

VOTE AGAINST S. 3274

June 6, 2006

The Honorable Bill Frist
U.S. Capitol, Room S-230
Washington DC 20515

The Honorable Harry Reid
U.S. Capitol, Room S-221
Washington DC 20515

The Honorable Arlen Specter
711 Hart Senate Office Bldg.
Washington DC 20510

The Honorable Patrick Leahy
433 Russell Senate Office Bldg.
Washington DC 20510

Dear Senators:

We are strongly opposed to S. 3274, the revamped asbestos trust fund legislation now being considered by the Senate Judiciary Committee. This new bill, like its predecessor S. 852, is deeply unfair to seriously ill victims of asbestos-induced diseases, and will leave them uncompensated and worse off than they are under current law. Moreover, passage of this legislation before the end of the session would, under the contingency trust agreements devised by numerous asbestos corporations coming out of bankruptcy, divert billions of settlement dollars meant to compensate victims into corporate coffers instead.

The asbestos trust fund contemplated in S. 3274 remains unfair, unworkable and inadequately capitalized. The fund continues to rely on very substantial borrowing early on to pay hundreds of thousands of initial claims, resulting in debt service costs that will reduce the capital intended to pay claims by some 40 percent or more. The legislation still terminates the right of victims to seek redress in the civil justice system, which for all its challenges, has evolved to manage asbestos litigation with increasing efficiency. An asbestos fund that fails to offer victims equal or better protection and relief than they enjoy under the current civil justice system is unacceptable. An asbestos fund premised on fallacies – the non-existent toll of bankruptcies on the country's economic health, and the non-existent logjam of cases in the courts – is unconscionable.

S. 3274 is even more unjust than the bill considered by the Senate in February. It proposes savings by excluding payments from the fund to victims who have been waiting for years for the resolution of claims against bankrupt companies. The elimination of their dormant claims means that these seriously-ill individuals will be locked out of compensation from any source. The revised bill creates new medical and exposure criteria that further discriminate against patients by establishing burdensome hearing and audit requirements. It requires medical assessments of malignant disease by doctors who lack the expertise needed to provide the requisite diagnosis. It goes so far as to rule out the option of settlement during start up for terminally ill victims with exceptional medical claims. Veterans who gave their lives for this country will be relegated to a compensation limbo unless they had already sought treatment for asbestos disease through the Veterans' Administration. These requirements are clearly intended to narrow the claimant pool in an effort to save money – they have nothing to do with fairness and justice for individuals poisoned through corporate deceit. The ostensible inclusion of WTC

and Katrina victims is no more than a façade: they get no greater assurances of compensation under the new bill than they had under the old one.

S. 3274 does nothing to address the egregious shifting of the societal cost of asbestos poisoning away from defendant companies and insurers to asbestos victims and the American taxpayers. The specter of delays and onerous conditions will force those dying of asbestos diseases to settle for whatever they can get, however inadequate, during the start up period. This will leave the burden of future uncompensated costs on taxpayers and the treasury. Undercapitalization has become still more problematic in the amended bill, which contains a revised funding formula, funding holidays and hardship exemptions that will reduce corporate contributions.

The financial viability of the trust fund was a repeatedly articulated concern in testimony presented by the Congressional Budget Office, the Government Accounting Office and other experts before the Senate Judiciary Committee. CBO determined the legislation lacked sufficient transparency regarding company pay-ins to guarantee that the fund would ever collect the \$140 billion envisioned in the legislation. Furthermore, the fund would have to borrow at least \$8 billion within the first ten years, and calculations for paying out expected claims did not include the cost of debt service, which CBO estimated could exceed \$50 billion. CBO and numerous witnesses warned that the legislation seriously underestimated the number of future asbestos claims on the fund that no new effort to exclude seriously ill victims can – or should – resolve. None of these concerns have been addressed in the new bill. The proposed creation of a “Master Trust” to continue paying claims after the trust fund runs out of money suggests that the trust’s proponents fully understand the inevitability of taxpayers having to step in to bail out the fund, regardless of the “intention” of the bill’s drafters.

We strongly urge you to oppose this misguided legislation, which utterly fails victims of asbestos exposure and, in so doing, betrays the fundamental principles of fairness, justice and accountability on which this country was founded.

Sincerely,

Alliance for Justice
Center for Justice & Democracy
Public Citizen
USAction
U.S. PIRG