

Statement of

# The Honorable Patrick Leahy

United States Senator  
Vermont  
April 26, 2005

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Ranking Member, Senate Judiciary Committee  
Hearing on S. 852, the FAIR Act of 2005  
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I am pleased to join the Chairman at this hearing on our bipartisan legislation to address the serious problem of asbestos-related disease, the FAIR Act of 2005, (S. 852.)

This bipartisan bill is the product of years of difficult and conscientious craftsmanship and negotiation. Chairman Specter, with whom I have worked so hard on this legislation, rightly calls this one of the most complex issues we have ever tackled. It is not the bill that I would have written, were I alone responsible for its drafting, nor is it the bill that Senator Specter might have produced were he solely responsible for drafting a bill. Nor should anyone be surprised to hear that the interested groups - the labor organizations, the industrial participants in the trust fund, their insurers, the trial bar - are each less than pleased with some portion of the bill or another.

That is the essence of legislative compromise: We have worked hard to advance and protect the ultimate goal of fair compensation to victims as the lodestar of our efforts, and we have all had to make sacrifices on a variety of subsidiary issues as we worked together to resolve this emergency. What we have achieved is a significant step toward a better, more efficient method to compensate asbestos victims.

Asbestos is among the most lethal substances ever to be widely used in the workplace. Between 1940 and 1980, more than 27.5 million workers were exposed to asbestos on the job, and nearly 19 million of them had high levels of exposure over long periods of time. We even know of family members who have suffered asbestos-related disease from washing the clothes of loved ones. The ravages of disease caused by asbestos have affected tens of thousands of American families.

The economic harm caused by asbestos is also real, and the bankruptcies that have resulted are a different kind of tragedy for everyone -- for workers and retirees, for shareholders, and for the families that built these companies. In my home State of Vermont, the Rutland Fire Clay Company is among the more than 70 companies nationwide to have declared bankruptcy.

As Chief Justice Rehnquist noted several years ago, "the elephantine mass of asbestos cases cries out for a legislative solution." In another Supreme Court opinion, Justice Ginsburg declared that "a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure." I agree, the Chairman agrees, Senator Feinstein agrees, Senator Hatch - who I worked with earlier in formulating some of the initial elements of this bill -- agrees, and we hope that many others in this Committee and in the Senate will agree.

We are encouraged by the favorable reception that this bill has already generated from a wide array of interested parties. In the past week, I have received letters of support from the United Automobile Workers (UAW), the Asbestos Workers Union, the Veterans of Foreign Wars of the United States (VFW), the Asbestos Study Group, Blinded Veterans Association and others. I ask unanimous consent that the texts of these letters be printed in the record.

The UAW notes in its April 13th letter, "[The Specter-Leahy Proposal] will provide more equitable, timely and certain compensation to the victims of asbestos-related disease." I am pleased that Alan Reuther, the Legislative Director of the UAW, is testifying today.

The VFW letter of April 14 says this: "The national trust fund that you are proposing offers our members who are sick and dying the opportunity to secure timely and fair compensation for the injury they suffered in the course of serving their country." I look forward to the testimony of Hershel Gober, the former Acting Secretary of the Department of Veterans Affairs and the current National Director of the Military Order of the Purple Heart on the benefits of our bipartisan legislation for veterans exposed to asbestos.

The National Association of Manufacturers also released a statement expressing their hope that this legislation will engender broad support. I thank Governor Engler for NAM's support and look forward to his testimony today.

These statements in many ways tell the story of what we have already accomplished: the bipartisan efforts of the last two years have been productive. With the dedicated efforts of Judge Edward Becker and under the Chairman's leadership, the disparate interests have reached consensus on many issues such as overall funding of \$140 billion and a streamlined administrative process within the Department of Labor. I look forward to Judge Becker's expert testimony today on our bipartisan legislation.

Last Congress I was disappointed by the bill reported by the Judiciary Committee and by the partisan bill, S.2290, that was subsequently introduced as a substitute for that legislation. As compared to those efforts, our bipartisan bill includes significant and necessary improvements: Our bill provides higher compensation awards for victims, with \$1.1 million for victims of mesothelioma, \$300,000 to \$1.1 million for lung cancer victims, \$200,000 for victims of other cancers caused by asbestos, \$100,000 to \$850,000 for asbestosis, and \$25,000 for what we call "mixed disease cases."

All unimpaired asbestos victims are eligible for medical monitoring, and, unlike last year's bills, this bill provides for medical screening for high-risk workers, a relatively low-cost way to help make sure that those most likely to be harmed are properly diagnosed and treated. I want to thank the hard-working staff of the AFL-CIO for their expertise in drafting this medical screening program. I look forward to the testimony of Peg Seminario from the AFL-CIO on the improvements we have made and on their suggestions for further refinements to this bipartisan legislation.

Another essential improvement, and one strongly supported by organized labor, is the provision ensuring that victims' awards under the new trust fund will not be subject to subrogation by insurance companies. This means that victims will not have to give up any of their much-deserved compensation just because they received workers' compensation or other insurance benefits in the past.

The initial funding of this trust is both more realistic and more substantial than the partisan bill from the last Congress, providing for almost \$43 billion of the total \$140 billion in the first five years. And, unlike the earlier bill, this bill ensures that the contributors into the fund will be a matter of public record, as are their obligations to the fund.

Our bill also guarantees that court cases that have reached judgment or obtained verdicts will not be upset by the new trust fund, unlike last year's legislation. Similarly, last year's bill would also have overridden all civil settlements that had any remaining conduct outstanding. Our bipartisan asbestos bill protects those settlements between named defendants and named victims, and also protects settlements that provide for health insurance or health care.

In improving the way the asbestos legislation handles exigent claims -- those victims who are sickest and may not have long to live -- Senator Feinstein was instrumental in developing a creative solution. I thank the senior Senator from California for her tireless efforts on behalf of sick and dying asbestos victims. Under Senator Feinstein's approach, which we adopted, exigent cases may receive an immediate lump-sum payment, and, if the fund is not operational in nine months, these sickest victims will be able to continue their cases in court.

The problems we are addressing are complex, this bill necessarily reflects these complexities, and its drafting was not easy. The compromises we forged were difficult but necessary to ensure that we created a trust fund that would provide adequate compensation to the thousands of workers who have suffered, and continue to suffer, the devastating health effect of asbestos.

The history of asbestos use in our country must come to an end. Under a provision authored by Senator Murray that we have included, this bill will ban its use. We must halt the harm asbestos creates, and ameliorate the harm it has already caused. The industrial and insurer participants in the trust fund will gain the benefits of financial certainty and

relief from the stresses of litigation in the tort system, and the victims will have a quicker and more efficient path to recovery.

Through years of coping with and examining this problem, there now is general consensus that a remedy is needed. Those who have been coping directly with these complex problems know this, and those of us in Congress who have spent nearly three years examining these issues and forging solutions know it, as well. We also know that the legislative terrain that lies ahead for such a bold and complex initiative as this bill exemplifies is fraught with obstacles. As legislators with more than half a century of experience between us, Chairman Specter and I know that what we are attempting here rates off the charts in legislative degree of difficulty, and neither of us was born yesterday. But all of us who have worked long and hard in reaching this point also believe that this is not only worth doing, it also needs to be done.

I thank Chairman Specter, Senator Feinstein, Senator Hatch, and others for working so hard with me on this bipartisan legislation. I look forward to the testimony today on our compromise legislation which will, at long last, help solve the asbestos problem by providing fair compensation to victims of asbestos exposure.