

ADDITIONAL VIEWS OF SENATORS KYL, GRASSLEY, AND SESSIONS

This bill must meet three criteria in order to be worthy of support: it must provide adequate compensation to persons with asbestos injuries; its cost must be reasonable; and it must provide a permanent solution to the asbestos-litigation crisis.

The bill meets the first criterion. It compensates those who have been made sick by asbestos exposure, though it errs towards compensating many people with no asbestos-related injury. With the inclusion of a lockbox amendment to protect victims with serious asbestos-related injuries, we can be confident that the bill will provide adequate compensation to those who are actually sick from asbestos. A letter from Dr. James Crapo, describing the need for this amendment, is attached to this statement.

It is no longer clear if the committee-reported bill meets the second criterion. With the addition of the contingent-call amendment, the bill now may cost as much as \$139 billion. As noted elsewhere, *see infra Additional Views of Senator Kyl*, total asbestos tort judgments and settlements to date have amounted to approximately \$70 billion, with much of that amount going to plaintiffs with no injury or impairment. Also, medical professionals agree that actual asbestos injuries have been declining for the last decade, *see ibid*. It is not apparent to us that it is reasonable to pay twice as much in the future as has already been spent in the past to provide compensation for a health problem that peaked more than a decade ago.

This is not to say that we do not think that the Trust Fund will exhaust the entire \$139 billion available to it. Medical professionals already have warned us that much of the disease criteria employed by the bill is medically unsound and will compensate persons who are not sick from asbestos, *see infra* Attachment “E” to *Additional Views of Senator Kyl* (Letter of Dr. Crapo). Although this bill, unlike past bankruptcy trust funds, requires some evidence of impairment for all compensation levels, it is uncertain how many persons with common, non-asbestos-related diseases and injuries will qualify for awards under this bill’s criteria.

Finally, with the addition of the sunset amendment, the bill clearly fails the last test: it does not offer a permanent or even stable solution to the litigation system. That amendment provides that if, in any year, the fund is unable to pay 95% of “eligible” claimants, the entire fund terminates and all claims are returned to the tort system. Particularly given the inflated claim values approved by the committee, and the bill’s compensation of people who are not sick from asbestos, it is very likely that “eligible” claims will in some year exceed the resources of the trust fund.

Under the sunset amendment, defendants and insurers could pay into the fund for five years, for a total of \$25 billion dollars, and then, in year six, if claims exceed funds, the whole system would be scrapped and everyone would be back where they started – but minus \$25 billion. This amendment was adopted during the last hour of four days of Judiciary Committee executive consideration of the bill. It was one of a large number of amendments that had been filed but was never discussed before it was called up. We believe that our colleagues

did not consider all of the details and ramifications of this amendment. We are confident that, in the full Senate, a majority will agree that a hair-trigger self-destruct mechanism should not be included in this bill, and will vote to remove the sunset amendment.