



April 8, 2004

Honorable Don Nickles
Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you requested, CBO is pleased to provide additional information on the recent update to our cost estimate for S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003. In a letter to Senator Hatch on March 24, 2004, we estimated that the Asbestos Fund established by S. 1125 would pay claims totaling \$123 billion over the 2006-2052 period. That estimate is \$13 billion lower than the estimate we transmitted to the Judiciary Committee on October 2, 2003.

Reasons for the Update to CBO's Estimate

About \$6 billion of the reduction in estimated costs is due to changes in the inflation rates in CBO's baseline economic assumptions. Under S. 1125, award values would be indexed to the Consumer Price Index (CPI) beginning in year 2006. (In that year, awards would be adjusted for changes to the CPI since enactment in 2004.) For example, CBO estimates that a claimant who suffers from mesothelioma would receive payment from the Asbestos Fund of about \$1 million for a claim paid in 2006. In our original estimate, CBO projected that a claim for the same illness would receive \$2.2 million in 2035. Because we have reduced our projection of the long-term inflation rate (from 2.5 percent to 2.2 percent), CBO now estimates that such a payment in 2035 would be \$1.9 million. Aggregated over many years and many claims, small changes in projected CPI growth can affect spending from the Asbestos Fund by several billion dollars.

In addition, CBO reduced the estimate by about \$5 billion because we will now assume enactment of the legislation in the fall of 2004 instead of the fall of 2003. During this time, we assume claimants will continue to settle asbestos claims with defendants and insurers. Based on estimates of the pace of settling asbestos claims

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in recent years, CBO projects that about \$5 billion in claims that would qualify for compensation under S. 1125 will be settled privately in 2004.

There is no comprehensive, centralized source of information on the value of negotiated asbestos settlements between individuals and private firms or the awards claimants receive in court and from trust funds. The estimate of about \$5 billion of annual asbestos settlements in recent years is based on survey information collected by the RAND Corporation and information from major insurance firms. While the number of asbestos cases settled must certainly vary from year to year, CBO has seen no evidence to suggest that there has been a significant shift in the pace of asbestos settlements due to Congressional consideration of S. 1125.

CBO also has corrected two errors in the application of the rate of inflation to the cost of claims. Section 131 of the bill would specify how to adjust the value of claims for inflation. The first adjustment for changes in the CPI would be made in 2006 for any change since 2004. In our October 2003 estimate, CBO misinterpreted this provision. For that estimate, we adjusted the value of claims for changes in the CPI immediately following the year of enactment, which was then assumed to be 2003. That error resulted in a greater adjustment for inflation than was intended by the legislation—worth \$3 billion over the life of the Asbestos Fund. In addition, the updated estimate increases the cost of pending claims for inflation because we expect that such claims would be filed over several years, not all in the first year of the fund. Adding inflation to the estimated cost of some pending claims increases our previous estimate by \$1 billion. Hence, those two technical corrections reduce the total cost of claims by \$2 billion.

The Asbestos Fund would be a completely new governmental task. With no operational track record, CBO and other analysts have little basis for judging how the fund would be implemented. Uncertainty over the number, timing, and types of compensation claims that the fund would face is substantial, and even small changes in the rate of inflation could easily change the lifetime costs of the fund by \$10 billion. Thus, estimates of the cost of the Asbestos Fund over 50 years could be too high or too low by significant amounts.

Claims For Nonmalignant Conditions

You requested further information about the estimate that 85 percent of claims presented to the fund for nonmalignant conditions would receive medical monitoring. That estimate is based largely on an analysis prepared for the Manville Trust because CBO considers the Manville Trust fund to be the closest existing analogy to the fund that S. 1125 would establish.

In 2002, the Manville Trust established new medical criteria for payment of asbestos claims—known as the 2002 Trust Distribution Process (TDP). The Manville 2002 TDP evaluates claims using criteria similar to the medical criteria for asbestos compensation that would be used under S. 1125. Manville attempted to reevaluate claims it had paid under the 1995 TDP to determine how such claims would have been paid if the 2002 TDP had been in effect earlier. Using that analysis, CBO estimated that 85 percent of claims received by Manville for nonmalignant conditions would have qualified for level I compensation (Asbestosis/Pleural Disease A) under the bill. Those that qualify for level I compensation under S. 1125 would receive payments only for medical monitoring expenses.

Since our cost estimate was prepared, Manville has had several more months of experience paying claims under the 2002 TDP. Recent information from the trust indicates that of about 7,800 claims for nonmalignant conditions received under the 2002 Manville TDP, 86 percent would receive compensation from Manville for medical conditions similar to those specified for level I claims under S. 1125.

Administrative Expenses

Finally, you requested further information about our estimate of the administrative expenses of processing claims to the Asbestos Fund. Our estimate is based on a detailed cost analysis produced by the Court of Federal Claims and the Administrative Office of the United States Courts. Those agencies used CBO's estimate of the number and distribution of claims the courts would receive to prepare this cost estimate. CBO estimates that processing claims under S. 1125 would cost about \$100 million annually in 2006, 2007, and 2008 (as pending claims are received) and about \$55 million per year from 2009 through 2014 for salaries and benefits, office and storage space, information technology, training, travel, and other expenses. Initially we estimate the Court of Claims would need 70 special masters and a staff of over 700 people to process claims. Administrative costs

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would decrease in later years as the number of claims declines. The administrative costs of processing claims to the fund are subject to appropriation from the general fund of the Treasury and would not increase the expenses of the Asbestos Fund.

I hope this information is helpful to you. If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette J. Walker.

Sincerely,

Douglas Holtz-Eakin
Director

cc: Honorable Kent Conrad
Ranking Member

Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary

Honorable Patrick J. Leahy
Ranking Democratic Member