

Testimony of  
**Ms. Mary Lou Keener**

January 11, 2005

WRITTEN STATEMENT of  
Mary Lou Keener  
Before the  
United States Senate  
Committee on the Judiciary  
"The Fairness in Asbestos Injury Resolution Act"  
January 11, 2005

Chairman Specter, Ranking Member Leahy, Members of the Committee, my name is Mary Lou Keener, and as a Navy Vietnam Veteran and the daughter of a wonderful father whose life was shortened by asbestos-related disease, I am honored to have this opportunity to offer testimony to the Senate Judiciary Committee on the very important issue of asbestos litigation reform. My personal experience in dealing with the asbestos-related death of my father was not an easy one. It is my hope that by sharing this experience with you, the importance of your efforts to establish an asbestos injury compensation fund will become apparent.

My father was also a Navy veteran. During World War II he served as a machinist mate in engine rooms aboard the USS Mayrant, Lindsey, and Columbus. Both the USS Mayrant and Lindsey were "hit" and the engine rooms blown up. My dad spent many months aboard these ships "riding" them back to port and/or working repairs on them in a shipyard. It is well documented that all three of these ships contained significant amounts of asbestos, and there is no question regarding his exposure. On Veterans Day 2001, he died a quick but painful death from mesothelioma. Asbestos is the only known cause of mesothelioma. It is the most severe of asbestos related diseases and there is no known cure.

My dad was lucky to have a daughter who is a nurse, a lawyer, and a veteran to help him and my mom navigate all the health, regulatory, and legal systems we had to deal with. I was able to bring them to the National Cancer Institute, at the National Institutes of Health in Washington, D.C. where he received a definitive diagnosis of mesothelioma and the best care available. After his death, I was able to help my mom receive Dependent Indemnity Compensation from the Department of Veterans Affairs for a service connected death. And finally, I helped my mom find an asbestos plaintiff's law firm to file her tort and wrongful death claims.

Unfortunately, her legal claims have been languishing in the courts for almost three years now. There are few viable defendants in these cases because most companies that supplied asbestos to the Navy are no longer in existence or are bankrupt. The courts are clogged with asbestos cases, and even if she finally has her day in court, the law firm will collect almost half of any jury award. That's why a trust fund solution is so important - the court system just doesn't work for lots of asbestos victims. A trust fund solution to this problem, if designed properly, will bring much needed compensation to veterans suffering from asbestos related diseases and end the vagaries and lengthy delays of the current tort/wrongful death systems.

One of the most tragic facts about asbestos-related injuries is that U.S. veterans, as a population, were disproportionately exposed and are now, therefore, disproportionately suffering from the disease and the inability to secure appropriate compensation through the judicial system. Let me explain.

During and after World War II, asbestos use greatly expanded in the military as the asbestos products were specified for use on U.S. Navy ships. This caused hundreds of thousands of workers and sailors to be unknowingly exposed to dangerous asbestos dust. As a result, many of these men and women in our armed forces are contracting an asbestos-related disease decades later.

It was not until the 1970's that the U.S. Government began to regulate asbestos use ... too late for the thousands of veterans who became afflicted with asbestosis, lung cancer, and mesothelioma as a result of their exposure.

The wide variety of occupations of the victims of asbestos disease proves that no one was immune - even family members have been afflicted. Although fire and engine rooms were most commonly associated with asbestos disease, no place aboard Navy ships was safe, including sleeping quarters, mess halls, and navigation rooms, due to asbestos in pipes. Thousands were exposed to asbestos while working at shipyards and dry docks.

Unfortunately, veterans have limited avenues to seek compensation for illnesses caused by their asbestos exposure. This is so because the Federal government was their "employer," and their ability to recover from the government is restricted by law. Adding to the recovery difficulty is the fact that many asbestos suppliers to the Federal government have largely gone bankrupt, often providing only pennies on the dollar to victims of asbestos exposure, if anything at all.

A November 2003 Wall Street Journal article reported that claims from individuals exposed in military and shipyard construction accounted for 26% of all mesothelioma cases, 16% of all other lung-cancer cases, and 13% of all disabling lung-disease cases.

The Department of Veterans Affairs continues to receive claims for benefits from veterans for illnesses related to asbestos exposure while serving in the military; however, due to the difficulty of proof, less than one-third of the known VA asbestos claimants receive service connected compensation for their asbestos disease.

The status quo is unfair and inequitable. For my family, and for the many asbestos victims in the veterans community, it is absolutely unacceptable. A solution must be found and it must be expeditiously implemented.

I understand that Chairman Specter is working on revisions of the Fairness in Asbestos Injury Resolution Act that was proposed in the 108th Congress, first as S. 1125 and later as S. 2290. S. 2290 is a very good starting point for the Chairman's efforts. In fact, I would urge Congress to enact legislation that looks very much like last year's S. 2290.

The trust fund proposal envisioned by S. 2290 and, as I understand it, the new proposal being drafted by Chairman Specter, would provide many advantages for veterans over the current tort system.

First, S. 2290 preempted all claims for asbestos-related injuries except claims brought under Workers' Compensation and Veterans' Benefits Programs and thus would keep intact the benefits currently available to Veterans if they choose to pursue these benefits.

Second, in the tort system, payments received by an individual from Veterans' Benefits Programs may be reduced from any recovery by a defendant, known as the "collateral source" rule. Although S. 2290 required reductions for recoveries from collateral sources, the requirement excluded any recoveries under Veterans' Benefits Programs.

Third, S. 2290 applied to exposures to U.S. citizens occurring on U.S. owned ships and occurring overseas while working for U.S. entities.

Fourth, S. 2290 recognized that military exposures occurring prior to 1976 were more significant than those exposures occurring after 1976, especially for employees working at shipyards during World War II. As such, S. 2290 reduced the exposure requirements for these types of exposures by weighting them more heavily.

Fifth, under S. 2290, claimants could have included family members of the victim, allowing spouses or children to recover in place of the victim.

Sixth, because S. 2290 contemplated a no-fault system, the evidentiary burden on the claimant would have been reduced. Unlike Veterans' Benefits, there would be no "service-related" requirement, easing the burden of proof on those individuals who were exposed while in the military and while employed as a civilian.

And, seventh, S. 2290 would have provided \$1 million from the fund for each of fiscal years 2004 through 2008 for up to 10 mesothelioma disease research and treatment centers. The bill required that the centers be geographically distributed throughout the U.S. and closely associated with Department of Veterans Affairs medical centers, to provide research benefits and care to veterans who've suffered excessively from mesothelioma.

For these and many other reasons, I am proud to join with my many friends in the veterans' community in supporting a trust fund resolution to the asbestos-related injury litigation crisis, including the Veterans of Foreign Wars of the United States, the Non-Commissioned Officers Association, the Military Order of the Purple Heart, the Jewish War Veterans, the National Association for Black Veterans, the Paralyzed Veterans of America, the National Association for Uniformed Services, the Veterans of the Vietnam War, Inc., the Pearl Harbor Survivors Association, the Women in Military Service for America, the Marine Corp League Fleet Reserve Association, the Military Officers Association of America, the Blinded Veterans Association, the American Ex-Prisoners of War, the Retired Enlisted Association, the Arkansas Veterans' Coalition, the Florida Veterans of Foreign Wars, the Louisiana Veterans of Foreign Wars, the Texas Veterans of Foreign Wars, the West Virginia Veterans of Foreign Wars, the West Virginia American Legion, and the National Association of State Directors of Veterans Affairs, all of whom have come out in support of a trust fund solution to this troubling crisis.

Thank you for listening and I look forward to working with the Committee in the weeks and months ahead to enact this critical and much needed relief for veterans and other deserving asbestos victims.