PLAINTIFF'S
EXHIBIT
DUP-1006

Mr. Chairman:

My name is John L. Baldwin. I am President and Chief Executive Officer of the Pittsburgh Corning Corporation. Pittsburgh Corning is in the specialty glass business, manufacturing and distributing cellular glass insulation and glass building block.

Our implication in events leading to this hearing began in 1962 when we purchased a pipe covering business which had been and continued to be involved with the use of asbestos. Although we stopped manufacturing the pipe covering product on February 1, 1972 and have not been involved with asbestos for a decade, we have, at last count, over 12,000 asbestos-related claims pending against us.

This is a staggering problem for a company with 640 employees, whose annual sales are less than 40 million dollars. For the past five years, more than 50% of our pre-tax profits have been expended on asbestos-related matters. This does not include substantial sums paid by our insurance companies for lawyers' fees and settlements.

Like the majority of manufacturers, we are in litigation with our insurance carriers. We have exhausted our primary coverage for the majority of the years we were involved with asbestos. We are in court with our excess carrier who is attempting to deny coverage. In 1981 we were essentially without product liability coverage for five months.

Should we be denied coverage, our future is questionable, for it does not appear that we would be able to fund claims or maintain defense from our cash flow.

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This whole situation is having an adverse effect on our personnel and activity. We have had severe restrictions put on us by our lending institutions which limit capital spending for plant and equipment. In my own case, I am spending about half my time on asbestos-related matters, instead of my company's business.

I have wrestled with this problem for the past three years since I joined Pittsburgh Corning. I am firmly convinced that Federal legislation is the only answer. The present system for resolving asbestos disease claims is a travesty. This was brought home to me recently when I attended a meeting in which our insurance company was attempting to negotiate settlement of some 30 asbestos disease claims. The attorney representing the claimants volunteered that his fee for previous asbestos cases that year was $500,000 and that the 30 cases he was then handling were worth a lot more to him. He frankly stated that he had solicited cases and that he split fees with other lawyers on a 50-50 basis, complaining that some referring attorneys now demand a two-thirds split.

Under the present system, both plaintiff and defense lawyers benefit enormously at the expense of the injured parties and the companies defending and paying the claims. There is an urgent need for Federal legislation that would pool the resources of responsible parties and bring about an orderly and equitable disposition of asbestos claims as they arise. During an 8-1/2 week period in February and March of this year, we went to court in six asbestos cases. The result was that we won all six cases. However, what must also be noted is that the legal defense costs on behalf of my company in disposing of only these six of our 12,000 cases were in excess of $100,000.

One of the principal objectives of asbestos compensation legislation must be the elimination of third-party litigation. This can only be done, in fairness, if claimants receive value, that is, an enhanced remedy, in exchange for what is given up. The system which is to be constructed must provide for a claimant to have an adequate and certain -- but exclusive -- remedy for any injury compensable under the system. In this manner we can bring under control the current deluge of litigation which has already clogged our courts, not only delaying the compensation for those asbestos plaintiffs who may succeed in their claims, but delaying all other civil cases as well.

Let me make clear that asbestos compensation legislation is not, and should not be, a bailout. We do not support compensation legislation on the ground that it will save us a lot of money over what we would spend under the present approach; while we obviously hope that the efficiencies of a legislated program would result in savings in legal costs, much and perhaps all of the savings would likely go into the compensation pool. Some members of the Coalition believe that legislation will actually cost them more than case-by-case adjudication, but they support compensation legislation as a far more efficient mechanism for dealing with this extraordinary problem, and they see it, frankly, as making good business sense.

We are not trying ɔ avoid our just responsibilities. Our purpose in supporting legislation is twofold: first, that the money we do pay out goes where it should go and is needed, efficiently and promptly--to victims rather than to lawyers. Second, we hope that legislation will allow us more accurately to plan our payments and thereby have the opportunity to preserve our business future and the jobs of our employees. As long as the threat of third-party litigation impends, we cannot predict from year to year what our exposure or actual costs will be. Contributions of a predetermined amount each year into a pool would significantly reduce uncertainty and permit planning.

The fact that four leading companies are currently operating under the cloud of qualified opinions from their auditors and that several other companies expect to be receiving similarly qualified opinions this year is necessarily of great concern to the industry. Auditors issue "subject to" qualifications in their reports because companies cannot predict the future number of cases or the value of jury verdicts and settlements with a reasonable degree of certainty. Qualified opinions throw doubt on a company's financial viability and all but eliminate the opportunity for a company to raise money from either the debt or equity market.

Because of the magnitude of the asbestos problem, it makes sense and is fair to create a special arrangement where the funding of compensation is shared by responsible parties. But there is also a pragmatic reason for creating a compensation pool. The country has a real interest in the continued viability of our companies. We produce products--whether they involve asbestos or not--which have proven themselves in the marketplace and we provide jobs which are not easily replaceable. If we go out of business, as many present and former manufacturers might be forced to do, we will not be available to contribute to the solution of the asbestos problem. Similarly, some insurance companies have alleged that their future viability is at stake. The problem is not going to go away soon; our continued business viability is the principal alternative to dropping the entire problem on the states or the federal government.

Let me turn, then, to § 9 of H.R. 5735, which deals with exclusivity and third party liability. We have a number of problems with this section. First, we do not believe it is fair to allow a claimant both to pursue a common-law action begun before enactment of the bill and to recover enhanced benefits as well. The equity of a compensation system is that the claimant enjoys the certainty of a no-fault administrative remedy in return for losing the far more risky common-law remedy. We believe that existing litigants should be offered an opportunity to opt into the legislative program, but only if they voluntarily terminate their common-law actions.

Second, a number of key questions are not answered. For example, who gets the benefit of exclusivity in cases brought after the effective date of the bill? What about prior employers? What about wholesalers and distributors of asbestos products? What about the U.S., which sells raw asbestos from its stockpiles?

Finally, the whole framework rests on the presumption in § 11 that the most responsible party is the employer who last

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employed the claimant, if such employment included at least two years of exposure to asbestos, unless the exposure was only "casual and sporadic" in nature. If ever there was an invitation to litigation, it is in these vague requirements. But more fundamentally, we question the emphasis on the last employer. Admittedly, this questioning goes against our industry interests, since in most cases the employer will not be one of our members. However, we believe in the principle that all the parties which contributed to the problem should contribute to the solution and that this contribution should reflect not only their degree of responsibility but the relief they would receive from a legislated alternative to the present system. That principle is violated by arbitrarily picking out the last employer.

In this regard, I would like to make two final points about the responsibilities of manufacturers and their insurers under a statutory compensation scheme.

In the case of the manufacturers, once the industry's overall contribution is determined, the measure of contribution should relate to litigation exposure. This is the best approximation of existing liability and is therefore a sound measure of liability under a new program. Thus each company could be assigned a share of the industry's responsibility to fund the benefits, based on the company's settlement and judgment experience, and on the number of cases pending against the company, or on any other objective criteria that follow in proportion to the benefit one receives. A market share approach, as found in § 11 of H.R. 5735, strikes us as arbitrary and raises many questions which are not addressed in the bill.

Finally, we would point out that the contribution of insurance companies must be carefully considered. Many manufacturers are in litigation with their insurers and it is clear that a failure of insurance coverage would be devastating to many businesses. It is our view that a legislative solution must include contributions by insurance companies to victims to the same degree that insurance would have been available to manufacturers in litigation. Insurers should garner important benefits by not having to pay for the legal defense of cases. They should not be allowed to escape their existing contractual obligations while their insureds pay large trust-fund assessments that are in turn predicated on insured risks. It is critical to us that legislation would not jeopardize our present degree of coverage.

This concludes my presentation, Mr. Chairman. Our final panelist is Mr. Victor Drexel, who will talk about the government's role in asbestos-disease compensation.