

Statement of
The Honorable Patrick Leahy

United States Senator
Vermont
November 17, 2005

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Ranking Member, Judiciary Committee
Hearing on S. 852, the FAIR Act of 2005
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I thank the Chairman for convening this hearing to address two reports issued since we voted our bipartisan asbestos bill out of Committee. The witnesses here today will give us their views on what level of claims filings we should expect our trust fund to receive and the cost resulting from such claims. It should be noted for the record that this is not the first time we have received testimony addressing the issue of claims projections.

The Chairman and I have gone to great lengths to ensure a full and thorough debate on this issue. Although we cannot know with scientific certainty how many victims will file claims within the trust fund, we have received significant testimony from panels of experts. From the different projections that have been scrutinized over the past several years and from relevant experiences with bankruptcy trusts such as the Manville trust, we can reasonably anticipate a range of expected claims filings and resulting costs.

These projections have been considered by Members of the Judiciary Committee over the course of dozens of hearings and mark-ups. Like other contentious aspects of the asbestos bill, these hearings and meetings led to some consensus on what we could expect in the realm of claims filings. Nonetheless, after we reached substantial agreement on claims projections and reported the bill from Committee a new study was performed by Bates White. At today's hearing we will examine this controversial study.

The report issued by Dr. Bates contains vastly different estimates on projected claims and costs of the proposed Asbestos Trust Fund than those previously considered by this Committee. Since his estimates on the number of people who could qualify for an award are significantly higher than other estimates, it is important that we examine the underlying assumptions and methodologies used by Dr. Bates. I am concerned that his estimates do not take into account the rigorous eligibility criteria that we wrote into the legislation. I am glad that he is here today so that we can have a serious discussion about his report that has received a lot of attention from special interest critics of our bipartisan bill. I look forward to receiving the testimony from today's other witnesses about why this newest study fails to fall within the range of previous estimates.

I also look forward to hearing from a disinterested party, the Congressional Budget Office. In their extensive review of claims projections they found "broad agreement on the magnitude and types of claims for malignant conditions likely to be received by the fund." The Bates White projections for malignant conditions due to asbestos exposure are far outside this "broad agreement" found by the CBO. Certainly if one accepts exaggerated claims projections for the highest award levels, then the resulting cost estimate will be exaggerated.

In contrast, the CBO's cost estimate adopted mainstream claims projections and its independent analysis concluded that the FAIR Act would raise sufficient funds to cover the projected claims. In their expert opinion, the CBO predicted that the asbestos claims and award values will total \$132 billion over the life of the trust fund and confirmed that the 'total receipts to the Asbestos Trust Fund over its lifetime would amount to about \$140 billion, including a small amount of interest earnings on its balances."

I find it reassuring to see the CBO project \$132 billion as adequate to pay the claims in a contest where there are so many variables that do not lend themselves to precise projections or predictions. Even in the range of that uncertainty, CBO has estimated that the claims could be as low as \$120 billion and no higher than \$150 billion so that our legislation with \$140 billion is reasonable and realistically calculated to cover the claims, especially in the context with the provisions for congressional review of medical criteria and award values to reduce expenditures or increase contributions in the trust fund.

I welcome the independent analysis issued by the non-partisan CBO that the Specter-Leahy bill will raise sufficient funds to fairly compensate asbestos victims and look forward to hearing the testimony today of Dr. Douglas Holtz-Eakin, the Director of the from CBO.

Yesterday, the Senate Majority Leader announced that the full Senate will take up our bipartisan asbestos bill directly after the consideration of the nomination of Judge Alito to the Supreme Court. The Chairman and I have been requesting floor time for this important legislation for some time now. I am heartened that the Senate will finally be moving forward with bipartisan legislation to provide fair and quick compensation to asbestos victims across the nation.

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