

Testimony of

# The Honorable Patrick Leahy

June 19, 2003

Statement of Senator Patrick Leahy  
Senate Judiciary Committee Executive Business Meeting  
S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003  
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I am disappointed that we have yet to reach consensus on legislation for an effective national trust fund for victims of asbestos-related disease. Since I convened the first hearing on the asbestos litigation crisis last September, I hoped a bipartisan dialogue would result in the best means for providing fair and efficient compensation to the current victims and those yet to come. Chairman Hatch and I have been working for months with Senators Dodd, DeWine, Kennedy, Carper, Ben Nelson, Feinstein and others to encourage representatives from organized labor and industry to reach a consensus solution, and to bring our own ideas and efforts to the table. We have made some progress but we are far from having an effective trust fund.

I thank Senator Hatch for working with me and other Committee members to resolve some matters. These are items we had hoped would have been resolved before introduction of legislation on this matter. These housekeeping amendments are useful and correct some of the unnecessarily harsh provisions in the original bill. Amendments we are offering today incorporate our efforts to strike offsets to compensation for asbestos victims from previous payments from disability insurance, health insurance, Medicare, Medicaid, and death benefit programs. The use of these "collateral sources" in the original bill would have reduced or eliminated compensation pledged to asbestos victims. We had urged this approach before the bill was introduced and, again, at our most recent hearing, and are glad to correct it now.

Another bipartisan amendment we should adopt today will incorporate Senator Kohl's and my amendment to index the award values to asbestos victims for future inflation as a matter of basic fairness in a 50-year fund. This, too, is not unimportant but a correction we are happy to make at this time.

There are a number of other amendments that address "housekeeping" matters in the bill that I hope we will incorporate without additional delay, including one providing for annual Congressional oversight of the asbestos fund, another imposing criminal penalties for false or fraudulent statements against the fund, and another establishing penalties for corporations that fail to make their contributions to the fund. There are a number of others, too many to describe here, and indeed Senator Hatch himself circulated more than a dozen amendments to his own bill last night.

Unfortunately, several fundamental concerns have not been resolved and there is no consensus on them. As I said at our June 4th hearing on this legislation, we need to work with all the stakeholders to resolve the remaining complex and inter-related issues -- medical criteria, award values, and insolvency risk -- necessary to enact an effective trust fund solution. Unfortunately, we have not reached anything near a consensus on these critical issues. Thus, the overall bipartisan progress on this bill has been quite modest and incomplete.

This bill still shifts the financial risk from defendants and insurers to victims. The bill guarantees businesses a lifetime of absolute legal and financial certainty, but it leaves asbestos victims completely out of luck if the trust fund runs out of money at any time in the next 50 years. The one constant in our experience with projections of asbestos liabilities is that the projections of today will be wrong tomorrow.

Twenty years ago, all the experts predicted that the Manville Trust Fund would be paying asbestos victims full compensation for many years. Now, asbestos victims get 5 cents on the dollar because the Manville Trust Fund is nearly insolvent. The risk of insolvency in a national trust fund - and, indeed, the risk of inadequate funding short of

insolvency -- must be addressed in order to provide certainty to asbestos victims as well as to defendants and insurers.

We have yet to reach consensus on medical criteria requirements for fair compensation. Once Chairman Hatch permitted the negotiations with stakeholders to resume, after more than a month of delay, we focused for the past week on crafting the details of medical criteria necessary to evaluate legitimate claims and to weed out "frivolous" claims in the trust fund. Despite our efforts this week, the parties have not yet achieved common ground on the medical criteria requirements. This is an enormously important matter. By setting statutory criteria we are not only deciding who can recover but who cannot. It needs to be done fairly.

In addition, since we have focused this week on medical criteria issues without success, the stakeholders, at the Chairman's insistence, have not been permitted to discuss the fundamental question of appropriate award values for victims of asbestos. That sets the cap on what those who are victims can receive.

And the parties have this week only had brief discussions of insolvency risks. There is no more fundamental concern underlying this bill. What has doomed earlier efforts is the fact that they were all unfunded or drastically under-funded. If this solution is to work, it cannot be predicated on a false promise. There must be money to compensate the victims. The money cannot simply dry up and victims be left holding the bag. We have been stymied in our efforts to find the answer to these legitimate concerns. Negotiations need to take place and to succeed for us to reach consensus. We all should now sorely regret that we lost much of the last month to a prohibition of negotiations.

Our undertaking is complex and unprecedented. It has not been easy to work out the details necessary for consensus. But the stakes are too high for us to leave the field before trying our utmost to complete this task. I want to make every effort to solve this crisis, and I commend and encourage all who are working in good faith to help do that.

That is why I have asked the Chairman to lock in the modest bipartisan agreements we have made and to continue our work to achieve the consensus needed to enact a law.

Acting together and encouraging the private negotiations to continue is, in my view, the best way to move a consensus bill through the legislative process and into law. There remain a number of important issues on which we need to find common ground. Working together we stand the best chance of success.

Given that the parties and all of us and our staffs have been faced with a series of short deadlines that have not been productive, given the breakdown in negotiations under the pressure of this week, I suggest that we let the parties take a breath and refresh themselves and then redouble their negotiations after a few nights' sleep. This would enable them to make the hard assessments that have to be made about where there is room to compromise and whether they are ready to make the kinds of compromises they were headed to back in early May to get a consensus agreement and effective legislation.

I know how much the Chairman likes to press ahead, but I suggest that constant pressure has not yielded results and a different tack may be in order. The parties are not in the frame of mind to be ordered back to a bargaining table to butt heads and exasperate each other further. Realistically, they may need until sometime in July to reassess where this is headed and to make real progress.

It would be my hope that by the time of our business meetings in mid-July we might have a consensus bill. I know that the Chairman has a full agenda for this Committee next week, including five hearings and a business meeting debate over a proposed constitutional amendment and a highly controversial circuit court nominee. The Committee will be fully occupied next week. The parties need a break and the opportunity to assess where they are and where this may be heading. The negotiations by the private parties are essential to our producing a consensus bill, and helping them to succeed in their work will help us succeed in ours.

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