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Asbestos Bail Out Fund : Check the Facts. Americans Deserve the Truth

1. Why the asbestos corporate bail out bill is bad

It is grossly unjust

- Bars *all* victims of what are invariably progressive, fatal asbestos diseases from access to any form of compensation for their injuries, but allows just a small sliver of selected individuals to get compensation from the trust fund. These are people who trusted their employers, trusted aggressive sales staff, and relied on the goodwill of the companies that put asbestos factories in their towns and asbestos waste in their landfills and will now have to pay the price with their lives and family wellbeing.
- Bails out companies that for decades exposed workers and consumers to what they knew was a highly toxic mineral in order to extract huge profits, and shifts the cost of their wrongdoing to taxpayers.
- Sends those asbestos victims who have spent years pursuing their claims in court—even some with settlements in hand—to go back to square one and instead file applications with the fund, with uncertain chances of getting anything.
- Because the fund captures existing settlement trusts, agreements under which victims have been receiving compensation that was negotiated and approved by victims, defendants, and the courts will be thrown out the window. Again, the fate of these same victims under the fund will be uncertain—some will get nothing at all, others will receive less.
- The bill sets up such prejudicial and scientifically unjustified exposure criteria that a sick worker exposed to asbestos on the job since 1985 would only qualify for compensation after working for 50 years (each year after 1985 is discounted and only worth 1/10 of a calendar year). How can this ever be called “fair”?
- It gives special consideration and extra compensation to victims from Libby Montana, but shuts out residents of hundreds of factory towns across the U.S. that received and processed Libby ore.

- Gives victims of asbestos disease pennies on the dollar compared to what they would have obtained through the courts, while letting corporate culprits off the hook.
- It will take money that should be going to victims and use it to set up a 700-person government bureaucracy to administer the fund, plus other costs that should not be borne by victims. In doing this, it shifts all the transaction costs onto victims and taxpayers.

It is unworkable and a financial time bomb

- The bill was written by a handful of companies with significant asbestos liability based on what they were willing to chip in—not on a realistic assessment of the potential number of claims. Studies of similar federal funds show they have all failed due to receiving claims vastly in excess of predictions.
- At least seven financial analyses by groups such as the CBO and university professors have predicted that, the fund will likely fail in the first few years and leave taxpayers holding the bill for some \$7 billion in federal borrowing.

Judge Becker testimony Jan. 11, 2005:

With respect to how many claims will be made to the fund: “...the Lord only knows...”. “I think it is fair to say that we will never know, we will never solve the projection issue as someone once said, in the long run, the only way we'll know it is in the long run. And the old saying is in the long run we'll all be dead.”.

- No one, not even the bill’s sponsors, has any idea how many companies will pay in, nor how much they will pay. Companies are now jockeying for earmarks that will keep them from paying anything at all into the fund. That means that not just the cost of the fund is in question, due to an underestimate of potential claims, but the revenue is doubtful.
- How are the bills sponsors planning on handling this uncertainty? Make the criteria for getting compensation from the fund even more restrictive.
- In a shocking admission of what lies ahead for claimants, here’s what Arlen Specter said on the floor 2.7.06 prior to the vote on the motion to proceed: If it looks like the number of claims will exceed \$140 billion, we’ll just change the medical criteria or other criteria—to cut out even more of those injured by asbestos and deserve compensation.

2. What’s New?

The recent bankruptcy agreement reached by US Gypsum (USG) has conclusively ripped the spin off the line that bankruptcies are hurting the economy and workers. In fact, Halliburton has a Chapter 11 primer on its website that explains that bankruptcy is a smart business move that can be very profitable for businesses that are fundamentally healthy but have big asbestos

liabilities. Industry already succeeded in getting Congress to pass legislation in 1994 giving them the 524(g) bankruptcy as a way to climb out of their asbestos liability and make money on it into the bargain. Look at the figures for USG (see Public Citizen's press release).

The conventional wisdom that asbestos cases are clogging the courts is FALSE. We conducted the first comprehensive look at the situation of these cases, number of cases, processing time, and did the primary source research—not just quoting from the obscure figures published as gospel by RAND—and found across the board that courts are handling these cases expediently and pushing victims suffering from the most severe stages of disease to the front of the line (see Public Citizen's report).

3. TWO QUESTIONS FOR SPECTER

Sen. Specter has refused to disclose publicly the company contributors to the trust fund, the basis for the trust fund size of \$140 billion, and the content of his manager's amendment. Everyone will lose the right to sue in court if the trust fund bill passes. That means that everyone has the right to know how and why.

- **What is in the Manager's Amendment?**

Specter has promised that everyone's concerns will be addressed in a manager's amendment. We already know that at least one of the numerous managers amendments introduced in the Judiciary Committee and approved by that Committee contained exemptions for certain giant corporations, notably insurers, and these exemptions are not in the bill that was reported out of Committee. Those companies are counting on getting immunity from all future asbestos-related payments under this bill. According to Political Moneyline, Equitas spent \$1.2 million lobbying for the bill in the first half of 2005 alone. What are they getting? What are others getting?

- **Which defendant companies are being given a pass on contributing to the bill?**

Here are just some of the special earmarks already in the bill:

- An exemption for a company that entered into “a stock purchase agreement before 1988 involving sale of the stock of businesses that produced friction and other products.” § 204(g)(4)
- A “two tier and two subtier adjustment downward” if a company made railroad locomotives and the entity was dissolved more than 25 years before the date of enactment of the trust fund. § 204(d)(3)(A)(ii)
- A two tier and two subtier adjustment downward for companies whose liability stems from a merger more than 30 years old. § 204(d)(3)(A)(iii)

- Payment reduction from 1.67% of revenues to just \$500,000 annually for a company that is engaged in engineering and construction services. § 203(b)(2)(B)(ii)
- **Note:** credit for insurers that had to pay shortfall assessments in the first five years because some companies could not or did not have to pay into the fund: § 212(f)(3)

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