

Asbestos Defendant and Insurer Funding “Agreement” Will Not Provide Fair or Certain Compensation to Asbestos Victims

Under the auspices of Senate Majority Leader Bill Frist, on October 15, 2003, defendant companies and insurers reached an agreement on funding levels and allocations for a national asbestos trust fund.

The new funding agreement is a major step backwards. The \$114 billion agreement provides far less total funding than the bill (S. 1125) reported by the Judiciary Committee, which provided for \$153 billion to pay asbestos disease claims.

The agreement was worked out exclusively between asbestos defendants (the parties responsible for the asbestos disease problem), their insurers and Senator Frist. No representatives of victims, including the AFL-CIO, were invited to participate or consulted. The funding agreement was presented to the AFL-CIO by Senator’s Frist staff on October 16, as a take it or leave it offer, with the statement that there would not be a nickel more of funding.

The terms of this agreement are inadequate to cover the costs of expected disease claims, which the Congressional Budget Office has recently estimated to be \$136 billion for S.1125 as reported, let alone to cover the costs if the numbers of claims exceed projected estimates. Moreover, the CBO estimate is for the inadequate, unfair claims values in S. 1125 as reported.

The compensation values set by the funding agreement are unfair to victims. While compensation for some disease categories has been slightly increased, the compensation levels proposed for many victims, including those with fatal diseases, are insufficient to cover medical costs, let alone provide fair monetary compensation.

Asbestos disease victims are left to bear all the risk if funding is inadequate to cover claims. Contingent funding has largely been eliminated and there is no automatic return to the tort system if funds run out. Given the CBO’s estimate that \$136 billion is needed to cover expected claims, even at lower claim values, under the proposed funding agreement victims are likely to be left high and dry.

In addition to the inadequate funding and unfair claim values, there are many outstanding issues that need to be addressed. These issues include the treatment of pending claims, establishing a truly no-fault administrative system, the exclusion of FELA-covered employees from the scope of this law, eliminating subrogation and providing medical screening for high risk workers.

The complexities of this legislation are enormous, and the differences are too great to be resolved in a hurried fashion in the remaining weeks of this Congressional session.

The AFL-CIO has supported efforts to adopt asbestos compensation legislation that will improve the system of compensation for victims of asbestos disease. We have attempted to play a constructive and responsible role in this process, and will continue to do so. But we will strongly oppose any efforts to pass S. 1125 as reported, a bill that incorporates this latest inadequate funding agreement or any legislation that does not provide fair, timely and certain compensation to asbestos victims.

