

Testimony of

# Mr. Dennis Cullinan

June 7, 2006

STATEMENT OF  
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VETERANS OF FOREIGN WARS OF THE UNITED STATES  
BEFORE THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
WITH RESPECT TO  
S. 3274, "FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT"  
WASHINGTON, D.C. JUNE 7, 2006

MR. CHAIRMAN, RANKING MEMBER LEAHY, AND MEMBERS OF THE COMMITTEE:

It is a great honor to appear before you today representing the 2.4 million men and women of the Veterans of Foreign Wars of the United States and our Auxiliaries. Founded in 1899, the VFW is this nation's largest organization of combat veterans. Our members come from across the country and even around the world.

Thank you for the opportunity to testify today on the "Fairness in Asbestos Injury Resolution Act of 2006" ("FAIR Act"). I want to especially thank Chairman Specter and Senator Leahy for their recognition of the veterans' stake in this critical piece of legislation and the many provisions they have included in the legislation, including important changes incorporated in the newly introduced bill, S. 3274, which are specifically intended to ensure the legislation will provide much needed relief to the many veterans who have become seriously ill because of their exposure to asbestos during their military service.

Tens of thousands of veterans who served between the World War II and Vietnam eras were unknowingly exposed to asbestos during their tours of duty. Because of the long latency period of asbestos-related disease, many veterans who served before the mid-1970s are just now being diagnosed with life threatening asbestos-related diseases.

Veterans and other asbestos victims face countless and sometimes insurmountable hurdles in their pursuit of fair compensation under the current tort system. A flood of claims is overwhelming the courts today, with as many as 300,000 or more claims currently pending, according to one recent study by the actuarial firm Towers Perrin.

Today, truly ill asbestos victims are forced to compete in the court system with unimpaired claimants - many of whom will never get sick - for scarce space on the court dockets. And too often the sick die waiting for their day in court, while many of those who do receive awards or settlements only receive pennies on the dollar of the true worth of their claims.

Veterans are also faced with some other particularly unique obstacles under the current system. First, because they were "employed" by the federal government during their military service, they are restricted in their ability to recover from the government as a result of its sovereign immunity. Second, most of the companies that supplied asbestos to the federal government have either gone out of business or gone into bankruptcy and are only able to provide a fraction of the compensation that should be paid to asbestos victims, if anything at all. Third, even if there is a solvent defendant to pursue for relief, there remains the time-consuming, expensive, uncertain, and draining ordeal of filing a court case and wading through discovery to get to trial, where the plaintiff bears a difficult burden of proof and often has the impossible task of proving which defendant's product caused their injuries.

In short, veterans with asbestos-related diseases and their families desperately need relief from the current system, which is not taking care of their needs or treating them fairly. The VFW supports S. 3274 because it strongly believes it will provide veterans and other asbestos victims with the long overdue relief they both need and deserve.

The VFW believes S. 3274 is not only a fair solution for veterans, it is the only solution that will effectively address the unique plight of veterans. The so-called medical criteria solution, whether at the state or federal level, which some promote as an alternative to the solution embodied in the FAIR Act, would do nothing to help veterans who, as I have explained, have little or no avenue for receiving fair compensation under the current broken system which a medical criteria solution would leave largely unchanged.

We believe the national trust fund solution embodied in S. 3274 can deliver certainty to our members afflicted with asbestos-related disease and provide the fairest outcome so that the right people are compensated with the greatest speed and the fewest transaction costs.

The many provisions contained in S. 3274 that the VFW believes will effectively serve the needs of veterans include the following:

? Establishment of a Streamlined, No-fault, Administrative System.

S. 3274 will establish a new federal Office of Asbestos Disease Compensation for the processing and payment of asbestos claims. (§§ 101(a)(1)-(2)). Administrative review of claims will occur through an efficient, streamlined, and no-fault process, with strict time lines on when eligibility determinations must be made. (§§ 114(b), (c), (d)(1)(a), (d)(2), & (e)(2)). The new administrative system is expressly designed to ensure that eligible claimants will receive timely, fair and certain compensation based on clearly defined eligibility criteria. (§§ 121 & 131).

? Protection of Veterans' Benefits.

S. 3274 will preempt all claims for asbestos-related injuries, but will preserve claims brought under Workers' Compensation and Veterans' Benefits Programs. (§ 3(3)(B)). The FAIR Act will, therefore, keep intact all of the benefits currently available to veterans if they choose to pursue those benefits. The Act will also exclude any recoveries under Veterans' Benefits Programs from the requirement that awards under the Act be reduced by prior recoveries. (§ 3(6); § 134(b)).

? Provides Relief for Veterans Who Could Face Statute of Limitations Problems.

As noted above, veterans whose asbestos illnesses are service related are left with little to no effective avenues for obtaining meaningful relief under the current system.

S. 3274's statute of limitations takes into account the unique circumstances of veterans by providing veterans who are receiving veterans' benefits for disability caused by asbestos exposure at the time of the enactment of the Act with the opportunity to file a claim with the new Fund for up to 5 years after the date of enactment. (§ 113(b)(4)(B)).

? Reduction of Evidentiary Burdens.

Unlike the tort system, there will be no requirement under S. 3274 to prove exposure to a particular defendant's asbestos product. (§ 121(c)). S. 3274 will also include heavier weighting for pre-1976 and World War II shipyard exposures and provide special provisions for take-home exposures. (§§ 121(a)(16), (c)(3)). The Act will further reduce the burden on claimants through simplified claims requirements and the requirement that exposure presumptions for certain industries, occupations and time periods be developed. (§§ 113, 121(c)(5)). It is well known and documented that certain individuals in certain occupations within the military had high exposures to asbestos. These presumptions should help ease the burden of proof for veterans.

? Application to Exposures on U.S. Ships and Overseas.

S. 3274 will expressly apply to exposures to U.S. citizens occurring on U.S.-owned or flagged ships and occurring overseas while working for U.S. entities. (§ 121(c)(1)(B)).

? Allowance of Recoveries by Dependents.

Under S. 3274, claimants will include family members of victims, allowing spouses or children to recover in place of a family member who is a victim. The Act will provide a definition of "personal representative" to ensure that the Office will not become embroiled in disputes over who is the proper beneficiary. (§§ 113(a)(1),(2)).

? Providing Medical Monitoring, Education, and Medical Screening Programs.

S. 3274 will provide medical monitoring, including reimbursement of an individual's costs for physical examinations in addition to x-rays and pulmonary function tests. (§§ 132, 225(e)). Such examinations and tests could be conducted every three years. Under this provision, veterans would be able to seek additional medical help outside of the VA system. In addition, the Act will establish a medical screening program for claimants considered to be at high risk of asbestos-related disease and provide an outreach and education program about asbestos-related medical conditions. (§§ 225(b),(c)).

? Establishment of a Claimant and Legal Assistance Program.

S. 3274 will establish a claimant and legal assistance program to assist claimants in submitting claims or to find free legal representation to help file their claims. Among other things, the Act will require that the claimant assistance program include outreach, training of individuals providing assistance, and resource centers established in areas with a high concentration of potential claimants. The Administrator will also be authorized to contract with local community and labor organizations to provide such assistance. (§ 104).

? Providing Grants to Mesothelioma Research and Treatment Centers.

Recognizing the need for more research on mesothelioma, the Act will provide for \$1.5 million from the Fund and \$1 million from the Director of the National Institutes of Health for each of fiscal years 2006 through 2015 for the establishment of each of 10 mesothelioma disease research and treatment centers. These centers will be closely associated with the U.S. Department of Veterans Affairs' medical centers to provide research benefits and care to veterans. These research grants will help advance the current treatments available for mesothelioma, especially for veterans, which the legislation recognizes as having "suffered excessively from mesothelioma." (§ 222(b)).

Again, thank you for the opportunity to testify today on behalf of the Veterans of Foreign Wars in support of S. 3274.