

MANVILLE PERSONAL INJURY SETTLEMENT TRUST

David T. Austern
General Counsel

October 9, 2003

BY MESSENGER

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Committee on the Judiciary
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Re: Congressional Budget Office
Cost Estimate of S. 1125

Dear Rebecca and Ed:

Please forgive the joint letter, but I am almost as busy as I am sure both of you are in the waning days of this year's legislative process, albeit for different reasons.

I have received a copy of the Congressional Budget Office Cost Estimate for S. 1125 dated October 2, 2003 (the "Report"). Because some of the Report's conclusions are based, in part, on Manville Trust data, and for other reasons, I wish to submit for your consideration the following comments.

1. Nonmalignant Claims.

The Report estimates that 85% of claims for nonmalignant conditions filed with the Asbestos Fund described in S. 1125 will be eligible only for medical monitoring (Level D). This estimate is based on "available research" involving a sample of the exposed population with malignant history and the history of claims filed with the Manville Trust. (Report at page 12.)

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I disagree. As you will recall, on the two occasions I appeared before the Committee on the Judiciary with respect to asbestos legislation (the first of which did not specifically concern S. 1125), and in my conversations with you and others, my comments have been restricted to issues concerning the Manville history, predicting future claims, and claims processing issues (addressed below). As I have testified, predicting future asbestos claims, even when relying on Manville Trust filing data, is an extremely difficult task and is arguably as much art form as science.

That said, there are data sources that can be relied upon to assist in the claims forecast process even where exposure and medical criteria are new, as in the case of S. 1125. Among these data sources are Manville Trust ("Trust") estimates of claim filing trends based on recent (2000-2003) Trust claim filings. The Trust is, of course, aware of the exposure and medical criteria of these recently filed nonmalignant claims, which number over 200,000. Based on the exposure and the medical criteria of these nonmalignant claims, we believe there is almost no likelihood that as many as 85% of the nonmalignant claims filed pursuant to S. 1125 will qualify only for Level I.

Our best estimate -- subject to the vicissitudes of future claims forecasting about which I have previously testified and which I have discussed with you -- is that over two-thirds and as many as three-quarters of the nonmalignant claims filed pursuant to S. 1125 will qualify for compensation at Level II or higher.

Obviously, the very large number of nonmalignant claims that I believe will qualify for Level II or higher compensation inexorably leads me to conclude that substantially greater funds will be needed to compensate eligible claimants than the amounts noted in the Report.

2. Malignant Claims.

The Trust -- and virtually everyone else -- has experienced substantially greater success in predicting future malignant claim filings. In that regard, I agree generally with the total number of malignant claims described on page 7 of the Report. However, at the risk of seeming to quibble, I believe the Report inaccurately allocates claims among the three lung cancer Levels (Level VII, Level VIII, and Level IX) and also inaccurately allocates claims among the payment categories (nonsmokers, ex-smokers, and smokers) for each lung cancer Level.

In summary, I disagree that "a large majority of claimants compensated for lung cancer" will be compensated "near the low end of the range of lung cancer award values." (Report at page 7.)

3. Claims Processing Costs.

Under most circumstances, I believe it is useful for me to remain as neutral as possible when providing technical suggestions as to the operation of a one payor asbestos compensation

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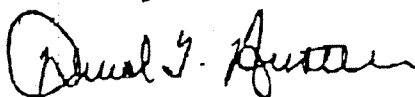
system. However, my neutrality utterly fails when assessing the unnecessarily complex and excessively repetitive claims processing procedures mandated by S. 1125.

To be sure, the \$700 million estimated in the Report for claims administration costs, based on 100 claims processing employees, is a small portion of the total funds that must be made available to provide compensation to asbestos victims. However, I believe, based on an examination of the claims processing requirements of S. 1125 and my sixteen years of asbestos claims processing experience, that at least 200 and possible 250 people will be required to follow the cumbersome processing procedures mandated by the legislation.

Whether this doubles the funds needed for administrative costs from \$700 million to over \$1.5 billion is not something I can determine, but in any event, I encourage that consideration be given to simplifying and truncating the S. 1125 claims processing procedures.

If you have any questions concerning this letter, please call me.

Yours very truly,



David T. Austern