

Testimony of

Mr. Peter Ganz

June 7, 2006

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United States Senate Committee on the Judiciary
S.3274: The Fairness In Asbestos Injury Resolution Act of 2006

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My name is Peter J. Ganz, and I am the Executive Vice President, General Counsel and Secretary of Foster Wheeler Ltd. and its subsidiaries ("Foster Wheeler"). I thank Chairman Specter, Senator Leahy and the members of the Committee for inviting me to provide testimony concerning S.3274, "The Fairness In Asbestos Injury Resolution Act of 2006." In particular, I am pleased to provide Foster Wheeler's perspective on the provisions of Section 204(a)(4) entitled, "Tier II Adjustments For Well-Insured Defendant Participants."

By way of background, Foster Wheeler is a global engineering and construction contractor and power equipment supplier. Foster Wheeler and its predecessor companies have been in business for well over 100 years, and the company currently employs over 9,000 people world-wide. Foster Wheeler operates through two business units, a Global Engineering and Construction (E&C) Group which provides front-end design, engineering, procurement, construction and project management in a variety of industries and a Global Power Group which designs, manufactures and erects steam generating and auxiliary equipment for electric power stations and industrial markets.

Over the course of its long history, Foster Wheeler designed, supplied and erected numerous marine and land-based steam generators and process plant facilities which required insulation, valves, and pumps supplied by third parties either to Foster Wheeler or to Foster Wheeler customers, and which in certain instances and during certain periods of time may have contained asbestos. For example, during World War II Foster Wheeler supplied marine boilers and auxiliary equipment for battleships, destroyers, liberty ships and other vessels under strict specifications prescribed by the U.S. Navy or the U.S. Maritime Commission that often required that asbestos-containing components such as gaskets, refractory or insulation be included.

Like many American companies engaged in the businesses in which Foster Wheeler participated in decades past, Foster Wheeler subsidiaries have confronted and continue to face many thousands of asbestos claims in jurisdictions throughout this country. We have resolved almost 300,000 asbestos claims to date at a cost to Foster Wheeler and its insurers of almost \$700 million, and as of March 31, 2006, we had approximately 165,000 claims pending. Notwithstanding the many problems, challenges, and abuses which have plagued the asbestos litigation system over the years and about which this Committee is very well aware as a result of its important work in this area, Foster Wheeler always has endeavored to deal fairly with legitimate claimants who can demonstrate an asbestos-related disease and a sufficient nexus to a Foster Wheeler boiler or other equipment containing asbestos.

Over the years, not only has Foster Wheeler sought to defend itself as best it could given the difficulties faced by any defendant confronting thousands upon thousands of asbestos claims in the court system, but it also worked diligently to marshal its available insurance assets and carefully protect and manage these extremely valuable resources. As a

result, except for amounts allocated to insolvent insurers, we believe substantially all of Foster Wheeler's asbestos-related defense and indemnity costs incurred to date have been, or will be, covered by insurance. In addition, based upon current estimates as reflected in our SEC filings, we expect that the bulk of our future asbestos-related expenditures also will be covered by our available insurance assets.

Foster Wheeler has long supported the goal of enacting fair, reasonable federal legislation to address the asbestos litigation crisis. We are cognizant of the repeated calls of the Supreme Court imploring Congress to act in this arena. Nevertheless, while Foster Wheeler consistently has supported the concept of a federal legislative asbestos solution and believes there may be different possible approaches which could be effective, including a trust fund or medical criteria framework, Foster Wheeler did not support the solution set forth in S.852. We made it very clear that our principal, although by no means only, criticism of that version of the asbestos trust fund legislation was that we considered the allocation formula contained therein to be grossly unfair to companies such as ours by requiring us to make annual payments into the trust far in excess of what we otherwise would expect to pay out-of-pocket net of future insurance receipts. We believe that the allocation formula contained in S.852, in effect, penalized us for having carefully collected, managed and conserved our available insurance assets so that they would be available to us to pay a substantial part of our future asbestos-related liabilities.

It is because of Foster Wheeler's concern over this critical issue that as early as the fall of 2004, we first reached out to other companies who might have similar concerns over the trust fund bill. In early January 2005, Foster Wheeler and several of these other so-called "well-insured" companies formally communicated their position to this Committee, and at about the same time these companies formed the nucleus of the Coalition for Asbestos Reform, or "CAR", a group which later attracted insurers and others also critical of various aspects of S.852. Of course, I am only here today to speak on behalf of my own company, Foster Wheeler, but it always was our preference to achieve what we believed to be necessary changes to the proposed asbestos legislation, not the end of meaningful efforts at reform. Nevertheless, we felt it necessary to strongly oppose the bill in the form in which it was brought to the floor of the Senate earlier this year since it did not address our concerns on the critical issue of allocation.

Following the floor action on the bill, Chairman Specter and his staff invited our company, as well as several others, to discuss possible revisions to the bill in an attempt to seek to address our concerns with regard to the allocation issue upon which we had been directing so much of our attention and criticism. Following what appeared to us to be a great deal of hard work and careful balancing of interests, Senator Specter, Senator Leahy and their staffs incorporated a provision in the new bill which Foster Wheeler believes reflects a true recognition of our concerns on allocation and constitutes a fair and reasonable compromise on the issue. As the Committee is aware, this provision, embodied in Section 204(a)(4), essentially provides that many small and medium size companies like ours which have relied on extensive insurance assets will be eligible for an adjustment to their allocation so that they can expect to pay into the Fund no more than 5 percent their annual adjusted cash flow, subject to an annual minimum and an aggregate cap. While this solution is not perfect and may still result in our company paying somewhat more out of pocket in any given year than we might otherwise have paid had we been able to rely upon our available insurance, we support it as a fair compromise. It provides a company like ours with a manageable, predictable, contribution to the Fund which should allow us to focus our management resources on running and growing our businesses.

In conclusion, we thank Senator Specter, Senator Leahy and their staffs for incorporating a provision in the revised legislation which provides a fair and reasonable solution to the allocation issue about which we have been concerned since the early discussions of the trust fund bill. We also would commend their work to improve other aspects of the bill including strengthening the medical criteria and claim procedures. That is not to say that there cannot, and should not, be further improvements to the legislation as it works its way through the legislative process in the Congress, but in light of the aforementioned significant changes in the allocation methodology, we would strongly support S.3274 moving forward at this time.

Thank you for the opportunity to express these views to the Committee.