

Testimony of

The Honorable Patrick Leahy

March 5, 2003

Today's hearing is aptly titled, because it is time for Congress to act on a fair and effective solution to the asbestos litigation crisis.

Thousands of workers and their families have suffered debilitating diseases and death resulting from exposure to asbestos, and latency periods for asbestos-related illness of up to 40 years, the damage done by asbestos will not end for decades. I convened the first Senate Judiciary Committee hearing last September on asbestos litigation to begin a bipartisan dialogue about the best means for providing fair and efficient compensation to the current victims and those yet to come.

We have all learned a great deal about the harms wreaked by asbestos exposure since last fall. Not only do the victims of asbestos exposure continue to suffer, and their numbers to grow, but the businesses involved in the litigation, along with their employees and retirees, are suffering from the economic uncertainty surrounding this litigation. More than 50 companies have filed for bankruptcy because of their asbestos-related liabilities. These bankruptcies created a lose-lose situation. Asbestos victims deserving fair compensation do not receive it and bankrupt companies can not create new jobs nor invest in our economy.

As a general matter, our tort system is well-equipped to handle the resolution of conflicts, and I have long battled the misguided attempts, hidden beneath the guise of "tort reform," to limit the access that the American people have to their courts. I will continue to do so, for one of the distinguishing characteristics of our judicial system is its openness to legitimate claims of injury, and its availability to all aggrieved plaintiffs. Because of the particular circumstances of the harm caused by asbestos, however, the system is not working as it should.

These circumstances are causing the failure of asbestos litigation to meet the needs of many victims and the capabilities of many defendants. If we work in good faith toward a bipartisan asbestos solution, we can meet the challenge created by this litigation. I agree with the Supreme Court's conclusion that the number of claims defies "customary judicial administration and calls for national legislation."

Let me be clear: An effective solution is not one that would create more corporate bankruptcies. It would not erect arbitrary barriers to recovery, and it would not generate excessive legal fees. An effective solution will fairly and efficiently compensate victims, and it will eliminate the financial uncertainty that hinders defendants and their insurers from resolving their liabilities. I am open to finding creative ways to devise such a fair and efficient system.

Let me also be clear about the biggest danger to bipartisan reform: overreaching by some special interests for immunity from legitimate asbestos claims. For Congress to enact reforms this year,

all the stakeholders will have to come to the table willing to work with open minds toward a realistic and reasonable solution. The answer will require the full participation not only of the victims and the corporate defendants, but of their insurers as well. It will not be a stacked solution that attempts to shoot the moon for one side or the other. To succeed, it must be narrowly targeted, and it must be balanced.

Last September we began the bipartisan discourse on the problem of asbestos injuries and the litigation that has ensued. Now we must proceed to a dialogue on the solution to that problem, a solution that will bring fair and adequate compensation to victims in a timely fashion, that will resolve the financial uncertainty for corporate defendants, and will enable insurers to predictably meet the obligations of the policies.

I look forward to continuing to work with Chairman Hatch in a constructive and bipartisan fashion, and I thank our witnesses for their testimony today as they assist us in crafting a solution to the asbestos litigation crisis.

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