

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
February 2, 2005

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Ranking Member, Senate Judiciary Committee  
Hearing On "Asbestos: Mixed Dust and FELA Issues"  
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I commend Chairman Specter for holding this hearing today. In the last two years, bipartisan efforts to find a fair resolution to the asbestos problem have been productive. Judge Edward Becker and the various stakeholders have worked diligently and as a result, today we are very close to an agreement on many aspects of a national trust fund that would fairly compensate victims of asbestos exposure. But now, some special interests are trying to limit their liability on cases not related to asbestos through a last-minute, overly-broad provision that could jeopardize the years of work spent developing a bipartisan asbestos trust fund.

Despite its title, the latest draft of "asbestos" legislation would dramatically alter the proof requirements and recovery rights within the tort system for "any personal injury claim attributable to exposure to airborne dust, fibre, or minerals." This eleventh-hour provision, which was not in the bill reported by this Committee last Congress or in the substitute bill considered by the full Senate last year, is not limited to so-called "mixed dust." It appears to cover hundreds, perhaps thousands, of injuries caused by airborne substances other than asbestos, including silicosis, blacklung disease, and even lead poisoning: Talk about overreaching.

The Leahy-Hatch medical criteria, adopted unanimously by this Committee in the last Congress and agreed to by all the stakeholders, addressed only asbestos-related injuries. The purpose of this legislation has always been to address compensation for asbestos victims -- not to prevent compensation for injuries caused by other materials. Victims of diseases from airborne substances other than asbestos will not be able to qualify for compensation from the trust fund under our bipartisan and consensus medical standards.

I am pleased to see Doctor Laura Welch here today for an encore performance before this Committee. She provided insightful testimony and critical assistance with the development of the Leahy-Hatch medical standards for compensating asbestos-related diseases that we crafted in the last Congress. I thank her for joining us today and look forward to receiving her testimony about non-asbestos related injuries from airborne materials and whether physicians will be able to establish that asbestos was not a cause of a victim's injury, which would be required under the latest asbestos proposal.

It is clear to me that requiring victims to prove that asbestos was not a cause of their injuries in court would preempt state law, shift the burden of proving defenses to plaintiffs and greatly expand the scope of liability protection for corporations without adding a corresponding method of compensation for additional victims. My two grandfathers worked as stonecutters in the granite quarries of Vermont and both suffered from silicosis because of their workplace exposures to stone dust. One of my grandfathers died at the age of 35 because of that exposure.

My grandfathers did not have asbestos-related disease so they would not have qualified for compensation under the proposed trust fund and under the sweeping language in the latest draft bill, they would have faced unprecedented legal hurdles to recover any compensation in a court of law. That is not fair. And it is certainly not acceptable to this Senator.

Let me be clear, the biggest danger to enacting bipartisan asbestos legislation is overreaching by some interests for immunity from lawsuits brought by victims with legitimate injuries caused by silica or other substances. I hope those pushing this overly broad proposal will take a step back and reconsider.

I believe the second issue we are addressing today should be easier to resolve in a fair manner. The Federal Employers' Liability Act or FELA is a unique statute. Since 1908, FELA has provided workers compensation benefits for railroad workers and provided compensation in tort law for injuries to railroad workers, such as asbestos.

The latest asbestos draft bill overrides FELA for victims of asbestos exposure because the proposed trust fund will become their source of compensation. But by preempting FELA, the proposed legislation also eliminates the railroad workers compensation program even though all other workers' compensation programs remain intact under the bill. That is not fair.

If this legislation will eliminate workers compensation benefits for railroad employees, a separate award matrix must be negotiated to compensate these workers for the loss of their workers compensation benefits. That is the fair way to resolve this issue.

I commend the representatives of the railroad workers for coming to the table to bargain in good faith for special awards under the proposed trust fund for FELA-eligible asbestos victims. I hope the representatives of the railroads will soon do the same.

I look forward to working with Chairman Specter, Senator Feinstein, other Members of the Committee, and the stakeholders to resolve these and other important issues in a fair and just manner. We should continue the hard work necessary for us to craft the bipartisan solutions necessary to enact an effective trust fund to fairly compensate asbestos victims.

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