

February 4, 2015

Re: Opposition to H.R. 526, the Furthering Asbestos Claim Transparency Act (FACT Act)

Dear Representative:

We are writing to express our strong opposition to H.R. 526, the “Furthering Asbestos Claim Transparency Act” (FACT Act). This bill will delay and deny justice to people suffering from lethal asbestos-related diseases, severely invade the privacy of asbestos victims and their families, and interfere with state legal systems without justification. With the topic of asbestos litigation occupying the news lately, it may seem like an opportune time to legislate in this area. However, this bill is extremely misguided. It will do little more than harm dying victims, including many former Navy shipyard workers, while advantaging big corporations responsible for compensating them. For decades, secrecy and deceit have been a way of business for the asbestos industry and this bill does absolutely nothing to change that. The legislation is one-sided, unfair to victims and unnecessary.

The FACT Act has two primary provisions:

1) It requires asbestos trusts to disclose on public web sites private, confidential information about every asbestos claimant and their families, including past, current and future claimants. The information that will go on these public sites includes victims’ names, addresses, where they worked, how much they made, medical information, how much they received in compensation and the last four digits of their social security numbers. This extreme invasion of privacy will make victims and their families vulnerable to predators, con artists and unscrupulous businesses who will scour these sites for information. At the same time, the legislation does nothing to stop asbestos defendants from continuing to demand secrecy when they settle cases (as they routinely do), or force companies to disclose any information to help a claimant with his or her case. To this day, these companies refuse to make public where asbestos is present, where it was used and where it is imported. This bill is a terribly unfair and unwarranted imposition to place on people who are probably going to die because the asbestos industry covered up the dangers of asbestos for over 50 years, and which still insist on confidentiality today.

2) It allows any defendant in any asbestos lawsuit the right to demand any information about any asbestos victim from any asbestos trust at any time for any reason. The trusts themselves have already told this Subcommittee that such a provision would place substantial burdens on them, requiring them to spend tens of thousands of additional hours per year trying to comply with this requirement.¹ Considering the unlimited nature of the provision, the costs for trusts to comply would be very high. And since there is no provision requiring defendants to pay for these

¹ See Letter from Douglas A. Campbell, Campbell & Levine, LLC, to Rep. Bob Goodlatte, Chairman, et al., H. Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary, (Mar. 20, 2013).

additional costs, expenses would presumably come out of the limited money that is intended for victim compensation. Trusts are already underfunded. A RAND study found that the median payment from asbestos trusts to victims is 25 percent of the value of the claim, and some payments are as low as 1.1 percent of the claim's value.

But even aside from costs burdens are the delays that will result. As explained by Caplin & Drysdale's Elihu Inselbuch in his "Responses to Questions for the Record" following his 2013 Subcommittee testimony, because trusts will be buried in paperwork seeking claimant information they do not need to do their job, "The bill would slow down or stop the process by which the trusts review and pay claims, such that many victims would die before receiving compensation, since victims of mesothelioma typically only live for 4 to 18 months after their diagnosis." In many cases, "the delays in trust payment will force dying plaintiffs, who are in desperate need of funds, to settle for lower amounts with solvent defendants.... Delay is a weapon for asbestos defendants."

Finally, as Mr. Inselbuch put it, this bill is "a heavy-handed piece of federal interference with the states' legal systems." That is because the bill does not require that the information demanded by defendants be relevant to, or admissible in, any lawsuit. Far from being even-handed, this bill allows defendants – and only defendants - to do an end-run around state rules of discovery that place limits on information-gathering by parties.

As to the claim that this bill will "prevent fraud," this bill places new, burdensome requirements on regularly-audited trusts. No one can find evidence of significant fraud in the trust process. The U.S. Government Accountability Office (GAO) studied the problem and did not identify one fraudulent claim.² As Mr. Inselbuch noted, "Because the injured victim was typically exposed to multiple asbestos products at multiple job sites over a period of many years, he or she must file different claims, with different trusts, with different forms that request different information. The fact that the exposure information submitted to one trust *differs* from the exposure information submitted to another does not mean it is 'inconsistent' – and certainly not specious or fraudulent." Similarly, with regard to charges that victims "double-dip," he explains, "when an asbestos victim recovers from each defendant whose product contributed to their disease, that victim is in no way 'double-dipping;' rather they are recovering a portion of their damages from each of the corporations who harmed them. In fact, each trust is responsible for and pays for only its own share of the damages." And as noted above, each trust usually can pay only pennies on the dollar.

Since at least the 1930's, asbestos companies and their insurers have been denying responsibility for the millions of deaths and illnesses caused by this deadly product. The Centers for Disease Control and Prevention report that roughly 3,000 people continue to die from mesothelioma and asbestosis every year, although some experts estimate the death toll is as high as 10,000 people per year when other types of asbestos-linked diseases and cancers are included.³ The companies hid the dangers posed by asbestos exposure, lied about what they knew, fought against liability

² UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO THE CHAIRMAN, COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ASBESTOS INJURY COMPENSATION: THE ROLE AND ADMINISTRATION OF ASBESTOS TRUSTS 23 (2011).

³ *Asbestos: Think Again: America's Asbestos Epidemic*, ENVIRONMENTAL WORKING GROUP (viewed on January 29, 2015), <http://bit.ly/1Dd9NEG>.

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 veterans and other cancer victims of the asbestos industry's wrongdoing and oppose the FACT Act.

Thank you for your consideration of our views.

Alliance for Justice

Center for Justice & Democracy

Connecticut Center for Patient Safety

Consumer Action

Consumer Watchdog

Environmental Working Group Action Fund

National Association of Consumer Advocates

National Consumers League

OpenTheGovernment.org

Public Citizen

U.S. PIRG