

Testimony of

The Honorable John Engler

April 26, 2005

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John M. Engler
President and CEO

on behalf of The Asbestos Alliance

before the Committee on the Judiciary United States Senate

on Asbestos Legislation

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Chairman Specter, Senator Leahy, and members of the Judiciary committee: thank you for the opportunity to testify. Today I am speaking on behalf of the National Association of Manufacturers' Asbestos Alliance, a broad based coalition of companies and associations committed to seeking a fair resolution of the asbestos litigation crisis. Last week's introduction of the bipartisan S.852 represents a major step forward in the decades-long push for asbestos legislation. I commend the two of you, along with Majority Leader Frist, Senator Hatch and others who have been involved, for strong leadership and incredible persistence in dedicating yourselves to crafting a bill that takes care of victims, provides fairness and certainty to companies and delivers a major boost to our nation's economy. We will submit for the record detailed comments on S.852, but today I would like to focus on the latter point--why passage of trust fund legislation is so vital to our economy.

In the last few years we have seen numerous studies documenting the negative economic impact of asbestos litigation. I will summarize those in a moment. But first I would like to talk about a study, to be released shortly by NERA Consulting, which for the first time quantifies the tremendous benefits of a legislative solution like S.852. Here are some of the key findings:

? Enactment of trust fund legislation will reduce administrative costs (such as legal fees) and bankruptcy costs (including impacts on workers) by \$85 billion. According to NERA, these costs and the cost to the economy of lost productivity have reached a staggering \$343 billion.

? To date, productivity losses due to litigation represent \$303 billion. This means that companies involved in asbestos litigation pay more to borrow money to expand and create jobs. They also devote significant resources to fighting lawsuits, lose opportunities for mergers and acquisitions and are less attractive to investors. A trust fund bill will eliminate these drags on productivity and substantially reduce productivity losses that have in the past been as high as \$50 billion a year.

? Another plus cited by NERA is the near elimination of the transaction costs (such as legal fees), which have eaten

up almost 60% of the billions spent on litigation. RAND previously reported that claimants are only getting 43 cents of every dollar today. NERA reports that the reduction in transaction costs means that with a \$140 billion trust fund, claimants will receive up to \$65 billion more in compensation than they would if we allowed the status quo to continue.

? Finally, NERA quantified the expected value of asbestos reform on Wall Street using stock market valuation of defendant companies. They note that Wall Street would value enactment of an asbestos trust fund bill at as much as \$137 billion. A bounce in the stock market from asbestos legislation would benefit millions of workers, retirees and other investors who are building nest eggs for their future or enjoying their retirement years.

These new findings from NERA clearly demonstrate that passage of asbestos trust fund legislation will provide an immediate and long-lasting boost to the economy. I request that the full study be made part of the record.

As I said earlier, other studies have also detailed the significant economic effect of asbestos litigation. The impact on workers is particularly worth noting. According to a 2002 study by Nobel laureate Joseph Stiglitz, about 60,000 jobs, many in the manufacturing sector, have been lost due to asbestos bankruptcies. Many of those lost jobs were union jobs, and I note that earlier this month, the United Autoworkers, which represents many workers and retirees, including thousands in my home state of Michigan, strongly endorsed the draft that formed the basis for S.852.

The direct job losses reported in the Stiglitz study tell only part of the story. Communities are also affected as laid-off workers tighten spending or even move away in search of new jobs and bankrupt companies cut operations and reduce purchases. This has a significant impact on a wide range of local businesses. In fact, another NERA study estimated that for every 10 jobs lost to an asbestos bankruptcy, a community will lose as many as 8 more jobs.

The scope the asbestos litigation scourge is quite clear. More than 8,000 companies have been dragged into this litigation, from the Fortune 100 to small, family owned businesses. For thirty years these companies have been paying an asbestos tort tax, expending an estimated \$70 billion. Nearly 60% of that money went to the asbestos trial bar, defense lawyers and court costs. This tax has come randomly. While defendants will certainly pay into a trust fund, they will at least get a clear picture of their liability, now and in the future. That certainty provides a huge advantage over the status quo.

The trial bar has already driven more than 70 companies into bankruptcy and they are in a continuous search for "the next solvent bystander." A trust fund bill will stop the flood of bankruptcies.

In closing, Mr. Chairman, let me summarize some of the major advantages of a trust fund solution of the sort S. 852 would establish. It would:

- ? Provide sure, fair and timely compensation of medical victims of asbestos exposure;

- ? End the scandal of asbestos litigation by getting the problem out of the courts and into a no-fault system;

- ? Comply at long last with repeated Supreme Court exhortations that Congress step in and solve the problem as only it can;

- ? By getting it out of the courts, limit and in many cases eliminate the flow of funds to lawyers instead of victims;

- ? End the random assessment of asbestos tort taxes on companies, a tax that has already taken more than \$70 billion out of the economy and bankrupted scores of companies, and replace it with a knowable and predictable assessment that will go mainly to victims, not to lawyers;

- ? Encourage growth of individual companies freed from the cost and uncertainties of the asbestos litigation scandal and encourage therefore the growth of the economy as a whole.

Mr. Chairman, I want to again thank you for your hard work and determination. For the sake of asbestos victims, America's workers and our economy, we must all work together to pass comprehensive and fair legislation that resolves the asbestos problem once and for all.