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FAIR COMPENSATION--CONTINUED

S1643—ASBESTOS HEALTH HAZARDS COMPENSATION ACT OF 1981
INTRODUCED BY SEN. GARY HART
(SENIOR DEMOCRATIC SENATOR, COLORADO)

The only asbestos-related compensation bill currently undergoing consideration in the U.S. Senate is Sen. Hart's bill S1643 which was introduced September 18, 1981, and is being reviewed by the Senate Committee on Labor and Human Resources.

Key difference between S1643 and the two bills covered previously is that it requires the federal government to share responsibility for compensation. As written by Sen. Hart in his editorial appearing in the September 5, 1982, edition of the "New York Times," "Clearly, although the asbestos companies may bear the principal financial burden for the social tragedy now confronting us, the Federal Government, as regulator, employer, importer, and user, must share some responsibility for compensating persons with asbestos-related diseases."

Criteria for apportioning payment into the Hart-proposed fund would be set by an Apportionment Criteria Commission composed of several government-appointed officials. Included in the apportionment would be parties responsible for the manufacture, design, formula, preparation, distribution, marketing, packaging, assembly, testing, warning or labeling of any asbestos product; parties responsible for control of the workplace environment and for publishing safe exposure limits; and parties responsible for establishing criteria to which product specifications were designed and manufactured.

Like the Miller bill, Sen. Hart's proposal requires the fund to be tapped only when it is impossible to determine which employer is responsible for compensation. The remuneration would be paid through existing state and federal worker's compensation agencies. Also, like the other proposed legislation, this bill, once passed, would provide the sole and exclusive remedy for seeking compensation for asbestos-related disease.

To quote Mr. Hart when he presented his bill to the Senate, "This will put an end to the massive litigation that has served neither plaintiff nor defendant well over the last five years, and which would be guaranteed to continue on an even larger scale in the absence of this legislation."

ASBESTOS COMPENSATION COALITION
PROPOSED LEGISLATION

"When it filed for bankruptcy because of 16,500 asbestos lawsuits, the Manville Corporation dramatized a disastrous social failure: there is now no way to deliver prompt, fair help to the vic-

THE COALITION—CONTINUED

tims of certain occupational diseases. The suits of asbestos sufferers threaten to bankrupt much of the asbestos industry and even imperil some insurance companies. Yet the crippling expenses are largely absorbed by legal costs, often leaving little for the victims. How did the nightmare begin, and what can be done to break out of it?" questioned a "New York Times" editorial, August 27, 1982.

The editorial proceeded to say that "The Asbestos Compensation Coalition, a group of asbestos companies, is lobbying for legislation to break the impasse. Several features of the proposal make eminent sense. The companies want to see adequate benefits delivered promptly to successful claimants. They suggest that claims be judged by medical panels, and that all parties who contributed to the asbestos problem, including in particular the Federal Government, should contribute."

Says Tom O'Day, of the Alliance of American Insurers, about the ACC proposal, "We're intrigued by it. We think it's interesting and unlike some of the other proposals. We can't dismiss it as another federalization."

The Asbestos Compensation Coalition (ACC), which represents nine companies who are defendants in over 16,000 asbestos-related lawsuits, has an innovative bill in first draft and is currently circulating it to Senators and Congressmen. ACC members are optimistic the bill will be introduced either in the House or Senate next session, with action taking place in 1984. Companies represented by the Coalition include Manville Corporation, UNR Industries, Amatex Corporation, Lac d'Amiante du Quebec, Celotex Corporation, Eagle-Picher, Corning Corporation, Raymark and the Rock Wool Manufacturing Company.

The Coalition's bill would establish a trust fund which would provide that fixed award supplemental benefits be added to those distributed through worker's compensation funds. The benefits would be awarded by existing state and federal worker's compensation agencies and would be applicable to any occupational disease.

In the case of the fund for asbestos, the federal government would contribute 50% and the asbestos manufacturers and their insurers would contribute the remaining 50%. Manufacturers would contribute to the same degree that they now contribute to judgments or settlements following litigation, and insurance carriers would contribute based on the outstanding face value (minus deductions and amounts already paid out) of their product liability policies applicable to asbestos and health-related lawsuits.

According to the Coalition's statement submitted to Mr. Miller's Subcommittee on Labor Standards on September 9, 1982, "Such a system avoids the delay and expense of litigation while simultaneously providing a benefit that is prompt and certain. This ap-

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THE COALITION—CONTINUED

proach is also fair to claimants; in the case of asbestos, the overwhelming majority of worker's compensation claims filed are indeed granted. The supplemental benefit award would approximate the average anticipated damage awards received by the victim following litigation, and would displace the cumbersome, inefficient existing tort system. For occupational disease, claimants would have not yet commenced litigation when the new program becomes effective, the law would be the exclusive remedy; for those claimants who commenced lawsuits prior to the new program, it would be an alternative remedy."

When ASBESTOS questioned a Coalition spokesperson as to why the tobacco industry was not included in the proposal, we were informed that they foresaw an uphill battle due to the administration's abhorrence to government spending and, therefore, "didn't think it made much sense politically to take on the tobacco industry too." The Association of Trial Lawyers of America opposes the legislation. The Coalition also has supported Sen. Hart's bill.

ASBESTOS Evaluates the Bills

We do not agree with the Coalition's decision to ignore the medical evidence which shows that an asbestos-exposed worker who smokes cigarettes has a ninety times greater chance of developing asbestos-related cancer. The tobacco industry should be made partially responsible for compensating workers. However, we do appreciate that political realities make it necessary to avoid a battle with the powerful tobacco industry if this much needed legislation is to have any hope of passage.

On the other hand, we do agree with the Coalition that the federal government knew as much or as little about the long-term health hazards of exposure to asbestos as did the Industry, and that even after World War II and apart from its shipyard activities, the government continued to buy, sell and use asbestos on a large scale, especially since there existed no reasonable substitutes. In addition, we agree with Sen. Hart that the federal government must share in the responsibility, for it controlled the environment in which its employees were exposed to the mineral.

While not perfect, ASBESTOS salutes the Coalition for providing the most fair and workable proposal to date. We feel it is one that we and the entire Industry could and should support.

ANYONE WISHING COPIES OF A HOUSE OR SENATE BILL, PLUS ANY SUPPORTING MATERIALS AVAILABLE, SHOULD REQUEST SAME FROM THE OFFICE OF THE SPONSORING CONGRESSMAN OR SENATOR. THESE OFFICES CAN BE REACHED BY CALLING THE WASHINGTON CENTRAL SWITCHBOARD AT 202-224-3121.

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FEDERAL COMPENSATION BILLS AT A GLANCE

Sponsor	Bill #	Covers More Than Asbestos	Funded By				Status	Committee	Future
			Mfrs & Users	Govt	Insurers	Tobacco Industry			
Millicent Fenwick (R-NJ)	HR5224	No	✓			✓	Supporting Miller Bill	Subcommittee on Labor Standards	Fenwick is running for the Senate. Her bill will be absorbed by Miller's in committee
George Miller (D-CA)	HR5735	Yes	✓				Committee Hearings (House/Sen)	" " (Miller Chairman)	Most likely to get through committee if Miller continues as chair after elections
Gary Hart (D-CO)	S1843	No	✓	✓			Committee Hearings (Senate)	Labor & Human Resources	As apportionments unclear, bill will probably die in committee
Asbestos Compensation Coalition	—	Yes	✓	✓	✓		Seeking Sponsors	—	Much varied support. Will be introduced in 1982-83 Congress.
1. All four bills allow for alternatives for those currently in litigation. 2. All four bills cut off further litigation. 3. All four bills set up supplemental funds to be distributed through state and federal worker's compensation boards, except Fenwick's which has one central board.									

FAIR COMPENSATION—CONTINUED

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A Call For Action!

Whatever the solution, sluggish action both by the U.S. Supreme Court and federal legislators must halt. The American people and the U.S. economy are being threatened on too many sides to ignore any longer the question of developing a fair system of compensation. In recent weeks, talk of developing a "no fault" system of payment, similar to that currently existing in many states for automobile claims, has been heard frequently. The concept has merit, but first, someone will have to determine from where those no-fault funds will emanate.

In reviewing the situation and the Asbestos Compensation Coalition's answer to it, the "Chicago Tribune" said, on September 1, 1982, that "whether the industry's proposal is the ideal one will be for Congress to decide. What can't be denied, though, is that doing nothing is going to wreck one industry, set a precedent that could well wreck others, hurt countless innocent people, clog the court system, and do more to help trial lawyers than to help those who may have legitimate claims. This is not a matter that can be ignored."

For those of you, our readers, who desire to know what you can do to help, we would like to close this review by repeating the suggestions offered by John A. McKinney, Chairman, President and Chief Executive Officer of Manville Corporation, in "Leaders Magazine," (January-March 1982 issue) to business leaders who wish to respond to the challenge of the government's continuing demand for immunity.

Mr. McKinney suggests: 1) Recognize that the problem is a societal one, demanding attention; 2) Promptly seek solutions, working with the U.S. Chamber of Commerce, the National Association of Manufacturers and others concerned about product liability and occupational health reform. Haste is warranted if non-productive litigation is to be kept from inundating the legal system; 3) Work for legislative alternatives which will operate within the existing systems, establish equity in compensation; and apportion costs fairly, including the government; and 4) Educate others, within and without one's immediate contact, on the problem and the need for a solution.

EDITOR'S NOTE: WE ARE GRATEFUL TO BETSY GREEN SIERACKI FOR HER UNTIRING EFFORTS TOWARD PRODUCING THIS COMPREHENSIVE FEATURE ARTICLE. WE HOPE YOU HAVE FOUND IT OF INTEREST AND VALUE AND THAT IT WILL MOTIVATE YOU TO DO YOUR PART TOWARD ESTABLISHING A FAIR AND JUST PROGRAM OF COMPENSATION FOR THOSE WORKERS WHO HAVE OR WILL HAVE CONTRACTED DISEASES FROM OCCUPATIONAL EXPOSURE TO ASBESTOS. ■

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