is why I think when a lawyer is representing an injured plaintiff they not only have a duty to try and find the truth, but they also have a very practical duty to get money for their client.

Let's say you have a corporate tenant that's employing your client and you cannot sue that corporate tenant because 1), usually in an industrial area of town where most of these exposures occur, they are fly by night - they open one year, go out another year or two years. That's the majority in an industrialized zoned area. So you can't sue the employer and oftentimes because of poor finances, they don't have good workers' compensation. And so, when you find out you don't have any workers' compensation, you sue the landlord. But let's assume you do. It's more that you do - you sue the landowner now. I sued a landowner on the grounds of a non-possessionary environmental issue that was hotly contested. I lost the trial. I went up to the Court of Appeals. I won resulting in a landmark settlement in the millions of dollars

and that was -

(I sued a non-possessionary landowner, an industrial landowner of a premises. The corporate employer was fly by night - he was gone - my client had severe lung damage from this toxic emission.) - that it was undisputed under the lease between the industrial landowner and the corporate tenant, my client's employer; that there was no right of reentry under the lease, that the sole right of possession in the property belonged to the employer, my client's employer.

I sued the landowner on the theory that a non-possessionary landowner who has no contractual right to exercise possession over that land may still be held liable for a failure to inspect during a renewal of the lease or in any other contractual right. That he has a non-indemnifiable duty.

The standard contract provision that states that only the possessor of land has that duty, only the employer [has that duty] is, as a matter of public policy, unenforceable.

Now, what's also important about that when you get into insurance coverages and getting money for your client - not just getting to the truth, to be practical also, the landowner has a commercial general liability insurance policy. It has a pollution exclusion. If it was a non-employee that was injured, a s_____ in corporation, the employer had a pollution exclusion. But you are not suing the landowner for pollution. You are suing the landowner for failure to inspect for toxic and other safety hazards. The failure to inspect gives rise to negligence, not the act of polluting, and for that reason, there would be an exclusion if you sued the employer under pollution exclusion. But there would not be an exclusion in the comprehensive general liability policy for the landowner and it was the landowner that paid the entire amount of the money. So, after the Court of Appeals came down, saying 'yes,' and in fact it was a conservative Court of Appeals to boot, it said 'yes, that in today's modern, complex society a commercial landowner who is making profits from those that are polluting the environment has a duty, a checks and balances duty, to check to see what that is doing to people, what it's doing to the environment and that can be used, not just in the personal injury scenario. The way the Court of Appeal opinion, a published opinion, M_____ VS. BAUER COMMODITIES is written, it can apply to governmental agencies who are now trying to get toxic cleanup expenses back from the polluter. Now, they may not only have to just go after the polluter, they can go after the commercial/industrial ___ as well....

Moderator:

Any other panelists want to speak to that issue - the insurance issue?

End of tape.