

## **Ailments a Dilemma pose dilemma for workers' comp.**

**by: Jim Morris**

CLUTE -- Here is Robert Lara's day: Drag out of bed. Struggle to get dressed and force down some food. Sit on the couch and stare blankly. Nod off frequently. Move to the front porch, if the weather is nice, and sit and stare some more. Have bouts of confusion, irritability and paranoia.

Lara's colorless life is not much different from Mark Ott's. Once a bright, well-muscled rock climber and weight lifter, Ott has become a frail, moody recluse with a childlike dependency on his wife.

Two men with similarly puzzling afflictions: dramatic weight loss, disorientation and fatigue. Two men with despondent, angry wives. Two men who gave years to the petrochemical industry -- Lara as a pipe fitter for Dow Chemical Co. and Ott as an electrician for Shell Oil Co. -- and now blame that industry for overexposing them to compounds known to disrupt the nervous system.

Two men who tested the recently restructured Texas workers' compensation system -- and came away empty-handed.

Perhaps they made weak cases. Perhaps their ailments are, as doctors for Dow, Shell and the companies' insurers surmised, all in their heads, or unfortunate acts of fate.

Other doctors, however, believe that Lara, 51, and Ott, 38, show ample evidence of damage from neurotoxic solvents present in their former workplaces. The workers' failure to win even minimal benefits through the Texas comp system may, in fact, point up the system's inability to deal with illnesses, which often have long latency periods and untraceable sources.

Todd Brown, executive director of the Texas Workers' Compensation Commission, acknowledged as much in a recent interview. The system is best equipped, he said, to handle "impact injuries" -- broken legs, wrenched backs, severed fingers. The injury either happened on the job or it didn't. If there is a dispute in such cases, it is usually over the degree of the worker's impairment.

Illnesses, however, pose a dilemma: Where and when, exactly, did this insulator, who worked for a dozen contractors, inhale the fibers that caused his asbestosis? What caused this pipe fitter's chronic myelogenous leukemia? Is this painter's asthma occupational in nature or hereditary?

Brown knows that many sick workers never file comp claims. If enough of them did, he said, "It would possibly break the system."

Ultimately, Brown said, it may be necessary for Texas and other states to create separate programs to compensate victims of occupational disease. In the meantime, workers such as Lara and Ott can face stiff challenges from the moment they decide to file comp claims. (Under Texas law, they cannot sue their employers.)

THE first challenge may be to find a lawyer who will take the case. Before the Texas Legislature revamped the state's comp system in 1989, plaintiff's attorneys could make good money on comp cases and many specialized in them.

Among other things, the new law, which took effect in 1991, did away with lump-sum settlements for workers. The workers' lawyers used to receive portions of those often-sizeable sums; now they must file for fees as they perform the work and are held more accountable in other ways.

As a result, most workers now show up at decisive "contested case" hearings without legal representation. The insurance companies on the other side almost always have counsel. Neither Lara nor Ott had an attorney: Ott was represented by his wife, Rae, and Lara by an officer of his pipe fitters local.

Lara, a pipe fitter at the Dow complex in Freeport for 15 years, recalls brushes with benzene, a neurotoxin and carcinogen, and chlorine gas, a severe respiratory irritant. "You can't breathe," Lara said, describing the effects of chlorine. "Your chest hurts. You feel like hell."

Ott, an electrician and supervisor at Shell's Deer Park refinery for 13 years, said he regularly worked around benzene, toluene, acetone and other solvents, as well as ammonia and chlorine.

Neither man knew the intricacies of the workers' comp system, however, and neither was able to make his case.

They did not know, for example, that workers whose comp claims are challenged may be sent to specialists who -- unknown to the workers -- make money performing "independent medical evaluations" for industry and its insurers.

Lara and Ott were sent by their plant doctors to Dr. George Delclos, a Houston pulmonologist. Delclos diagnosed essentially the same thing in both men: depression unrelated to work.

Although Delclos has impressive credentials -- he is director of occupational medicine at the University of Texas School of Public Health -- he has a history of testifying for industry, especially in asbestos-exposure cases. Delclos said he tends to be conservative in diagnosing asbestos-related disease and chemical sensitivity but added, "I don't cater to anyone."

LARA'S wife, Severa, said that if she had known about Delclos' industry ties, she would have raised objections about him.

Rae Ott claims that several Shell employees tried to shame and intimidate her husband after he got sick and that the company refused to continue his salary unless he signed forms declaring his illness to be nonoccupational. Shell officials deny ever pressuring any employee to make such a declaration.

She bears even more animosity toward doctors, who, in her eyes, are beholden to industry.

"The chemical companies could not do what they do without the cooperation of the doctors," Rae Ott said.

Doctors can make good money performing examinations for insurance companies. Brown said he has seen bills as high as \$2,400 for a single exam.

Asked if the prospect of such lucrative fees might cause some doctors to lose their objectivity, Brown said, "There is the potential for that to happen. I would hope the integrity of any physician would not allow that to happen."

Brown said it is simply "the game of comp" for a worker to seek maximum benefits and the worker's employer, and its insurer, to seek minimum benefits or none.

"The sad thing about it is, I can give examples of wholly unethical doctors on both sides," he said. Just as some may be swayed by insurance money to declare sick workers fit, others may delay diagnoses or extend treatment of illnesses to rack up fees for physical therapy, tests and other services.

Brown said the comp commission should be concerned only with doctors' adherence to commission rules and "shouldn't be forced to police the medical community" in search of ethical lapses. That responsibility, he said, rests with the Texas State Board of Medical Examiners.

Still, Brown said, the commission is drafting a rule that would establish a maximum fee for independent medical evaluations in an effort to "level the playing field."

SEVERA Lara and Rae Ott maintain that there was plenty of medical and scientific evidence to suggest that their husbands' problems were caused by chemicals.

Dr. Dale Haufrecht, a Houston neurologist and an assistant professor at Baylor College of Medicine, concluded in a report that "Mr. Ott's symptoms are directly related to . . . multiple chemical exposures" -- primarily benzene -- at Shell in May 1992. A Shell internal report states that on May 1 and May 9, 1992, benzene vapors were detected in and near the control room of the unit in which Ott worked. Shell maintains that the benzene levels didn't get high enough, and the vapors didn't stay around long enough, to pose any danger.

Haufrecht also examined Lara and found evidence of peripheral neuropathy, damage to nerves in the extremities that can be caused by solvent exposure. And Dr. Doreen Sabalesky, a Houston psychiatrist, noted in a report last December that Lara's symptoms "began in a progressive fashion" after he was splashed with the solvent polyethylbenzene in January 1993. "Mr. Lara is gravely disabled at this point in time," she wrote. "Daily activities are severely restricted by his headaches, nausea, vomiting and psychotic depression as well as his neurological deficits."

Although Dow minimized the significance of the

polyethylbenzene exposure at Lara's hearing in October 1993, a company information sheet on the substance says that "excessive vapor concentrations are attainable and could be hazardous on single exposure. Signs and symptoms of excessive exposure may be central nervous system effects."

Robert Lang, the hearings examiner who heard both the Lara and Ott cases, sided with Dow's and Shell's insurers -- Planet and CIGNA, respectively.

Severa Lara thought the turning point of her husband's hearing came when Dr. Stanley Pier, a retired toxicologist who taught at the UT School of Public Health for 19 years, took the stand for the defense.

"When he got up there, he was like, "No way. There's nothing wrong with this man," " Severa Lara said.

Pier had not examined Lara. But he concluded, after reviewing narratives by Delclos and other doctors, that nothing at Dow contributed to Lara's illness.

Pier told the Houston Chronicle he has limited recollection of Lara. But in any such case, he said, he does a "really involved, strictly scientific analysis, obviously using only what data are available. If a person alleged exposure 10 years ago, there's no way anybody can go in today and measure what the exposure was."

He said he has testified for plaintiffs and defendants in comp and toxic tort cases, although more for defendants. "That is not by choice," he said. "I respond to requests that are given to me."

AT Ott's hearing in January, the key medical witness for the defense was Dr. Roy DeHart, chairman of the Department of Family Medicine at University of Oklahoma Health Sciences Center. After reviewing other doctors' narratives on Ott -- including one that mistakenly said Ott's father had died of cancer -- and listening to testimony at the hearing, DeHart posited that Ott had no work-related illness.

"He made a decision about our lives based on something somebody else wrote," Rae Ott said. She could not afford medical witnesses to rebut DeHart, she said.

DeHart said it is not unusual for him, or any doctor, to render an opinion without actually seeing a patient. "A parallel would be in the teaching environment of a medical school," he said. "Many examples we use in teaching are, in fact, literature cases and not cases you lay your hands on."

DeHart remembers the Ott hearing. Although there were "divergent opinions" about the source of Ott's ailment, DeHart said, he determined that "there was enough evidence in the medical records to strongly suggest" it was caused by something other than Shell chemicals.

DeHart theorized that Ott had been unhappy at home or on the job and, as a result, had amplified symptoms that might have been only a nuisance to someone else.

DeHart said chemical-exposure cases are difficult. "Someone working in a chemical plant or refinery is never exposed to a single agent. They're exposed to a variety of agents," which can "reinforce one another" to produce baffling effects.

Officials at Dow and Shell would not comment on the Lara and Ott cases. Both companies have federally mandated medical-surveillance programs for chemicals such as benzene, as well as voluntary ones.

"I think Shell does a very good job of controlling chemical exposures here at the facility," said Ed Hawthorne, manager of health and safety at Shell-Deer Park. The plant's medical director, Dr. Edmond Shepper, said such exposures are "quite infrequent."

Indeed, both Shell and Dow have reported only a handful of chemical-inhalation cases to the Occupational Safety and Health Administration in recent years. OSHA relies on employers to report work-related illnesses and injuries. Although the agency can inspect company records, it has limited resources, so reporting is mostly done on an honor system.

Rae Ott believes that Shell and other petrochemical companies have colluded, with the help of certain doctors and insurance companies, to suppress the long-term impacts of chemicals in the workplace.

Shell's corporate medical director, Dr. Charles Ross, belongs to a group called the Gulf Coast Medical Directors. The group, composed mainly of Houston-area plant doctors, meets every two months or so to informally discuss "issues of common interest," Ross said. Recent topics, he said, have been benzene and asbestos.

Ross said there is nothing "collusional" about the meetings. Workers' comp issues are not discussed in detail, he said, although one of the group's members is Dr. Robert Conte, medical director of Brown & Root Inc. and Houston Lighting & Power Co. and chairman of the Workers' Comp Commission's medical advisory committee. Individual medical cases are never considered, Ross said.

RAE Ott is unconvinced.

Certainly, her husband's and Robert Lara's futures appear cloudy. Lara's weight has fallen from 198 to 155, Ott's from 170 to 128. Such weight loss, said Dr. William Rea, director of the Environmental Health Center in Dallas, is consistent with excessive solvent exposure.

"I have seen people die of malnutrition from this," said Rea, who estimates that his center has treated 10,000 workers in the past 20 years.

Both men once led active lives: Ott worked out regularly at the gym, rock-climbed and played tennis, softball and basketball.

Lara played the guitar, fished, camped and played volleyball.

They also were dedicated employees. Both worked lots of overtime and were roused from bed at all hours to help deal with plant crises. Lara received an Employee Recognition Award from Dow in 1989 and four other commendations between 1986 and 1991.

The Ott and Laras have seen their incomes fall precipitously in the past two years. Ott made upwards of \$60,000 a year at Shell; he and his wife, then senior vice president of an oil leasing company, lived in a large house in Nassau Bay. Lara's base pay at Dow was \$18 an hour, and there were weeks when he cleared \$2,000 with overtime.

Neither man would have gotten rich by prevailing in the comp system. The maximum benefit is \$472 a week for 401 weeks -- or \$24,544 a year for 7.7 years.

Lara had planned to work at least another 10 years, Ott long enough to get through chiropractic school. Instead, both spend their days helpless and cloistered -- Lara in his small frame house in Clute and Ott in his one-bedroom Clear Lake City apartment. Their wives tend to them as if they were sick children.

"I feel like my whole life is gone in two years," Severa Lara said.

Both couples are saddled with thousands of dollars in medical bills. Lara receives medical insurance and a \$195-a-month pension from Dow and \$1,085 a month in Social Security disability benefits. Severa Lara supplements the couple's income by working as Wal-Mart cashier for \$4.50 an hour.

The Ott's have filed for bankruptcy and are behind in their rent. They have no medical insurance.

"We have nothing," Rae Ott said. She is convinced that if her husband had fallen down and broken a bone at work, "there's no question he would have been taken care of" by Shell.

But because Ott alleged that his illness was caused by chemical exposure, his wife said, Shell didn't dare admit responsibility, lest it open itself up to other comp claims and product-liability lawsuits.

AN internal briefing paper on "environmental illness," prepared four years ago by the Chemical Manufacturers Association, makes note of increased media, medical and legal interest in possible relationships between chemicals and disease and warns of "the threat of lawsuits.

"Litigants seeking redress for personal injury allegedly resulting from exposure to toxic substances are numerous now," the paper says. "Should environmental illness be recognized by legal or judicial decree, these suits would only multiply. Toxic torts create special problems for the defendant in the best of circumstances."

CMA spokesman Jeff Van said in a prepared statement that "our industry acknowledges there is a potential that employees can be harmed by exposure to substances in the workplace." He added that while "most people don't believe it, ours is a very safe industry."

Warren Levy, a spokesman for Philadelphia-based CIGNA, Shell's insurer, said that cases of alleged chemical illness "are obviously a little bit more complicated than, say, a trauma." However, he said, "if the causal relationship is established" between exposure at work and a disease, "we handle it like a trauma" and pay the claim.

But neurologist Haufrecht said his diagnoses of chemical illnesses are always challenged by industry and its insurers.

"It's a financial problem, and a major one, for the chemical companies," he said. "It's always to the benefit of large companies, which have a great deal of money at stake, to defend themselves at any cost. In this case it would be at the cost of human suffering."