

Proposed asbestos fund not enough for victims

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Many shipyard workers may be interested to know that there is a piece of proposed legislation facing a Senate vote that has the potential to limit how much money they could be awarded as asbestos victims.

The bill proposes creating a national trust fund for victims – giving priority to patients with the greatest needs. The proposal, which largely has the support of Republicans, asbestos companies and insurers, may be a good idea, but opponents say the proposed \$114 billion is too small. A recent study issued by the Rand Institute for Civil Justice estimates that as many as 2.4 million victims are still possible, which would translate into an additional \$210 billion in new claims. The proposed trust fund amount is billions too short to provide for these expected claims.

In addition to the sizable shortfall, trial attorneys also oppose the bill because it proposes a cap on total payments to plaintiffs.

And while \$55.5 million – the largest sum awarded to a mesothelioma victim – may be a bit over the top, I also don't believe you can mandate the amount of money an asbestos victim will receive. The fund is intended to award victims based on the severity of their condition. But in order to take care of each victim, the pot of money needs to be large enough to award each individual a fair settlement.

As of a few weeks ago, according to a Reuters news story, Democrats said the proposed legislation is in no danger of being passed in the Senate, closely divided along party lines, because the fund was too small to compensate victims.

Richard Glasser, an attorney with Glasser & Glasser who has been working full-time for asbestos claimants since 1976, is not a fan of the proposed legislation either.

"They need to make the pot sufficiently bigger to make sure they can take care of all the damage that they caused," Glasser said, referring to the asbestos companies and insurers. "And then they have to make sure it is timely funded so that the victim is not victimized again."

Under the proposed legislation, Glasser said, 70 percent of asbestos cases will be eliminated, and these victims have valid claims.

"They're going to limit who gets paid and how much they get paid," Glasser said. "Congress will become your second doctor. They will tell you when your asbestosis is severe enough. It would take people who have a claim today and who could get a court trial today ...and it will delay their payment."

The national trust fund would initially be paid for by industry companies who have already established trusts to take care of victims. After that, responsible industries would have to contribute money to the national fund, \$6 billion a year, for the next two decades. Glasser agrees that the proposed amount is staggeringly low because it doesn't take into account the millions of victims to come in new claims, and he added, there are already \$30 billion in claims that need funding now.

And what happens if these industries don't contribute toward the annual \$6 billion amount, because they simply can't afford to? Glasser said the government is supposed to have a priority claim, but if no one fills the gap, there is no back-up fund. So basically, there's no way to hold these industries accountable.

"The legislation is looking out for industry and not the worker," Glasser said. "We have worked hard since 1976 and if we felt it was a solution, we would join it. I think that when the victims support it, then it is time to support it."

Another problem with the legislation is that the proposal has a built-in five-year delay before victims would get paid.

In effect, Glasser said, a whole new court would have to be established if the legislation passes. And until that court is created, all asbestos cases currently in court right now would be stopped and every settlement that has been agreed to, but not paid, would be cancelled.

"What could make this legislation," Glasser said, "more radical than it is? They're throwing out everything that's there and setting up something that doesn't exist. If we start that system, where is it going to stop? If we set up a whole new separate court system, it's an overreaction."

This legislation protects industry, Glasser said. Industry, and not the victims, are the only ones guaranteed any security in this proposal.

"This is a bill," he added, "written by industry and they are trying to get labor's support. And we can live with the concept if it's fair."

But the legislation is not fair. It's not fair to the millions of victims suffering from asbestosis and related diseases, who weren't aware that just by going to work every day, their health was increasingly being put at risk.

"An asbestos case is a failure-to-warn case," Glasser said. "They had a duty to warn, they failed to warn and they had a resulting injury. And that's all you need for a claim."