

Testimony of

# The Honorable Patrick Leahy

June 26, 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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Today we resume consideration of legislation to enact an effective national trust fund for victims of asbestos-related disease. Earlier this week the Committee unanimously adopted an amendment on medical criteria and a number of other amendments we were able to work through in the last several weeks. Unfortunately, in the few hours that have transpired since our last meeting, we have not been able to reach consensus on two critical issues: award values and a guarantee of solvency for the fund to protect asbestos victims. I am disappointed that we have yet to reach consensus on these essential parts of a fair and effective national trust fund.

Perhaps we should not be surprised that lightening did not strike twice within one week on the same bill and that we did not achieve a breakthrough on the critical issues remaining for this bill. We still need to find common ground on appropriate award values and on safeguards against insolvency risks.

After Tuesday's markup, I had genuine hope that we would be able to agree upon a real solution to the asbestos litigation crisis. We had worked hard, and then harder, to reach consensus on fair and reasonable medical criteria. The next two steps - defining the right compensation values, and ensuring the solvency of the trust fund - also pose difficulties, but they did not seem insurmountable. And in fact, they need not have been beyond our grasp.

How much money the fund will require depends on how many people become ill, and how much they are compensated for their illnesses. All the pieces of this puzzle must fit together. We have all been working for weeks with financial projections as we consider the necessary financial aspects of this trust fund. Indeed, parties have in good faith shared projections and have been working with similar figures. At least we have all known where we differed and the assumptions underlying the projections.

Late last night, during the "vampire hours" that have so dominated these discussions, the defendants' numbers changed dramatically. The analysts retained by some of the business groups were suddenly saying that the worst case scenarios were much more dire than they had previously predicted.

I realize that the medical criteria the Committee adopted on Tuesday differ in some ways from those used by other funds, and I realize that some other changes might have been necessary to adjust prior projected figures to account for new information. But I find it very difficult to believe that the number of victims and the projections needed to be so significantly increased. The changes in assumptions and projections will require explanation and examination. That could not happen in the wee hours of this morning.

Time may help. It has helped to restart discussion before and to make progress when all seemed lost.

If we were to take the time to consult with the people in the best positions to help us understand the changes in the financial projections, and to help us develop accurate estimates of the likely number of claimants that this fund will see in the future, we might still be able to develop a bill that would perform the function of providing fair compensation to victims and reasonable certainty to defendants.

But that cannot happen in a couple of all-night sessions. It requires thoughtful consideration and the time for real deliberation.

I must reemphasize one fundamental bedrock principle: I will not support a bill that contains inadequate compensation for victims. I will not adjust fair award values for those who have been poisoned by asbestos into some discounted amount just to make the final tally come within a pre-determined, artificial limit. From the beginning of this effort, I have been committed to finding fair medical criteria, reasonable awards, and effective solvency solutions. I will not sacrifice any of these fundamental principles. I do not believe other fair-minded Senators will, either.

I do not fault anyone for our not being able to reach agreement overnight. This is not a recipe to which we just add water and stir. We have only had a day and one-half since adopting the medical criteria on Tuesday.

I understand that the business community and their insurers may be taking time to determine whether they really want a bill or not and whether they are willing to contribute what it will cost for fair compensation to the victims of asbestos exposure.

During our consideration of ideas to solve the asbestos litigation crisis, this was the theme that all Senators have been sounding: fair compensation to those who have suffered from asbestos exposure. We have already adopted an amendment that defines those victims for purposes of this proposed trust. We still need to ensure fair compensation for all 10 categories of asbestos-related disease, the five levels of non-malignant disease of increasing severity and five levels of cancer, including colorectal cancer, lung cancer and Mesothelioma.

Both Senator Specter and Senator Biden spoke last week about the need to be sure this bill is fair and provides an alternative process and outcomes that will be fair in compensating asbestos victims before taking away people's rights. I totally agree.

This week's agreement on medical criteria will be meaningless if we fail to reach common ground on what victims should be entitled to receive as compensation for their illnesses. Unfortunately, we were essentially prohibited from negotiating award values until after this Tuesday. Even with consensus on medical criteria, if the award values are unfair, the bill itself will be unfair, unworkable and unworthy of our support.

I know that the Chairman would very much like to finish today. Given the interruptions we will have with floor amendments and votes on the prescription drug legislation that is before the Senate, that goal seems overly ambitious. Given the new assumptions, estimates and projections received last night literally in the 11th hour, there is no shared basis for making progress this morning. Given that lack of consensus, I caution that forcing through a final vote will not be productive.

Members of this Committee have been diligent. I thank them for their efforts and their patience. Senator Kohl and Senator Feinstein, for example, have spent countless hours working to correct the fundamental problem of insolvency of the fund. This bill still shifts the financial risk from defendants and insurers to asbestos victims. We have to determine how to guarantee that the trust fund will be funded from the outset and not run 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. I thank them for their dedication to finding a solution.

Similarly, I thank Senator Durbin for all his efforts and his attempts to ensure fairness by avoiding windfalls to those who have previously made agreements with regard to dedicating funds to compensate asbestos victims. The trust fund that would be created by this bill is not intended to undercut the agreements already reached by others.

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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Opening Statement of Senator Patrick J. Leahy  
Meeting of Senate Judiciary Committee  
United States Senate  
June 26, 2003

Let me begin with a few comments on an important area of law on which Senator Hatch and I have traditionally tried to work together, namely, protecting our nation's creators and our intellectual property in order to encourage innovation and advancement. Enforcement of our copyright laws is important and that includes our criminal laws. Yesterday the Federal Court in New York proceeded with a guilty plea by a person who had a pirated an unauthorized copy of the current movie "The Hulk" and posted it on the Internet. People need to understand that the government is serious about copyright infringement. That is what that FBI warning at the beginning of tapes and DVD's was meant to signify. Intentional copyright infringement is against the law. Violating the law has consequences. Law enforcement is cracking down.

In addition, I support our efforts to crack down internationally on copyright infringement that costs American creators and our copyright industries billions of dollars a year. The copying and distribution of illegal CD's and DVD's in Asia and Eastern Europe is growing exponentially. This may fast become the darling of organized crime.

Also this week the recording industry announced a new effort to identify and stop individuals who offer illegal copies of copyrighted music online. Digital distribution of copyrighted works, such as music, movies, and other media, offers wonderful opportunities to deliver high-quality copies more conveniently and cost-effectively than ever before. The challenge we have faced has been to preserve and enhance the opportunities offered by digital media, while responding to the threat of widespread copyright infringement that it poses. Enforceable intellectual property laws have made this country the world's greatest exporter of creative works. The music industry has been working hard to provide consumers with options to access music lawfully online. I understand their frustration with unauthorized copying when lawful access is readily available. In 1998 Senator Hatch and I worked together to help pass the Digital Millennium Copyright Act. It included tools to help fight online piracy. The recording industry is seeking to utilize every lawful tool at its disposal.

These actions this week by law enforcement and private industry drive home the point that if someone is offering pirated materials online, or pirating and selling unauthorized copies of copyrighted works that will be treated seriously and our laws will be enforced. I support strong law enforcement.

Senator Hatch and I yesterday sent a joint letter to the Federal Trade Commission urging it to examine peer-to-peer networks that threaten the privacy of their users. Last week Senator Hatch and I joined with Senator Feinstein and Senator Kyl to write to the Administration's cabinet secretaries to ask them to look into their agency's use of peer-to-peer networks and to take appropriate steps to respond to the security threats those networks can pose. Following up on the Chairman's hearing last week, I also sent extensive questions about copyright infringement to Kazaa Network about the privacy implications of their operations.

Intellectual property matters are among those on which Senator Hatch and I have worked hard to cooperate and limit partisanship. I look forward to our continuing bipartisan efforts in these matters.

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