

May 20, 2013

The Honorable Bob Goodlatte, Chairman
U.S. House Judiciary Committee
Washington, DC 20515

The Honorable John Conyers, Jr., Ranking Member
U.S. House Judiciary Committee
Washington, DC 20515

Re: Opposition to H.R. 982, the Furthering Asbestos Claim Transparency Act (FACT Act)

Dear Chairman Goodlatte and Ranking Member Conyers:

We are writing to express our strong opposition to H.R. 982, the “Furthering Asbestos Claim Transparency Act” (FACT Act). The so-called FACT Act will delay and, in some cases, deny justice to people suffering from debilitating asbestos-related diseases, including mesothelioma and other cancers. In the name of “transparency,” the bill places lengthy and burdensome reporting requirements on claimants applying to asbestos trusts, but has no comparable requirements for the asbestos companies who were responsible for the harm. The legislation is one-sided, unfair and unnecessary.

Asbestos, a known human carcinogen that has killed millions of people over the last several decades, has not been banned in the United States. It remains a threat to Americans in our homes, schools, and at workplaces. Environmental disasters such as 9/11 and Hurricane Sandy exposed many more people to asbestos dangers. Meanwhile, experts estimate that about 10,000 people die in the U.S. every year as a result of exposure to asbestos.

In 1994, Congress passed special legislation applicable only to the asbestos industry that allowed asbestos companies to set up trusts to compensate asbestos victims and, at the same time, reorganize under the bankruptcy laws to enable the companies to continue operating. This protection has allowed most companies that have sought bankruptcy protection due to asbestos liabilities to recover and remain economically healthy.

While this law has protected the companies from going out of business, it has not provided full compensation for victims. A RAND study found that “(m)ost trusts do not have sufficient funds to pay every claim in full, and thus, set a payment percentage that is used to determine the actual payment a claimant will be offered” with a median payment of 25 percent and some as low as 1.1 percent of the value of the claim. The FACT Act will make that compensation even harder for victims to obtain, in some cases delaying the compensation beyond the life of the claimant.

Most asbestos victims were exposed to asbestos from a number of different companies’ products. Therefore, asbestos victims usually bring claims against multiple companies, in an attempt to recover damages from every entity that has caused the harm. As the litigation progresses, the victims may settle the claim against one or another of the wrongdoers as the parties may agree.

Some asbestos claims will be filed with asbestos trusts. Other claims, against solvent companies that have not set up trusts, must proceed in court and are governed by the applicable state law.

The FACT Act will grant asbestos companies the right to demand any information they choose from the asbestos trusts. Specifically, the bill will: 1) require the trusts to publicly disclose private, confidential claimant information such as individual and personal claim information, including the victim's exposure and work history; and 2) allow asbestos companies to demand any additional information from the trusts at any time and for virtually any reason. The bill will place unnecessary and costly burdens on asbestos trusts, delay badly-needed compensation for claimants, invade privacy rights of asbestos victims, and give solvent defendants in asbestos lawsuits special benefits not accorded to claimants.

While these proposals masquerade as mechanisms designed to advance evenhanded justice, they are, in fact, obvious efforts by asbestos litigation defendants to do an end-run around uniform rules of discovery in the civil justice system and reverse principles of tort law established hundreds of years ago.

The bill will also destroy the safeguards of state laws that govern disclosure of a trust claimant's work and exposure history. Currently, defendants can obtain that information if it is relevant to their defense, but they must abide by the rules of a state court. This is an important safety mechanism to provide a balance between information to be used for a company's defense and yet not allow for fishing expeditions into a plaintiff's personal history.

In addition, asbestos defendants often settle cases and demand confidentiality as a condition of settlement. Yet this bill demands that the asbestos trusts must disclose the amount of their specific payments. Wouldn't a bill that is designed to increase transparency require equal disclosure of all settlement amounts by defendants as well? The asbestos trusts already file annual reports with the Bankruptcy courts and publish lists of products involved in their work. Shouldn't this bill require asbestos defendants to disclose information about the history of exposures caused by their asbestos products?

The purported purpose of the Fact Act is to eliminate fraud in asbestos claims, yet studies show the incidence of fraud to be negligible at most. If fraud remains a problem, there are ways to address it without subverting justice for the hundreds of thousands of legitimate claims in the system. Supporters also claim that asbestos victims are "double-dipping," obtaining more compensation than they are due from both asbestos trusts and solvent defendants. But the RAND study shows that asbestos claimants are woefully undercompensated by asbestos trust funds. It is both appropriate and proper for asbestos victims to pursue compensation from all companies that caused their exposures.

Since at least the 1930's, asbestos companies and their insurers have been denying responsibility for the millions of deaths and injuries caused by this deadly product. The companies hid the dangers posed by asbestos exposure, lied about what they knew, fought against liability for the harms caused, tried to change the laws that held them responsible, and to this day, they still fight against banning asbestos in the U.S. The asbestos industry is not interested in transparency. This legislation is nothing but another attempt by the industry to avoid responsibility for the

grave harms they have caused. We are asking you to stand with the cancer victims of the asbestos industry's wrongdoing and oppose the FACT Act.

Thank you for your consideration of our views. If you have any questions, please do not hesitate to contact Joanne Doroshow, Center for Justice & Democracy, 212.431.2882.
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Sincerely,

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Alliance for Justice

Joanne Doroshow
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