



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 8, 2000

Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter presents the views of the Administration, updating the preliminary views of the Department of Justice presented to you on October 26, 1999, regarding H. R. 1283, the "Fairness in Asbestos Compensation Act of 1999." H.R. 1283 has changed considerably since our last letter, which raised a number of issues and questions that we have spent the last several months analyzing. In recent weeks, we have received several amendments, including the latest amendment, in the nature of a substitute, on March 3.¹ We understand that the Committee has spent substantial time crafting the legislation, and we have met with your staff and others working on behalf of the proposed legislation. As we have informed your staff, we remain interested in continuing our dialogue about these very important and difficult issues.

Like the Committee, the Department of Justice wants to see asbestos claims processed fairly, efficiently, and quickly. We share the same concerns and sympathies for the victims of asbestos exposure. As the Committee knows, the diseases that result from exposure to asbestos can cause great suffering, and often lead to quick and painful deaths. Like the Committee, we have considered at great length the question of how to ensure prompt and appropriate compensation for individuals harmed by exposure to asbestos. The question for both the Department and the Committee, we believe, is whether the proposed solution improves upon the status quo by ensuring faster and more equitable compensation to asbestos victims. We could not support any proposal that fails to improve the present system or hinders the progress made in compensating asbestos victims.

We oppose H.R. 1283 for a number of reasons, including:

¹ While the latest amendment has not yet been introduced, we understand that the Committee intends to make it a substitute for the currently pending bill. Therefore, in this letter, "H.R. 1283" refers to this amendment, entitled "Asbestos Compensation Act of 2000."

- The process of compensating asbestos victims has improved since the 1980s, when the last comprehensive study on asbestos litigation was completed. While the current system is not ideal, we believe a new administrative process would undermine progress that has been made.
- H.R. 1283 would deprive asbestos victims of fair compensation, including victims who are demonstrably sick as a result of exposure to asbestos;
- H.R. 1283 would transfer costs now borne by defendant companies - who have been found legally responsible for the harm caused - to asbestos victims and the taxpayers; and
- H.R. 1283 would delay and worsen, rather than accelerate and improve, compensation to the sick.

I. The Asbestos Litigation and Compensation Process Has Improved

Like the Committee, we have been concerned by reports that the asbestos litigation and compensation process is an "elephantine" morass in need of reform.² In evaluating the state of asbestos litigation, the Supreme Court relied on a study using data from the mid-1980s. For the past several months, we have attempted to analyze the situation in asbestos litigation today. To some extent, our efforts have been hampered by the paucity of data and the absence of any more recent comprehensive study of asbestos caseloads, settlements and the like. Nevertheless, we are persuaded that the process for compensating victims of asbestos exposure has improved since the mid-1980s.

First, in recent years the parties to the asbestos controversy have settled hundreds of thousands of claims, a marked improvement over the more adversarial culture that permeated much of asbestos litigation at the time of the last major study. Working together, the plaintiff and defense bars have created a number of these private settlement mechanisms and national settlement programs, all of which have hastened the payment of claims to sick individuals, reduced the burden on the courts, and brought greater financial certainty to a number of defendants. For example, as the Committee was informed in its July 1999 hearing, Owens Corning alone has settled over 200,000 claims through the National Settlement Program it initiated in 1998. Another example is the Louisiana settlement agreement entered into by plaintiffs and defendants in 1998, which is creating numerous additional settlements.

Second, as to the claims that do remain on the court dockets, the courts have made considerable progress in managing these caseloads. In particular, state and federal courts around the country have instituted several case management controls that harness the volume of asbestos claims and permit the claims of the sickest victims to be expedited. These tools include multi-district consolidation in the Federal courts, the consolidation of similar claims for discovery and

² See Ortiz v. Fibreboard, 119 S. Ct. 2295, 2302 (1999).

trial, and procedures for those with less serious diseases to file claims in court without actively prosecuting them (i.e., pleural registries). This latter technique has resulted in a de facto stay for many claims of the less impaired. Thus, in courts utilizing pleural registries, even though the cases of the less impaired constitute a large part of the pending case backlog, they consume comparatively few judicial resources. In addition, several states have created distinct causes of action for different asbestos-related injuries, eliminating the incentive for victims to rush to court at the first physical sign of injury and permitting those who initially recover small amounts for minimal injury to return to court if their condition subsequently deteriorates.

Third, asbestos has become a "mature" tort, with many of the basic liability questions resolved. Over the past decade, the litigants have clarified some of the medical issues, made progress on product identification, causation, and apportionment of liability issues, and the defendant companies have resolved a number of disputes with their insurers. This has resulted in fewer disputes, less discovery, less repetition in depositions and trials, and, as a consequence, a higher percentage of available dollars going to the victims.

This is not to say, however, that the present state of asbestos litigation is ideal. There are still a large number of cases pending in the courts, and not every court system has instituted the case management and prioritization techniques used successfully by other courts. As a consequence, some cases migrate to forums that are historically more favorable to plaintiffs, resulting in inconsistent verdicts and settlements, and some deserving victims are still compensated too slowly.

For the Administration, a key question is whether the imperfections in the current system justify the substitution of untested administrative procedures and standards for the traditional court system. Given our concerns that the system would not work as hoped and would benefit culpable defendants at the expense of the victims and taxpayers, we think the case for this untested system has not been made.

II. H.R. 1283 Would Exclude Many Asbestos Victims From Fair Compensation

H.R. 1283 would create medical criteria according to which asbestos victims would be determined to be medically eligible or ineligible for compensation. At the outset, we note that legislating medical criteria to limit recipients of asbestos-related compensation sets standards that overstate the precision of existing diagnostic testing; and it precludes the incorporation of advances in medical knowledge by prescribing standards that may soon be outdated. Further, the proposed legislation does not foster fairness for people with diseases resulting from asbestos exposure.

First, the medical criteria in H.R. 1283 would result in sick people being denied compensation for their injuries. Even if we were to accept the proponents' avowed purpose of eliminating the claims of the non-sick while preserving the claims of the sick, the medical criteria in H.R. 1283 would not accomplish that goal. Experts from the Department of Health and Human Services, as well as many in the medical community, have indicated that the proposed medical criteria are too restrictive and would result in the denial of compensation to many

injured and impaired patients.

For example, the proposed medical criteria for asbestosis would require a claimant with evidence of obstructive disease on lung function testing to demonstrate high levels of fibrosis on chest x-rays as well. Yet, as our colleagues at HHS have informed us, asbestos exposure may cause a mixed obstructive and restrictive pattern and, in some instances, cause predominantly obstructive disease. In addition, the use of objective norms to measure the lung function of every claimant treats all claimants as if their normal lung function is identical. This, of course, is not the case. Some patients may have pre-exposure lung functions well above average and may lose more than 20% of their lung capacity, yet fail to meet the lung function criteria in the proposed bill. H.R. 1283 would deny compensation to these people who have been demonstrably impaired by their exposure to asbestos. Further, patients with asbestosis may have shortness of breath with exertion and functional impairment demonstrated by reduced arterial oxygenation during exercise, yet not meet the lung function criteria in the bill. In addition, H.R. 1283 understates the degree of injury experienced by individuals with pleural disease who fail to meet the lung function criteria, and does not adequately provide screening for these individuals. As a result of the proposed medical criteria, we are informed that physically impaired asbestos victims would be denied compensation.

Second, the medical criteria of H.R. 1283 would eliminate many existing causes of action and injuries compensable under current state law. In many jurisdictions, for example, plaintiffs are entitled to sue and recover for scarring of the lungs or for an increased risk of lung cancer as a result of exposure to asbestos, regardless of impairment. Under H.R. 1283, those claims would no longer be recognized, prohibiting claimants exposed to asbestos from obtaining compensation. At best, the claimants alleging such injuries could recover reimbursement of medical monitoring costs, as compared to the significant compensation they might receive today. Section 306(a). In a system in which those who are not yet physically impaired are denied the right to bring a claim, it is unlikely that the plaintiffs' bar, which currently finances and facilitates much of the medical monitoring of the less seriously impaired, would have the necessary financial incentive to pursue claims for medical monitoring. As a result, many victims who today receive the peace of mind and prompt medical attention that results from medical monitoring - at little or no cost to the victims - would be denied that benefit.

Third, H.R. 1283 would make it effectively impossible for many victims of asbestos exposure, who also were smokers, to recover compensation from asbestos defendants for the damage done to them by asbestos. H.R. 1283 would prohibit presumptive eligibility for lung cancer victims, where the claimant has a "substantial history of smoking" and does not have a qualifying non-malignant condition. Section 304(b). As many experts have stated, the interaction of smoking and asbestos exposure is synergistic, and smokers exposed to asbestos are at an exponentially greater risk of developing lung cancer than smokers without asbestos exposure. Among those heavily exposed, for example, 80% of all lung cancers would have been

eliminated in the absence of asbestos exposure, even had smoking habits not been changed.¹ Thus, contrary to the implication of H.R. 1283, many lung cancers involving both a substantial history of smoking and significant asbestos exposure would not have occurred but for the asbestos exposure. As for the requirement that lung cancer be accompanied by a qualifying non-malignant condition, HHS advises us that many studies have clearly shown that asbestos is a carcinogen and causes cancer independent of causing non-malignant disease, again contrary to the implication of H.R. 1283. In short, H.R. 1283 would prevent many victims of lung cancer from recovering compensation for a primary cause of their cancer - asbestos exposure.

Fourth, H.R. 1283 would prohibit courts from awarding punitive damages to victims. Section 202. Under H.R. 1283, punitive damages would be available only in administrative adjudications, thus diluting any right to opt out to a traditional court and eliminating the already-rare phenomenon of court-imposed punitive damages. Yet, even in the administrative context, where any possible concerns over jury-applied punitive damages would be eliminated, the legislation would make punitive damages available only where a "conscious, flagrant indifference" to a claimant was "the proximate cause" of the injury. And even if the claimant could satisfy this standard, he or she would be severely limited as to the amount of punitive damages available for past bad acts by culpable companies. Section 208(d). As we have stated with regard to other tort reform legislation, punitive damages serve an important deterrent function.

III. H.R. 1283 Would Impose Unwarranted Costs on Asbestos Victims and Taxpayers

In addition to our concerns with the medical criteria and the exclusion of asbestos victims, we have a number of concerns with the economic impact of the legislation. Specifically, we believe that H.R. 1283 would provide unwarranted benefits to asbestos companies to the detriment of victims of asbestos and the taxpayers.

First, to the extent that it is unable to recover from defendants the recommended aggregate settlement that it has already paid to claimants, the Asbestos Compensation Fund - the entity charged with paying claimants - would be required to reduce future recommended aggregate settlements, taking into account the outstanding deficit. Section 402(a)(4). This provision, in effect, creates an incentive for defendants to avoid paying the government in a timely manner, if at all, on the assumption that a deficient Fund reduces settlement values and therefore defendants' ultimate expense. Ultimately, this would lead to lower settlement values for deserving victims.

Second, although the stated intention of the program is for defendants ultimately to cover all expenses, under H.R. 1283, the Federal Treasury could advance the Office of Asbestos

¹ See, e.g., A. Ritzen and L. Rosenstock, The Misuse of Epidemiology and Apportionment in Compensation for Occupational Disease, *New Solutions*, Winter 1993, at 29-36. R. Saracci, Interaction and Synergism, *12 American Journal of Epidemiology* 465-466 (1980).

Compensation (the "OAC") up to \$100 million in start-up funds. Section 403(a). Past programs in which the Federal government has advanced funds have been largely unsuccessful in trying to recover from responsible parties. In programs such as the Black Lung Benefits Act and the Comprehensive Environmental Response, Compensation and Liability Act (the CERCLA Superfund), the government spent considerable resources to seek reimbursement from responsible parties, and yet in many instances failed, leaving the taxpayers to subsidize the programs, or reducing future settlements to cover the shortfall. Similarly, we are concerned that the defendant companies may not pay for all of the costs associated with the administration of the OAC.

Third, to the extent that less seriously injured claimants seek medical monitoring expenses, it is likely that the U.S. government would be left holding the bill. Unlike other parts of the legislation, no mechanism is even proposed for the defendants to fund medical monitoring. By contrast, the bill contemplates yearly non-administrative appropriations by the U.S. of up to \$150 million, which would not be reimbursable. Section 403. It appears that payment for medical monitoring would be drawn from these appropriations.⁴ In the coming years, therefore, the government could be required to pay billions of dollars for injuries caused by the asbestos companies. We see no justification for the taxpayers to assume such a liability from the defendant companies, particularly in light of the fact that courts consistently have found the asbestos companies legally responsible for asbestos-related harm.

As we understand it, one of the justifications offered for this taxpayer subsidy is that the United States should share in paying for the asbestos problem. This argument does not fully account for the substantial sums that the United States already has spent as a result of the asbestos problem. Over the past thirty years, the government has paid billions of dollars in health, medical, research, and abatement costs to address the problems created by the marketing and sale of asbestos products. Similarly, in the coming years U.S. taxpayers can expect to pay additional billions in such costs, without the additional financial burden placed on them by this legislation. To the extent the Committee believes the government should pay even more because the United States shares culpability with the asbestos companies for the sale and distribution of asbestos products, we believe that premise is misguided. Virtually every court has rejected the assertion that the United States is culpable for the harms inflicted by asbestos. Significantly, these rulings were based not on immunity doctrines but on factual findings that the liability of asbestos defendants should not be placed upon the United States. As one court concluded, the effort by the asbestos companies to transfer culpability to the government is a "grossly misplaced" attempt to "impose the woes of asbestos compensation upon the customer [the United States] whom they actively pursued."⁵ Another court, after conducting a six-week trial on the

⁴ An earlier draft of the bill specified appropriations of \$200 million annually for certain medical monitoring reimbursements. That provision has been excised from the current draft with no new provision to provide such funding.

⁵ Glover v. Johns Manville, 525 F. Supp. 984, 986 (E.D. Va. 1979), aff'd in part, vacated in part and remanded, 662 F.2d 225 (4th Cir. 1981).

issue, rejected the assertion that "the Government sacrificed the health of shipyard workers to the war effort." Instead, the court concluded, based on the facts, that "the Government took reasonable health and safety measures regarding asbestos use in the shipyard environment"⁶

Taken together, these various provisions, along with the elimination of many claims through the imposition of H.R. 1283's medical criteria, result in a massive transfer of funds – billions of dollars – to the defendant companies, financed by asbestos victims and taxpayers. We see no justification for such a significant subsidy, particularly given the fact that so many courts and juries have found asbestos companies liable to the people who have been exposed to their products.

We understand that some have asserted that cost-shifting is required to ensure the continued viability of defendant companies so that they will continue to have the capacity to compensate sick victims in the future. We agree that preserving the assets of companies in order to compensate sick victims is vital. However, proponents of H.R. 1283 have not demonstrated that the financial health of asbestos defendants, taken as a whole, is so dire as to require a large subsidy of the sort envisioned by H.R. 1283. The Treasury Department has examined publicly available information regarding a number of asbestos defendants. While the industry has seen bankruptcies in the past two decades, public filings (10K and 10Q reports) by many major industry participants do not indicate financial distress; to the contrary, their statements often inform shareholders and others that asbestos-related liabilities will not have a material impact upon the present or future financial performance of the companies. In fact, over the past decade, many of these companies successfully have recovered, or made agreements to recover, billions of dollars in insurance coverage. We do not doubt that some companies may be in distress due to asbestos-related liabilities, but we have not seen the kind of compelling financial data, on an industry-wide basis, to justify shifting the economic responsibility of these injuries from the culpable corporate defendants and their shareholders to the victims and the taxpayers. In addition, the Treasury Department informs us that some companies that have chosen to work cooperatively with plaintiffs to resolve their asbestos-related liabilities could be placed at a competitive disadvantage by H.R. 1283. Public policy should not seek to reward defendants that have chosen not to settle at the expense of those firms that have acknowledged their responsibility.

IV. H.R. 1283's Administrative System Would Delay Compensation to the Sick, Not Make It Better or Faster

While one of the stated goals of H.R. 1283 is to speed compensation to deserving claimants, our analysis of the proposal indicates the opposite. In our view, H.R. 1283 would

⁶ Johns Manville v. United States, 13 Cl. Ct. 72, 133 (1987), vacated on jurisdictional grounds, 855 F.2d 1571 (Fed. Cir. 1988); see also GAF v. United States, 19 Cl. Ct. 490, 499 (1990) (rejecting GAF's assertion that "the Government knowingly exposed its employees to asbestos hazards"), aff'd, 932 F.2d 947 (Fed. Cir. 1991), cert. denied, 502 U.S. 1071 (1992).

delay compensation to sick victims of asbestos exposure.

A. Start-up Delays

The creation of an administrative structure to handle a large number of claims inherently requires a multitude of steps and decisions before that structure can begin to process the claims of the sick. Of necessity, these steps and decisions delay the processing of claims for those cases that are already pending. Based on our experience administering several compensation programs, we are convinced such delay would result were H.R. 1283 to be adopted.

First, we believe it would take a considerable amount of time to establish and effectively operate the proposed Office of Asbestos Compensation ("OAC"), which would serve both administrative and adjudicatory functions. As we read H.R. 1283, the OAC likely would need to hire and/or contract with hundreds, and perhaps over a thousand employees – including lawyers, physicians, claims reviewers, and administrative personnel – before it could adequately handle the large number of cases that would confront the OAC initially.

In this regard, a comparison to the National Vaccine Injury Compensation Program, established more than a decade ago, is instructive. That program processes cases that, while often medically complex, are nevertheless more streamlined than the average asbestos case in that vaccine cases do not require resolution of difficult and fact-intensive issues such as allocation, apportionment, or the exercise of subrogation rights against the industry. Yet, the vaccine program utilizes approximately 100 staffers in various agencies to handle the approximately 700 cases currently pending before it, and has resolved approximately 5,000 cases in its entire eleven-year history. We are concerned that, given similar staff-to-claim needs and even assuming some economies of scale accompanying the larger volume of asbestos cases, the OAC may need to hire a very large number of people to process the tens of thousands of claims that would be filed upon the commencement of OAC operations.

Second, in addition to hiring and training all of these people, the OAC, no matter how well-intentioned and diligent in purpose, would face further delays in opening due to the complex and controversial rules that would have to be promulgated before any claim could be processed. For example, as we read H.R. 1283, before processing a claim, the OAC must develop, based on difficult-to-obtain historical data, a "compensation grid" on which offers to the asbestos claimants would be based. Section 103(b)(2). The legislation appears to recognize the difficulty of this exercise by providing the OAC with subpoena power to collect information about prior settlements. Section 107(c). It is almost certain that litigants would challenge the process of developing this grid. This is precisely what occurred in the vaccine program, which has developed and modified its own compensation grid. Litigation and disputes over the development of the compensation grid would further delay compensation to the sick.

Third, the processing of asbestos claims would be further delayed by satellite litigation on at least two significant issues. First, even once developed, the "compensation grid" would lead to more litigation when affected parties were not satisfied by the outcome. Second, the medical criteria, and the controversy surrounding them, would lead to new litigation and multiple

appeals. For example, the parties to the asbestos claims process almost certainly would litigate and appeal multiple questions involving claimants with asbestos-related lung cancer and a history of smoking. The uncertainty resulting from this litigation over new questions - which the parties, not the OAC, would initiate - would further delay compensation to asbestos victims facing progressive asbestos-related illness.

This delay in establishing the OAC is crucial because during this interim, start-up period, most of the pending asbestos claims would almost certainly grind to a halt. Although the bill allows for current claimants to continue with their case in court if trial commences within six months of the bill's enactment (Section 501(b)), only a marginal percentage of asbestos cases currently make it to trial, let alone within six months. Similarly, although the bill permits claimants to demand "right to sue" letters from the OAC if they do not receive an initial decision on medical eligibility quickly, that right is limited to those rare claimants with "a scheduled trial date within one year" after enactment. Section 501(c). In any event, even if a few claimants could return to court before the OAC was operational, the prospective change in the law that the bill represents (and, in particular, the development of the compensation grid) almost certainly would alter the defendants' litigating positions and create incentives to defer litigating and settling the pending cases until the OAC process sorted itself out. Therefore, for the years that it would take for the OAC to become operational, while many victims' disease would progress, their claims would not.

Again, a comparison to the vaccine program is illuminating. Although the National Childhood Vaccine Injury Act was passed by Congress in 1986, the vaccine program did not issue its first award for several years. In the interim, during the years it took to establish the vaccine office, most cases were stayed by the courts and little settlement progress was made. Once the vaccine claims resolution process commenced, it took twice as long to resolve claims as was predicted at the time the legislation was drafted (two years instead of one). Indeed, with the backlog created by the initial filing of approximately 4,300 cases by 1990, the vast majority of vaccine cases were not resolved in even two years. Thus, our experience indicates that, with the erection of any new administrative structure, pending cases tend to be delayed far longer than anticipated, no matter how well intentioned or diligent the staff. The result is delayed justice for deserving victims.

B. Delays in the Claims Resolution Process

Once the OAC was finally up and running, the proposed claims resolution process would not, in our view, materially improve upon the traditional court system. H.R. 1283's claims processing procedures would require a number of steps for each individual. First, as we understand the bill, a claimant would have to submit a detailed, complete medical file before a claim was considered filed. Section 102(b). Our experience with asbestos litigation indicates that it would often take months to complete such a file. Second, once the claim was successfully filed, the claimant would be required to wait up to thirty days for the Medical Director to make an initial decision regarding eligibility. If initially denied, the claimant would then be obligated to petition for review by a panel of two qualified physicians or an exceptional medical claims panel. Section 102(c). If the denial were affirmed by the review panel, the claimant would then

seek further review through an appeal to the Court of Federal Claims, and ultimately to a U.S. Court of Appeals. Section 106.

Third, for a claimant determined to be medically eligible, if the claimant decided to use the administrative system, he/she would have to name all defendants and submit a verified, particularized statement providing, with respect to each defendant, the basis for the allegation. The amount of time permitted for such a filing is not yet determined. Section 103(a)(2). Fourth, upon finding that the claimant's statement met the requirements of the bill, the Administrator would have to provide notice to each named defendant. The Administrator is not given a deadline for doing so. Section 103(a)(3).

Fifth, each named defendant in turn would have the right to assert third party claims, and likely would be entitled to discovery for the purpose of obtaining information necessary to identify all such additional defendants. This discovery, to be determined by an Administrative Law Judge, would not be subject to statutory or regulatory deadlines and could itself take months, particularly given the history of disputes regarding the allocation of responsibility among asbestos defendants. Section 103(a)(4).

As we read H.R. 1283, it is only after these five events occur that the claimant would be entitled to receive a good faith settlement offer from the named defendants. It is entirely likely that a claimant under the new administrative system would face a substantial wait before receiving even an initial settlement offer, let alone full compensation. That is not a material improvement over the current system. Indeed, for many claimants, the wait to work their way through the system would follow the wait for the system to be erected, resulting in years of delay in compensation to the sick.

Moreover, even if a claimant is able to resolve his or her claim, H.R. 1283 would create the likelihood of bitter litigation over one of the most contentious issues in asbestos suits: apportionment of liability among the defendant companies. In many cases, it is this dispute which occupies the most time and resources. Rather than attempt to reduce this litigation, the legislation would insert the U.S. government further into the maelstrom, by obliging the Trustee to litigate against defendants in an effort to recover the funds awarded to the claimant. Section 104. The Trustee would be prohibited from even acknowledging in court the fact or the amount of the settlement for which it is seeking reimbursement. Section 209. Meanwhile, the defendants would remain as capable and likely as they are today to attempt to elude paying their appropriate share of liability. Given the litigation history over apportionment of liability, we believe years of litigation would be likely, involving the U.S. government in matters that previously have remained a private dispute, and - to the extent the defendants were successful individually in defeating U.S. attempts to recover the full settlement amount - leaving the taxpayer to pay the difference and reducing the funds available to victims in future settlements.

Finally, one aspect of H.R. 1283 raises constitutional concerns. H.R. 1283's provision for the appointment of the OAC's Medical Director by the Administrator of the OAC, Section 101(c), appears to run afoul of the Appointments Clause. The Director is an inferior officer whose appointment must be vested "in the President alone, in the Courts of Law, or in the Heads

of Departments." Because the Attorney General may remove the Administrator of the OAC for cause (see Section 101(a)), we do not believe the Administrator to be the head of a department for purposes of the Appointments Clause.⁷

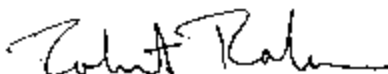
To be clear, the concerns we express about H.R. 1283 do not stem from a "can't-do" attitude, or from any objection that the Department of Justice, as opposed to another federal agency, is tasked with developing this proposed administrative process. If this bill were enacted, the Department of Justice would embrace this challenge with dedication to our statutory responsibilities and to the need to speed compensation to deserving claimants. Our concerns arise, regrettably, from our experience with similar administrative systems and our decades-long experience with asbestos litigation.

* * * *

As we noted at the outset, we remain interested in a dialogue with the Committee on how to improve the present state of asbestos compensation, which is far from perfect. However, to the extent that any legislation would improve the process, one might do better by building upon developments in the current system than by erecting new structures of the type proposed by H.R. 1283. As we have informed your staff, we remain willing to work with the Committee on this issue and to evaluate any other proposal for improving the present state of asbestos compensation.

Thank you once again for this opportunity to present our views. The Office of Management and Budget has advised us that from the standpoint of the Administration, there is no objection to submission of this letter. Please do not hesitate to call upon us if we may be of further assistance.

Sincerely,



Robert Raben
Assistant Attorney General

cc: Honorable John Conyers, Jr.
Ranking Minority Member

⁷ In addition to this concern, and the constitutional concern we raised in our letter of October 26, 1999, H.R. 1283 contains no congressional findings regarding the problems caused by the current approach to asbestos litigation, including its impact on victims, on the judicial system, and, most importantly, on interstate commerce. This may make it less likely that H.R. 1283 would withstand constitutional challenge under the Commerce Clause.

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