

Testimony of
Mark Peterson, Ph.D.

President
Legal Analysis Systems
November 17, 2005

Statement of Mark A. Peterson Before the
Senate Judiciary Committee Hearing on S.852
"Fairness in Asbestos Injury Resolution Act of 2005"
November 17, 2005

Mr. Chairman and Members of the Committee, my name is Mark Peterson, and I am submitting this statement to provide data, quantitative analyses and comments that I hope will aid the committee in its consideration of the "Fairness in Asbestos Injury Resolution Act of 2005." I comment here on the two documents: "Congressional Budget Office Cost Estimate for S. 852," dated August 25, 2005, and "Analysis of S.852 Fairness in Asbestos Injury Resolution (FAIR)

Act," the estimate of S.852 costs prepared by Bates-White, LLC, dated September 2005. These comments supplement my Judiciary Committee testimony and reports of April 2005 and June 2003 regarding S.852 and its predecessors.

2. CBO's Warnings about the Risks of S.852 CBO warns this committee and the Congress that S. 852 "resources may be insufficient to pay all(asbestos) claims." CBO forecasts that "the value of valid claims likely to be submitted to the fund ... could be between \$120 billion and \$150 billion" and that additional "interest cost ... would add significantly" (CBO, August 25, 2005 p. 2).

CBO does not report the total of these "significant" interest costs, so I examined their warnings through a simulation of the S.852 fund that applied forecasts of the number and costs of claims from CBO's August 2005 report to CBO's schedule of the timing and volume of claims in its previous reports. CBO's current forecasts produce the following conclusions:

- ? The S.852 fund will borrow heavily.
- ? Claims and interest costs will exceed the promised \$140 billion of S.852 funding.
- ? The fund will "sunset" because of its debt and inability to accept new claims.
- ? At sunset the fund will owe \$35 billion dollars.
- ? Only \$103 billion of the promised \$140 billion would actually be paid to asbestos victims.

3. CBO Warns that Its Own Forecasts Are Optimistic

CBO notes that its forecasts of claims and liabilities are highly uncertain and likely underestimate

the real risks of the fund's failure. CBO acknowledges that a "precise forecast of the fund's performance over the next five decades is not possible because there is little basis for predicting the volume of claims, the number that would be approved, or the pace of such approvals" (Ibid). CBO warns that "there might be a significant risk of underestimating the number of future claims" noting that "the projections that have been made in recent decades of the number of asbestos claims likely to be filed were in hindsight much too low" (Ibid, pp. 15-17).

Then CBO warns that the availability of the \$140 billion in revenues is also "highly uncertain":

"The revenue stream that would be generated by the legislation is highly uncertain" and "difficult to project ... with much reliability" (Ibid, p. 17).

CBO anticipates there will be significant insolvencies among defendant companies that add to "uncertainty in the value of the fund's future revenue stream," putting at risk the fund's realization of the \$140 billion (Ibid. p. 18):

Peterson Statement--S.852 2

"Thirty years is a long time-span for a business. Even under ordinary conditions, economic circumstances lead many firms to liquidate over time. Normal attrition will be exacerbated by the costs of dealing with asbestos liability--either under the current system of litigation or under the legislation itself" (Ibid).

The fund's sunset will further exacerbate liquidations among the defendants and insurers who would be required to repay the \$35 billion of debt left by the fund at sunset. After sunset, defendants' and insurers' "costs of dealing with asbestos liability" would not be simply their costs "either under the current system of litigation or under the legislation" but rather the costs of both together. Companies would be back facing the costs of litigation while also continuing to face their S.852 payment obligations, despite having lost the S.852 protections.

These doubled obligations would be catastrophic for many businesses and also for asbestos victims, who could pursue litigation only to obtain recoveries that are uncollectable from insolvent defendants and insurers. This financial chaos after sunset will also burden taxpayers who will be called upon to pay some or all of the fund's debt. CBO provides this damning warning through faint reassurance:

"So long as the fund's Administrator does not borrow from the U.S. Treasury beyond the means of the fund to repay such borrowing, the government's general fund would not be used to pay claims" (Ibid, p. 18).

But the fund's sunset with \$35 billion of debt that can only be repaid by defendants and insurers, who would then bear double obligations of litigation and S.852 payments, presents precisely the borrowing "beyond the means of the fund to repay" that CBO warns must be avoided if the government's general fund is to be spared from paying the S.852 obligations.

4. But CBO's Warnings Are Not Strong Enough: CBO Greatly Underestimates the Costs and Risks of S.852

As worrisome as CBO's warnings are, they greatly underestimate the real risks of S.852. CBO uses a series of impossible or implausible assumptions that sharply reduce its estimates of the costs and risks of S.852.

? In counting the number of pending claims that the S.852 fund would face when it opens, CBO stopped counting newly arriving claims as of 2002--ignoring hundreds of thousands of claims that have arisen during the last three years.

? CBO then assumed an impossibly early January 1, 2006 fund start date that cut out another 160,000 claims that will arise before the S.852 fund could possibly start paying claims--sometime in 2008.

? CBO predicted only 45,000 present and future mesothelioma claims, a forecast that is 35 percent less than the 69,000 forecast of mesothelioma claims under S.852 claims based on recent Tillinghast Towers Perrin forecasts for the Manville Trust.

? Then CBO assumed that only 1 in 7 nonmalignant claimants would qualify for payment, an assumption that CBO has made repeatedly without any evidence or support and always contrary to the sources that CBO cites for this assumption.

When CBO's forecasts are changed to use empirically based assumptions that are actually

accepted by its cited sources, the risks of S.852 become overwhelming: the S.852 fund fails within 2 to 4 years with an indebtedness ranging from \$48 billion and \$64 billion. At most only Peterson Statement--S.852 3

\$82 billion of the \$140 billion promised by S.852 would be used to pay claims. The risks are even greater when Tillinghast's 15 forecasts of future Manville Trust claims are used to forecast future S.852 claims instead of CBO's forecasts.

4.1. The Number of Pending Claims Is Critical to the Success or Failure of S.852

As CBO describes, S.852 claims and liability are front-loaded, mostly in early years; but most of the fund's revenue will be received only later, with "roughly constant" annual revenue payments over the 30 years of contributions (Ibid, p. 2). The fund would have to borrow immediately in order to pay the initial flood of claims within the time deadlines imposed under S.852. Facing a great number of initial pending claims, the fund would be forced into heavy, immediate borrowing that would cause an early sunset. The fund would incur large interest payments that would further erode fund assets. Within 2 to 4 years the fund would have to use all future revenue

to repay this debt and its continuing interest charges. Within 2 to 4 years the fund would have to mortgage its future revenue in order to pay the hundreds of thousands of claims that it receives at the start, turning away all new claims and using all future revenues to repay this mortgage.

4.1.1. CBO Ignores 250,000 Pending Claims Filings Since 2002

Like all analysts, CBO has accepted an estimate of 300,000 asbestos claims pending on December 31, 2002.¹ But CBO's forecasts in its August 2005 report quit counting almost all claims filed after December 31, 2002, ignoring hundreds of thousands of actual claims that have arisen since that date.

CBO ignores 8,500 recently filed mesothelioma claims. Since the beginning of 2003 the Manville Trust has received 9,400 new mesothelioma claims, but CBO's forecast counts only 900 of these newly filed mesothelioma claims. All 9,400 of these actual mesothelioma claim filings were not, but must be, included in CBO's count of claims that will be pending when the S.852 fund opens. The 9,400 mesothelioma claims filed against Manville will be pending S.852 claims even if they have received payment from the Manville Trust. While Manville values mesothelioma claims at over \$400,000 on average, it pays those claims only \$20,000, leaving an average unpaid value of \$380,000 per claim. Moreover, few claimants will have received appreciable collateral source payments. Few, if any, of these mesothelioma claimants will have been paid by asbestos defendants who are now in bankruptcy, including eight thermal-insulation products manufacturers who accounted for the majority of compensation paid in the past to asbestos plaintiffs but who all entered bankruptcy in 2000 or 2001. Few S.852 claimants will have received significant payments by other defendants still in tort litigation, because Congressional consideration of S.852 has almost halted the willingness of defendants to settle and

has dried up compensation payments.

CBO's \$120 to \$150 billion forecast for claim liabilities must be increased by \$9.35 billion simply to account for the additional 8,500 actual mesothelioma claims filed with the Manville

1. In their analyses during early 2003, Goldman Sachs, Navigant, the AFL-CIO and Legal Analysis systems all

assume 300,000 as the number of claims pending at the end of 2002. CBO used this same assumption in its

October 2003 report on S.1125, a prior version of S.852. The 300,000 number takes collateral source payments

into account--it actually represents more than 300,000 claimants, some of whom had already received some

compensation from asbestos defendants or trusts. See, CBO "Additional Information Regarding CBO's Cost

Estimate for S.1125, the Fairness in Asbestos Injury Resolution Act of 2003", October 2003.

Peterson Statement--S.852 4

Trust that CBO ignores. Adding this \$9.35 billion of initial liability will further increase the fund's borrowing and interest costs, which should have led to more dire warnings by CBO of the S.852 fund's precarious prospects.

CBO's forecast ignores a far larger number of recent claims. Across all diseases, CBO ignores a quarter million new asbestos claims that have been filed since 2003. CBO itself concludes that a quarter million or more asbestos claims have been filed since 2002, although it did not use the conclusion in its estimate of pending S.852 claims. CBO's prior analyses noted that in recent years about 90,000 new claims have been arising annually, 270,000 claims over three years.

CBO's current report forecasts that 80,000 new claims will be filed annually between 2006 and 2008, 240,000 claims over three years (CBO August 2005 Report, pp. 5-6, and Table 2, p. 8).

CBO's observations are consistent with the actual claims experiences among asbestos defendants.

Union Carbide received an average of 90,000 new claims in 2003 and 2004. National Gypsum has received an average of 120,000 new claims in 2004 and 2005. Manville, which has historically received less than the total number of claims filed against all defendants, received an average of 60,000 new claims in 2003 and 2004. Yet rather than adding the quarter million new claims over the 2003-2005 period that CBO recognized, its forecasts count only 22,000 additional

new claims as having been filed since 2003.

CBO does not explain why it ignored over 90 percent of mesothelioma claims and over 90 percent of all claims that were filed between 2003 and 2005, nor does it acknowledge these huge omissions. CBO does state that it "did not take into account the number of claims that were technically pending with at least one company that have been inactive for several years" which, if

filed under S.852, would make "the number of claimants seeking compensation from the fund in the first four years ... significantly higher" (CBO August 2005 report, p. 8). But the 2003 to 2005 filings that have been omitted by CBO are new filings, not claims "that have been inactive for several years." In any event most claims that are "pending with at least one company ... for several years" are not inactive, but rather are active claims that have been stayed by bankruptcy proceedings.² Clearly it was improper for CBO to exclude a quarter million claims that have been

made since 2003. When these improperly omitted claims are restored, the count of pending claims that have been filed through 2005 reaches between 540,000 and 570,000.

4.1.2. CBO Fails to Include Another 160,000 Filings from 2006 and 2007 that Will Be Pending at Start-Up

CBO further and improperly omits another 160,000 pending claims by stopping its count at the end of 2005. CBO's forecast assumed that the count of pending claims would stop and the S.852 fund would begin receiving, processing and paying claims in January 2006 even though S.852

has

not become law and likely will not have been brought up for vote in either the Senate or the House by January 2006. Indeed, CBO recognizes that the S.852 fund will be unlikely to start 2. More than a dozen current bankruptcies among asbestos defendants, including bankruptcies of eight major thermo-insulation defendants filed in 2000 and 2001, have stayed law suits that were filed in earlier years.

Unpaid claims against these defendants remain as active bankruptcy claims that are included among the CBO's count of the 300,000 claims that have been pending since before 2003. Plaintiffs who have filed since 2001 cannot sue these defendants in bankruptcy and few have received compensation from these defendants.

Furthermore, CBO does not and could not claim that these omissions represent some kind of adjustment for collateral source payments to asbestos claimants. CBO's estimate of 300,000 pending pre-2003 claims have already been adjusted for collateral source (see footnote 1, above). Recently filed claims have received little.

Since 2003, compensation payments to asbestos claimants have plummeted because of the pendency of S.852 and its predecessors. Defendants and insurers have avoided paying claims while the legislation is pending.

Peterson Statement--S.852 5

before 2008, assuming enactment some time during 2007: "CBO expects that the fund would not be fully operational until at least a year following enactment of legislation" (Ibid, p. 6). CBO forecasts that 160,000 new claims will be filed in the meantime: that 80,000 new claims will be filed during each of 2006 and 2007 before the S.852 fund could begin to receive claims (Ibid, pp. 5-6, and Table 2, p. 8).

Adding this 160,000 claims to the pending claim count of 540,000 to 570,000 through 2005, the S.852 fund will face between 700,000 and 730,000 pending claims when it begins operations. Based on the clear facts of recent claim filings and CBO's own assumptions, the S.852 fund will face more than twice as many pending claims as CBO includes in its forecast for the S.852 fund. Rather than the \$25 billion that CBO forecasts, the fund's liability cost for pending claims would be between \$46 billion and \$49 billion. By themselves, corrections to the count of pending claims would add \$13 to \$16 billion to the costs of S.852, pushing the total well beyond the \$140 billion proposed fund. But these necessary corrections have other devastating effects, greatly adding to the fund's initial indebtedness and to its interest costs, thereby accelerating insolvency and sunset for the fund.³

4.2. CBO Greatly Underestimates the Number of Cancer Claims

The CBO Report also greatly understates the risk that far more cancer claimants would receive compensation from the National Fund than has been assumed by the CBO forecasts. CBO forecasts that 99,000 compensable cancer claims will be filed with the S.852 fund, 21,000 pending claims and 78,000 future claims (Ibid, Table 2, p. 8). According to CBO, 6.3 percent of all S.852 claims will be compensable cancer claims and 2.9 percent will be compensable mesothelioma claims.

In contrast, Tillinghast forecasts a higher percentage and greater number of compensable cancers in its recent research for the Manville Trust. The Manville Trust hired Tillinghast to do future claims projections so that the Manville Trustees could evaluate the payment percentage to claimants. Tillinghast's work produced 14 alternative Manville claim filing scenarios that differed with regard to the total number of future claims and their distributions across disease categories. Averaging across all 14 of these scenarios (weighted by Tillinghast's and Manville's estimates of probabilities for each scenario), 9.7 percent of all claims are cancers and 5.3 percent are mesothelioma claims, which would be compensable under S.852 (excluding lung cancer claims that do not have sufficient exposure or do not have asbestosis or pleural disease). Both for mesotheliomas and all cancers, Tillinghast forecasts more than half again as many claims as CBO. With a value for mesothelioma claims of \$1.1 million under S.852, this difference in the two forecasts of mesothelioma--2.9 percent as a percent of all claims according to CBO versus 5.3 percent according to Tillinghast--results in sharply different forecast liabilities for the S.852 fund.

The Tillinghast forecast alternatives result in 66,000 to 87,000 mesothelioma claims as compared to CBO's forecast of 45,000. Only 5,000 of these differences in forecast mesothelioma claims result from increasing the count of pending claims for 2003-2005 filings that CBO had omitted. Most of the differences result from Tillinghast's greater forecasts of future mesothelioma claims.

3. The \$13 to \$16 billion increases in total liability come from adding the 212,000 to 242,000 filings during 2003 to

2005 that were omitted by CBO. The 160,000 filings during 2006 and 2007 do not add to total liability because

these have been counted as future claims by CBO. However, the liabilities for both groups, all of the added

372,000 to 402,000 pending claims filed in years 2003 through 2007, increase the fund's borrowing and interest

burdens in order to pay pending claims.

Peterson Statement--S.852 6

The difference between the CBO forecast of 45,000 mesothelioma claims and the Manville "most likely" case of 69,000 mesothelioma claims cannot be reconciled by the differences between exposure and medical qualification criteria under the Manville 2002 TDP and those of S.852. The mesothelioma criteria are the same in both regimes. Rather the differences result simply because CBO has forecast far fewer mesothelioma claims than Tillinghast.

4.3. There is No Support for CBO's Assumption that Only 15 Percent of Nonmalignant Claimants Would Qualify for Payment

Although CBO recognizes that there is great uncertainty about how many S.852 claims will qualify for payment, particularly among nonmalignant claimants, CBO uses an unlikely assumption that only 15 percent of nonmalignant claimants would qualify for payment. The sources that CBO cites for its assumption, Tillinghast's and Manville Trust's forecasts of Manville

claims, do not provide support. The Manville Trust explicitly rejected CBO's assumption that only 15 percent of nonmalignant claims would qualify for payment. Manville Trust's General Counsel, David Austern, states: "Our best estimate...is that over two-thirds to three-quarters of the nonmalignant claims filed pursuant to S.1125 [which are not changed in S.852] will qualify for compensation at level II or higher."⁴

Instead of supporting CBO's 15 percent assumption, the Tillinghast and Manville Trust forecasts

incorporate the uncertainties about qualification rates and regard CBO's assumption is unlikely. The Tillinghast and Manville forecasts accept no single assumption about the rate at which nonmalignant claims would qualify for payment. Rather, to reflect uncertainty, the research simulates 14 different sets of assumptions about future Manville claims that vary the percent of qualifying nonmalignant claims. These simulations assume that 23 percent or more of nonmalignant claims would most likely qualify for payment under the Manville payment procedures. In their discussion of the research, Tillinghast and Manville conclude that among Manville asbestosis claimants (who are by far the majority of nonmalignant claimants) it is most likely that 53 percent would qualify for payment with a one in six likelihood that 77 percent would qualify for payment.

4.4. Using Manville Trust Futures Forecasts, the S.852 Fund Fails Almost Immediately

Tillinghast's forecasts for the Manville Trust provide helpful and disinterested alternatives that can be used to evaluate CBO's forecast of the costs and risks of the S.852 fund. CBO itself looked to the Tillinghast-Manville work, although CBO did not incorporate either the actual assumptions or forecast alternatives that Tillinghast and Manville used to investigate uncertainties

about likely future claims (see Sections 4.2 and 4.3, above).

I ran a series of forecast simulations to examine the prospects of the S.852 fund when future claims counts and disease distributions are forecast using the 15 Tillinghast-Manville scenarios rather than CBO's forecasts (the fifteenth scenario is the Tillinghast-Manville weighted average of

the 14 specific forecasts). I used each of these alternative forecasts to estimate, in turn, the number of claims and diseases for future claims beginning with year 2006. For each, I used the Tillinghast-Manville distributions of diseases to distribute pending claims that have already been filed during 2003 through 2005 and that must be included as pending S.852 claims and the 4. October 9, 2003 letter from David T. Austern, general counsel of the Manville Trust to Rebecca Seidel and J.

Edward Pagano, staff of the Senate Committee on the Judiciary.

Peterson Statement--S.852 7

300,000 pending claims filed before 2003. Finally, I assumed that the S.852 fund would begin to process and pay claims in January 2008.

S.852 forecasts using the Tillinghast-Manville scenarios produced lower estimates of the number of compensated claims than CBO forecast even after adding to pending claims the 2003-2005 filings that CBO had omitted from its forecast. In total CBO forecast 1.6 million pending and future claims (Ibid, Table 2, p. 8), while 9 of the 14 specific Tillinghast scenarios forecast fewer claims (five forecasting only 1.1 total claims) and 5 of the 14 Tillinghast scenarios forecast more (two forecasting 1.9 million total claims). The weighted average among the Tillinghast scenarios forecast 1.3 million pending and future claims, with inclusion of the 2003-2005 filings that CBO had omitted.

Distributions of diseases in the Tillinghast forecasts differed systematically from CBO's forecast, as I have discussed above. Each Tillinghast scenario forecasts more compensable cancer claims than CBO, with substantially more mesothelioma claims than CBO (see Section 4.2, above).

Tillinghast-Manville forecasts of the percent of nonmalignant claims that would be compensated ranged both below and above CBO's assumption that 15 percent of such claims would be compensated, with the greatest probability (.65) that the compensation rate would be at least 1.5

times the rate that CBO assumed (see Section 4.3, above).

Despite differences among the Tillinghast scenarios about the total number of claims and the percent of qualifying nonmalignant claims, this wide range of forecasts all tell the same story. Under every Tillinghast scenario the S.852 fund would fail immediately. The fund would become insolvent and forced into sunset within the first to third year (the first year for 6 of the 15 scenarios and the second year for 7 scenarios). At sunset the fund would face a debt between \$60 and \$67 billion. At best the fund would pay only \$77 billion of the promised \$140 billion to claimants.

These alternative future claim scenarios show uniformly that there is little uncertainty about the prospects for the S.852 fund. The risk of failure is complete. If CBO had used the actual Tillinghast-Manville forecasts rather than its own forecast of future claims, it would have had to conclude that S.852 has little or no chance of success.

5. As Corrected, CBO's Forecast Shows Early Failure and Devastating Consequences

Because CBO did not embrace the alternative Tillinghast-Manville forecasts, I examined S.852's prospects using CBO's forecast of future claims. I made modifications whose necessity was describe above, running the CBO forecast simulation with several variations:

? January 2008 startup for claims and revenues.

? Pending claims counts of (a) 700,000 or (b) 730,000.

? Nonmalignant qualification rates of (i) 23%, (ii) 33% or (iii) 53%.

All of the simulations using each of these variations produced results that fall within the following ranges:

? The fund sunsets within 1 to 4 years after startup.

? Debt at sunset ranges from \$48 to \$64 billion.

Peterson Statement--S.852 8

? Interest payments total from \$55 to \$62 billion.

? Payments to claimants range from \$76 to \$82 billion.

Results are essentially the same as those obtained using the 15 alternative Tillinghast-Manville forecasts. The simulations using the amended CBO forecast show that while there are uncertainties about some assumptions affecting the S.852 fund, there is again little uncertainty about the risks of S.852. The fund fails quickly under any set of assumptions that are based on actual counts of pending claims, a realistic startup date, and generally accepted assumptions about

qualification rates for nonmalignant claims.

With this early failure of the S.852 fund, asbestos defendants and insurers will face the doubled obligation of renewed asbestos liability and 30 years of continuing payments for their S.852 obligations, without any continuing benefit from S.852. There is great risk that many will become insolvent. In turn, asbestos victims whose diseases arise as early as the very year in which the fund starts will face great risk that they will receive no compensation for their injuries. S.852 will be insolvent; many defendants will be insolvent; and asbestos trusts will have been shattered and drained by S.852. Finally, even using the CBO future claims forecast, adding the omitted pending claims, the government's general fund will be owed between \$48 and \$64 billion, and it will face great uncertainty and risk in collecting this debt from defendants and insureds who face doubled asbestos obligations.

These risks are real. The likelihood that the risks could be avoided seems remote at best. Even CBO's August 2005 analysis, with its impossibly optimistic assumptions, forecasts liabilities that

exceed fund revenues and a heavy debt burden when the fund sunsets (see Section 2, above). Furthermore, all of these forecasts include the optimistic assumption that the proposed S.852 revenue of \$140 billion would be achieved. CBO warns that this assumption too is uncertain and risky.

6. The Bates-White Report Documents Additional Risks

The September 2005 "Analysis of S.852 Fairness in Asbestos Injury Resolution (Fair) Act" prepared by Bates-White, LLC, presents independent and further risks. Whether or not one accepts its quantitative estimates of liabilities, the report correctly describes additional risks to the

S.852 fund. As Bates-White notes, all previous forecasts of the S.852 fund have assumed continuation of levels of claiming that now obtain in asbestos litigation. But there is considerable risk that the numbers of claims submitted to the fund will be far greater, particularly for lung cancer, other cancers and nonmalignant diseases. As Bates-White discusses, the incidences of these diseases among asbestos exposed workers are greater than the incidences forecast by Nicholson, Perkel and Selikoff and other epidemiological forecasts because of the limited range of asbestos-using industries considered in the epidemiological forecasts and because the epidemiologists were concerned only with the extra burden of cancers caused by asbestos exposure and not the total number of cancers that will occur within the exposed populations. There are many other occupations and industries in which asbestos exposures occurred in addition

to the occupations and industries identified in Dr. Nicholson's 1982 paper. Dr. Nicholson's paper addresses excess cancer deaths caused by exposures only in the primary asbestos-using industries,

not all industries where workers were exposed to asbestos. Recent data from the Manville Trust shows that only 60% of Manville Trust claims for lung or other cancer are among workers exposed in a Nicholson industry; 40% were exposed in other, non-Nicholson industries. The pool of lung cancer and other cancer incidence (and resulting potential claims) among all persons Peterson Statement--S.852 9

exposed to asbestos could be at least twice the amount forecast solely from exposures within the Nicholson industries.

"Excess" and "base rate" are epidemiological terms about populations and estimates of total numbers of deaths that are "in excess" of the "base rate" of deaths that would be expected in a given cohort had they not been exposed to asbestos. These concepts are irrelevant to the diagnosis and qualification of individual claimants. To qualify for compensation under S.852, all that a lung cancer claimant must show is pleural disease or asbestosis and that he or she worked in an occupation for a required number of years which presented asbestos exposure on a regular basis. The number of claimants who might meet these qualifications includes both the counts of excess and base rates cancers and is far greater than the number of excess lung cancer deaths forecast by epidemiologists.

Bates-White not only raises the specter of larger populations of potential claimants than previous analysts have considered, as discussed above, but also notes that a greater fraction of these potential claimants will likely file claims than has occurred before in litigation.

In pointing out that the population of persons who can qualify for S.852 compensation is greater than analysts have previously considered and that the percent of these potential claimants will likely increase from previous rates in litigation, Bates-White imply even further risks that

liabilities under S.852 will exceed the promised \$140 billion of revenue. I have accounted for neither of these risks in my discussions above.