

Testimony of

The Honorable Orrin Hatch

March 5, 2003

I would like to welcome everyone to this hearing as the Committee continues its examination the asbestos litigation crisis. At the outset, I want everyone to know that I intend to make every effort to resolve this issue this congress, we simply cannot wait any longer.

I am encouraged by the level of interest in this issue expressed to me by my colleagues on both sides of the aisle and I hope the Ranking Member, Senator Leahy, and I along with our other colleagues will be able to work in a bipartisan manner to resolve this issue. As he indicated at the last hearing, Senator Leahy also recognizes that this is a situation that requires our attention. It is not too often that an issue has such bi-partisan interest in Congress.

I don't think there can be any doubt that the crisis in asbestos litigation is a serious problem, and it continues to get worse as the abuse continues and Congress has failed to act even as the Supreme Court has suggested that we must resolve this train wreck. It is my sincere hope that we can do better this time around.

As I stated in our hearing last fall, which Senator Leahy chaired, skyrocketing bankruptcies of companies being sued hurt not only those who are truly sick and deserving of appropriate compensation, but also those many hard-working Americans whose jobs and pensions are lost or put at serious risk. We have all heard the statistics by now, but they bear repeating. As the New York Times has reported, the number of cancer cases has remained virtually stable since 1995, while the number of non-cancer cases has spiked dramatically just in the last few years. This defies commonsense. According to the recent study published by RAND, almost 90% of the pending asbestos claims are brought by persons with nonmalignant injuries. Nonmalignant cases get 65% of the compensation awards compared to 17% for mesothelioma and 18% for other cancers. There is something wrong with that and the consequence is that more than 67 companies have been forced into bankruptcy - 67 companies, and thousands of jobs - and more than 20 of those bankruptcies have occurred in just the last few years.

Moreover, the scope of the litigation has increased exponentially and is mind-boggling to anyone. This has become such a gravy train for some abusive trial lawyers that over 2,400 additional companies were named in the last year alone. One company shared with me their story recently. This company never engaged in the business of manufacturing, producing, distributing

or selling asbestos or asbestos-containing products. Nor did they ever issue liability or workers' compensation insurance to companies in the business of manufacturing, producing, distributing or selling asbestos or asbestos-containing products. They did in fact lead the way in researching and issuing one of the first reports that exposed the true health risks of asbestos - a report that is actually cited by many plaintiffs' attorneys in current cases, and has saved lives! And how are they rewarded? They have been named in thousands of cases, more than 60,000 per year, alleging that they were not aggressive enough in revealing the dangers of asbestos. They told me it is cheaper for them to settle frivolous cases than to defend them in court and win. It costs them hundreds of millions of dollars each year to settle cases, and even millions for a case that they won. This sounds ridiculous, and it is, but it is happening.

I am encouraged by some recent developments that illustrate more widespread recognition of the problem. The American Bar Association recently adopted the findings of its special Committee on Asbestos Litigation. I look forward to hearing from our witness Dennis Archer, the president-elect of the ABA on their findings regarding medical criteria which would defer the claims of those who are not currently sick in favor of those who are truly ill and require urgent compensation. We will also hear from David Austern, trustee of the Manville trust on the problems encountered by Manville and his ideas as to how to resolve this issue. We look forward to hearing from organized labor -- Jonathan Hiatt kindly is making a return appearance before our committee on this issue as is Steven Kazan, an attorney who represents the truly sick claimants who are most adversely effected by the current system.

I know Senator Leahy joins me in my concern that the current system is hurting the true victims of asbestos; our panel of witnesses includes two physically impaired individuals, Brian Harvey and Melvin McCandless - we very much appreciate the effort it must have been for them to come here today to share their stories. In addition, we have victims of another sort present in the audience - people like Mike Carter of Monroe Rubber and Gasket - who flew here from Louisiana. He's a small businessman whose business is being threatened by endless asbestos litigation. In addition, and perhaps most importantly, we will hear from some victims who could not make it here today - victims who were unable to be here. The video you are about to see was provided to us by an attorney representing these victims.

In conclusion, let me just say that I believe that today's hearing is an important step toward finding the right solution and I am committed to doing so. I am keeping an open mind about how to approach the best solution to this problem. We have heard from some who have proposed the creation of a trust fund. We also have heard from those who would support a court reform proposal requiring medical criteria, among other things, to manage the cases and to minimize abuse. I have asked the various interested parties to meet over the past month and provide the Committee with their suggestions. We have received some recommendations this past week and I would encourage the various interested groups to take the next two weeks to try to come to a single approach that all can support, the sick victims, the companies who are targeted and their

insurance companies who are at risk, and hopefully the labor unions who would be affected by the loss of jobs that results from these abusive suits. Folks, time is running out before literally thousands of our most productive companies in this country and hundreds of thousands of jobs are put at serious risk by these suits. It is time to get together and come up with a solution. I invite your input and look forward to working towards a solution.

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