

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Ranking Member, Committee On The Judiciary
Hearing On Asbestos Legislation
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By calling this hearing, Chairman Specter has once again demonstrated his commitment to making constructive changes to the current broken system of asbestos litigation. Today we renew our discussion about legislation that will provide fair and quick compensation to asbestos victims and their families. Unfortunately, this bill fell last February on a procedural maneuver without getting the consideration it deserved. I hope this time around we can put this bill to a vote on its merits, because millions of Americans who suffer or have suffered from asbestos disease need our help. I thank the Chairman for this hearing, and I thank our distinguished witnesses for their willingness to discuss such an important issue with the Committee.

I want to mention the recent passing of Judge Edward R. Becker. Judge Becker was a distinguished Federal jurist and member of the United States Court of Appeals for the Third Circuit, where he served as Chief Judge from 1998 to 2003. Without Judge Becker's extraordinary efforts in helping us to develop this legislation - at the invitation of Senator Specter -- we would not be where we are today with an asbestos reform bill pending before the Senate, and we would not have a bipartisan bill that balances the equities as skillfully as this one does. Judge Becker brought numerous stakeholders to the table, and through his efforts he helped us accomplish a truly monumental task. We are deeply indebted to Judge Becker for his selfless work on behalf of so many Americans affected by asbestos-related illness, and on behalf of the judicial system to which he contributed significantly. We are grateful for his efforts, and our best wishes go to his family.

Tort reform has been a popular political issue to some, but too often we find ourselves considering bills that attempt to force a partisan solution on a non-existent problem. We have recently seen unsuccessful efforts to cap liability in medical malpractice lawsuits, and we are likely to deal with proposals to unnecessarily insulate the makers of food products from accountability as well. But unlike some of the politically expedient efforts at litigation reform that we have seen in the past, today we discuss a real problem, which desperately needs to be addressed. The Supreme Court has declared that the current system of asbestos litigation "cries out for a legislative solution." Chairman Specter and I and others on this Committee have answered the call, and I hope that Senators will look at this improved bill long and hard and carefully compare it to the status quo.

Today we discuss an improved bill. The Chairman and I have been responsive to concerns from many interested parties, and we have refined the bill to accommodate many of these concerns. These changes reflect the bipartisan nature of this process, as well as our desire to do the right thing for the victims of asbestos exposure. We must not lose focus of what we want to accomplish, which first and foremost is the fair compensation for those who have been injured or killed from exposure to asbestos. While some changes attempt to further balance the equities among the companies required to contribute to the Fund, the majority of the improvements are geared towards improving the system of victim compensation in the bill.

I want to make clear that the medical criteria in the bill remain unchanged. But additional safeguards have been put in place to ensure the integrity of the claims process. For example, the bill now includes a provision for random audits of both medical and exposure evidence submitted by claimants, as well as a provision requiring a detailed and specific

affidavit from a claimant attesting to their exposure. This will prevent fraud in the claims process, thereby ensuring that compensation gets to those who need it.

The bill now ensures that veterans who contracted an asbestos-related illness during their service can claim against the Fund. By providing a special statute of limitations for veterans who have received government benefits for their illness, the bill remedies the injustice of veterans being shut out of the tort system by virtue of their government employment. I am especially pleased to be able to report this improvement, as it respects those veterans who have been unable to get the compensation they deserve simply because they were injured during their service to our country.

Additionally, the improved bill will preserve more preexisting legal settlements between plaintiffs and defendants by allowing a plaintiff's representative or an authorized corporate attorney to sign an agreement. The new bill allows asbestos victims to claim against existing bankruptcy trusts during the startup period, which will now withhold some resources for this purpose but will exclude claims by unimpaired claimants. The new bill also makes clear that civil rights suits and disability claims are not preempted by the legislation. All of these changes were considered with an eye towards creating a bill that will help those people who suffer disease as the result of asbestos exposure, and which has a chance of passage in the Senate.

At a time when the Senate seems to be taking up one partisan political issue after another -- for show, and not for real solutions to the real priorities of the American people - here we have an historic chance to make a difference in the lives of many Americans who suffer so tragically. We also have a chance to relieve our Federal and State judicial systems from the crushing weight of what the Supreme Court has described as an "elephantine mass" of litigation. Let us compensate asbestos victims without delay, and equitably.

I want to thank all of our distinguished witnesses. I look forward to hearing their insights into the latest changes to this critically important piece of legislation.

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