

Congress Must Pass Comprehensive Asbestos Legislation

The broken asbestos litigation system fails victims.

- Today, a flood of asbestos claims is overwhelming the court system, jeopardizing victims' prospects for timely compensation. According to a major study of the issue by the RAND Institute, as many as 300,000 claims are pending and at least 730,000 have brought claims.
- A massive influx of claims by unimpaired claimants is exhausting resources that could be used to compensate seriously ill individuals.
- More than 75 defendant corporations have filed for bankruptcy related to asbestos litigation – with more than half of those bankruptcies occurring since 2000 – and the trend is headed upward. When companies file for bankruptcy, victims face long delays for compensation, often receiving only pennies on the dollar, if they receive anything at all.
- Because victims must wait years for a court date, many die without ever seeing the inside of a courtroom or a dollar of compensation.
- Those victims who do get compensation through the courts often must pay more than half of it to their attorneys and to the courts to cover fees. Based on estimates by the RAND Institute, approximately \$86 billion has already been spent on asbestos litigation, with up to 60% of the money under the current system being consumed by transaction costs.

The current flood of asbestos lawsuits has an enormous negative impact on business – particularly small businesses, workers and retirees.

- With virtually every original asbestos manufacturer bankrupt, many companies with little or even no relationship to asbestos are targeted with massive lawsuits. To date, asbestos lawsuits have driven more than 75 companies into bankruptcy and another 8,400 to court.
- According to expert estimates, the current asbestos litigation system represents more than a \$200 billion drain on the U.S. economy. At least 60,000 U.S. workers have lost jobs as a result of asbestos-related bankruptcies. If this crisis isn't resolved soon, more companies – and more jobs – will be in danger.
- The rising costs of dealing with the flood of asbestos lawsuits have a dampening effect on defendant companies, even for companies with only a tangential relationship to asbestos. As a result, retirees' pension plans suffer and the values of workers' 401(k) plans fall.

A privately funded \$140 billion no-fault victims' compensation fund is the best solution to this intractable problem.

- The FAIR Act, offered by Senate Judiciary Chairman Arlen Specter, and co-sponsored by seven other senators (4 Republicans and 3 Democrats) provides for the creation of an asbestos victims' compensation fund. A compensation fund approach along the lines of the fund embodied in the FAIR Act is the **best** solution to the asbestos legal crisis that promises both fair and timely compensation for victims and certainty and finality for the business community and the U.S. economy.
- The FAIR Act would provide a comprehensive solution to the asbestos litigation crisis by including medical, exposure and diagnostic criteria, minimizing the risk that monies will continue to be diverted to claimants who are unimpaired. The victims' compensation fund approach would also help to eliminate the many frivolous claims that are currently filed on behalf of unimpaired individuals.
- The FAIR Act would eliminate wasteful transaction costs and redirect money to victims, by reining in plaintiffs' attorneys fees and eliminating defendants' litigation costs. Since the fund is no-fault, claimants wouldn't need to hire an attorney to obtain compensation from the fund.
- The \$140 billion compensation fund that is the centerpiece of the FAIR Act would be financed entirely by defendant companies and insurers. The fund would ensure that there will be money available down the road for those victims who don't know they are sick yet.
- The FAIR Act would provide for significant start-up funding to allow speedy handling of the early wave of claims that would move from the court system into the fund.
- The system would be no-fault so victims would not need to prove causation or culpability related to a particular defendant's products. Claimants with mesothelioma, a deadly disease with no known cure that is caused only by exposure to asbestos, would be eligible for expedited consideration and payments. This approach would finally end the vagaries and lengthy delays of the current tort and bankruptcy systems.
- Mesothelioma victims would receive at least \$1 million or more in compensation and those who have lung cancer with asbestosis would receive up to \$1.1 million under the FAIR Act.
- The trust fund provides the best fix for U.S. veterans exposed during military service. Today veterans are left out in the cold – because the federal government has “sovereign immunity,” veterans cannot recover from their former “employer” through the courts. Under the victims' compensation fund, veterans with asbestos-related diseases would be compensated on a "no-fault" basis. And existing veterans' benefits would be protected under the fund.

Congress must pass comprehensive asbestos legislation now.

- Victims simply cannot wait any longer. Without asbestos legislation, more victims will die without ever seeing compensation.
- Continued lack of Congressional action means more U.S. employers will crumble under the weight of asbestos liability, hundreds if not thousands of U.S. jobs will disappear as a result of asbestos-related bankruptcies and countless retirees will see their retirement savings – their deserved rewards for decades of hard work – shrink or even disappear.
- Congress cannot let this opportunity to solve the problem pass by. *Senators must act quickly to pass comprehensive asbestos legislation now.*