

Testimony of

Dr. Robert Hartwig

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Testimony as delivered
by
Robert P. Hartwig, Ph.D., CPCU
Senior Vice President & Chief Economist
Insurance Information Institute
New York, New York

United States Senate Committee on the Judiciary

Solving the Asbestos Crisis: S.1125
The Fairness in Asbestos Injury Resolution of 2003

JUNE 4, 2003

Thank you, Mr. Chairman, and members of the Committee.

My name is Robert Hartwig and I am Chief Economist for the Insurance Information Institute, a property/casualty insurance trade association. I have been asked to testify before the Committee regarding several of the most important economic considerations surrounding the current asbestos debate. As an economist, I am particularly interested in eliminating the extraordinary inefficiencies associated with asbestos litigation, as well as the severe economic and financial dislocations associated with those inefficiencies, within a framework that is fair and equitable for all parties involved.

MACROECONOMIC DISLOCATIONS

The macroeconomic implications associated with the current out-of-control asbestos litigation system are not in dispute:

- ?X Nearly 70 companies have been pushed into bankruptcy by asbestos litigation
- ?X Approximately 8,400 companies, in almost every industry, have had claims filed against them
- ?X Between 52,000 and 60,000 jobs have been lost as a result of these bankruptcies
- o For shattered communities and families, these statistics are only the beginning of the story, as thousands of jobs are lost in industries dependant on the bankrupt firms.

TOWARD AN EFFICIENT SOLUTION TO THE ASBESTOS CRISIS

If nothing is done to resolve what has been described as the "elephantine mass" of asbestos litigation, scores, if not hundreds, of additional businesses will be forced into bankruptcy and tens of thousands of workers will find themselves unemployed. Retirees and workers who have spent decades saving for retirement will continue to see their life's savings vanish.

The inefficiencies associated with asbestos litigation stem largely from abuse, which has led to a rapid upward spiral in tort costs. Legislation now before the committee will address these abusive practices.

Under the present tort system, hundreds of thousands of victims;Xup to 90% of whom are unimpaired by any asbestos related illness;Xare able to move from state to state setting their sights on the most sympathetic jurisdictions and judges. As state and federal policymakers have determined previously, there are some public policy crises so profound, or certainly so vital, as to require quantum legislative actions: these include the September 11 Victims Compensation Fund, funds for Black Lung, vaccine compensation and state workers compensation funds.

The current trust fund proposal would be more efficient;Xand rational than the current system for the following reasons:

1. Only individuals who are impaired by asbestos exposure would be entitled to compensation under the fund;
2. Transactions costs would be radically reduced in the new no-fault framework; According to the RAND Institute, up to 50% of asbestos litigation dollars go to cover transactions costs rather than towards direct compensation of victims. RAND estimates that transaction costs can be reduced to just 10% of total costs.
3. Wild jury verdicts, such as the recent \$250 million verdict handed down in Illinois, would be eliminated, allowing funds to be distributed more equitably.

CONSTRUCTING A PRIVATELY-FUNDED FACILITY THAT PROVIDES CERTAINTY, FINALITY AND EQUITY

Major insurers and manufacturers have been working with some of the best financial, actuarial and legal resources available to construct a privately-funded facility that will bring certainty, finality and equity to the country;is asbestos problem. Based on these analyses, insurers believe that \$45 billion dollars contributed from both the insurance and policyholder sectors, combined with contributions from manufacturers and others will fund a facility that approaches \$100 billion and is sufficient to compensate present and future claimants based upon need, not when or where they file suit. Insurers are willing to perfect such a mechanism so that annual cash flows run unimpeded and that solvency risk is extinguished.

The proposed insurer contribution of \$45 billion is large and constitutes, by far, the largest payout in the history of the property/casualty insurance industry and will inflict true financial pain on the two dozen or so companies who will pay the bulk of this amount. Forty-five billion dollars is approximately 50% more than insurers hold in reserve for asbestos claims today and is equal to about one-third of all the capital held by commercial insurance companies today. That;is significant because there is no excess capital in the industry today -- it is all committed to paying for workers hurt on the job, for business owners recovering from national disasters or terrorist attacks.

The few dozen insurance companies most affected by asbestos litigation are small in number compared to the thousands of manufacturing companies that are currently involved in the pending asbestos litigation system. As a result, the financial burden of payments into the trust will fall much harder on insurers.

IMPLICATIONS OF INACTION

The consequences of inaction are grave. As previously mentioned, a large swath of Corporate America is at risk, jeopardizing the jobs of thousands of employees, impoverishing retirees and shattering families and communities.

America;is clear national interest lies in making sure asbestos funds are available for those who become sick and lifting an ominous cloud of litigation from our troubled economy.

Thank you for the opportunity to appear at today;is hearing. I would be happy to answer any questions you may have.