

Testimony of

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STATEMENT OF

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on the subject of

THE FAIRNESS IN ASBESTOS INJURY
RESOLUTION ACT OF 2005 (S. 852)

before the

COMMITTEE ON JUDICIARY
UNITED STATES SENATE

April 26, 2005

The UAW appreciates the opportunity to testify before the Senate Judiciary Committee on the proposed "Fairness in Asbestos Injury Resolution Act of 2005" (S. 852), which has been introduced by Chairman Specter and Ranking Member Leahy. The UAW supports this legislation, and urges the Committee to give it prompt, favorable consideration. We commend Senators Specter and Leahy for their leadership and persistence in fashioning this legislation.

This bill provides \$140 billion in private money for compensating the victims of asbestos-related diseases. Many of those victims would otherwise get little or no compensation. The bill establishes a system which promises to provide the money to victims more quickly, more consistently, and less wastefully than the current tort system. The bill spreads the cost among defendant corporations and insurance companies more equitably.

There is widespread agreement that the current tort system does not fairly compensate asbestos victims. Most unfair are the situations where the defendant company is bankrupt, where the source of the asbestos can't be identified, where the workers' compensation system prevents suing the employer, or where the employer was the government and is immune from any liability. Primary asbestos suppliers also are largely immune to further judgments because of bankruptcy.

There are often years of delay before victims receive any compensation. Awards to victims are highly unpredictable, with similarly afflicted individuals receiving vastly different amounts. Transaction costs, including attorney fees, are extremely high and reduce the amounts actually received by victims. Defense costs, where multiple asbestos companies try to blame each other, drain corporate treasuries. Even when victims are awarded compensation by the courts, these judgments often are not collectable because the defendant companies file for bankruptcy, leaving the victims with little effective recourse.

The UAW represents 1,150,000 active and retired employees in the automobile, aerospace, agricultural implement and other industries. Some of our members were exposed to asbestos in the workplace, especially in plants that

produced brakes, in foundries, and among maintenance and service trades working with process insulation. Those members who have or will develop asbestos-related diseases as a result of this exposure may receive inadequate compensation under state worker compensation statutes, but are barred by these statutes from suing their employer.

As a result of the mass of law suits filed against companies that produced or used products containing asbestos, a number of auto parts companies have been forced into bankruptcy. In addition, rising claims against major auto manufacturers threaten to expose them to significant liabilities in the future, posing a major threat to their long-term economic health and the jobs and benefits of hundreds of thousands of active and retired UAW members.

The Specter-Leahy bill (S. 852) would address the serious problems described above by replacing the current tort system with a national asbestos trust fund to compensate the victims of asbestos-related diseases. Perhaps most importantly, by providing compensation through a national asbestos trust fund, this approach would ensure that victims will receive the full amount of their award regardless of whether a particular company has filed for bankruptcy. By creating a no-fault administrative system for processing claims, this approach would provide victims with speedier compensation, while reducing the substantial lawyers' fees and other transaction costs in the current adversarial litigation system. By compensating victims pursuant to a fixed schedule of payments for specified disease levels, this approach would also provide predictable awards to individuals with similar illnesses, and ensure that the most compensation goes to the most seriously ill victims.

The UAW is especially pleased that the Specter-Leahy bill does not permit any offset of awards (subrogation) against worker compensation or health care payments received by asbestos victims. These offsets are now permitted by some state laws. We believe the provisions barring any subrogation are essential to ensuring that victims receive adequate compensation.

The UAW also is pleased that the Specter-Leahy bill establishes a transparent mechanism for defendant companies and insurers to contribute to the national asbestos compensation fund, thereby spreading the costs of compensating victims across a broad section of the business and insurance community. We believe this broad-based, predictable financing mechanism is vastly preferable to the current tort system, which has driven most asbestos manufacturers into bankruptcy and is threatening the economic viability of many other companies that produced or used products containing asbestos, thereby jeopardizing the jobs and benefits of hundreds of thousands of workers and retirees.

The Specter-Leahy bill provides for reversion of asbestos claims to the tort system in the event the national asbestos trust fund does not have sufficient funds to pay all claims, or in the event the compensation system does not become operational quickly enough. Although we hope these reversion provisions will never be triggered, the UAW believes these provisions are essential to ensure that victims will always have some effective recourse for receiving compensation, and to give all stakeholders an incentive to help make the compensation system operate properly.

Some critics of the Specter-Leahy bill have complained that the limitations on attorney fees are too low, and have asserted that this will undermine the ability of victims to get compensation because lawyers will refuse to take the cases for such low fees. It is critically important to recognize that the legislation replaces the current adversarial litigation system with a no-fault administrative system for processing claims. This means that employers and insurers will no longer be contesting and throwing roadblocks in the way of claims. Also, the issue of which defendant's asbestos caused the damage, which currently is a major part of bringing an asbestos lawsuit, will no longer have to be litigated. As a result, the difficulties and costs involved in bringing asbestos claims will be reduced. Indeed, most of the work can be done by paralegals. Thus, the attorney fees provided under the legislation are more than adequate to attract competent representation for asbestos victims.

It is also important to recognize that labor unions and other groups can help provide free or lower cost representation for asbestos victims by hiring staff attorneys and other professionals to process the claims under the no-fault administrative claims processing system. Pre-paid legal services plans can also help provide representation for such claims. In both cases, asbestos victims can receive competent representation with little or no attorney fees being deducted from their awards.

The UAW believes that the Specter-Leahy bill can be improved in two areas. First, while the legislation provides that CT scans showing asbestosis may be considered as evidence qualifying lung cancer victims for compensation, it

does not expressly allow CT scans showing pleural disease to be considered. This distinction is contrary to the current state of medical science and consensus recommendations. If this diagnostic technology demonstrates that individuals actually satisfy the criteria for compensation under any of the categories, there is no reason to ignore this evidence and thereby deny compensation to the asbestos victims. Thus, we urge the Committee to make CT scans admissible as evidence for all categories of claims.

Second, the criteria for triggering the statute of limitations for bringing claims should be clarified to make sure they are workable. We are particularly concerned that, as currently drafted, the criteria may force individuals with non-malignant diseases that may get progressively worse to rush to file claims in order to preserve their legal rights. In our judgment, this would be counterproductive and contrary to the objectives of the no-fault administrative system created under the legislation.

The UAW recognizes that the Specter-Leahy bill represents a compromise that reflects years of negotiations with the key stakeholders in this issue. It is easy for critics who want to maintain the current tort system to point to shortcomings in the legislation. But the standard for judging S. 852 should not be whether it is perfect or solves all problems. Instead, the standard should be whether this legislation is better than the current tort system.

The UAW firmly believes that the no-fault asbestos compensation system established under the Specter-Leahy bill would be vastly preferable to the current tort system. It would ensure that tens of thousands of victims have adequate recourse and can receive compensation, regardless of whether particular defendants have gone bankrupt or are otherwise immune from lawsuits. It would provide more equitable, timely and certain compensation to the victims of asbestos-related diseases. It would ensure that claims are processed more rapidly. It would ensure that the most compensation is directed to individuals with the most serious illnesses, and that individuals with similar diseases receive similar amounts of compensation. It would ensure that attorney fees and other transaction costs do not greatly reduce the amounts received by victims.

In addition, the system established under the Specter-Leahy bill would ensure that the costs of compensating victims of asbestos-related diseases are spread broadly across defendant companies and insurers in a rational, predictable manner. This will help to reduce business bankruptcies, thereby protecting the jobs and benefits of hundreds of thousands of workers and retirees.

For all these reasons, the UAW supports the Specter-Leahy asbestos compensation bill (S. 852). We urge the Judiciary Committee to move forward promptly to approve this important legislation.

Thank you.