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PLAINTIFF'S
EXHIBIT
JMMC-5

NATIONAL TRAGEDY OF ASBESTOS DISEASE

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, May 26, 1983

Mr. MILLER of California. Mr. Speaker, asbestos disease is a national tragedy of stunning proportions. Over 21 million Americans have been exposed to significant amounts of asbestos in occupations ranging from construction to shipbuilding to automobile maintenance.

In the San Francisco Bay area, a portion of which I represent, perhaps a quarter million men and women have been exposed to carcinogenic asbestos in shipyards since the end of World War II.

Hundreds of thousands of these men and women, over the course of many years, will develop disabling diseases as a result of that exposure. As many as 15 percent of heavily exposed workers will die of asbestosis; many more will also die of cancer attributable to occupational exposure to asbestos.

But few victims of occupational diseases will ever receive the workers' compensation awards to which they are entitled. The few who do will wait far longer and receive far less than occupational-injury victims. Less than 5 percent of their medical costs will be paid by the compensation system. And when they die, the survivors' benefits will be one-tenth those of an occupational injury victim.

The unworkability of the compensation system has led over 20,000 asbestos workers to file lawsuits against 260 manufacturers and other third parties; 500 new suits are being filed each week, totally overwhelming the ability of the courts to process the cases. While there have been a few large awards and settlements, the delays are long, and the average benefits, like those under workers' compensation, have been inadequate.

The average return to a successful plaintiff is under \$50,000—and one-third of that amount goes to attorneys. The remaining \$25,000 to \$30,000 represents the workers' lost wages, pain and suffering, medical expenses, and survivors' benefits. The settlement rarely covers the costs accrued by the disabled worker during the protracted litigation period.

And when those meager benefits are gone, the responsible industry is free from obligation, and the bills are paid by the taxpayer.

According to testimony before the Subcommittee on Labor Standards, the cost of providing public assistance to occupationally diseased workers is \$3 billion a year—an unwitting taxpayer subsidy of hazardous industries.

The payments of prompt compensation benefits, as well as settlements and judgments in the lawsuits have been further frustrated within the past year by the bankruptcy filings of the Manville Corp. and two other asbestos manufacturers. These actions not only delay the awarding of just benefits to workers, but also jeopardize the financial stability of businesses which are being called upon to shoulder

a disproportionate share of the compensation burden.

The enactment of occupational disease compensation legislation has been an elusive goal for many years. Like the events which spurred toxic waste cleanup laws, however, we have failed to act until tragedy has struck.

Today, I am introducing legislation to respond to this sweeping national crisis. This legislation will establish a fair system for providing adequate benefits on a timely basis to occupationally disabled Americans and their survivors—at no expense to the taxpayer of this country.

I am especially proud that the eight cosponsors of this important legislation include every Democratic member of my Labor Standards Subcommittee.

The Occupational Disease Compensation Act replaces the 51 contradictory, complex, and ineffective State systems with a single administrative mechanism for delivering benefits to deserving disease victims.

This legislation builds on existing administrative structures within the Department of Labor. A special task force would be created within that Department to expedite the processing of the enormous backlog of asbestos claims. The asbestos task force would be totally funded by responsible industries, not by taxpayers.

The legislation provides disability and medical benefits to disabled workers, and death benefits to surviving spouses and family members. Compensation under this bill is limited to those with work-related deaths and disabilities, and eligibility tests are rigid to assure that only deserving applicants receive benefits.

Fairness is the central principle embodied in this bill.

The entire financial burden of this compensation program will be borne by responsible employers and the industry. The bill does not require the expenditure of any public funds.

The funding mechanism employed by the bill is an insurance pool based upon the estimated liability of each participant. The average recipient under this plan would receive higher compensation at a much faster rate than the meager benefits received under the current compensation and tort liability systems. As with other workers' compensation laws, this system would be the exclusive means for workers to receive disability and medical benefits, except in the case of workers who have already sought benefits under the existing State compensation systems. Those workers would be able to proceed with lawsuits filed before the date of enactment of this new law.

My bill contains an important safeguard against the unlikely failure of the new compensation system. Workers who file a claim under this bill could also file a liability suit, but action on that suit would be suspended in order to give the compensation system an appropriate opportunity to process the claim. If the system fails to conclude a case within 18 months of filing, the injured worker will have the right to proceed instead with a lawsuit. This compromise provision will

encourage the system to work expeditiously and fairly, while protecting workers' rights.

Last, this legislation recognizes that, as terrible as the asbestos tragedy is, there are many other ticking time bombs in our Nation's workplaces. Other workers who develop occupational diseases should not have to endure the long delays suffered by asbestos workers.

Therefore, my legislation establishes a mechanism for extending the coverage of this act to other diseases and disabilities which result from occupational exposures, based upon expert scientific and medical research.

This legislation has been developed over the course of a year and a half, with the cooperation and full participation of all parties to the asbestos dispute. I want to offer my appreciation to everyone who assisted in that process.

As we move forward with hearings, I expect to hear recommendations for improvements in the legislation. I welcome such advice. We must all recognize that the opposition of any of the major parties can doom this legislation. But it would also doom tens of thousands of disabled workers, their families and their survivors to impoverishment, medical inattention, and even greater tragedies. No responsible person or industry can permit that to occur.

This legislation is the very highest priority of the Subcommittee on Labor Standards. I am totally committed to expediting hearings, markup and passage in this Congress, and we will begin on that process next month.

SECTION-BY-SECTION ANALYSIS

THE OCCUPATIONAL DISEASE COMPENSATION ACT, GEORGE MILLER, D-CALIF., AUTHOR

Section 1. Section 1 establishes the title of the Act, and provides a Table of Contents.

Section 2. Section 2 contains the Congressional findings and purposes which detail the risk of harmful substances to workers, the inadequacy of the current compensation and litigative processes, and the need for a federal compensation program for occupational disease victims.

Section 3. This section defines the terms which are used in the Act.

Section 4. Section 4 establishes the applicability of the Act to all employees and employers, and for all deaths or disabilities which result from work-related diseases which are covered by the Act.

Section 5. This section establishes the compensation provided the victims of occupational diseases for death or total or partial disability. All medical expenses associated with the diseases are to be compensated. In addition, monetary benefits which are fair, reasonable, and adequate to the needs of the victims will be provided. Benefits for total disability will be 80 percent of the National Construction Average Weekly Wage for disabled workers whose primary exposure to the harmful substance was during employment in the construction industry; and for all other workers, 80 percent of the National Manufacturing Average Weekly Wage. Monetary benefits for partially disabled workers will be based on their wage loss due to the disabling condition, or on the extent of the loss of their physical capacity due to the disabling condition. Death and survivors' benefits are fixed at five years' total disability benefits.

Section 6. This section establishes the criteria for determination of the eligibility of a claimant for compensation. Claimants must demonstrate that the death or disability of

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the employee was the result of a disease which arose out of employment exposure to a toxic substance, and that the employee did not receive workers' compensation benefits for the same death or disability under a state workers' compensation law or the Longshore Act. Because the initial scope of the bill is limited to asbestos cases, this section also contains medical presumptions establishing the cause and effect relationship between certain diseases and exposure to asbestos.

Section 7. This section requires that claims be filed with the local office of the Labor Department's Office of Workers' Compensation Programs within two years after the death or disability occurs and the claimant knew of the work-relatedness. Claims based on pre-enactment deaths or disabilities may be filed within two years of the effective date, if not otherwise compensated under the state workers' compensation law or the Longshore Act. Similar rules apply with respect to claims which may be filed based on subsequent coverage of other occupational diseases under the Act.

Section 8. This section establishes the procedure for the adjudication of claims. Claims are processed by the Office of Workers' Compensation Programs, which may submit medical questions of fact for binding determination by impartial medical examiners. The OWCP will issue an order awarding or denying compensation, based on the evidence adduced during the claims adjudicative process, unless a hearing is requested, in which case the administrative law judge will issue an opinion, which will form the basis of the final agency determination.

Section 9. Section 9 provides that any party may petition for review of the agency order by the Benefits Review Board of the Department of Labor, within 30 days of such orders. Subsequent appeals are to the U.S. Circuit Courts of Appeals.

Section 10. Section 10 establishes the relationship between the remedies under this Act and other litigative processes. This Act is to be the workers' exclusive remedy against the employer, union, and agents and insurers of the employer or the union. Those with pre-enactment deaths and disabilities may file for compensation under this Act if they haven't already received workers' compensation benefits, or have not been denied those benefits on an adjudication on the merits. Those with post-enactment claims must file for compensation under this Act. The filing of a claim for compensation serves as an automatic stay of any law suit which the claimant may have against a third party. Such stay remains in effect for 18 months (for all claims filed within the first two years after enactment) and for 12 months (for all claims filed after the second year after enactment). If the

final agency determination is made on the compensation claim within the 18 or 12 month period (as appropriate), the claimant must accept that determination, and the law suit is withdrawn. If the final agency determination is not made within the 18 or 12 month period (as appropriate), the claimant may withdraw the compensation claim and proceed with the prosecution of the law suit against the third party.

Section 11. Section 11 contains the mechanism by which the cost of compensating victims, as well as the cost of operating the compensation program, will be borne by responsible employers and industry. There will be no federal financial contribution to this program.

This section authorizes the Secretary to assist in the formation of a pool of insurers to underwrite liabilities under this Act. Responsible employers and manufacturers may secure liability insurance through this pool, or with the approval of the Secretary, self-insure their obligations.

The Secretary is directed to develop a formula for allocating the responsibility for funding benefits under the Act among responsible employers and manufacturers, and to insure through regulatory and enforcement authority provided, that employers and manufacturers meet their obligation to provide sufficient insurance to meet the need of the compensation program.

Section 12. This section provides that monetary benefits shall be paid bi-weekly, and shall commence promptly upon the filing of an uncontested claim, or after the final determination of a claim which has been contested. A mechanism for adjudicating questions arising out of the payment of benefits is provided, as well as penalties for the improper suspension of compensation payments.

Section 13. This section provides that the responsible employers and manufacturers will pay the representation fees of claimants who, because of challenges to their claims for compensation, must secure legal or non-legal assistance in processing their claims.

Section 14. Section 14 prohibits employer discrimination against an individual who has filed a compensation claim or other legal action, or who has previously been exposed to a toxic substance in the workplace, and provides enforcement procedures.

Section 15. This section establishes a program in the Department of Health and Human Services for research into improving the surveillance of workers exposed to toxic substances, improving medical treatment of such workers, and studying the development of occupational diseases. This program is to be funded by the employers and manufacturers who contribute to the payment of compensation by a 1 percent surcharge on

the cost of the compensation program.

Section 16. This section establishes the procedure by which the coverage of this Act may be expanded to include different workers who may be exposed to toxic substances other than asbestos. The National Institute for Occupational Safety and Health will conduct an ongoing review of medical research, and the Secretary of HHS will report annually on those studies which indicate that the risk of occupational disease among groups of workers exceed that which would be expected in a similar unexposed population by at least 30 percent. In these cases, the Secretary of HHS may recommend that the Secretary of Labor, by formal rulemaking, promulgate regulations to expand the coverage of this Act to include such disease or such groups of workers. The Secretary's regulation to expand coverage will include medically justified presumptions linking diseases with exposure to toxic substances, formulas for apportioning financial responsibility among employers and manufacturers, and provisions for providing insurance coverage of those liabilities. The Secretary's regulation is subject to a two-House Congressional veto.

Section 17. This section requires that the Office of Workers' Compensation Programs establish a separate task force to handle claims presented under this Act, and establish separate procedures for the processing and adjudication of those claims. It directs the Benefits Review Board to prescribe rules of procedure for the discretionary review of appeals taken from OWCP determinations on claims.

Section 18. This section contains the administrative provisions for the insurance pool which will pay the benefits under the Act, permits the designation of a manager of the pool, and authorizes the pool or the Secretary to enter into contracts for the administration of the pool and the management of its responsibilities.

Section 19. This section provides the Secretary with authority to seek to enjoin certain acts or practices which are violative of the Act.

Section 20. This section provides that the holding invalid of any provision of this Act will not result in the invalidation of the rest of the Act; but that a judicial determination that holds invalid the limitation of liability of manufacturers will result in the elimination of such manufacturers' obligation to provide funding of compensation benefits, and similarly, that the holding invalid of any aspect of the compensation program with respect to groups of disabled workers will enable those workers to pursue legal remedies outside the Act.

Section 21. Section 21 provides that the Act will become effective six months after its enactment.