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The attached statement was submitted to Senator Wendell Ford, Chairman of the Consumer Subcommittee, Senate Committee on Commerce, Science, and Transportation, and will be published in the Committee print of hearings on S. 403 (National Product Liability Insurance Act).

The hearings were held in April, 1977, and the Committee print will be available in September, 1977.

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A 18047

I have served as an expert witness on product liability cases involving asbestos and would like to offer some remarks for the record of your hearings. Most of my clients are environmental groups, and recent actions of the Natural Resources Defense Council are also particularly relevant to the subject of liability from the sale of asbestos-containing consumer products.

The modern asbestos industry is over 100 years old, and commercial production of asbestos insulation products was recorded as of 1874. The asbestos insulation products developed in the 19th century were still in use as recently as 1965.[1/] Asbestos insulation products did not bear hazard warnings before 1964, the year a study was published establishing that cancer and asbestosis were major causes of death among workers who applied asbestos insulation to pipes and boilers, etc.

Today there are thousands of product liability cases against the manufacturers of asbestos insulation being pressed by dying insulation workers and their families. A reading of the published literature strongly suggests that the manufacturers recognized the deadly nature of their products long ago, but decided that sales was a more immediate and overriding concern than the public health hazard those sales would represent.

Pliny the Younger (61-113 A.D.), a Roman historian, referred to asbestosis in his description of diseases of the slaves.[2/] He referred to the use of respirators to protect against inhalation of the dust.[3/] Apparently, the Romans realized that slaves

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weaving asbestos were first becoming disabled to the point that they could not exert themselves at work, and then they died as their breathing difficulties became severe.

The first modern reports of asbestosis appeared in Europe in the first decade of this century. In 1918, a U.S. Bureau of Labor Statistics monograph cited mortality figures from Prudential Insurance Company, and noted: 4/

> "...the hygienic aspects of the industry have not been reported upon. It may be said, in conclusion, that in the practice of American and Canadian life insurance companies asbestos workers are generally declined on account of the assumed health-injurious conditions of the industry."

The Department of Labor bulletin contained numerous pleas for research on the health hazards of the growing asbestos industry.

Case reports of asbestos deaths among factory workers appeared in British medical journals in the 1920's, leading to a government survey of the industry conditions and workers' health. But some of the factory workers figured out on their own that their jobs were hazardous and quit, according to a 1929 British report of four fatal asbestosis cases (average age: 41). 5/ The following year the government report was issued, in which it was reported that about one worker in three employed for 5 years or more had asbestosis. Regulations were shortly issued which resulted in vast improvement of conditions in British asbestos factories. 6/

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In 1929, "officials representing the asbestos industry in the United States" approached the Metropolitan Life Insurance Company to conduct a study of workers employed in asbestos plants.[7] Only 16 per cent of the workers had no sign of asbestosis on x-ray, and, of these, many complained of other symptoms (cough, shortness of breath). By the time this study was published in 1935, there was a growing body of evidence published in England and the U.S. showing that asbestosis is a progressive disease in many cases - that is, the disease becomes more extensive even after cessation of exposure to asbestos.[8,9]

The first case reports of asbestosis among insulation workers appeared in 1933-34, and these were the first findings of asbestosis among workers employed using asbestos products (as opposed to mining, milling, and manufacturing). These reports appeared in U.S. and British medical journals, also.[10,11]

In 1935, the first reports of lung cancer with asbestosis appeared in the U.S. and England.[12,13] At this time, lung cancer was far less common than it has since become. Other case reports followed, and by 1939 state insurance carriers in Germany recognized and compensated slight asbestosis with fatal lung cancer as death caused by occupational disease.[14] In 1943, the German government formally recognized lung cancer with asbestosis as a compensable occupational disease.[15]

Meanwhile, insulation workers were among those dying with lung cancer and there was a report of 2 cases in New York in 1942.[16] One of these men had stopped working with asbestos 10 years

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before his death but nonetheless developed very disabling asbestosis in this time ("...during the last few years of life he was almost completely exhausted after climbing only one flight of stairs. He had frequent bouts of coughing..."), prior to developing cancer.

By 1947, the Chief Inspector of Factories in England reported that of 235 cases of asbestosis known among deceased workers, 31 (13%) had had cancer of the lungs or pleura present as well at autopsy. This was contrasted with a 1.0% rate of lung cancer in autopsies in the general population.[17/]

Numerous descriptions in the literature show that the disability of the asbestos industry's factory workers must have been as obvious to factory owners as the same symptoms were to the Roman slave drivers many centuries before. When the Public Health Service announced its intention to survey the asbestos textile mills of North Carolina, the mill owners responded by firing 150 out of less than 600 workers, thus gutting the data base the government would need to develop its regulations.[18/] The Public Health Service recommended a "tentative" standard for worker exposure based on the severely limited findings of its study published in 1938, and this stood unchanged for over 30 years.

The cozy relationships that the American asbestos industry has set up with universities and government officials were described by New Yorker writer Paul Brodeur as the "medical-industrial complex," in his book Expendable Americans.[19/] More than half of Rachel Scott's chapter, "Science, The Drab

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and Slut of Industrialism" was spent discussing the publication of "red herrings" in the scientific literature to "buy time" for the asbestos industry.[20] Two other scathing accounts on the asbestos industry in the U.S. and Canada have been published by the Health Policy Advisory Center of New York, in its Bulletin.[21,22]

As far back as 1936, the General Manager for the Association of Casualty and Surety Executives in New York wrote that increasing workman's compensation insurance rates were as high as 12.5% of the payroll, and in New York some companies couldn't even find a carrier who would insure them.[23]

> "As a consequency of some of these very high rates and the inability of some industries to get any kind of insurance at a price that permits continuance of operations, many establishments are laying off workmen and either closing down or sending their hazardous work out of state..."

Unfortunately, state workman's compensation laws have become a patchwork of injustice when it comes to fatal occupational diseases with long latency periods, such as cancer and asbestosis. Very low limits on both weekly compensation and total medical compensation, as well as statutes of limitations for time allowed for filing claims after terminating employment leave workers little or no compensation compared to the harm they suffer. There is no provision for exemplary compensation. It is remarkable how little most workers can get from their direct employers as compensation for occupational cancers. The only workers who have a right to sue for full compensation - repayment of total economic loss (of earnings from premature

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death or disability, and for medical costs), and exemplary compensation for the loss or disability of a spouse, parent, and provider - are those workers who have access through the better state product liability laws. Of course, some state product liability laws suffer from the same types of limitations just mentioned in describing workman's compensation laws. And in most states, a worker must reimburse money received as workman's compensation to the insurance carrier out of a product liability award.

The asbestos industry is in quite a panic to stem the rising tide of product liability suits it faces, not only from insulators but drywall workers, floor tile installers, brake mechanics, and others. It has been conservatively estimated that 400,000 people now living in the U.S. will develop cancer from being occupationally exposed to asbestos now and in the past.[24/] Beginning in 1960, neighborhood and domestic exposure to asbestos have been linked to cases of rare cancers (pleural and peritoneal mesothelioma) that have been called "signal tumors" for asbestos exposure.[25,26/] The as-yet uncounted toll of death and disease is enormous, and it has directly resulted from calculated decisions to promote asbestos sales with the knowledge that workers' and consumers' lives would be endangered thereby.

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In my own experience of urging government agencies to provide increased public and worker protection from asbestos, the industry has bitterly opposed any regulation of its activities. A recent example is a petition to the Consumer Product Safety Commission which I helped draft for the Natural Resources Defense Council.[27] The petition asked the agency to ban the use of asbestos in widely sold dry-wall taping and spackling compounds. In spite of the fact that the use of such products entails long term indoor contamination and short term exposures to asbestos levels in excess of those now allowed in asbestos plants, and despite the fact that these products can be made without asbestos and the use of asbestos in these products constitutes only 1 per cent of the sales of asbestos in the U.S. -- the asbestos industry trade association (Asbestos Information Association of North America) asked the government to deny the petition.[28] Johns-Manville Corporation, the industry leader, also urged that the petition be turned down. This is only one recent example of the asbestos industry's refusal to accept a decline in sales to protect the health of its customers.

The product liability laws are a last stopping place for justice when it comes to environmental cancer. Their principal value is that they return some of the proceeds from the sale of murderous products to the victims. The cost of such payments and of liability insurance is some incentive for firms to sell safe products, and has at least prompted the use of euphemistic hazard labeling.

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I realize that the litigious nature of our society has created problems in the area of product liability law, and changes in the laws may be necessary. But I hope that as you proceed your Committee and staff will also remember that whatever its excesses, product liability law in some parts of the country is deficient in terms of consumer protection, not excessive. Specifically, I urge your Committee to protect the rights of victims of the asbestos industry now existing under product liability laws, and to take appropriate further action so that all Americans will have a right to demand full compensation for product liability cancer.

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Footnotes

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