

Testimony of

# Governor John Engler

June 7, 2006

Gov. John Engler's Oral Testimony/Asbestos

June 7, 2006

Senate Judiciary Committee

Chairman Specter, Senator Leahy, and committee members: Thank you for inviting me to testify today on behalf of the National Association of Manufacturers' Asbestos Alliance.

I would like to begin by honoring the memory of Judge Edward Becker and acknowledging his tremendous contribution to moving this critical legislation forward. He will be missed.

And, I want to thank you, Senators Specter and Leahy, for your unwavering commitment to passage of asbestos trust fund legislation. The new FAIR Act is a win-win-win for asbestos victims, particularly veterans, workers and our economy. Only a trust fund approach, which takes asbestos cases out of the courts, can end the asbestos litigation nightmare.

We recognize that some states have made progress in addressing some of the most egregious aspects of asbestos litigation. But state medical criteria legislation, while very welcome, does not prevent plaintiffs' attorneys from seeking out new, more friendly forums, as they have done for years. It also does not end the litigation lottery, in which some victims do fine, but many others face delayed and reduced compensation.

More fundamentally, keeping asbestos claims in the courts ignores other problems. It costs U.S. business \$2.38 to provide \$1.00 of compensation to asbestos victims. That is a lose-lose-lose for victims, workers and the economy. In addition, plaintiffs' lawyers in search of new pockets have dragged thousands of companies into court on the flimsiest basis, disrupting their business and sabotaging their credit. Reform of the tort system alone cannot address these problems.

The only way to fix asbestos once and for all is by getting out of the tort system and into a privately-funded, no-fault administrative process.

Along with ending the litigation for all companies, the trust fund bill will exempt SBA-eligible small businesses from paying into the trust fund. Their asbestos litigation nightmare will finally be over. And the companies contributing to the trust fund will have certainty about their financial obligations. The trust fund will also prevent future asbestos bankruptcies and their destructive impact on workers, their retirement savings and their communities.

Far from being a tax itself, the FAIR Act actually eliminates the "asbestos tort tax" that American business has been paying for 40 years. The companies that will contribute to the trust fund today face expensive litigation, which hampers their ability to raise capital, expand and create jobs. The FAIR Act lifts the constant threat that asbestos litigation poses to their operations and sometimes, even their survival.

S. 3274 is a major advance over previous versions of the FAIR Act.

First, it adopts Senator Kyl's amendment, which limits the contribution of small and midsize companies to 1.67 percent of their gross revenues and liberalizes the procedure for hardship adjustments. It also addresses concerns of small, deeply insured companies in Tier II like Foster Wheeler, from whom you will hear today.

Next, S.3274 goes even further than the earlier bill to prevent fraudulent claiming. We commend Judge Janis Jack for exposing all of the fraud rampant in silica litigation. But there are still hundreds of thousands of asbestos claims pending and rampant fraud has been a problem for decades. If we keep asbestos cases in the courts, the profit motive remains for trial lawyers to recruit unscrupulous doctors to deliver bogus diagnoses. A key advantage of the trust fund bill is that it will stop this madness and ensure that only the truly sick receive the compensation they deserve.

Another important improvement limits the filing of old or "dormant claims," with the trust fund for compensation. This will strengthen the fund's financial integrity.

Finally, the new bill explicitly states that the trust fund will not increase the deficit, will not impose any burden on the taxpayer and will not create any taxpayer obligation. The trust fund solution has always been based on a private financing, with absolutely no obligation to the federal government to make up any shortfalls.

S.3274 also requires the chief financial officer of the Department of Labor to certify annually that the fund will be financially solvent based on private contributions. This strengthens the earlier bill, which made this the responsibility of the trust fund administrator, who may have a special interest in keeping the fund going.

In short, the trust fund will ensure fair, fast and certain compensation to victims. It will also boost our economy. Navigant Consulting estimated that it could create more than 800,000 jobs and increase economic growth by \$64 billion.

As the U.S. Supreme Court has twice said, asbestos litigation "defies customary judicial administration and calls for national legislation." After decades of trying, the solution is at hand and it is time to act on it. I urge the Senate to move trust fund legislation forward and onto the House. Time is short, but it can and must be done this year.