

Testimony of

The Honorable Patty Murray

June 4, 2003

Testimony of Sen. Patty Murray
Hearing Before the Committee on the Judiciary
Solving the Asbestos Litigation Crisis: S. 1125, the Fairness in Asbestos
Injury Resolution Act of 2003
Wednesday, June 4, 2003

Chairman Hatch, thank you for allowing me to testify at this important hearing today. I would also like to thank Senator Leahy for his support for my bill to ban asbestos.

Mr. Chairman, I am very concerned about several aspects of S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003. Before I outline my concerns for you and the Senate Judiciary Committee, I'd like to make one very important point:

If we are going to protect companies from asbestos lawsuits indefinitely into the future, then we must protect all current and future asbestos victims into the future as well.

The current asbestos liability crisis is not just a function of a high number of lawsuits. It is also a function of the toxicity of asbestos and the long latency period for asbestos diseases, which can be up to 40 years. Asbestos is a known carcinogen with no known safe level of exposure, and U.S. companies used large amounts of it for far too long. Many companies chose to continue using asbestos long after its dangers were well known, and some companies are still using it today.

I have several concerns about the current proposal, and then I'd like to talk about the one glaring problem that S. 1125 fails to address. As you know, I have also outlined my concerns to you in a May 30, 2003 letter.

First, in order for an asbestos liability reform bill to be truly fair to victims, it must ensure adequate compensation for all types of asbestos victims. This bill only covers workers exposed to asbestos on the job, and it ignores everyone else. This means that if S. 1125 gets passed, many people would not get any compensation at all. This includes many people from Libby, Montana. The problem with asbestos contaminated vermiculite may have started in Libby, but the problem is national in scope.

For decades, W.R. Grace's Libby mine supplied 80 percent of the vermiculite used in this country. Vermiculite was processed at hundreds of plants all over America, from Washington to Massachusetts.

I'd like to share with the Committee a photo from the late 1970s of Justin and Tim Jorgensen. The boys are shown climbing on waste rock from the Western Minerals plant in Minneapolis, Minnesota. This plant processed asbestos contaminated vermiculite from the W.R. Grace plant. The company knew when it bought the mine in 1963 that it was full of asbestos, but chose not to warn workers or their families

Justin and Tim's grandparents lived across the street from the Western Minerals facility. The waste rock that Justin and Tim are climbing on contains up to 10 percent tremolite asbestos. Their father, Harris Jorgensen, died in 1991 at the age of 44, from asbestosis and lung cancer. Under this proposal, if Justin and Tim ever get sick from their exposure to asbestos, neither one would receive a dime because they weren't exposed to asbestos on the job.

Asbestos exposure can also occur when people work on their cars or their homes. In America today, we are still adding asbestos to brakes on purpose. Most people who work on their own cars probably don't know this, and

probably aren't taking the proper measures to protect themselves. The same is true for the millions of people who chose to make home improvements themselves and unwittingly expose themselves to asbestos.

I have a constituent from Spokane, Washington, Mr. Ralph Busch, who regularly disturbed asbestos-contaminated attic insulation while renovating his home. For two years, he routinely stirred up insulation made with Libby vermiculite before learning that he was exposing himself to deadly fibers in the air.

Ralph Busch is not alone. As many as 35 million homes, schools and businesses could have this asbestos-tainted Zonolite insulation. Just a few weeks ago, the Environmental Protection Agency and other federal agencies launched an education campaign warning people not to touch vermiculite insulation. The campaign also warns people not to let their children play in attics with Zonolite insulation.

Mr. Chairman, under this bill, people like the Jorgensens and Ralph Busch wouldn't get compensation. And companies like W.R. Grace, which knowingly exposed people to asbestos, would be protected. I hope you will consider amending your bill to take in a much larger universe of existing and future asbestos victims.

Second, the legislation sets restrictive medical criteria to determine who would qualify to be compensated for an asbestos-related sickness. Even the President of the American Thoracic Society, Dr. Thomas Martin, wrote that similar standards endorsed by the American Bar Association last February are too narrow, and could leave out deserving victims. Dr. Alan Whitehouse, who has treated hundreds of victims from Libby, also believes the medical criteria in S. 1125 are not appropriate. I strongly urge the Committee to redraft the medical criteria section of this bill, and to base the criteria on the latest information coming from the American Thoracic Society and from the doctors working on the front lines in Libby.

Third, the total size of the trust fund -- even at \$108 billion -- may not be sufficient. There is no federal backstop to guarantee compensation - like the FDIC does for a bank - to ensure that future victims would be covered. Furthermore, the funding levels seem arbitrarily low. A victim who develops lung cancer from asbestos exposure could get as little as \$50,000. A mesothelioma victim would only receive \$750,000, a paltry sum considering that this disease usually is a death sentence and that medical costs can routinely approach this amount.

Finally, I'd like to raise the most obvious shortcoming of this legislation.

Congress is considering eliminating the ability of asbestos victims to sue for compensation, no matter how severe the harm. And if Congress is going to prevent any future lawsuits, then Congress must try to prevent any more asbestos casualties, by banning the use of asbestos.

Why on earth does our government allow thousands of tons of asbestos to continue to be put into consumer products every year? Why does our government still allow asbestos products to be imported?

More than 30 other countries have banned asbestos, but we still have not followed suit. This is the elephant in the room for this legislation. It is the most obvious, yet least discussed, aspect of asbestos.

If we are going to limit the rights of asbestos victims, we have an obligation to prevent future victims by banning asbestos.

In 2001, America consumed 13,000 metric tons of asbestos. It's in brake pads and gaskets, roofing shingles and roofing sealants. Like most Americans, I had thought asbestos was banned long ago. In 1989, the EPA finalized rules to ban asbestos. But the asbestos industry sued to overturn the ban in 1991, and the first Bush Administration chose not to appeal the decision to the Supreme Court. If we are going to limit asbestos liability for businesses, then the least we can do is stop adding to the problem by continuing to use asbestos.

That's why I introduced the Ban Asbestos in America Act, S. 1115. My bill would finally ban the use of asbestos and prohibit the import of asbestos products. S. 1115 creates a national mesothelioma registry to track where Americans are still developing this deadly disease. The bill would require an education campaign to raise awareness. In addition,

it would require federal agencies to improve protections for workers and consumers. I greatly appreciate Senators Leahy and Baucus cosponsoring S. 1115.

I do not believe asbestos can be safely used in most applications. Millions of workers are still being exposed to asbestos today. According to the Occupational Safety and Health Administration, an estimated 1.3 million employees in construction and general industry face significant asbestos exposure on the job. Between fiscal years 1996 and 2001, three thousand of OSHA's inspections and more than fifteen thousand of its violations involved asbestos. Ultimately, the best way to protect people from asbestos is to ban it.

Any legislation to fix the litigation crisis must be balanced in its protections for present and future asbestos victims. Protecting these people is at least as important as protecting companies from liability. We need to ensure that an end to asbestos liability also means an end to the creation of new asbestos victims. This should be the charge to this Committee. Thank you.