PLAINTIFF'S
EXHIBIT
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STATEMENT OF
J. HOWARD BUNN, JR., VICE PRESIDENT
NATIONAL ASSOCIATION OF INDEPENDENT INSURERS
HEARING ON H.R. 5735
BEFORE THE
SUBCOMMITTEE ON LABOR STANDARDS
OF THE
COMMITTEE ON EDUCATION AND LABOR
UNITED STATES HOUSE OF REPRESENTATIVES
APRIL 21, 1982

The National Association of Independent Insurers opposes H.R. 5735 for the following principal reasons:

- Irrebuttable presumptions for mesothelioma and asbestosis will result in inequities and injustices.

- Establishment of fifty state funds for payment of benefits for asbestos and uranium ore diseases would be an administrative and costly nightmare.

- Administration by the Office of Workers Compensation Programs of the U.S. Department of Labor would add another layer of backlog and chaos to an already severely criticized administrative operation.

- Foreclosure of third party liability renders the bill potentially unconstitutional.

- Triggering mechanisms for including other occupational diseases would create a "cost cloud" of indeterminable proportions.

- The bill overlooks state progress in recent years in enacting laws providing coverage and compensation for occupational diseases.

- The bill would constitute federal usurpation of existing state compensation systems for occupational diseases.

- State regulation of insurance would be significantly interfered with.

My name is J. Howard Bunn, Jr. I am a Vice President for Workers Compensation for the National Association of Independent Insurers. The NAII is a property-casualty insurance trade association with more than 500 member companies.

The NAII opposes H.R. 5735. The bill would result in federal usurpation of the existing state compensation systems for occupational diseases. The bill would also interfere with the state regulation of insurance. Moreover, the compensation program provided for in H.R. 5735 is imprudent and costly.

H.R. 5735 would establish a federal workers' compensation program to compensate employees and their dependents for disabilities and deaths from occupational diseases associated with exposure to asbestos or uranium ore. In addition, the bill provides a framework for incorporating other occupational diseases into the federal program.

The reason for creating this new federal program is apparently expressed in the bill's finding that under state workers' compensation laws, occupational disease cases are not always adequately compensated. While this may be true in some instances, the NAII believes that it would be a grievous mistake to simply hand over the responsibility for compensating occupational diseases to the federal government whose own Office of Workers' Compensation Programs is anything but a model of efficiency.

The state compensation systems are dynamic in nature. Since the enactment of the early workers' compensation statutes, states have continually modified and reformed their laws and procedures. It has been said that each state is a laboratory for workers' compensation study and change. Each state can draw from the experiences of other states, disregarding approaches that have failed and adapting successful compensation experiences to its own needs.

The dynamic nature of the state workers' compensation systems is especially valuable in compensating occupational diseases. The study of occupational disease as a medical specialty is relatively new and still developing. Compensation laws once excluded diseases from coverage; today all state compensation laws provide coverage for occupational diseases. The state laws provide coverage with a variety of benefit plans and according to a range of procedural and evidentiary requirements. Occupational diseases are not compensated uniformly among the states. However, given the rapidly changing and sometimes contradictory medical evidence regarding the link between disease and the workplace, this absence of uniformity is understandable. Each state is developing its compensation system based on its own local problems and needs, while at the same time learning from the experiences of other states in addressing the difficulties of occupational disease compensation.

The dynamic nature of state workers' compensation is preferable to the proposal that H.R. 5735 puts forward. H.R. 5735 proposes to straitjacket all occupational disease compensation into a federally imposed program. This is a simplistic response to a complex issue. A uniform federal program lacks the flexibility that is needed to respond to new findings concerning the nature and extent of occupational diseases. Such a program does not have the same potential for achieving the equitable compensation of occupational diseases as the existing state workers' compensation systems.

The federal experience with occupational disease has not been good. The federal Black Lung program was created under the guise of being a compensation program. That program, in fact, has become a pension plan for a particular segment of the American work force. The calls for special treatment of asbestos-related and uranium-related diseases are reminiscent of the calls for special treatment of coal miners pneumoconiosis that preceded the establishment of the Black Lung program. Even more disturbing is the fact that the scheme for compensating asbestos-related and uranium-related diseases in H.R. 5735 appears to be modeled after the Black Lung program. The poor experience of the federal Black Lung program is reason enough to withhold support for H.R. 5735.

The exclusivity provisions in section 9 of H.R. 5735 put forth the hope that the compensation for asbestos-related diseases offered by the bill will foreclose third party suits against employers and the manufacturers and importers of asbestos and products containing asbestos. Section 9 is an attempt to stem the burgeoning litigation over the liability for asbestos-related diseases. H.R. 5735 could have an effect on this litigation, however, the effect would be achieved at the expense of the state workers' compensation systems and with possible constitutional consequences. From a public policy viewpoint, it is unwise to seek a solution to the problem of asbestos liability suits by disrupting state compensation systems which have been compensating injured and diseased employees for decades. Those searching for an answer to the problem of asbestos litigation should look beyond the shortsighted solution in H.R. 5735, which is merely to sweep the problem under the jurisdiction of a new federal program. The root problem of many product liability suits, lies with strict liability approach which has been imposed by the courts in recent years. This judicial law is very much in need of legislative revision.

The NAII is particularly concerned with how H.R. 5735 would affect the state regulation of insurance. The bill would impose a federal layer of regulation over carriers whose workers' compensation insurance coverage extends to occupational diseases related to asbestos or uranium ore. In addition to the existing supervision by the state, these insurers would be subject to supervision by the Secretary of Labor. We contend that dual regulation of this type is unnecessary.

H.R. 5735 would create compensation excess liability funds for asbestos-related and uranium-related disease claims where no responsibile employer can be identified. Each state insurance commissioner would be charged with administering the portions of these funds which are allocated to his or her state. Furthermore, each state insurance commissioner would also be obliged to determine the employer contributions to these funds and then to collect the contributions from employers who expose their employees to asbestos or uranium ore as a surcharge on the workers' compensation insurance premiums of those employers. The state insurance commissioners are expected to perform these duties as, more or less, agents of the Secretary of Labor. H.R. 5735 assigns these duties to the commissioners without granting any corresponding rights to the states to participate in the direction of the bill's compensation program.

The provisions in H.R. 5735 relating to the state insurance commissioners' duties regarding the excess liability funds demonstrate an insensitivity to the important responsibilities that the commissioners are already carrying out. More importantly, the NAII believes that the added duties that H.R. 5735 would impose on state insurance commissioners threaten to impair the effectiveness of state insurance regulation.

The federal compensation program set forth in H.R. 5735 is characterized in the bill as a rational approach to the compensation of occupational diseases. The bill's compensation program is, in reality, costly and seriously flawed.

The bill would provide death and total disability benefits which exceed the maximum benefit levels provided in most state compensation laws. Moreover, all death and disability benefits would be escalated annually. A claimant's representation fees could also be assessed against the employer. These provisions assure that insurance premiums for coverage under the H.R. 5735 compensation program would by necessity be high. The high costs of the program would also be borne by manufacturers and importers of asbestos and products containing asbestos and by all employers who expose their employees to asbestos or uranium ore, through their contributions to the compensation excess liability funds. These contributions would, in addition, be subject to surcharges related to the administrative costs of the program and the conduct of occupational disease research.

Section 5 of H.R. 5735 contains several presumptions for compensability. For example, mesothelioma or asbestosis are irrebuttably presumed to have resulted from exposure to asbestos and to have arisen out of and in the course of employment, if it is demonstrated that the employee was exposed to asbestos during his or her employment. This irrebuttable presumption would apparently be made no matter how brief or how slight the employee's exposure to asbestos during his or her employment. When an employee who was exposed to asbestos during his or her employment suffers from cancer of the lung, it is presumed under H.R. 5735 that the cancer resulted from exposure to asbestos and arose out of and in the course of employment. Again, this presumption would apparently be made no matter how brief or how slight the work related exposure to asbestos.

These and other presumptions in H.R. 5735 should be carefully scrutinized. Legislation was recently enacted which removed three presumptions from the Black Lung Act. These presumptions were repealed because it was found that they failed to equitably define the relationship between pneumoconiosis and the workplace. There is a danger that the presumptions in H.R. 5735 may similarly impede the achievement of equity.

In summary, the NAII opposes H.R. 5735 because it would displace state workers' compensation systems and interfere with the state regulation of insurance and because the federal program provided for in H.R. 5735 would be excessively costly and over-all ill advised.

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STATEMENT OF THE

ALLIANCE OF AMERICAN INSURERS

BEFORE THE

HOUSE LABOR-STANDARDS COMMITTEE

IN OPPOSITION TO

H. R. 5735

THE OCCUPATIONAL HEALTH HAZARDS COMPENSATION ACT

APRIL 21, 1982

Alliance
of American Insurers

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