

Testimony of
Mr. Melvin McCandless

March 5, 2003

Dear Mr. Chairman and Honorable Members of the United States Senate Judiciary Committee:

Let me thank you for the opportunity to be here today, to tell you about my family and my story. My name is Melvin McCandless and I am from Plymouth, North Carolina.

I am here today to address an unfairness in the bill that has been introduced by Senator Nickles, the "Asbestos Claims Criteria and Compensation Act of 2003," Senate Bill 413, and in the medical criteria proposed by the American Bar Association.

1. I suffer from asbestosis and I was found by the Deputy assigned by the North Carolina Industrial Commission to be permanently and totally disabled because of my asbestosis. Although I have been found permanently and totally disabled by the Deputy who heard my case, I would be unable to recover in a court of law for the very same disease if this bill or the ABA proposal became law.

2. I worked for one of the largest employers in North Carolina, a large mill in eastern North Carolina. It is lined with literally miles of asbestos-containing insulation, around pipes, conduits, turbines and boilers. I worked there 35 years, and for years, almost every day, you could see the dust in the air.

3. I worked there as a supervisor. None of us had any idea about how dangerous asbestos was. We worked in and around it everyday. Down in eastern North Carolina, the plant where I worked is one of the few places where you could get a good paying job.

4. None of the workers had respiratory protection. We were not given any special clothing to keep the asbestos off of us or to prevent us from taking it home to our families. I did not know asbestos was dangerous until after I already had the disease. I was required every month to have a safety meeting but at no time did the company ever mention anything, nothing about asbestos, in any meeting that I ever attended. I didn't see any warnings on any boxes of asbestos products.

5. For several years before I went out of work, I was short of breath while trying to do my job. Anytime I was in dust or steam, which was really every day at work, it would affect my breathing. Anytime I was in the heat or around the steam insulation, the coughing would be the same. As a supervisor, I had to walk around various parts of the mill, including up and down stairs. It got to where I could not do my job anymore because I was so short of breath. Anytime I had to exert myself, I would get winded almost immediately. My work environment aggravated all my breathing problems. In fact, because of my breathing, I couldn't wear a respirator because it would suffocate me.

6. To work as long as I did I had the other guys help me do my job and that just was not right.

7. Although the company gave me a couple of chest x-rays, no one ever told me of any abnormalities. I did not know what was wrong with me but my employer did. See, they had been monitoring my lungs since 1989. In 1989 they started seeing changes on x-rays the company doctor took. But they never told me....they just moved me out of the mill into the woodyard. Then, four years later, in 1993, they moved me back into the dust, inside the mill and that is when my breathing really went downhill. My doctors testified that I should not have been further exposed to asbestos after the chest x-ray showed I was developing the disease. After my chest x-ray changes showed up, the company took me out of the medical monitoring program.

8. There is not a lung doctor in my county or a B reader. The few doctors that are there are just general doctors who usually don't stay long because of our location. The only reason I ever found out what was wrong with me is because I contacted a lawyer who I heard represented my co-workers.

9. I was sent to a pulmonologist first, then to an independent state doctor who is an associate professor of pulmonary medicine who also confirmed that I had asbestosis. I also had the B reader who read chest films for the company confirmed that I had it as did other B readers yet my lawyer tells me that despite all of this, I wouldn't qualify to even file a claim for compensation in a court of law under the Nickles bill or the ABA proposal.

10. The North Carolina Industrial Commission found that the reason I cannot work is because of my asbestosis; I am short of breath and I could not do my job.

11. In fact, the dust was so bad it would come home on my clothes. While washing those clothes, and just being around me, my wife of 37 years, Janice, started inhaling the asbestos as well. In fact, now my wife has been diagnosed with asbestosis too. She is having breathing trouble, which is getting worse and she has a terrible cough.

12. I am here today because my lawyer told me that if Senate Bill 413 or the ABA proposal is passed neither I nor my wife nor most of our friends would be able to recover in a court of law for asbestosis. Even though the North Carolina Industrial Commission has ruled I am permanently and totally disabled, I couldn't recover because my pulmonary function test is "within the range of normal" and I would therefore be excluded under the Nickles bill or the ABA proposal.

13. I cannot do any amount of exertion for over a very short period of time. Just pushing the garbage from the house to the road makes me short winded and uneasy. My wife's condition is similar to mine but she also would be excluded under the Nickles bill or the ABA proposal.

14. I had not planned to be here today because one of my co-workers was going to testify but he was put in the hospital last week due to his asbestosis. He is on oxygen. Like me, his chest x-ray report would not allow him to qualify for access to a court under the Nickles bill or the ABA proposal.

15. I have worsening shortness of breathe; a dry cough, and I am severely limited in what I do. I cannot be around dusts, fumes, or chemicals, and I truly believe that I may one day be like my friend who could not be here because he is on oxygen in the hospital.

That is wrong!! It is wrong for me, it is wrong for my wife, it is wrong for my buddies at the mill, and all the others whose lives have been hurt by asbestos.

Thank you for this opportunity to be here today, to tell you my family's story and the story of a lot of my co-workers who my lawyers say would also not be allowed access to a court under the Nickles bill or the ABA proposal.