

Testimony of

The Honorable Orrin Hatch

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Statement of Chairman Orrin G. Hatch

Before the

United States Senate Committee on the Judiciary

Hearing on

"Solving the Asbestos Litigation Crisis: S. 1125, The Fairness in Asbestos Injury Resolution Act of 2003 (FAIR Act)"

Good morning and welcome to this important hearing on possible solutions to resolve the asbestos litigation crisis.

I want to thank all of our witnesses for providing their expertise and suggestions to the Committee so that we can arrive to the best possible solution as soon as possible. Also, I want to thank my partner on this Committee, the Ranking Democrat, Senator Leahy for his continued efforts and interest in this subject matter. He, along with Senators Dodd, Feinstein, Levin and others continue to provide helpful suggestions that will help us all arrive at a bill that truly will help the hundreds of thousands of victims of asbestos exposure who currently get pennies on the dollar in compensation, and whose pensions are in serious jeopardy as more and more companies continue to file for bankruptcy.

Senator Leahy, along with Senators Dodd, Senators Kennedy and others have shown true courage in standing up and tackling the complex policy issues involved. To get this resolved, we will all have to dig deep, face the realities of the alternatives and work together in a bi-partisan manner to come up with the best solution possible. One that is fair to the claimants, and one that recognizes the limitations of our economy.

The private sector has been trying to resolve the asbestos situation for nearly 25 years. Several times major settlements were challenged by a few members of the trial bar and various efforts have been curtailed, prompting the Supreme Court, among others to call on Congress to "fix" this serious problem. We are fortunate to have Professor Tribe here today to educate us on the Constitutional implications of the pending legislative solution and perhaps on the private efforts in the past that have failed.

The private sector and the labor unions have had very important and constructive dialogue and much has been gained by their efforts. But we are now at a stage where given the importance of this issue to our victims, our workforce and our economy, we must act. It is time for legislators to legislate in the public interest. And that is why we are here at our third hearing on this issue and why I commend my colleagues for their interests and courage to support efforts to arrive at a solution.

I should also say that the legislation we are examining today, S. 1125 is a product of much discussion and input from all interested parties. We introduced S. 1125, the bipartisan "Fairness in Asbestos Injury Resolution Act of 2003," in an effort to move the legislative process along. I have said that we are open to constructive suggestions and to improvements to this bill. I have heard many suggestions from outside affected parties and from my colleagues here. That has been very positive and I think the legislative process is working and working well.

This bi-partisan bill, as I noted when we introduced it, is not without flaws and this hearing today is intended to provide expert advice on how best to improve it. With that, I would hope that all of our witnesses today will provide specific solutions to possible problems or flaws they may believe the legislation may have. It will not help anyone to

point out flaws without suggesting reasonable and workable solutions. In short, we want constructive criticism if there is going to be any criticism. If we all commit to that and to be open on solutions, we will get a bill and get one soon.

On S. 1125, I want to say that the support around the country we have gotten has been overwhelming. Many recognize that it may not be the perfect solution, but it is close to being one of the best workable solutions. It establishes a system to pay victims faster, ensure that it is the truly sick getting paid and provide the business community with the stability it needs to protect jobs and pensions. I appreciate the bipartisan support of the co-sponsors of the bill so far. Prior to introduction of this bill, we incorporated a number of very constructive suggestions by Senator Leahy and Senator Dodd, and I look forward to continuing to work with them and our other colleagues so that we can win their full support.

Moreover, we continue to address other helpful suggestions and concerns raised since we introduced the bill. For example, we are working with Senator Baucus to address compensation for those victims who are in Libby, Montana. Senator Baucus testified at our two prior hearings on this issue and I know it is a serious concern for his constituents. We have also heard from some of those who are truly sick and suffering from asbestos related diseases who are concerned that the bill as currently drafted would require reductions in awards for amounts received from collateral sources. We will look to address as many concerns as possible. I should note on that point that prior to introduction of the bill, at Senator Leahy's suggestion, we specified that life insurance proceeds would not be offset. Others, including Senator Murray who will provide testimony today have asked us to look at enacting a ban on asbestos and provide for research funding to find cures for these horrible diseases caused by asbestos exposure. All are laudable and well intentioned and I would like to work with my colleagues to see if we can address these concerns.

Unfortunately, I also recognize that there will be special interest groups who benefit handsomely from the current broken system and have every incentive to stop our efforts on behalf of victims. That is their right and I know we will hear all sorts of parades of horrors on anything we do. I hope their efforts will not succeed and we do what is best for the country. We need to recognize where we will be if we don't get this done. I want to say to labor - already you have very sick members that are either being shortchanged in the tort system due to the flood of claims and dwindling resources or those who may receive nothing at all, and members whose jobs and pensions have suffered as a result of the skyrocketing bankruptcies. What will your membership say if that is allowed to continue? To the business community, I ask, how many of you will still be around in the next few years if we don't do something to resolve this crisis now? Let me caution that many that have gone before you thought that they would survive, that they would not be flooded with claims or that they had enough insurance to cover their claims.

More than sixty companies have gone bankrupt, nearly a quarter of which occurred in just the last two years! And I should note - those companies thought it wouldn't happen to them - I know, I worked with some of them on a legislative solution five years ago, which I introduced with Senators Lieberman and Dodd. And the insurance companies - you should have the same concerns.

That being said - I hope this hearing, and the fact that we have a bill to work from, will encourage the interested parties to work with us to support a workable solution that will benefit the common good. We need to ensure that the truly sick get compensated first and foremost. But we can do that without bankrupting companies, so that jobs and pensions will not suffer needlessly.

I look forward to all constructive views presented here today. I also invite anyone in the public and victims groups to provide any suggestions or improvements you have to us by close of business this week. As the interest from each member of this Committee indicates, we are serious about this and we intend to get this done and make tough policy calls, where necessary.

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