



AMANDA HAWES - "It's discouraging," says the health and safety specialist of plaintiff recovery through workers' compensation.

ERIC SLOMANSON

## Advocates for High Tech Workers Seek Compliance, Not Litigation

Computer chip makers say they are already limiting the use of chemicals tied to high miscarriage rates — and there's no need for legal action.

By Jennifer Pittman

Daily Journal Staff Writer

While Silicon Valley computer chip manufacturers scramble to deal with the health concerns raised in a damning study about commonly used chemical solvents, lawyers have resisted filing personal injury and workers' compensation suits.

Instead of rushing to the courthouse, some of the most prominent lawyers in the field of occupational health and safety are advocating worker safety and industrywide reform — not litigation. They are using a recent study about the health effects of exposure to ethylene-based glycol ether solvents on computer chip workers to

pressure industrywide policy changes.

"One hat that I'm wearing is trying to put the other hat out of business," said occupational health plaintiff lawyer Flora Chu, who is working to educate Silicon Valley companies about the dangerous solvents. "When I can do that, I think I'll be very happy."

Only two San Jose firms are looking at the possibility of a complaint related to glycol ether, a solvent identified as increasing the chance of miscarriages. And they are saying little about their case.

The statistics that show that women exposed to glycol ether have a miscarriage rate 40 percent higher than the rest of the population are the result of a 4-year-long study into glycol ethers by the University of California, Davis. The study cost \$2.8 million and was paid for by 16 members of the Semiconductor Industry Association, based in San Jose.

The industry claims it has taken swift and comprehensive measures to minimize toxic exposure since the study was completed and that there has been no litigation because there is no

cause for it.

"Obviously we don't think there's any basis for litigation," said John Greenagel, spokesman for Advanced Micro Devices Inc., one of Silicon Valley's largest chipmakers, which contributed funds for the study. "The way you cover your legal bases is to do the right thing and have appropriate practices. We maintain safe workplace conditions. We keep our employees informed when the job requires use of hazardous materials."

Howard High, a spokesman from Intel Corp., agreed with Greenagel. "There is no real litigation to be pursued," High said. Companies regularly share information about safety and health issues, High said, because they are not considered proprietary.

Both companies said they have programs allowing pregnant women to temporarily transfer from positions that include exposure to hazardous chemicals to positions of comparable pay in other areas of the company. Intel also helped fund the glycol ether study, High said.

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# Chip Makers Are Urged to Comply on Solvents

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The dangers of glycol ethers came to light after more than 15,000 semiconductor industry employees were surveyed. Results indicated that there was a 14 percent miscarriage rate for women using the chemical in water fabrication areas compared with a 10 percent rate for women who do not come in contact with the chemical.

What might seem to be a green light for an onslaught of workplace-related litigation, however, may draw only a few interested parties, attorneys say.

Lawyers at San Jose's Hawes & Chu, who have a statewide reputation for impact litigation and activism on behalf of predominantly low-income workers in Silicon Valley, said they didn't want to talk about litigation, but education.

They want the glycol ethers out of the industry's "clean rooms" and they want to make sure workers are told about the dangers in languages they understand. Many of the electronics workers are Asian and Hispanic immigrants who don't speak English, they said.

"Too many times we see that you can get money for their injuries but it really doesn't help in many ways," Chu said. "Getting a down payment on a house is not going to make up for the loss of a child and the loss of your health. That's why we do the kind of work that we do."

Chu is head of the Asian Workers' Health Project, a project of the Santa Clara Center for Occupational Safety and Health, which is headed by her law partner, Amanda Hawes. The two have spent the last nine years together fighting for workers' rights and bringing some precedent-setting cases in the workers' compensation field.

They are working on about a dozen workplace hazard cases with San Jose personal injury attorney Richard Alexander, but only one involving glycol ether, Alexander said.

"This is one of those situations where you want compliance without having people worry about liability," Chu said. "This is not a legal effort. It's merely community organizations working with people from the community and workers trying to alert people that this chemical is dangerous and should be changed."

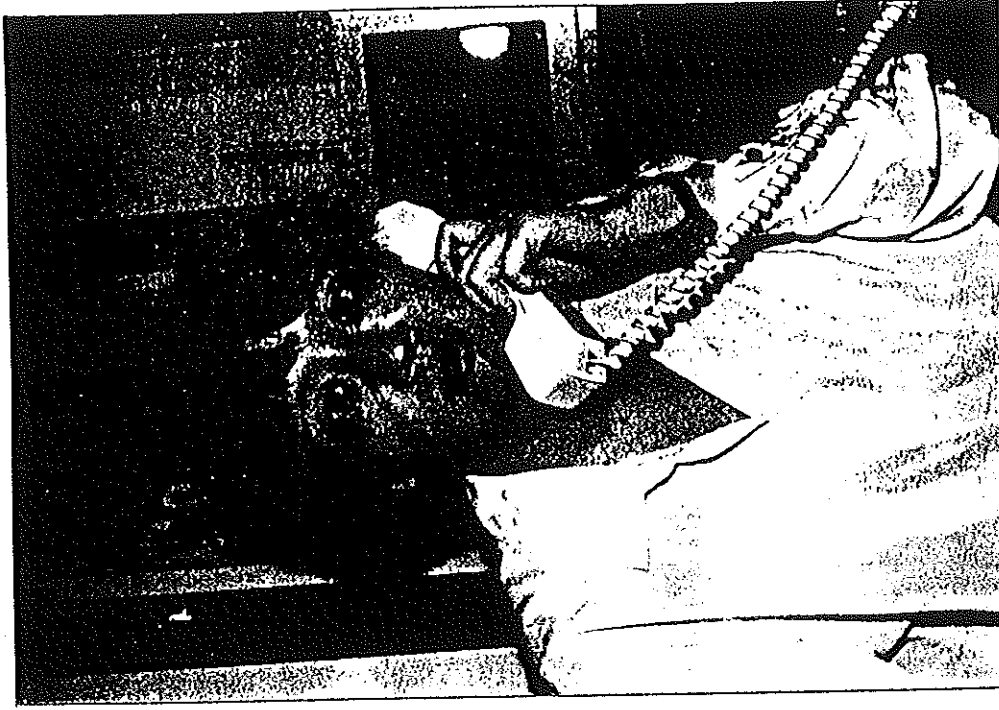
Alexander said, however, that there was "a strong likelihood" they will take action on the one case they have that involves glycol ethers.

"If they're causing miscarriages, it's only a matter of time before we find what the real damage is," Alexander said. "Anything that's strong enough to make you abort it double the rate of spontaneous abortions is most probably causing long-term effects."

Existing laws, however, are inadequate to fight many workplace safety issues and don't allow plaintiffs to recover meaningful damages through the workers' compensation system, Hawes said. "It's discouraging," she said.

For legal action to occur against employers under workers' compensation laws, plaintiffs would have to prove malicious intent or mismanagement, because such laws do not provide damages for injuries, only for time lost from work and medical costs.

"In fact, what the semiconductor indus-



FLORA CHU — "Too many times we see that you can get money for their injuries but it really doesn't help."

try has done is just the opposite," said Intel's High. "They took \$4 million out of their pocket and allowed unrestricted access to their workplace." Then companies moved to correct exposure hazards, High said, and limit the use of the chemical. Intel has already eliminated glycol ether in its newer manufacturing processes, High said. The company has also made information on the chemical available to employees, he said.

"To me, those are not the grounds for strong legal action," High said.

Company lawyers have readily shared information about health and safety issues within the industry, said Marcie Beriman, in-house counsel for Intel. "What the [in-house] lawyers have done in general is to make sure we understand the legal requirement in the various jurisdictions in which we operate," Beriman said. "There are state laws and we are aware of them."

Companies have gone beyond what the law requires in trying to do the right thing to accommodate workers' health needs, Beriman said.

Chu said, however, that trade secret laws makes it difficult to determine just how many companies are using hazardous solvents.

Proposition 65, which requires that employers inform their workers about the hazards of working with certain chemicals, may be the basis for the first successful suits in the field, said Catherine K. Ruckelshaus, an attorney with the Employment Law Center in San Francisco. However, those cases are not easy, she said.

"It's a tough row to hoe. Our strategy has been to think about the workers and what remedies they want," said Ruckelshaus, who works primarily with low-in-

come clients.

Although tort litigation against a third party, such as the chemical manufacturer or equipment distributor, can help raise awareness about a health issue, proving causation in court can be a complex, and sometimes almost impossible task, attorneys said.

Alexander predicts scientific breakthroughs in the next six months will change the practice of occupational health law and encourage more litigation as lawyers are better able to determine the cause of workplace-related injuries and illnesses.

"It's extremely difficult to prove these cases because the workers are actually the body count," Chu said. "Animal data is not enough, but if you have the human data and not the animal data, then it's not enough."

Marijorie M. Shultz, a Boalt Hall School of Law professor who worked with Chu and Hawes on an extensive policy report regarding reproductive health hazards in the workplace, said she thought there would be few lawyers joining Chu and Hawes in occupational safety litigation.

"The substantive issues raised here are already situated in extremely thorny turf involving doctrinal issues of causation, political issues about reproductive rights and the conceptual issue about the beginnings of life," Shultz said.

"Amanda and Flora are innovators carried in part by their commitment to the substance of the issue," Shultz said. "The reason they're in the law business in connection with these issues is because they care about the underlying issues. If they wanted to make money, they wouldn't be doing what they're doing."

"There may be others, but I don't think there will be a stampede."