

Testimony of

The Honorable Orrin Hatch

June 19, 2003

Statement of Chairman Orrin G. Hatch
Before the United States Senate Committee on the Judiciary
Executive Business Meeting on

S. 1125, "THE FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2003" (THE "FAIR ACT")

I think it goes without saying that all members of this Committee recognize the major crisis our economy is facing as a result of the current asbestos litigation crisis. Not only is the economic viability of companies threatened, but with it tens and likely hundreds of thousands of jobs continue to be lost, pensions threatened and legitimate victims of deadly asbestos exposure are losing out as funds are going to non-sick plaintiffs and unscrupulous attorneys who are making a very good living targeting and squeezing company after company in our economy.

Today's mark-up of the asbestos legislation is one of the most important actions this committee has taken in recent years, given its broad impact on so many of our hard working union members and those who employ them. I want to thank all of my colleagues on this Committee, particularly Senator Leahy, for their continued interest in this subject matter and coming to a fair resolution. The legislation we will be considering today is a result of months of hard work by representatives of business interests and the AFL-CIO and the input of many of our colleagues in this Committee.

Since we introduced this bill, we have received many suggestions and improvements. We have come a long way to get here and frankly the fact that we are so close to a universal resolution to this major problem has been encouraging. I thought the hearing we held just over two weeks ago on the legislation helped us understand some areas where the bill needed improvements, and I will shortly go through them. We have had hours and hours of bipartisan negotiations over the last two weeks with representatives of the various interests, including labor, who represent the victims of asbestos exposure, some of whom are only receiving pennies on the dollar in the current system, business groups who have fallen victim to the frivolous suits, and the insurance industry. A lot of progress has been made, but we also don't have every issue resolved to the satisfaction of all Committee members at this time. I would hope that through this mark-up, various concerns of my colleagues can be heard, debated and hopefully resolved.

To assist us in the Mark-up today, particularly in the area of the medical criteria which determine the eligibility of certain claimants to be compensated under S. 1125, I have asked two of the most impressive witnesses we have had before us, Dr. Laura Welch and Dr. Jim Crapo, to join us to assist the Committee with any medical or technical questions members may have with the medical criteria portion of this bill. I thought that this would be the fairest and most effective way for members of the Committee to make informed decisions on the bill and on the amendments they might offer or wish to vote on. Drs. Welch and Crapo are both experts in this field of asbestos-related diseases and are not strangers to us. They both were witnesses at our last hearing and impressed all members with their testimony, though they did not always agree. I want to thank you both for taking the time and helping us with this important issue. We value your expertise and your input in this process and appreciate the hours and days both of you have spent with our staffs to help us shape the proposals we have before us. We know that at some point, those of us who have been elected to make difficult policy judgment calls will have to make certain decisions, but I am convinced that having your input to understand fully the ramifications of our action will help us craft the best policy.

I should note that the private sector and the labor unions have had a very important and constructive dialogue over the past two weeks since the hearing. Frankly, I was hopeful that we could have had agreement by business and labor on the eligibility criteria. But despite much progress, we still don't have that. Hopefully today's mark-up can at the very least produce a set of eligibility criteria that as a Committee we can live with and organized labor and the business community can endorse.

I think we have made significant progress. I am pleased to announce that I have agreed to accept numerous modifications in an effort to address various members' concerns and to get Labor's support for this bill. Let me list the changes I have agreed to make, which will be incorporated in S. 1125. These changes were either to address suggestions made at the last hearing or concerns raised by Senators Leahy, Durbin, Feinstein, Feingold, Murray and Baucus.

Some of the changes are as follows:

? Removing most collateral source deductions from the awards given to the victims. This was an issue Sen. Durbin and Sen. Leahy raised at the hearing and we have resolved this.

? Ensuring that the award values increase as inflation increases over the years, as Sen. Leahy had recommended.

? Doubling the statute of limitations period for claimants to file with the fund.

? Providing coverage for claimants whose exposure was the result of employment on U.S. Flagged ships or at U.S. Companies overseas.

? Strengthening the Administrator's ability to enforce contributions by providing for penalties.

? Providing criminal penalties for anyone who commits fraud or makes false statements against the fund.

? Providing the Administrator the authority to recoup past hardship and inequity adjustments amounts if a company later becomes able to pay.

? Creating a new medical exceptions panel which will allow claimants who do not meet the medical criteria, but may have a special case that merits separate review.

? Striking the product identification requirement, making it easier for claimants to qualify.

In addition, I have agreed to make numerous changes to the medical eligibility criteria to address labor's concerns. These changes include:

? Adding a new level of category for those with the most severe asbestosis.

? Adding a category for those with "mixed causation", that is, those who have both obstructive and restrictive impairment and might not otherwise be able to meet the requirements.

? Striking the 1982 exposure cutoff date. Senator Leahy and others also expressed concern about this issue.

I am also pleased to say that we have reached agreement with Senator Baucus to include the Libby, Montana victims. We have also reached a fair resolution with Senator Feinstein and Senator Murray on the issue of a responsible ban of asbestos-related products that may still be in use. I believe we also have a fair way to resolve the so-called back-end issue of making sure the private sector companies bear the risk of possible short-falls in funding of the plan. However, having this private-sector back-end proposal, which essentially would require companies to continue to pay at a capped amount in the event of a shortfall, or be liable to suits for tort actions again, should force us to make sure that the medical eligibility criteria are fair and not overly broad in order to avoid allowing payments to claimants who are not sick and not legitimately deserving of payments. Otherwise, this fund would be a disaster. That is why we have Doctors Welsh and Crapo here today, because this is so serious.

So, I want to say to my colleagues, we have come a long way, with their significant help. We have addressed many, if not all, of the concerns raised with the underlying proposal. I look forward to a very constructive mark-up here today to make any further improvements that may be necessary. I have no intention on forcing a vote on this bill if there is

sincere and legitimate progress being made and as my colleagues Senators Dodd, Kennedy and others have recommended, I am prepared to allow a few more days, and continue with the Mark-up on Monday or Tuesday to resolve any remaining issues, if it looks like the additional time could help. However, I have every intention of finishing this bill today if it looks like we are being unduly delayed. More delay only hurts the victims, but if it looks like it is possible, I would allow a few more days in order to get the support of as many of my colleagues as possible on this important legislation. In order to get this legislation done, I think all members are ready to and must make tough policy calls, where necessary. If it had been possible to achieve a global settlement of this matter by private negotiations, I think this could have been done completely as a private settlement, and legislation would not have been necessary. But we know that is not possible. Hopefully we will be able to have a resolution that is fair and has broad bi-partisan support, including the support of those who represent the victims of asbestos exposure, who will be the ones that will suffer if the current system continues.

With that, I will turn it to our Ranking Member who has provided great suggestions as I have already mentioned and has made this bill a much improved product. Then, given that Doctors Welch and Crapo can only be with us until 2 P.M., I would like to allow them to make some brief comments on the medical portions of this bill and then move forward with marking up the bill, starting with the Medical Criteria.

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S. 724, A BILL TO EXEMPT CERTAIN ROCKET PROPELLANTS FROM EXPLOSIVES PROHIBITIONS

As I mentioned at last week's mark-up, we have been diligently working on a substitute to S. 724 that strikes an appropriate balance between the legitimate concerns of all parties. I will be offering a substitute on behalf of myself and Senator Kohl that I believe does just that. The original bill sponsored by Senator Enzi, and cosponsored by Senators Craig, Sessions and Durbin, provided a blanket exemption for non-detonable rocket propellant. Some Members of the Committee, along with the Department of Justice, have expressed concerns with the blanket exemption. In drafting this substitute language Senator Kohl and I - and I want to commend Senator Kohl for working so diligently to craft this compromise - have very carefully considered those concerns. I believe the compromise legislation I offer today appropriately balances the interests of the rocket hobby with those of our law enforcement community. In my view, it minimizes the burdens on law-abiding citizens without jeopardizing the safety and security of our nation.

Very briefly, the compromise places a limit at just under one pound on the amount of the rocket propellant, APCP, one may purchase without a permit. Further, it requires those who legally possess more than 25 pounds of the propellant to store the material in a locked metal container. This storage requirement comports with the International Fire Code - which has already been or will soon be adopted by 33 states, including my own state of Utah.

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THE NATIONAL GREAT BLACK AMERICANS COMMEMORATION ACT OF 2003

I am proud to join Senator Mikulski as cosponsor of the "National Great Black Americans Commemoration Act of 2003." This legislation will help offer a more complete portrayal of our nation's proud history - one that includes an increased awareness of the contributions made by many great black Americans of various fields and accomplishments.

This legislation seeks to recognize the contributions of African Americans who have served in Congress or other government capacities, in the military, or in other important roles as educators, authors, scientists, inventors, athletes, clergy and civil rights leaders. Clearly, there are few, if any, areas of American culture and history that have not been touched and improved upon by the impact of black individuals. As we recognize this, it is important that we also recognize those whose goal is to make available the history of these outstanding people.

One such institution is The Great Blacks in Wax Museum, a nonprofit organization in Baltimore, Maryland, whose mission is to present the history of black Americans and to highlight their contributions to our nation. I believe that this institution's work thus far and its goals for the future make it worthy of our support. This legislation not only commends the efforts made by this museum to date, but authorizes the appropriation of funds that will help the museum to improve and expand. Appropriate federal assistance, coupled with other funding raised by the museum, will allow the current institution to become the National Great Blacks in Wax Museum and Justice Learning Center, which will be better equipped to serve its purposes. This improved museum will be a bright example for projects with similar goals and will provide an excellent source of historical education for all who visit.

I am a strong believer that our history should be presented in a complete and accurate manner. Where we have understated in the past, we should make amends. The development of the National Great Blacks in Wax Museum and Justice Learning Center will be a valuable statement recognizing the contributions of so many great African Americans. I hope that my colleagues will see the merit in this endeavor and will lend their support to the National Great Black Americans Commemoration Act.

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