

Testimony of

The Honorable Chuck Hagel

June 4, 2003

United States Senator Chuck Hagel
"Solving the Asbestos Litigation Crisis: S.1125
The Fairness in Asbestos Injury Resolution (FAIR) Act of 2003"
United States Senate Committee
on the Judiciary
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Thank you Mr. Chairman for asking me to testify before the Senate Judiciary Committee today. As you know, I served as a trustee of the Manville Personal Injury Settlement Trust for over a year and a half, between February of 1994 and June of 1995. I was appointed by the Trustees on the recommendation of The Honorable Jack B. Weinstein, U.S. District Court Judge for the Eastern District of New York.

Judge Weinstein and I were first acquainted when he appointed me Chairman of the \$240 million Agent Orange Settlement Fund. I would like to thank you and the Committee for your efforts to take on this complicated and urgent issue affecting hundreds of thousands of Americans.

Today, I would like to discuss my experience as a Manville Trustee, and how it relates to your legislation, S.1125 the "Fairness in Asbestos Injury Resolution (FAIR) Act of 2003." I am pleased that the medical and exposure criteria contained in your legislation are based on the 2002 Manville Trust Distribution Process. The history of the Manville Trust illustrates the problems facing asbestos claimants and defendants everywhere. And because the Manville Trust is the largest and the oldest of the asbestos trusts, it is in the unique position of being the bellwether for asbestos claim filings. I would like to share with you some of what I learned based on my experience and why I believe federal legislation is needed to correct the shortcomings of the current system.

Let me begin by discussing three of the major problems facing the Manville Trust and others like it:

- ? Insufficient payments to claimants;
- ? Inability to accurately predict the number of future claims; and
- ? Depletion of resources by non-sick claimants.

Problem #1 - Insufficient payments to claimants: During the 15 years of its existence, the Manville Trust has received over 620,000 claims and has paid over \$3.1 billion to approximately 530,000 claimants. This is substantially more than any other asbestos trust has paid to beneficiaries.

Unfortunately, only 27,000 of the total 530,000 paid claimants have received the full value of their claims. The remaining 500,000 claimants have received far less than the fair value of their claims as determined by the courts that established the Trust. Because of a very serious asset/liability mismatch, approximately 400,000 claimants have been paid only 10% of the value of their claims, while an additional 100,000 claimants - those who have most recently filed claims - have been paid only 5% of the value of their claims. Like the Manville Trust, none of the existing asbestos trusts pay more than a few cents on the dollar when compared to the court-approved claim values. It appears that none of the 20 or so asbestos trusts pending bankruptcy confirmation will pay anywhere near full claim value.

Why does the Manville Trust and every other asbestos trust pay only a few cents on the dollar and why do they all have an asset/liability mismatch? Again, the history of the Manville Trust illustrates the second problem affecting the fairness and solvency of the trust: the inability to predict future claims.

Problem #2 - Inability to predict future claims: The Johns Manville Corporation declared bankruptcy in 1982 because of its asbestos liabilities. Since then, over 60 corporations have also declared bankruptcy because of asbestos liabilities. During 1986, expert claims forecasters testified in the Manville bankruptcy court that between the late 1980s and 2049, the Manville Trust would receive between 83,000 and 100,000 claims. The Trust began operations in 1988 and as of today, only 15 years later, the Manville Trust has received over 620,000 claims - and 2049 is almost half a century away.

During 2001 the Manville Trust commissioned the fourth future claims forecast it has undertaken during its 15-year

history. That recent forecast predicted that by 2049 the Trust would receive between 750,000 and 2.7 million additional claims, in addition to the nearly 500,000 claims it already had received. As you can imagine, a future claims forecast of between 750,000 and 2.7 million additional claims is essentially a useless prediction if you are trying to adjust claim payments on a pro rata basis.

Mr. Chairman, we learned from the Manville Trust that forecasting future asbestos claims is very difficult. When considering the pending legislation, all of us should try to become comfortable with the inevitable uncertainty associated with trying to determine the number of future asbestos claims.

Problem #3 - Depletion of Resources by non-sick claimants: In the morass of asbestos claims data and statistics, we must remember that behind the numbers are people, some of whom are suffering from inevitably fatal illnesses caused by their asbestos exposure. These claimants - drawn from a claimant population with an average age of over 66 - have had their lives shortened by their asbestos exposure. Other claimants, while not terminally ill with an asbestos-related disease, nonetheless have had the quality of their lives destroyed.

These claimants have not received the full value of their Manville compensation. I noted earlier that the Trust has paid its beneficiaries over \$3.1 billion, almost all of that at either a 10% or a 5% share of claim value. Currently, the unpaid portion of the Manville claim values is over \$23 billion. Every asbestos trust also has billions of dollars of unpaid and never-to-be-paid liabilities. While it is true that some underpaid claimants may have received funds from defendants in the tort system, it is doubtful that very many, if any of them, have or will receive the fair value of their claim.

Why do these huge liabilities remain unpaid? There is, of course, an ongoing debate as to whether all of the claimants who have been paid were impaired; what "impairment" means; whether too much money has been paid to claimants with non-malignant diseases versus the dollars paid to claimants with malignant diseases; and how many manufacturing and insurance dollars this country can afford to pay to the victims of one toxic substance.

Regardless of the definition of impairment, some claimants are seriously ill, and the proposed legislation we are addressing today appears to strike an appropriate balance between those potential asbestos victims who are seriously ill and those who are not, by codifying the Manville medical and exposure criteria.

Mr. Chairman, because S. 1125 incorporates the Manville Trust 2002 Trust Distribution ("TDP") Process, I wish to discuss what I believe the Trust has done right and should be emulated in Federal legislation.

During 2002, the Trust's administrative costs were less than 3% of claim payments. This is lower than the administrative costs of any other asbestos trust and lower than the administrative costs of practically all casualty insurance companies. The Manville Trustees are appropriately proud of these very low administrative costs. The principal reason these costs are low is that the Trust's operating subsidiary, the Claims Resolution Management Corporation, employs an interactive, web-based electronic claim filing system. Federal legislation should maintain as low an administrative burden as possible.

Finally, I would like to conclude with a few short comments regarding why I believe your legislation, the FAIR Act, is needed. Although some have raised relevant questions related to your legislation, I hope we can work through these issues and move toward a solution to this critical and urgent problem.

With six operating asbestos trusts and with 20 or so companies pending bankruptcy confirmation, a national trust and its single payer format, such as the one in S.1125, is long overdue. No useful purpose is served by having multiple asbestos trusts, each with their administrative burden, coupled with the economic burden of the tort system. Such a system depletes the funds that are available for victims of asbestos exposure, as I previously discussed.

Where bankruptcies have not occurred, asbestos plaintiffs and defendants are left to the tort system. In addition to being costly, the tort system is very uncertain. The tort system has many equitable attributes but its uncertainties and unfairness for some asbestos personal injury victims, particularly under circumstances where there are insufficient funds for tens of thousands of injured asbestos workers, is not a system that should be perpetuated. To say it straight, Mr. Chairman, some claimants are doing very well under the system, yet others, equally deserving, are receiving little or nothing. It is obvious that a single payer system is needed to bring equity and fairness to current and future asbestos injury claimants.

In conclusion, I encourage this Committee to focus on the fact, as you have, that the fair resolution of our asbestos crisis is not the province of one political party or one economic point of view, but rather is an issue that should unite all of us in a common goal. S.1125 accomplishes this objective in an imperfect but yet realistic and efficient way.

Thank you for the opportunity to appear before this Committee.