



PENNSYLVANIA

April 8, 2013

Hon. Ron Marsico
Chairman
House Judiciary Committee
Room 218, Ryan Office Building
Harrisburg, PA 17120

Hon. Thomas Caltagirone
Democrat Chairman
House Judiciary Committee
Room 106, Irvis Office Building
Harrisburg, PA 17120

Dear Chairmen:

On behalf of the small-business members of the National Federation of Independent Business (NFIB), I am writing to thank you for the opportunity to testify in support of the Fairness in Claims Transparency (FaCT) Act.

NFIB is Pennsylvania's leading small-business advocacy organization representing 15,000 small- and independent-businesses in the Commonwealth and roughly 350,000 nationwide. NFIB members represent virtually every sector in Pennsylvania's economy. A typical NFIB member employs five or fewer workers and generates gross sales of \$400,000 per year.

The Fairness in Claims Transparency (FaCT) Act applies the principles of the recently-enacted Fair Share Act to asbestos claims involving personal injury bankruptcy trusts. This legislation is particularly important to small businesses that have limited responsibility in asbestos-related claims but in some cases are being required to pay a disproportionate amount of the liability because of the current lack of trust claims transparency.

Nearly all of the companies most responsible for asbestos injuries have established trusts through the federal bankruptcy code to pay exposure claims. Collectively, these asbestos bankruptcy trusts manage in excess of \$36 billion, and they distribute billions of dollars to hundreds of thousands of claimants every year.

These bankruptcy trusts often operate independently of the traditional civil justice system. The problem occurs when a plaintiff files suit for their injuries against a solvent defendant in state court and then files a claim with the asbestos bankruptcy trusts. In other words, the plaintiffs are collecting double recoveries for the same injury.

The lack of transparency denies the solvent defendant an opportunity to fully and fairly defend themselves by comparing the plaintiff's level of exposure to the defendant's products in the civil lawsuit to the level of exposure to products covered under the asbestos bankruptcy trusts.

The solution to the problem – and what this bill does - is to ensure that defendants in the state civil suit have access to the exposure information contained in trust claims and to require plaintiffs in asbestos suits to file trust claims before proceeding to state trial. In so doing, the FaCT Act effectively would end the practice of plaintiffs collecting overlapping recoveries and ensure defendants in these actions are required to pay damages proportionate to their responsibility. The FaCT Act wouldn't take away a plaintiff's rights – but it would ensure fair coordination of his rights in the state civil system and the federal bankruptcy system, not an unfair manipulation of those systems.

Thank you for the opportunity to appear before the committee to share the views of NFIB's small-business members

Sincerely,

Kevin Shivers
Executive Director