National Association
of Manufacturers
Industrial Relations Department

Summary of NAM Testimony

on H.R. 5735

"Occupational Health Hazardous Compensation Act of 1982"

Before the

U. S. House of Representatives

Subcommittee on Labor Standards

Good morning Mr. Chairman, Members of the Subcommittee. My name is Daniel W. Vannoy, Associate Director, Product Liability and Employee Compensation Systems for the National Association of Manufacturers. Accompanying me is Dr. Ronald E. Gots, M.D., Ph.D., President of the National Medical Advisory Service and medical-science advisor to NAM's Occupational Disease Task Force.

The members of NAM employ approximately 75% of all workers in the manufacturing sector. As such, NAM is vitally interested in industrial workers receiving adequate compensation and medical care in a prompt manner when they are disabled as a result of injuries in the workplace and/or diseases caused by workplace exposures. However, NAM is extremely concerned over the proliferation of programs providing workers' compensation benefits for injuries and/or illnesses not related to the job.

Industry recognizes its obligations to provide a safe workplace and continues to strive for improved safety and health conditions on the job. NAM is encouraged by 1980 health and safety data which, for the first time since 1975, suggest improvements in overall safety trends in the nation's workplace. In those unfortunate situations where employees become disabled as a result of workplace exposures and

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accidents, industry is also taking positive steps toward restoring those workers to as near full earning capacity as possible in a prompt manner.

NAM strongly "endorses continuing evaluation of state workers' compensation laws to assure their adequacy and efficient administration." Before Congress adopts the concepts embodied in H.R. 5735, states should be provided the opportunity to attempt to resolve the problems presented by occupational disease (OD).

Mr. Chairman, the NAM does not agree with your allegations that the workers' compensation (WC) systems are structurally incapable of effectively dealing with claims based on disease-related disabilities. NAM does agree with the finding in H.R. 5735 that WC laws govering OD disabilities do not in many cases provide compensation. However, NAM's Product Liability and Employee Compensation Systems Committee believes that in many of those cases, the claimants are not utilizing the WC system.

Currently, disabled workers are utilizing two separate and distinct legal systems to seek compensation--WC and product liability tort. Some workers are using one system or the other, while others are receiving compensation through both systems. The overwhelming majority are using the tort system exclusively.

The basic objective of the "no-fault" WC system is to:

- offset loss of wages resulting from a work-related accident/illness;
- provide adequate medical care;
- provide rehabilitation; and
- provide incentives to return to work.

WC was originally predicated on the premise that the injuries/ illnesses in question would be specific as to time, place and consequence. NAM realizes that most issues involving OD do not meet these tests.

Product liability tort law is a fault-based system to award compensation only as an incident to allocating liability among responsible parties. Through judicial activism and pressures built by the ingenuous plaintiffs' bar, courts are allowing PL actions to circumvent the WC system. Over the past decade, courts have been allowing workers--after collecting WC benefits--to sue manufacturers of a product involved in an injury or illness and collect without even proving that the manufacturer caused the injury or illness. Some courts are even permitting tort claims by employees against their employers. There is also a growing awareness on the part of the American worker and plaintiffs' bar that there is a "gambling chance to get rich quick" through PL litigation.

Under this complex web of interacting laws, a majority of courts in the U.S. are ruling that the ultimate cost of the entire accident/illness is to be born by the manufacturers. The majority of PL cases alleging work-related diseases are based on a failure to warn of hazards associated with the use of a product. NAM recognizes the duty of manufacturers to warn of product hazards and the obligation of employers to warn employees of those hazards and provide instructions/training on the safe use of workplace products. NAM strongly believes that liability in such cases should be based on the negligent conduct of the manufacturer and/or employer and that

there should be a limitation as to the state of technical knowledge at the time the product entered the stream of commerce.

Granted, both the WC and PL systems are in need of reform if they are to deal with current OD problems and those which may confront the nation in the future. NAM commends the chairman and members of this subcommittee and sponsors of H.R. 5735 for recognizing the need for reform and looks forward to working with you in arriving at "a rational approach for the compensation of occupational disease and disabilities related to occupational exposure to toxic substances and harmful physical agents." However, NAM does not believe H.R. 5735 is that rational approach.

While cures for the problems presented by occupational exposures to toxic substances and other harmful physical agents will not be easy to find, NAM feels these cures must be developed within the boundaries of the distinct and separate WC and PL systems. NAM opposes meshing non-fault procedural and evidentiary rules to a system of strict, joint and several liability for compensation of victims exposed to hazardous substances. H.R. 5735 suffers many of the difficulties inherent in mating these separate and incompatible concepts.

Before the adoption of federal public policy in compensating OD workers or judging whether state programs are adaptable to deal with OD, several major issues must be addressed. Otherwise, any new benefit system, such as that proposed in H.R. 5735, would be no better prepared to handle OD claims than the current systems. Therefore, NAM must oppose H.R. 5735 at this time.

As a first step, NAM respectfully urges the members of this subcommittee to support the efforts of Congressman Henry Waxman and the Energy and Commerce Subcommittee on Health and The Environment to reduce the strains on the judicial system by adopting PL reform legislation which fair and equitably balances the rights and obligations of consumers, workers, manufacturers and the employer community.

NAM has formed an OD Task Force consisting of member representative with corporate responsibilities in the field of WC, PL, occupational safety and health, insurance, industrial medicine and science. The duties and responsibilities of NAM's OD Task Force and its efforts to date are outlined in our written statement. Suffice it to say that the primary objective is to explore alternative compensation systems that provide compensation for work-related disabilities in a prompt manner. NAM believes that there is a better, more efficient method than the current tort system where attorneys recieve $7 for every $6 a claimant receives. And although diminishing in number, there are still a few state WC laws with restrictive provisions.

Dr. Ronald Gots--an advisor to NAM's OD Task Force--brings a multidisiplinary view from several professional vantage. As president of a biomedical consulting firm, his expertise bridges the gap between medicine and science on the one hand with law and policy on the other.

Dr. Gots believes and NAM agrees that H.R. 5735 reaches far beyond limits of current medical knowledge and ignores the latest body

of scientific evidence. For example, the proposed legislation:

- contains erroneous presumptions;
- fails to consider exposure data;
- fails to provide guidelines to prove that associations are epidemiologically sound;
- falsely assumes that the medical community has adopted diagnostic criteria for asbestosis. It contains erroneous presumptions; and
- would review "new" occupational diseases based upon statistically meaningless excess frequencies.

H.R. 5735 and its findings fuel misperceptions that the workplace is a major cause of ill health.

Dr. Irving Selikoff has testified before this subcommittee that 13-18% of all cancers in future years will be asbestos-related; a 1978 study publicized by former HEW Secretary Califano reported that 20-30% of all future cancers will be occupationally induced. Recent observational and empirical data has demonstrated fallacies in these predictions.

Media exposes have graphically portrayed the asbestos risk and increased the public perception as to the prevalence of the hazard. The increase in claims filed has been intensified by medical uncertainties which complicate both casual assessments and even the very definition of asbestosis. "Asbestosis" means different things to different specialists.

Diagnostic uncertainties also continue to mount. H.R. 5735 falsely assumes the medical community has agreed upon a standard

definition of asbestosis. Despite contradictory data, H.R. 5735 assumes all mesotheliomas are caused by asbestos and are therefore classified as occupational diseases. The lung cancer eligibility is even more troublesome. Many medical scientists assert that the majority of lung cancers are caused by cigarette smoking.

H.R. 5735's rebuttable presumptions that lung cancer associated with any occupational exposure to asbestos is compensable will result in floods of claims, since nearly everyone has had some workplace exposure to asbestos. What does "associated with exposure" mean? NAM feels that it would be inequitable to rely heavily on the opinion of the patient's physician as H.R. 5735 proposes; in most cases they do not have command of scientific data.

The 30% "above expected increases" in Section 16 as the trigger for new occupational diseases is epidemiologically unsound. NAM also believes that this section has the potential for completely federalizing the workers' compensation system. The 30% trigger would require that literally thousands of associations be investigated immediately. Everything from serious diseases, to hemorrhoids in secretaries from sitting, to upper respiratory complaints from office ventilation systems have been reported at that 30% excess level.

If it is your intention to establish a national health program or a federal workers' compensation system, then let's call "a spade a spade' and debate the issues involved.