

Testimony of

The Honorable Orrin Hatch

June 24, 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")

Good morning. Welcome to the continuation of the Committee's mark-up of the asbestos legislation. I want to thank all of my colleagues on this Committee, particularly Senators Leahy, Kennedy, DeWine, Specter and Graham for their continued efforts since last Thursday so we can make progress towards coming to a fair resolution.

We received many suggestions and improvements since Thursday. We had an incredible and unprecedented markup last week where the two experts we had, Doctors Crapo and Welch, helped all Members better understand this complex issue. We have had hours of bipartisan negotiations over the weekend and have consulted with representatives of the various interests, including labor. I think we will all agree that a lot of progress has been made. I am very pleased to announce that Senator Leahy and I have agreed upon a set of medical criteria. This has helped narrow the number of amendments we will need to consider and I am optimistic that we will have a bill at the end of the mark-up that will have the bi-partisan support of the members of this Committee.

I am pleased to announce that in addition to the amendments I described on Thursday I agreed to accept many other changes to get bi-partisan and Labor support for this bill. Let me list the changes I have agreed to make, which we will get to first. Some of the changes for the benefit of all my colleagues 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.

The new criteria that Senator Leahy and I have agreed to make numerous changes to the medical eligibility criteria to address concerns expressed last week. 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.

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.

Striking the 1982 exposure cutoff date.

Weighting exposure more heavily in earlier years.

Allowing independent reviews of B-reads and providing the ability to investigate smoking history of claimants - both of which will help the fund maintain its integrity.

We've also agreed to direct the Institute of Medicine to study the link between asbestos and "other cancers" to find out more definitively what the connection is.

We also have resolved the issue relating to Libby, Montana victims with the help of Senator Burns and Baucus, and we have agreed to a responsible ban of asbestos related products that may still be in use.

I believe the bill we have today with all the changes we have agreed to is a fair and generous bill. I hope that we can keep amendments to a minimum. In order to get this legislation done, we need to make tough policy calls, but we need to be responsible here.

We have come a long way and we have worked hard to get to where we are today. If we don't get this bill done this week, we are telling the victims that they must live with the broken system of today. A system where a few get significant amounts, but many more get only pennies on the dollar and almost a guarantee that the companies who employ most of the working Americans will be bankrupt in the next couple of years, thanks to a few creative but unscrupulous trial lawyers who are the true winners of today's system. Jobs will be lost. Pensions will be drained and victims will be left in the dust because all of the money needed to compensate them would have been sucked up by the broken system where 86% of the claimants who are not sick, are getting most of the funds. If we can't get this done, more and more companies will go into 524 (g)'s under our current bankruptcy laws and that is bad news for victims, their employers and the economy.

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