

Despite Opposition, Asbestos Expert Hopeful of Hatch Bill Passage

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WASHINGTON (BestWire) - Since 1970, there have been 20 attempts to enact some sort of asbestos legislation in Congress. All have failed. Despite that history, and the current opposition to it, an asbestos law expert told journalists and trade associations that he is optimistic about passage of the proposed Fairness in Asbestos Injury Resolution Act when Congress returns in the fall.

"Somebody asked me to lay odds on it, and I don't do that, but I will say it has a very substantial chance of passage," said Patrick M. Hanlon, a partner in the Washington-based law firm Shea & Gardner. "Asbestos legislation has never had this kind of chance before."

Hanlon, co-author of "Asbestos: Legislation or Bankruptcy" and a frequent advisor to both industry and the federal government on asbestos issues, made the remarks Aug. 20 during a panel discussion on federal legal reform at the Washington Legal Foundation.

Hanlon's optimism stands in stark contrast to insurance groups' take on the legislation, the Fairness in Asbestos Injury Resolution Act sponsored by Sen. Orrin Hatch, R-Utah. Within the last week, the American Insurance Association said the Hatch Bill, as it is known, "needs a major structural overhaul." The Alliance of American Insurers called it "totally unacceptable," and the National Association of Independent Insurers said "a number of substantial changes have to be made before this bill goes to the floor" (BestWire, Aug. 14, 2003).

Despite the short session when Congress returns, Hanlon was optimistic the bill could be passed. "Everybody is now working on the problem," he said.

The bill, S. 1125, attempts to fix the massive, expensive and unwieldy system of litigating asbestos claims by taking it out of the court system and dealing with claims through a national trust fund. After numerous committee meetings and amendments, the Judiciary Committee in July voted 10-8 in favor of sending the bill to the full Senate. The vote was along party lines, with the exception of Sen. Dianne Feinstein, D-Calif., who voted with the Republicans. One Republican abstained.

Insurers originally supported the bill, as did business groups, because the bill--as it was submitted in May--gave some sort of finality to the years of asbestos litigation. Companies and insurers would finally be able to know when they would have to stop paying out and how

much that amount would be. But support began to erode with constant amendments to the bill (BestWire, July 15, 2003).

After clearing the Judiciary Committee in July, the bill was immediately opposed by the AIA and the NAI. The National Association of Wholesaler-Distributors, who represent about 125,000 companies responsible for virtually all products that move to market through wholesalers or distributors, also withdrew its support. All three groups said the amended bill was much more expansive than the one they initially supported, and that the costs were tens of billions of dollars higher than expected.

The \$108 billion cost initially cited has ballooned to \$160 billion or more. Costs to insurers alone grew to \$52 billion from \$45 billion, with no end in sight, insurance groups said.

Insurers and business groups also want a sunset provision so they know when they will have to stop paying out. As now proposed, defendant companies may be liable for up to \$2 billion per year after the trust fund expires in 27 years.

One telling indicator is the stance of the National Insulation Association, a trade group whose plaintiff companies stand to lose billions. The NIA has deemed the bill's chances of passage so slight that it hasn't bothered to take a stand against it. In a July 25 bulletin to its members, it wrote "all in all, do not expect favorable action" on it.

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