

Written Questions of Senator Patrick Leahy,  
Ranking Member, Senate Committee on the Judiciary  
To Ms. Susan Vento  
St. Paul, MN

Hearing on “**The Need for Transparency in the Asbestos Trusts**”

Susan Vento responses:

1. I am concerned that the additional reporting requirements for asbestos trusts mandated by the FACT Act would be a significant drain of many trusts’ already strained resources, and could substantially increase the time it takes a trust to pay victims.

Do you agree that the legislation will have this effect? Why is it important that trusts process claims and deliver compensation to victims in a timely manner?

**ANSWER:**

Yes, I agree that the legislation will have this effect. The FACT Act has two parts, both of which will cause asbestos trusts to spend their limited resources complying with its mandates. The first part of the bill will require every trust to publish quarterly reports on its public docket about all the claims in the trusts, going back to the date when each trust was established. Some trusts will be forced to create hundreds of thousands of records to comply with this requirement. Representatives of a number of asbestos trusts have written to Congress that preparing such reports will require approximately 20,000 hours of work every year for every trust. That is time that the trust staff will not be spending processing claims of asbestos patients.

The second part of the bill allows every defendant in an asbestos lawsuit to request information about any asbestos claimant from any asbestos trust at any time. The number of information requests that could be made is limitless. This part of the bill will probably be even more onerous on the trusts, but how onerous is impossible to say because asbestos defendants, and only the defendants, will control how many information requests are made to the trusts and what those information requests will entail. If this bill becomes law, trust administrators will be compelled by federal law to respond to these individual law firm requests. So, while it is impossible to predict the actual number of outside requests from defendants that will arise, because the trusts will be legally obligated to examine and respond to all of these requests, the program will entail considerable time and resources of the trusts.

Accordingly, there is no question that the FACT Act would strain the resources of the asbestos trusts, delaying and depleting needed compensation to the patients and their families.

This is a big concern for patients and families because it is critically important that trusts process claims and deliver compensation in a timely manner. Mesothelioma patients do not have time on their side and delay can literally be deadly. The average life expectancy of a mesothelioma patient is 6 to 18 months. My husband, Bruce, died within less than a year of his diagnosis. The treatment for asbestos disease is harsh and challenging and the medical costs escalate. Sophisticated treatments are not available everywhere so patients often have to travel great distances for their medical care. Others need to enroll in clinical trials that are far from home. Asbestos patients usually cannot work while they are being treated, so they lose their jobs just when their family needs money for their treatment and expenses. Delays in compensation can mean that patients will forego needed treatment and die sooner. In addition, while treatment proceeds, patients and family members must also plan for the worst outcome. It is important to the patients to know that their families will be taken care of in the event of their deaths, so delay in trust fund claims can be devastating to them.

Fortunately, more and more we are hearing about asbestos patients who are being kept alive with new treatments. Shandi Speedy, who I talked about in my testimony, is one such example. For the doctors to prolong her life requires constant and unpredictable medical costs. In addition, she has had to take a medical retirement from her Air Force career at the age of 26. She needs compensation now so she can take advantage of whatever hope medical science has to offer her.

I am grateful to the Senate Judiciary Committee for allowing the voices of asbestos patients and families to finally be heard and become part of the official record of the debate over the FACT Act. I urge you to stand with us and not delay and deny justice to sick and dying patients and their loved ones. Please oppose the FACT Act.

2. The FACT Act would require an asbestos trust to disclose--for any victim who has received payout--the victim's name and asbestos exposure history, and the basis for any payment the victim received from a trust, including sensitive medical information.

Would this requirement deter victims from filing claims? Why might an asbestos victim or her family be deterred from filing a claim if the FACT Act were enacted?

#### ANSWER

Yes, I believe that this forced disclosure of personal information would deter patients and families from filing claims. I am doubtful that Bruce would have proceeded with his claims had there been a requirement in 2000 that this personal information would be on a public website out of concern for personal privacy as well as a concern for financial security. The decision to pursue claims against those responsible for his illness and ultimate death was not an easy one. He did so primarily out of a sense of obligation to change the behaviors of those who knowingly expose workers and their families as well as consumers to lethal asbestos.

I recently met a family whose mother died from mesothelioma. Their father was asked if he would agree to have his wife's name and diagnosis publicly disclosed on his attorney's web site and he declined. His family is confident that, if the FACT Act was the law, both their mother and father would not have filed claims because of the privacy violation. In fact, few people at the mother's funeral even knew what disease she had suffered from. This family would not be comfortable having the world know intimate details about them.

In addition, the fear of identity theft and con artists using the information against the patients and families is a very real one. Glen Kopp, a partner with the law firm of Bracewell & Giuliani and a leading authority in the area of privacy law, recently reviewed the FACT Act and concluded that it presents significant privacy concerns. (See "Analysis: Identity Theft Threatens Asbestos Victims Under Congressional Proposal," Asbestos Nation, EWG Action Fund, <http://www.asbestosnation.org/analysis-identity-theft-for-asbestos-victims-looms-under-congressional-proposal/>)

After reviewing the FACT Act, Mr. Kopp wrote the following:

Identity theft largely results from the compromise of personal identification information, which identity thieves can use for any number of illegal purposes, including bank fraud, credit card fraud, and health care fraud. Based on the sparse limitations contained in [the FACT Act], information for each claimant that may be made publicly available could include the following: name; address; phone number; email address; date and/or year of birth; last four digits of a Social Security number; employer; asbestos exposure history; and claim amount. . . . Maintaining the confidentiality of this kind of information is particularly important given its typical use by identity thieves. For example, phishing scams – or schemes in which criminals impersonate a legitimate business or person in order to trick a victim into giving away personal information – are often predicated on exploiting an existing relationship between the victim and the business. Current or previous employment information can provide a criminal with the lure he or she needs for such an attack. An address, email address, and/or phone number are the means to execute the attack.

It isn't just thieves and criminals that patients and families are worried about. Legitimate businesses, such as potential employers, insurance companies and banks can use people's personal information to deny them employment or services that they are entitled to.

For all of these reasons, the FACT Act would deter many asbestos patients and their families from filing claims with asbestos trusts, even though they are entitled to receive compensation from those funds.

**Questions for the Record**  
**“The Need for Transparency in the Asbestos Trusts”**  
**Wednesday, February 3, 2016**  
**Senator Sheldon Whitehouse**  
**For Ms. Susan Vento**  
**St. Paul, MN**

**Susan Vento responses:**

1. Why is it important for trusts to quickly and efficiently process victims’ claims?

**ANSWER**

It is critically important that trusts process claims quickly and efficiently. The average life expectancy of a mesothelioma patient is 6 to 18 months. My husband, Bruce, died within less than a year of his diagnosis. The treatment for asbestos disease is harsh and challenging and the medical costs escalate. Sophisticated treatments are not available everywhere so patients often have to travel great distances for their medical care. Others need to enroll in clinical trials that are far from home. Asbestos patients usually cannot work while they are being treated, so they lose their jobs just when their family needs money for their treatment and expenses. Delays in compensation can mean that patients will forego needed treatment and die sooner. In addition, while treatment proceeds, patients and family members must also plan for the worst outcome. It is important to the patients to know that their families will be taken care of in the event of their deaths, so delay in trust fund claims can be devastating to them.

Fortunately, more and more we are hearing about asbestos patients who are being kept alive with new treatments. Shandi Speedy, who I talked about in my testimony, is one such example. For the doctors to prolong her life requires constant and unpredictable medical costs. In addition, she has had to take a medical retirement from her Air Force job at the age of 26. She needs compensation now so she can take advantage of whatever hope medical science has to offer her.

2. What impact would delay in receiving compensation have on victims and their families?

**ANSWER**

Mesothelioma patients do not have time on their side and delay can literally be deadly. Treatment costs for asbestos disease are very high, patients often have to spend money to travel long distances for their care, and they most often cannot work during treatment. Compensation from asbestos trusts can help defray those costs, although trust fund compensation is rarely enough to pay all of the necessary costs. Without timely compensation, patients may have to forego treatment and can die sooner.

In addition, asbestos patients worry about leaving their families behind with unpaid bills. It is important for their peace of mind to know that their families will receive at least some compensation from the trusts. If the compensation is delayed, patients may die without ever knowing if their families will be taken care of, which can be devastating to them. Think of veterans, who make up 30% of mesothelioma victims. Just imagine, after serving their country, they get sick because they were exposed to asbestos during their service. To add insult to injury, Congress passes legislation that delays compensation to them and their families, potentially leaving them to die without ever knowing whether their families will be provided for.