

Testimony of

The Honorable Patrick Leahy

June 24, 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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A Breakthrough On Medical Criteria

Today we resume our quest to enact an effective national trust fund for victims of asbestos-related disease. I thank Chairman Hatch for working with me in good faith since last week's markup and hearing. I am pleased that we have reached a break-through agreement on the medical criteria requirements identifying legitimate victims of asbestos exposure. I also want to thank the stakeholders for working with us to reach this bipartisan agreement on one of the three critical issues to creating a fair and effective national trust fund. One down, two to go.

But we still need to find common ground on appropriate award values and on safeguards against insolvency risks.

During our consideration of resolving the asbestos litigation crisis, all Senators have been sounding a consistent theme: fair compensation to the truly sick. Our amendment properly defines the truly sick, dividing them into appropriate categories on the basis of sound medical diagnoses.

I am grateful for the generosity of Dr. Welch and Dr. Crapo, who gave us all such a useful tutorial on the medical aspects of this problem at last week's mark-up. Dr. Welch also sacrificed this past Sunday afternoon, missing her daughter's soccer game, to work with our staffs. We have tried to make good use of their expertise, and I believe our bipartisan amendment reflects that.

For example, our agreement lays out ten categories of asbestos-related disease: five levels of non-malignant disease of increasing severity and five levels of cancer, including colorectal cancer, lung cancer and Mesothelioma.

Our amendment also provides a mechanism for comparing various years of exposure, in various industries, on a correctly weighted basis. Thus, the years a shipyard worker worked during World War II - which were among the heaviest of asbestos exposures - will be counted as four times a normal year of exposure. Our "weighted occupational exposure" provision fairly accommodates the many scenarios that the victims of asbestos exposure will present to the fund to determine appropriate compensation.

Our amendment requires in-person physician examinations of each and every victim, which will eliminate the mass screenings that have garnered so much attention in the asbestos litigation debate. It also permits the Fund Administrator to audit the doctors whose diagnoses are used by claimants, and to refuse to accept submissions from doctors whose diagnoses are not trustworthy.

Our amendment requires the use of the diagnostic tests and standards that the medical community agrees upon for diagnosing these lung diseases, to ensure the accuracy of the evidence presented to the Fund. Finally, the Leahy-Hatch amendment includes a "take home exposure" provision to allow recovery for spouses and family members who were exposed to asbestos from the work clothes of their loved ones.

Senator Specter hit the nail on the head last week when he spoke about this bill as taking away people's rights and wanting to be sure the alternative process and outcomes will be fair before we do that. We have reached consensus on the first step in this process, but we still have two critical steps remaining: crafting adequate award values and safeguarding against insolvency risks.

Today's agreement on medical criteria will be meaningless if we fail to reach common ground on award values - namely, what victims would be entitled to receive as compensation for their illness. To date we have not had any debate or negotiations over award values by order of the Chairman. This core issue obviously entails a critical series of judgments that we will be called upon to make.

Even with appropriate medical criteria, if the award values are unfair, the bill will be unfair and unworthy of our support.

I suggest that we not try to finish that endeavor today. We need to get the most accurate estimates of claims projections based on our agreed-upon criteria. Then we need to run the numbers to calibrate the delicate balance between adequate award values and sustainable contributions to fund payments based on those awards over the 50-year life of the trust fund.

In addition, we still have the critical questions associated with potential insolvency of the fund. This bill still shifts the financial risk from defendants and insurers to asbestos victims. We have to determine what to do if the trust fund runs out of money at any time during 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. 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.

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 bill is to work, it cannot be predicated on a false promise. There must be money to compensate the victims. The victims cannot be left holding the bag.

Last week we locked in the modest bipartisan agreements on collateral sources, indexing awards for inflation and many other amendments.

Today we lock in a bipartisan agreement on fair medical criteria needed for a national trust fund. We need to continue our work to achieve the common ground needed to enact a law. Acting together through consensus remains, in my view, the best way to move a bill through the legislative process and into law.

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