

**Testimony of Nicholas P. Vari Regarding the Fairness in Claims and
Transparency (FaCT) Act – April 8, 2013**

Mr. Chairman, members of the committee, thank you for giving me an opportunity to appear before you today. My name is Nicholas Vari. I am an attorney with the law firm of K&L Gates, LLP, in Pittsburgh. My firm has the privilege of representing Crane Co. in asbestos lawsuits across Pennsylvania. Crane Co.'s experience in the asbestos litigation shapes my comments today.

Over the past 30 years, 56 asbestos personal injury trusts have been established on behalf of companies that have filed for reorganization under United States bankruptcy law.¹ Those trusts now pay billions of dollars per year to asbestos claimants. As of year-end 2008, the bankruptcy trusts reported assets of approximately \$30 billion. An advocate of asbestos claimants in bankruptcy proceedings has noted that asbestos trusts "do[] not contest liability" when faced with a claim.²

At the same time that the asbestos bankruptcy trusts pay out claims on an uncontested basis, still-solvent entities are brought before Pennsylvania Courts on a regular basis to compensate asbestos claimants. In those lawsuits, the claimants seek full compensation for their injuries from the solvent defendants whom they choose to sue in the tort system, even though (1) the claimants were likely exposed to asbestos-containing materials associated with now-bankrupt entities, and (2) the claimants are entitled to collect money from the bankruptcy trusts. Historically, the lack of any interface between the two different recovery mechanisms has led to disproportionate

¹ Dixon, McGovern, Asbestos Bankruptcy Trusts and Tort Compensation, p. 1 (RAND Institute, 2011).

² *Inselbuch, et al.*, "The Effrontery of the Asbestos Trust Transparency Legislation Efforts" Mealey's Litigation Report; Asbestos (Vol. 28 Issue #2) (2/10/13)

liability being placed on solvent defendants who are sued in the tort system. This disproportionate allocation of liability imposes undue burdens upon Pennsylvania companies, and depletes resources that these companies could otherwise use to fund research, expansion, and jobs.

In 2010, the legislature enacted the "Fair Share Act", which allows jurors to apply proportionate fault in personal injury lawsuits. That statute permits the jurors to allocate fault to any person or entity with whom the plaintiff has entered into a settlement release. The present legislation goes no further. Rather, it merely creates a mechanism to ensure that plaintiffs recover all of the trust monies to which they are entitled, with the objective of ensuring that Pennsylvania defendants pay any share of an injured person's damages for which the jury has held that defendant responsible, but no more.

The proposed legislation does not deprive any plaintiff of his or her choice of tort system defendants, nor does it delay justice in any respect. Rather, the proposed bill simply proposes additional sources of potential compensation for asbestos claimants, and alleviates the burden of those who would otherwise pay disproportionately.

Thank you for considering my comments.