WV.0278 #38

John Kyle

CALL TO ACTION

March 25, 1986

To: Manville Friends

From: Bob Browne, Sales/Customer Outreach Chairman

Status of the Asbestos Workers Recovery Act

The support of AWRA legislation is increasing, both through public endorsements and within Congress. There are two new sponsors of House Bill H.R. 1626 -- Rep. Newt Gingrich (R-6-GA) and Rep. Charles Wilson (D-2-TX). On March 10, Senator Paul Simon (D-IL) announced he would co-sponsor the Senate Bill, S. 1265. Sen. John Glenn (D-OH) has also announced his support of the AWRA legislation although he is not yet co-sponsoring. There are now 74 sponsors of H.R. 1626 and 7 sponsors of S. 1265.

Markup in House or Senate has not been scheduled although additional activities continue in the House geared toward finding a common language for H.R. 1626 and H.R. 3090.

Easter recess will begin in the House on March 25 and in the Senate March 27 and will end April 7-8.

I am enclosing a newly revised brochure, "The Asbestos Disease Tragedy and The Doctrine of Fairness," which was originally a white paper published by McKamy/Schechter in New York. This piece contains basic information about the asbestos compensation issue including government responsibility and potential cost. This is a good source of information if you are writing your members of Congress about this issue and we are hopeful the information will be of use to you.

The distribution of the "Washington Today" newsletter, also enclosed, grows larger each month. It now has a distribution of approximately 38,000 and we regularly receive requests for further information and to be added to the distribution to receive AWRA materials, including the newsletter. To those of you who are writing your members of Congress, I hope you know how much we appreciate your help. To those of you who are receiving your first copy, I hope that you will review the attached brochure and the newsletter, then write your two senators and the representative of your district, asking them to sponsor the AWRA legislation. If you have friends or neighbors who believe this is a good solution, please ask them to help by also writing.

PLAINTIFF'S EXHIBIT
UC-3992

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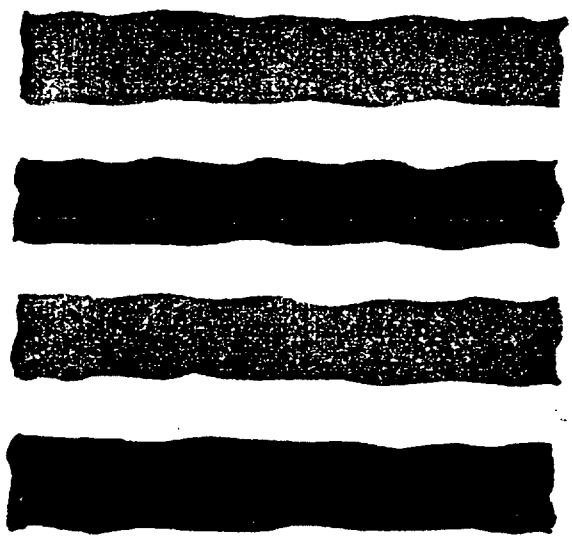
Another influence on Congress is the number of endorsements (81) we have been able to get from a great variety of organizations throughout the country, all of whom are receiving this letter. If you belong to an organization who believes this legislation is a viable solution, it would be very helpful to have that contact - or, we'd be glad to provide assistance to you if you'd request an endorsement of the proposed legislative solution to the asbestos compensation issue.

Thank you for your tremendous response - it is truly appreciated. Feel free to contact me at any time at the address or phone number listed on page one.

Bob Browne
Sales/Customer Outreach Chairman

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The Asbestos Disease Tragedy and the Doctrine of Fairness



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Overview

"The only satisfactory way to bring justice to disabled workers and their families is to set up a national compensation fund . . . unless the government pays its share, the asbestos crisis may evolve into a catastrophe."

—Representative Austin J. Murphy (D-Pa.) Chairman, House Labor Standards Subcommittee, in the August 1984 issue of *The American Legion Magazine.*

Congressman Murphy wrote those words after a systematic and careful review of the asbestos crisis, and it is no exaggeration to call it a crisis.

In April 1984, the Rand Corporation's Institute for Civil Justice reported that, ". . . asbestos-related disease and consequent litigation involve enormous personal and economic stakes." It stated that about $1 billion in compensation and litigation expenses had been spent by the end of 1982 on more than 20,000 open and closed asbestos liability claims. By 1986, the number of pending claims had escalated to an estimated 35,000 and it is still climbing.

The statistics are chilling, but they do not tell of the individual suffering. How long must legitimate victims wait for fair compensation? As the Institute for Civil Justice stated:

". . . the resolution of disputes regarding asbestos-related diseases has become one of the critical problems facing the American civil justice system. Indeed, given the suffering and death involved and the fact that such diseases may be the harbinger of an emerging class of substance related diseases, the problem becomes one of major importance to our entire society."

Our American society has always insisted that disaster victims be treated with compassion and dignity. At the same time it has to be understood that taxpayers' interests must be taken into consideration in this period of government budget cutting and deficit reduction. To understand how this dilemma can best be resolved fully, fairly to victims and economically to the taxpayer, it is necessary to take a closer look at Manville's experience with the asbestos crisis.

Background

Over 16,500 lawsuits were pending against Manville, a former asbestos producer, at the time it filed for reorganization under the federal bankruptcy laws in 1982 (as have six present or former asbestos producers). It was conservatively estimated in 1982 that the number of lawsuits ultimately would have totaled over 50,000 and cost the company at least $2 billion — and more probably about $5 billion — against a net worth of $1.1 billion. Thus, claimants and creditors would have financially bankrupted Manville, preventing the company from continuing to generate income to help compensate present and, as importantly, future victims.

However, under the reorganization plan it has proposed to the Bankruptcy Court, Manville would function in two distinct forms:

- as an operating company which would be protected by the Court from lawsuits so that it could continue to employ 21,000 wage earners and pay federal, state and local taxes and
- as a settlement vehicle which would provide a continuous flow of monies to compensate legitimate claimants, funded by earnings realized by the operating company.

Through its reorganization plan, filed in Bankruptcy Court on Feb. 14, Manville has committed in excess of $2.5 billion over a number of years to pay asbestos health claims.

The Manville bankruptcy proceedings were fully justified in the opinion of presiding Judge Burton R. Lifland. He ruled in January, 1984, "that Manville is a real business with real creditors in pressing need of economic reorganization." He also stated that the burden on the company was "further compounded by the insurance industry's general disavowal of liability to Manville on policies written for this very purpose."

Insurance Lawsuits

In order to collect the insurance money it was owed, Manville sued a total of 27 of its insurers and, as of February 1986, settlements had been reached with ten of them totaling approximately $460 million. Manville is seeking additional millions from its insurers in the suit that is currently being heard.

Manville and other companies in the asbestos industry are taking a variety of actions to secure the maximum amount of money for the prompt and fair compensation of victims. Five former asbestos producers, including Manville, are presently suing over 80 insurance companies in San Francisco State Court to make sure that proper insurance coverage will be available for victims.

U.S. Government Responsibility

Additionally, Manville has initiated several suits against the U.S. government seeking compensation for

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its responsibility in causing asbestos disease in thousands of shipyard workers.

The facts reveal that the government played an integral role in causing asbestos disease in thousands of Americans.

Indeed, the single, largest group of Americans exposed to asbestos were the 4.5 million workers in U.S. Navy-owned or-controlled shipyards during World War II.

The evidence of government complicity in contributing to asbestos-related diseases in these forgotten "veterans" is overwhelming. For example, a March 1941, memorandum from the medical officer in charge of the U.S. Navy's Division of Preventive Medicine to Admiral Ross McIntire, Navy Surgeon General and President Roosevelt's personal physician, stated:

> *"(I) Asbestosis. We are having a considerable amount of work done in asbestos and from my observations, I am certain that we are not protecting the men as we should. This is a matter of official report from several of our Navy yards."*

Facts reveal that the government, specifically the U.S. Navy, had indisputable knowledge of the dangers of asbestos as early as 1940, but this information was classified until recently, and was unavailable to the public.

Reports show that the Navy adopted a code of standards called "Minimum Requirements for Safety and Industrial Health in Contract Shipyards" in 1943 that dealt in detail with the hazards of asbestos dust. The Secretary of the Navy stated that he expected "full and complete compliance" with the Minimum Requirements. Yet, although Navy inspections took place daily, little action was taken to protect workers.

These shipyard workers are now manifesting asbestos-related diseases, due to their overexposure 40 years ago. They are bringing suit against third party asbestos manufacturers because they are not legally permitted to sue the U.S. government due to its claims of sovereign immunity and other technical defenses.

Although it knew of the dangers, the Navy advocated forging ahead with asbestos product installation at the expense of safety. At a conference on shipyard safety in 1942, a federal official, after advising conferees of the precautions to take concerning asbestos, added that "above all the last thing we want is to put through any restrictions that will slow up the shipbuilding process."

Under wartime conditions — in an atmosphere very different from today's — with national security at stake, possible long-term health risks to employees were a lesser concern. The war effort had to come first.

Perhaps the government's actions were justifiable at the time, but Manville feels that industry should not be asked to bear the burden for the government's own negligence.

That is why Manville is pressing forward to force the government to acknowledge its involvement and accept its share of the financial responsibility in compensating disease victims.

Potential Government Liability and Associated Expenses

The government continues to avoid liability in suits against it by exercising its unique defenses as sovereign. However, more and more plaintiffs believe they can overcome these defenses and are suing the U.S. The Justice Department has made staggering projections showing potential claims against the government totaling in excess of $25 billion by the end of fiscal year 1987:

	1982	1983	1984	1985	1986	1987
Pending Cases	1,217	1,785	2,744	4,362	7,072	11,603
Pending Claims ($ billions)	$2.6	$3.8	$5.7	$9.5	$15.5	$25.4

The Government Accounting Office report detailing the potential liability figures stated that, "Asbestos litigation is emerging as a large, complex and costly problem to the federal government."

Further, payments now being made for certain means tested assistance programs such as Supplemental Security Income, Aid to Families with Dependent Children, Food Stamps and Medicaid, not to mention the costs the Government is now spending on attorney fees, administrative costs, court time and clerk fees to defend itself against lawsuits, could be going where they will benefit those who need them in a much more efficient manner.

Corrective Legislation Will Help Victims

The magnitude of the problem makes it apparent that industry and government in partnership must share responsibility for providing funds to care properly for the asbestos victims. Manville believes the time has come to move forward and take action to help the victims.

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To that end, the Asbestos Workers' Recovery Act (AWRA) was introduced in the House of Representatives, H.R. 1626, in March, 1985 and, as of February, 1986, had 72 co-sponsors. A companion bill was introduced in the Senate, S. 1265, in May 1985. These bills would guarantee a system of speedy, fair compensation with funds provided by an industry-government partnership.

Manville believes that AWRA or similar legislation is the best way in which the victims can be compensated fairly without extraordinary delay and legal expense, and the government can become a proper participant reflecting its obligations to the forgotten shipyard workers who are, in fact, victims of victory.

The bill clearly states that the federal government has the responsibility:

> *". . . to establish a mechanism for financial contribution by responsible industries as a substitute for inefficient, inadequate and inequitable tort remedies and for supplementing workers' compensation benefits; and*
>
> *". . . to contribute financially, but only to an extent commensurate with the federal government's responsibility for an increased incidence of asbestos-related diseases."*

In addition, federal legislation will:

- End all asbestos-health litigation, which is unfruitful for everyone;
- Prevent industry from being required by the courts to pay shipyard workers for asbestos-related injury caused solely by the acts of the government;
- Limit unreasonable attorney fees; and
- Provide compensation and preserve the government's sovereign immunity, thereby protecting the taxpayer from imprudent juries.

This system would be fairer than the present tort litigation, which, according to Rand's Institute for Civil Justice, has netted asbestos victims only 37 cents of every dollar spent by all parties in cases closed over the past decade. "The remainder," according to the Institute, "was spent on litigation costs by both plaintiffs and defendants."

As *The Washington Post* in an editorial strongly favoring a legislative solution stated:

> *". . . the lack of remedy for the victims and the unmanageable legal mess that is burdening court schedules make it imperative for Congress to stop its endless studying of the problem — this has been going on for years — and take action. The general principles of a fair, workable and affordable compensation scheme have been outlined. The present system is serving no one but — who else? — the lawyers."*

Public Support Needed for Legislative Action

Congressman Austin J. Murphy of Pennsylvania has summed up the reasons for drafting the proposed legislation:

> *"A national compensation fund would take the issue out of the courts, guaranteeing each asbestos-related disease victim a quick, predictable payment as soon as his disease is confirmed by medical authorities. Such a fund should be contributed to by all responsible parties — miners, manufacturers, employers, insurers and the federal government.*
>
> *"Your representative in Congress should be working toward legislation that will ease this tremendous burden for asbestos-related disease victims and their families. Members of Congress need to hear your views."*

Conclusion

"In summary," Rand's Institute for Civil Justice stated, "the heart of the asbestos litigation problem is its huge scale. Much human suffering is involved. Tens of thousands of current and future injury claims are worth billions of dollars. The sheer numbers stretch the ability of some courts to handle the claims, threaten the economic survival of some defendants, and ultimately threaten the ability of the injured parties to receive fair compensation."

"The question of how we, as a society, should respond to the massive litigation that toxic substances can generate is still open," stated Deborah Hensler, leader of the Rand research team studying mass toxic tort litigation. "It's important that we learn from asbestos and learn quickly because asbestos is the forerunner of a new kind of lawsuit that we do not yet know how to handle efficiently and equitably."

Rand asks, "In those cases in which causal links have been established between asbestos and disease, and victims of that disease have been properly identified, does our system compensate the victims or their survivors adequately and efficiently? Does the system establish a context in which a similar catastrophe is less likely to occur?"

We believe it is high time for Congress to act on these questions.

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