

Testimony of

The Honorable Max Baucus

September 25, 2002

Mr. Chairman, Senator Hatch, and distinguished members of the Judiciary Committee, thank you for holding this very important hearing and allowing me to testify before you today.

Mr. Chairman, I think we can all agree that asbestos litigation in this country is an enormous issue that will impact this nation for many years to come, and I applaud you for your leadership in stepping up to address it head-on.

I just want the record to reflect my deep concern that we not lose sight of what's really at stake here, and that's making sure that people who are sick, or who are likely to become sick, from exposure to asbestos are not denied the ability to fight for their rights against the companies or persons that injured them. That is absolutely the bottom line here.

I know you've all heard me talk about Libby, Montana before, but Libby represents one of the grossest cases of corporate irresponsibility and down-right criminal negligence that I have ever seen.

The extent of asbestos contamination in Libby, the number of people who are sick, who have died from asbestos exposure, is just staggering. The people of Libby suffer from the deadly asbestos-caused cancer, mesothelioma (ME-SO-THEE-LEE-O-MA), at a rate 100 times greater than the rest of the nation. One in 1000 residents of Libby suffer from this disease. The national average is 1 in 1 million. Moreover, the Agency for Toxic Substances and Disease Registry has found that Libby residents suffer from all asbestos-related diseases at a rate of 40 to 60 times the national average.

How could this happen? Well, a company named W.R. Grace owned and operated a vermiculite mining and milling operation in Libby. It just so happened that vermiculite was contaminated by a deadly form of asbestos called tremolite asbestos. WR Grace milling operations belched thousands of pounds of asbestos contaminated dust into the air each day, dust that settled in the town of Libby, on cars, on homes, gardens, dust that settled on children. Workers brought the dust home on their clothes and exposed their families. Hundreds have died, hundreds more are sick.

The very worst part about this story is that W.R. Grace knew exactly what it was doing, it knew the vermiculite dust was contaminated with deadly asbestos, yet it told workers and the town that it was harmless.

Now W.R. Grace has filed for bankruptcy, wringing its hands over escalating asbestos claims involving the vermiculite products it produced, and shielding billions in assets from the

bankruptcy proceeding. Through all of this, W.R. Grace has yet to step up and do the right thing in Libby.

It has ungraciously fought any attempts to beg, plead, or cajole the company into living up to its responsibilities to the people of Libby, Montana. It is attempting to drastically scale-back a paltry health-care fund set up for former workers.

All the while, Grace lawyers have filed for over \$30 million in fees accumulated in the past year alone defending Grace in the bankruptcy proceeding. \$30 million would go a long way in Libby, Montana, where health care costs are increasing rapidly, threatening the ability of that town to get back on its economic feet after the blow it took from W.R. Grace.

More worrisome still, many folks who have been diagnosed with asbestos-related disease - some of whom are in their 30's because they were exposed to asbestos as children - are now essentially uninsurable going forward, because the costs of securing private insurance are non-economical.

The costs to the community and state government related to providing health coverage for uninsured sick people are creating significant pressures on the state Medicaid fund and even causing Worker's Compensation problems for some private business owners in Libby, like the Stimson Lumber Mill and Lincoln County

Additionally, the Federal Government, through the U.S. Environmental Protection Agency will spend well over \$100 million to clean-up the contamination caused by W.R. Grace's vermiculite mining operation. So, everyone - taxpayers, local businesses, the State of Montana, and the victims themselves - everyone but W.R. Grace is bearing the burden, suffering and pain caused by W.R. Grace's actions. Granted, we can all agree that the state and federal governments should have done more to protect the folks in Libby, but ultimately, the buck stops with Grace.

So, I apologize if I am skeptical and find it hard to be sympathetic to companies like W.R. Grace who claim they are over-burdened by asbestos lawsuits. I would agree, however, that it's also not fair for companies like W.R. Grace to shift the burden of their actions onto other companies that have not filed for bankruptcy and that do not share W.R. Grace's liability or responsibility.

But, again, this is where I would ask this Committee to be very, very careful in how you address the asbestos litigation issue.

It would be so very easy to insulate bad actors like Grace from their fair share of liability and responsibility, and to cut off rightful claimants like the Libby victims from ever receiving their fair share of compensation for the wrong done to them. Because, Mr. Chairman, it's a little too easy to say lets cut off those folks who aren't sick yet. We're talking about a disease that has a 20-40 year latency period. Given the exposure of the folks in Libby, and the type of exposure - to deadly tremolite asbestos - it's very likely that many more people in Libby will become sick, very sick, in the future. We cannot cut them off.

I'm sure you remember my opposition to the Fairness in Asbestos Compensation Act of 2000. I believed very strongly that the administrative procedures set up by that bill, particularly the medical eligibility criteria, would effectively eliminate the legal rights of many residents of Libby. I wrote you a letter last year letting you know I would filibuster any attempt to attach the Fairness in Asbestos Compensation Act to bankruptcy legislation moving through your committee. I would ask your permission to insert in the record a letter from some Libby representatives that raises similar concerns about what could be contained in revised asbestos litigation legislation that this Committee may consider.

Ultimately, Mr. Chairman, because W.R. Grace has filed for bankruptcy, the rightful claims of Libby victims may never be satisfied against W.R. Grace, no matter what this Committee chooses to do about asbestos litigation reform.

Perhaps part of this Committee's review should include a review of the injustices inherent in corporate bankruptcies like W.R. Grace's that are related to asbestos litigation, particularly those injustices associated with the ease with which Grace hid a vast chunk of its assets from the reach of the bankruptcy court, and by extension, from the Libby victims. Maybe some of those billions will be returned to the bankrupt estate. Maybe not. But, it's certainly an appropriate piece of the asbestos puzzle for this Committee to take a hard look at.

Mr. Chairman, I have fought for every resource at the disposal of the federal government to help the people of Libby, Montana get a clean bill of health, and despite W.R. Grace's resistance, we've actually been making real progress on the ground in cleaning up the town of Libby, cleaning up contaminated homes, and screening more than 8,000 current and former Libby residents for asbestos-related disease or exposure.

I am pursuing all other avenues to address long-term health care costs for those who have been devastated by asbestos-related disease, and screening costs for those who are worried they may become ill. This includes the possibility of setting up some type of White Lung Trust Fund.

But, these other avenues have to be pursued because W.R. Grace has side-stepped its responsibilities to the community of Libby. In your search for solutions to the real problems associated with asbestos litigation, Mr. Chairman, I would ask that you not make it easier for companies like W.R. Grace to shift their liability to others. In fact, you should make it much harder.

The focus here should not be on cutting off the rights of victims, but on holding accountable those who are truly responsible for the pain and suffering of real people like the people of Libby, Montana.

Thank you again Mr. Chairman for allowing me to testify today.