

Mr. Chairman:

My name is Victor L. Drexel. I am Corporate Counsel of the Amatex Corporation. We are a suburban Philadelphia-based company with plants in Pennsylvania and New Hampshire. Our sales are in the \$16-17 million range, about half of which relate to asbestos. We manufacture asbestos textiles such as asbestos cloth, tape, thread, and rope. These products are used in the laminating, wire and cable and safety clothing industries. Our products may also be found in the packing, automotive, shipbuilding and repair industries. Over the years, a substantial part of our business was in the filling of orders for materiel that the United States deemed essential to the defense of this country.

I was a partner in a large Philadelphia law firm, close to retirement, when Amatex asked me to help it deal with the onslaught of litigation. We are not a large company, and with others are currently faced with more than 10,000 claimants, with new suits coming in at the rate of 200-300 per month. I manage our legal affairs with one full-time and one part-time secretary, two paralegals, and no computer. Our insurance is rapidly being consumed and we are having disputes over coverage. Our asbestos litigation expenses have been running at about \$1 million a year exclusive of insurance coverage. There have been no verdicts or judgments against us. (There has been one in our favor.) You can see that we are just at the beginning of a process which will

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grow worse for the company each year. We cannot survive if litigation continues over a lengthy period.

It is ironic that our textile products have over the years served to prevent injury and to conserve energy. But this small company, as the result of knowledge acquired within the last 10-15 years, is confronted with a situation that can only be called disastrous. Even more unfortunately, much of the company's resources which are being drained are not going toward the compensation of persons who may have been injured as a result of exposure to our products, but to lawyers. From the perspective of a company of our size, approximately 250 employees, it is particularly frustrating that the U.S. government, which awarded us contracts because we could furnish what it ordered and because ✓ it wanted to assist small business, stands back and watches the agony of this situation with the aloofness of an institutional Nero.

Standard
I commend Congressman Miller and the co-sponsors of H.R. 5735 for recognizing that a massive and national problem exists and for introducing legislation directed toward its solution. However, as in all legislation which requires the creation of a fund, the most controversial and difficult issue is the identification of those entities which will be required to put up the necessary cash to make the legislation effective.

H.R. 5735 specifically excludes from participation in the funding process one whose responsibility for conditions existing today is clear and unequivocal. I speak of the United States.

Why do we say the government is a responsible party? In the case of my company, as I have said, a great deal of our business was with the government, which for many years gave us a preference as a small business. The Government specified the products it wanted and permitted no deviation. Commonly, a U.S. inspector would be on our premises for the purpose of assuring the government that it was getting what it had specified. More generally, the government's involvement in the asbestos industry as a regulator, an importer, a seller, a user and an employer has not been casual or intermittent; it has been a substantial, continual, and in many respects dominant player.

Asbestos was not of merely tangential interest to the government. In fact, government documents clearly identify the U.S. as a buyer, seller, and stockpiler of asbestos as a commodity critical to the national defense. A Bureau of Occupational Safety and Health report issued in 1969 identifies the U.S. Navy as the largest single asbestos user in the country. Even as late as January 5, 1979, the Deputy Chief of Naval Operations advised the General Accounting Office that "all ships presently in operation contain some quantity of asbestos."*/ By far the largest number of individuals occupationally exposed to asbestos--something like 4.5 million individuals--have been employed in shipyards either operated or

*/ Letter of January 5, 1979 from Vice Admiral T.J. Bigley to Robert F. Hughes, Assistant Director, U.S. General Accounting Office. The Bigley letter states there were still shipboard uses of asbestos for which technically acceptable asbestos-free substitutes did not exist.

controlled by the Federal government. We believe that about one-half of the plaintiffs in third-party suits have shipyard-related claims.

When Dr. Selikoff testified before this subcommittee on March 4, I understand he showed a slide of a large group of insulation employees, union workers, at a shipyard award ceremony during World War II. He pointed out the Navy brass participating in the ceremony. The happy occasion of patriots being recognized for their good work has now turned to a somber remembrance--many of the employees have since died of asbestos-related diseases.

This group portrait calls us back to the war years, to place today's events in proper context.

It is June, 1940, and there are 97,000 workers employed in the shipyards of this country. In December 1941, Pearl Harbor is bombed, and suddenly our nation's most urgent task is to build and maintain a "Two-Ocean Navy." Employment in private yards goes up to 366,400. It peaks in November, 1943, at 1.4 million workers, over fourteen times the pre-war level. Work goes on around the clock. "The wartime shipyard," write two naval industrial health experts, "was indeed a bedlam of activity."^{**}/

But the bedlam was not without direction. The U.S. government controlled the private shipyards with a directness and authority that is unfamiliar in this country except during

^{**}/ George M. Lawton (Industrial Environmental Health Division, Bureau of Medicine and Surgery, Department of the Navy) and Paul J. Snyder (Navy Industrial Environmental Health Center), "Occupational Health Programs in United States Naval Shipyards", (197_).

wartime mobilizations. The government directed and financed a large portion of the expansion of many shipyard facilities. It provided special tax treatment to private investment in shipyard facilities certified to be necessary for national defense. The government also participated in the recruitment of shipyard workers and was represented on the Shipbuilding Stabilization Committee, which worked out basic agreements on wages, hours, and working conditions. The Navy and Maritime Commission jointly issued "Minimum Requirements for Safety and Health in Contract Shipyards." Through a variety of means, the government monitored the performance and costs of shipbuilding, controlled the managerial decision-making process, and even participated in the selection of management teams. In effect, the government became an owner and operator of the nominally private shipyards, and the de facto employer of the workers.

It was in this context that asbestos played its wartime role. As early as June, 1940, government officials began discussing plans to procure and stockpile asbestos, which they knew would be needed for such naval applications as insulation, expansion joints, gaskets, welders' curtains and gloves, electrical cable, stress relief pads, sheathing, packing, flooring, fire-fighters' clothing, pipe hanger covers, table tops, intumescent coatings, and cement. By December, 1941, the critical need for asbestos was recognized, and it was decided to conserve available stocks. The demand for asbestos-cement corrugated sheets and asbestos textiles (for use in aircraft hangars and ordnance works) had already exceeded supply.

Conservation of asbestos was handled by government regulation. The first order was issued in January, 1942, and it was followed by a series of ever-increasing detailed orders on what could or could not be done by the asbestos industry. For example, one order in 1942 restricted the processing of asbestos textiles not only for standard civilian items such as theatre curtains and scenery, but for gun covers, ammunition containers, parachute flare shields and clutch facings, except for implements of war.***/ Controls on asbestos remained in effect until August 31, 1945. By 1949, the average annual level of employment in the shipyards had returned to pre-war levels.

During the period of "bedlam", conditions in the shipyards were often unhealthy, a fact which was recognized by the government, but which was of secondary concern. At the first meeting of the Shipbuilding Health and Safety Section of the U.S. Navy and U.S. Maritime Commission, on December 7, 1942, a participant, speaking of the procedures to be used in checking up on such environmental hazards as asbestos dust, told the meeting: "Now, those sort of air analyses and checks need not be done often. We do not want to wish a needless chore on you that will

***/ Conservation Order M-123, as amended December 14, 1942. See generally Bowles, Asbestos, A Materials Survey, Ch. 18 (Bureau of Mines, 1959).

interfere with more important duties for the safety engineer, and above all the last thing we want to do is to put through any restrictions that will slow up the shipbuilding program."****/

It was a time of crisis. The shipyards had exploded into a bedlam of activity to raise a Navy; the government was controlling the shipyards and was closely regulating asbestos as a critical commodity; the government did not feel it had time to worry much about short-term effects of exposing shipyard workers to asbestos dust, much less about long-term diseases about which virtually nothing was known. In 1938, the U.S. Public Health Service had recommended the threshold limit value for occupational exposure to asbestos. This remained in effect for some 30-odd years. This standard, in the light of advances in scientific knowledge acquired with the passage of time, turned out to be incorrect--tragically incorrect--but it was relied upon for over a quarter of a century by manufacturers, employers, and employees throughout the country. In fact, the Navy and the asbestos industry were lulled into a sense of false security by the combination of the 1938 Public Health Service standard and the absence of data, confirmed in the 1946 Fleischer-Drinker report, which might indicate the presence of any worrisome asbestos problem in the shipyards. We have to understand the situation as it was then in order to understand today the Faustian bargain that we now realize was struck in the

****/ Transcript of Meeting in Regard to Minimum Requirements for Industrial Health and Safety in Shipyards, Chicago, December 7, 1942.

shipyards. As Senator Gary Hart has said, "In many ways, asbestos disease is a hidden cost of World War II, for which many American workers are still paying."

The government's role does not end with World War II. The government continued to operate its own shipyards, to buy and use asbestos on a large scale. As a result of this activity, approximately 6,100 claims have been filed against the government as employer, for benefits under the Federal Employees Compensation Act. The government is also the defendant in approximately 13,000 administrative claims and 1,000 law suits under the Federal Tort Claims Act, and there is a likelihood that the government will be brought into many asbestos cases as a third-party defendant. According to the Commercial Union insurance company, which has announced its intention to cross-claim against the government, the U.S. has already been impleaded in asbestos cases involving over 500 plaintiffs.*****/

Evidence is developing in litigation involving shipyard workers, revealing that even after 1964, when Dr. Selikoff discovered the possible hazard to workers using asbestos-containing thermal insulation materials, there was a haphazard delay or indeed nonexistent effort in Federal shipyards to educate employees or institute adequate work practices. In one case,*/ the court specifically found that "the government did negligently fail to fully carry out and implement the range of

*****/ Howard W. Ward, "Coverage for Exposure: Destructive Judicial Legislation," For the Defense 10, 14, 18 (March 1982).

*/ Glover v. Johns-Manville, No. 78-648 (D. Va., Dec. 21, 1979), aff'd in part, 662 F.2d 225 (4th Cir. 1981).

safety devices that the government knew were essential" for shipyard safety. In at least one case, the government has settled claims at what is believed to be a multi-million dollar level. The claims were brought by employees of a plant to which the government had supplied asbestos fiber out of its stockpile. There was a \$20 million settlement and the government paid a portion under an arrangement that kept its contribution secret, but which is rumored to be \$5.75 million.

So far, the United States has escaped the full impact of the litigation in which shipyard employees are involved. However, U.S. governmental conduct ordinarily is a factor in any trial involving asbestos. Juries have heard the evidence of government demands and specifications for asbestos-containing products, the government's rigid control of the shipyards, the sloppy housekeeping and industrial hygiene programs even after 1964, and the rejection by the government of efforts by the industry to provide work practice instruction to shipyard workers.

In some jurisdictions, it is possible to interview jurors after a trial. In cases where this was done, and in which the juries had returned verdicts in favor of the defendant manufacturers, it was found that a substantial factor in the juries' decisions was a conviction that the party at fault was the U.S. Navy. In other cases, where post-trial interviews were not allowed, industry lawyers have reasonably concluded that jury verdicts favorable to the defense resulted from evidence of Navy conduct, and that many verdicts favorable to plaintiffs carried damage awards that had been discounted because of jury

recognition of the Navy's disinterest in protecting the health of shipyard employees.

It is clear that the government's role in the asbestos disease process was anything but benign. And it is clear that the government is going to have to spend a considerable amount of the public's money on defending and compensating asbestos claims. Exactly what the government itself anticipates it will spend on asbestos litigation is something this Committee could ascertain from the Departments of Defense, Labor, and Justice.

When we say that the government's role was not benign, we think, for example, of a memo written on May 8, 1978, by George Seeberg, Safety Director of the Defense Property Disposal Service, an agency of the Naval Supply Systems Command. Seeberg reacts to memoranda on telephone conversations between the attorneys for the Navy and the Justice Department, concerning the disposal of asbestos. He takes strong exception to those portions of their discussion which "inferred that we should make 'asbestos fodder' of our own employees because their potential claims against the Treasury would be far less under workmen's compensation than a private citizen might have under the Federal Tort Claims Act." Seeberg said he found this line of thinking to be "morally distasteful and ethically reprehensible," and that it indicated "the obsession that has been reached with dollars to the exclusion of our own employee's welfare." Mr. Chairman, we share Mr. Seeberg's outrage.

We also share the sense of outrage recorded by Sheldon H. Manning, the Industrial Hygienist at the Long Beach Naval

Shipyard, in a 1970 memorandum.**/ He described at length an industrial hygiene program which since 1951 "had been non-existent or marked by weakness whenever the billet had been filled." And we wonder how many other memoranda concerning the government's responsibility were destroyed once this became a public issue. On November 14, 1980, a U.S. District Court judge granted a preliminary injunction to restrain the United States from destroying categories of documents that relate to asbestos. The court found that the U.S. and the U.S. Navy were then engaged in document destruction programs which could result in the destruction of relevant evidence, and that the government was unable to reach an agreement with Johns-Manville, a defendant in the private civil litigation, by which the documents would be protected.***/

The public has a major stake in a fair compensation system. To the extent that such a system excludes lawsuits against the Government, there is a public savings. To the extent that citizens can be compensated out of a shared private/public pool rather than out of strictly government funds, there is a public savings. The Labor Department estimates the annual cost to taxpayers of public compensation attributable to the inadequacy of workers' compensation is \$2.2 billion. And to the extent a legislated system reduces the burden on the courts there is a

**/ Memorandum from Manning to Commander Jose C. Smith, MC, USN, June 30, 1970.

***/ Johnson v. Johns-Manville Sales Corp., et al., No. C-80-0394 RFP, (D. Cal., Nov. 14, 1980).

significant public savings. As a lawyer, I can tell you we are already seeing the courts in Philadelphia overburdened as a result of the asbestos litigation. Non-asbestos cases are already getting inadequate consideration and it is doubtful that the recent increase from one full-time asbestos judge to five full-time asbestos judges will be enough.

We say therefore that it is entirely appropriate that the government contribute to a compensation plan, to reflect its responsibility in the tragedy and to reflect the public's benefits from a no-fault alternative to the present system. The level of contribution is, of course, open to discussion. But to argue that the government should have no compensating role is to ignore the evidence before this Subcommittee, to ignore the juries and courts that have sifted even more detailed evidence, and to ignore the historic and moral obligations which ought to govern our public behavior.

Mr. Chairman, we appreciate this opportunity to present our views. We appreciate the work being done by your Subcommittee, and we welcome future opportunities to cooperate in this landmark venture.