

Testimony of

The Honorable Patrick Leahy

September 25, 2002

Today we will hear from experts, representing all sides in asbestos litigation, to get a better understanding of how asbestos victims, defendants and others fare in the courts. I hope today is the beginning of a bipartisan dialogue that will result in a comprehensive review of the complex and competing issues involved in providing fair and efficient compensation to asbestos victims.

We must begin by acknowledging the root cause of asbestos litigation. For decades, America's labor force was secretly poisoned. Unbeknownst to the men and women who worked in our nation's factories, shipyards, mines and construction sites, the worksite air was laced with a substance so harmful that they could become critically ill by simply breathing, and they risked contaminating their loved ones from their clothes after a hard day's work.

In 1906, England adopted the first labor regulation warning about the health effects of inhaling asbestos. In 1924, a national insurance company studied the health effects of asbestos exposure of Johns-Manville workers and then hid the results. In 1949, the American Medical Association Journal editorialized on the harm from asbestos exposure. In 1989, the Environmental Protection Agency banned asbestos in 3,500 products, only to see industry successfully overturn the ban in the courts. Asbestos - a known carcinogen - is still used today in many products.

Simply put, corporate America has been on notice that asbestos carried significant health risks for its workers and customers. Some corporate executives ignored these warnings and manufactured, mined or used asbestos because it was inexpensive and profitable. As a result, the marketplace has punished more than 50 companies that knew or should have known about the health dangers of asbestos, forcing them into bankruptcy because of their asbestos-related liabilities.

Three thousand Americans die every single year from mesothelioma, a horrible cancer caused only by asbestos. In addition, hundreds of thousands of Americans suffer from other injuries caused by asbestos exposure, including lung cancer, throat cancer, asbestosis and other diseases.

Perhaps the worst part of the asbestos nightmare is that many victims do not know yet that they will get sick. That is because of the long latency period for many asbestos-related diseases. Some cancers may take 30 or 40 years to fully develop. During that time, the asbestos illness just sits in the victim like a ticking time bomb.

Unfortunately, the asbestos time bomb is ticking in the bodies of thousands of innocent victims. Approximately 120 million Americans have been or continue to be exposed to asbestos. With the long latency period for most asbestos-related diseases, simple math tells us that innocent workers and others exposed to asbestos will be suffering for many years to come.

Indeed, asbestos victims who filed claims with the Manville Trust this year were, on average, first exposed to asbestos in 1961. Since asbestos production in the United States did not slow down until well into the 1980s and asbestos is still being used today, that means we have decades to go before we know who is going to be sick. In short, many more Americans will be seeking fair compensation for their asbestos-related injuries for decades.

All of this caused Supreme Court Justice Ruth Bader Ginsberg in the *Amchem v. Windsor* case to call for legislative intervention. I agree with Justice Ginsburg that Congress can provide a secure, fair and efficient means of compensating victims of asbestos exposure. I believe it is in the national interest to encourage fair and expeditious settlements between companies and asbestos victims. That is why I have convened this hearing, the first full Senate Judiciary Committee hearing on this matter since Justice Ginsburg urged congressional action.

But it will not be easy. It will require a commitment by lawmakers and interested parties to conduct a full and open debate to identify issues and craft possible solutions.

Unfortunately, Congress has yet to conduct that kind of debate. The past failed efforts at legislative solutions were thinly veiled attempts by some to avoid accountability for their asbestos responsibilities through what they euphemistically call national "tort reform." The lesson to learn from the past is that any compensation plan must be fair to asbestos victims and their families. I applaud the business leaders who met with me recently for their recognition that victims come first in any alternative compensation system.

This hearing is a first step in what I hope to be an honest and constructive debate. I for one am open to finding creative ways to devise a fair and efficient system for asbestos claims. As Senator DeWine and I have attempted to prove in our bipartisan asbestos tax legislation, encouraging fair settlements is a win-win situation for businesses and victims. I thank Chairman Baucus and Senator Grassley for including our legislation in their small business tax package to be considered soon by the Finance Committee.

Senator Hatch recently wrote to me that he wished to work in this same bipartisan spirit on asbestos litigation issues, and not to include controversial tort reform proposals in this debate. I am hopeful that we can move forward in that spirit.

For any proposal to work, it will take the good faith efforts of all stakeholders. Workers, industry and victims will have to come to the table for any solution to succeed.

Moreover, we will need full participation from the insurance industry. The press reported this month that many insurers have refused to pay claims that were related to the September 11th terrorist attacks, and even threatened to pull business coverage if such claims were filed. We will need the participation and cooperation of the insurance industry to reach a better solution for asbestos litigation.

As the chairman of the Judiciary Committee, I know that the insurance industry enjoys a one-of-a-kind statutory exemption from our antitrust laws. With that special privilege comes a special responsibility to the public. I hope and expect that they will be up to the task.

And I hope that this hearing will start the debate that we need to better understand the current process for compensating those suffering and developing afflictions from asbestos and to consider fair ways to improve it. I look forward to hearing from our expert panelists today on the nature and scope of asbestos litigation.

#####