

## **Asbestos Claims Payment Facility: Supporting A Solution That Works**

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The Problem. The current asbestos litigation system is in a state of crisis. Escalating asbestos claims have overwhelmed the judicial system, and compensation is uncertain and inequitable. The percentage of claims filed by unimpaired plaintiffs continues to rise at alarming rates, often forcing truly sick victims to wait years for compensation. In some instances, meaningful compensation is effectively precluded by companies filing for bankruptcy as a result of asbestos liabilities. In some cases, high transaction costs and defendant bankruptcies reduce awards to pennies on the dollar.

The Supreme Court has repeatedly recognized, most recently in a March 10, 2003 opinion, that the "elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation." The Supreme Court has suggested as an alternative that Congress pass an administrative claims procedure. Legal scholars and research institutions agree. Now, Congress is in a position to act. The Senate Judiciary Committee has held two hearings since September 2002, and the momentum is building.

The Solution. The Asbestos Study Group advocates replacing the existing tort system with a privately funded Claims Payment Facility that will provide an exclusive remedy for all claims of bodily injury from exposure to asbestos.

- Eligible victims of asbestos-related disease would receive compensation on a no-fault basis, without naming specific defendants, having to identify specific asbestos-containing products, or proving causation.
- Compensation would be awarded quickly and equitably, with accelerated payments being made to living mesothelioma victims and in cases of extreme hardship or exigent circumstances.
- No government funds would be required to administer the program or pay claims; the necessary funds would come entirely from existing asbestos defendants and their insurers.
- Existing private claims resolution facilities could administer the program with appropriate federal oversight.
- Administrative and judicial review of claims decisions would be available in appropriate circumstances.

The Benefits of a Claims Payment Facility Approach. A number of different approaches to solving the asbestos litigation crisis have been proposed. ASG believes that the Claims Payment Facility proposal is unique because 1) it assures prompt and fair compensation for those with asbestos-related diseases; 2) it will do so without

delay and with minimal transaction costs; 3) it can solve the problem with certainty and finality for all, including the Congress; and 4) it has the best chances of garnering the bipartisan support that is essential to enacting a comprehensive solution.

### **Prompt and Fair Compensation to Victims**

- Under the Claims Payment Facility proposal, asbestos victims meeting eligibility criteria would be fairly compensated according to a statutory schedule, which takes into account a variety of factors and conditions relevant to the valuation of claims. As a result, the gross disparity among victim recoveries in the current tort system would be eliminated.
- The consequences of failing to act fall heavily on asbestos victims, as the current system holds victim compensation hostage to increasing numbers of bankruptcies and protracted litigation.
- Priority would be placed on ensuring and expediting compensation for those most seriously ill from asbestos-related diseases. Living mesothelioma victims would be eligible to receive a substantial lump-sum down payment of full claim value within 60 days of filing a claim.
- The overall size of the program, as well as annual funding requirements, would be set by statute. While Congress will ultimately need to determine the appropriate level of funding for a Claims Payment Facility, discussion among many stakeholders to date indicates that there is sufficient funding available to create a fair compensation program outside the tort system.

### **Reducing Delay and Transaction Costs**

- In the current tort system, transaction costs drain far too much of the monies available for compensation, nearly two-thirds of every dollar according to some studies. A Claims Payment Facility will be much more efficient, saving monies better spent on compensating victims.
- The resources necessary for claims processing could be accommodated by existing private claims resolution facilities that will no longer be utilized to process asbestos bodily injury claims. These entities already have the expertise needed for administration of such an operation.
- The proposal would eliminate the current need to establish product identification, fault, and causation. In this respect, the Claims Payment Facility proposal will operate in the same manner as a workers' compensation program, in which rapid and certain recovery is substituted for the uncertain, time-consuming, and expensive process of obtaining recoveries under the tort system.

### **Creating Certainty and Finality**

- The Claims Payment Facility will provide finality and certainty to all stakeholders, as well as to the Congress. The national economy, jobs, and the 401(k) savings and pensions of hard-working Americans will continue to be at risk until Congress addresses this crisis.
- Eligible victims would be ensured predictable compensation, while defendants and insurers would receive financial predictability in exchange for making significant payments into the fund.
- The spiral of asbestos-related bankruptcies would be brought to an end, providing greater financial security for companies, their workers, and retirees. Defendants and insurance companies caught in the litigation crisis would no longer face the uncertainty and the risk premium that Wall Street imposes in order to deal with the unpredictable nature of the asbestos crisis.

### **Feasibility of Enactment**

- The ASG proposal is based on ongoing discussions with members of the ASG as well as outside experts, other asbestos defendants, insurance companies, and organized labor, in addition to Members of Congress from both parties and their staffs.
- There is broad consensus that something must be done to end the asbestos litigation crisis. A claims facility approach enjoys broad support, has drawn the interest of key stakeholders across the political spectrum, and has the best chance of enactment.