

Testimony of

The Honorable Strom Thurmond

September 25, 2002

Mr. Chairman:

Thank you for holding this important hearing regarding the asbestos crisis facing our Nation's courts. I hope that today's discussion will demonstrate that it is time for Congress to take action to control the overwhelming number of asbestos lawsuits. If we do not act to control this national problem, more companies will go bankrupt, and the truly sick victims will have no legal redress. As most people know, asbestos is an insulating material that was used extensively during the first half of the 20th century. It causes a particularly devastating form of cancer called mesothelioma and is also linked to other forms of lung cancer. Additionally, asbestos causes a lung condition known as asbestosis, which can drastically inhibit lung function.

Thousands of people suffer from these illnesses caused by asbestos exposure, and there is no doubt that many of them have legitimate claims. However, sick plaintiffs are increasingly being crowded out by those who, although they have been exposed to asbestos, are not sick.

Defendants are often willing to settle cases brought by those who are not impaired, rather than run the risk of trying cases and attracting negative media attention. When these cases go to trial, juries are also awarding large figures to those who are not sick.

I was recently made aware that the Manville Trust pays out more money to people who are not sick than it does to mesothelioma victims. In essence, money that should be going to those who are injured is being paid to those who are not. This is particularly problematic in light of the numerous bankruptcies that can be credited to asbestos-related liability. The bankruptcies of defendant corporations only make it more difficult for legitimate plaintiffs to obtain relief.

To make matters worse, many courts across the Nation have attempted to combine thousands of claims against multiple defendants. While these efforts have been designed to clear dockets, they have only resulted in more dubious claims by those who would take advantage of these mass trials. In a West Virginia trial that will commence this week, over 8,000 plaintiffs are suing over 250 defendants. It is hard to imagine that this case will ensure the effective administration of justice.

The Judiciary has repeatedly asked for Congressional action. In 1993, Chief Justice Rehnquist appointed an Ad Hoc Committee on Asbestos Litigation which warned that in the absence of Congressional action, the litigation explosion would deplete funds and prevent truly sick plaintiffs from being compensated. In 1997, the Supreme Court struck down a settlement in the Amchem case in which Justice Ginsburg, writing for the Court, noted that Congress had not acted. Again in 1999, the Supreme Court struck down a settlement in the Fibreboard case in which Justice Souter, writing for the Court, said that asbestos litigation "calls for national legislation."

It is clear that asbestos-related litigation presents grave problems and warrants legislative action. As policy-makers, we should seek to ensure that those who are actually injured have sufficient access to justice. We should also seek to provide a fair litigation climate for companies that are

overwhelmed with asbestos claims. I hope that this hearing will shed more light on this issue and that we can work together to fashion an appropriate legislative response.