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applied throughout the construction industry, it was quite specific in requiring use of safety nets to protect against 25 foot fall hazards, and, therefore, there was no need to refer to industry practice to determine what was required.

The full text of this decision, which was written by Chief Judge Levin H. Campbell, who was joined by Circuit Judge Juan R. Torruella, and Chief Judge Edward D. Re, of the U.S. Court of International Trade, sitting by designation, will appear in a future Decisions issue.

Legislation

ASBESTOS VICTIM RELATED CLAIMS PREDICTED TO REACH $29 MILLION NEXT YEAR

Asbestos compensation litigation will directly cost the federal government $29 million in fiscal 1986, James Storey, vice president of the Washington, D.C., consulting firm, Chambers Associated, Inc., told a June 10 hearing of the House Education and Labor Subcommittee on Labor Standards.

Storey, who worked on similar cost analysis projects for the Urban Institute, based his information on court costs on General Accounting Office data, coming up with a preliminary figure of $16 million for trying such cases in the next fiscal year.

The Department of Justice has estimated that it will spend $11 million for asbestos-related activities, Storey continued. The other $2 million will be spent on litigation by the Department of the Navy, the Department of Labor, the Department of Health and Human Services, the General Services Administration, and the Maritime Administration, he predicted. The information was based on data provided by the attorney general to Congress, he said.

The hearing was held on HR 1626, the "Asbestos Workers' Recovery Act," which would establish an industry-federal government trust fund that would be a victim's sole remedy for any illness suffered from asbestos exposure, and would absolve asbestos manufacturers and insurance companies paying into the trust from further liability, except under workers' compensation (Current Report, March 28, p. 823).

The bill was introduced by Subcommittee Chairman Austin Murphy (D-Pa) who noted during Storey's testimony that he planned to talk to Justice Department officials about their justifying 1985 staffing needs by arguing that if the government was found liable for the then-pending 830 claims, there would be a payout of $152 million.

"We now know that there are many more than 830 claims pending against the government. Preliminary Justice Department data obtained by GAO are still being examined, but it appears that the number of pending claims may exceed 100,000 by the end of FY 1985. Their potential dollar value could total as much as $9.5 billion," Storey declared.

An attorney representing two former manufacturers of asbestos products told the subcommittee that his clients applauded the introduction of HR 1626 because of the federal government's involvement in the fund, but that they did not like portions dealing with companies facing bankruptcy. The bill would "force these companies into liquidation," Joseph Hollingsworth, a partner with the Washington, D.C., firm of Spriggs, Bode and Hollingsworth, contended. The situation is being faced by one of the two companies, UNR Industries, Inc., of Chicago, Ill., he noted, which "was forced into reorganization proceedings ... due to the burden of asbestos litigation."

Government Facing Suit

Both UNR and Eagle-Picher Industries, Inc., of Cincinnati, Ohio, are in the process of suing the federal government, although the cases have not yet been heard on their merits, and may not be until 1987 because of the government's stalling tactics, Hollingsworth continued. "Millions of dollars now being expended by the manufacturers in pursuit of their meritorious tort claims against the government would be better spent by participation in a compensation fund such as that envisioned by the sponsors of HR1626," he said in his written statement.

The cases involve the theory that the government knew — as early as 1918 — about the danger of the material to workers, but kept requiring the use of asbestos in insulation productions used in shipyards, and ignored its own safety and health codes, he asserted. However, he acknowledged during questioning that some reports on the danger of asbestos were "available to our clients."

William Leavitt, vice president for UNR, added in a written statement: "Even today, Mr. Chairman, the Navy continues to violate existing [Occupational Safety and Health Administration] and Navy asbestos-handling regulations. For this reason, federal legislation must account and provide for future claimants whose exposure to asbestos in recent years can be expected to cause asbestos-related illnesses in the future."

The subcommittee also heard from two Baltimore, Md., retired shipyard workers who strongly opposed the legislation. "The bill is misnamed. A more truthful name would be 'The Asbestos Industry and Insurance Bail Out Act.' If you still insist on using asbestos victims in the title, we would suggest 'The Asbestos Victims Burial Act,'" James Fite, executive director, White Lung Association, declared. The bill is designed to protect the financial interests of the employers and insurance companies, while limiting the recovery ability of claimants, particularly those who cannot demonstrate decreased earning capacity, Fite insisted. In asking that the bill be withdrawn, he testified that "it fails to recognize that the state compensation systems are woefully inadequate." Murphy responded that the committee is studying compensation laws around the nation.

Paul Safchuck, national president of the White Lung Association, and a victim of asbestosis, said the compensation the bill provides "does not even begin to come close to helping to pay the doctor, hospital or medical bills ... let along providing compensation for the taking of a person's life." Both men questioned the liability of the insurers and manufacturers if the trust fund failed.

General Policy

CONFEREES TOLD EPIDEMIOLOGICAL DATA USEFUL FOR SHOWING LIABILITY IN TORT CASES

Until lawyers and judges "are willing to accept epidemiology, we can't expect any coherence in the outcome of toxic tort litigation," Bert Black, a Baltimore, Md., attorney specializing in toxic tort defense cases, told participants at a Washington, D.C., conference on epidemiology and the law.

The program, held June 3 and 4, was sponsored by the American Society of Law and Medicine and Johns Hopkins University School of Hygiene and Public Health.

Speakers at the conference, which was designed to familiarize attorneys with the terminology and basic concepts of

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