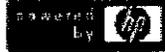


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Asbestos Plan Irritates Industry, Fails To Wow Unions, Lawyers



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Thu Jan 13, 7:00 PM ET

Sean Higgins

Sen. Arlen Specter ([news](#), [bio](#), [voting record](#)), R-Pa., was blunt when asked why his asbestos litigation reform bill doesn't include an actual dollar figure.

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"We've only been able to keep people (at) the table because I haven't said," he explained. Proposing any figure would only alienate some of the parties, he says.



Delayed Data
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Specter, the new Senate Judiciary Committee ([news](#) - [web sites](#)) chairman, has vowed to do what his predecessor Orrin Hatch, R-Utah, couldn't: get a comprehensive bill passed to resolve the asbestos litigation crisis.

Hatch labored in vain for a year to craft a deal between business, insurers, unions and trial lawyers.

Specter, a player in those talks, is pushing the same basic plan: a trust fund, financed by business and insurers, that would compensate victims on a no-fault basis in exchange for a halt to litigation.

President Bush ([news](#) - [web sites](#)) has strongly endorsed the approach, saying the existing court system is broken. "Funds should be concentrated on those who are sick, not lawyers or claimants who are not ill," he said last week.

While all sides have signed onto the trust fund in theory, they've been unable to reach an agreement on the details. A hearing Tuesday indicated that Specter may have even lost some ground.

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In addition to delaying a decision on a size of the fund, Specter has included a "sunset" provision in his bill that would allow for further litigation if the fund doesn't resolve all pending and future cases.

Business and insurers criticized Specter's proposal as a step back while unions and trial lawyers offered scant encouragement.

Edward Becker, an appeals court judge brought on as a mediator, said Tuesday the biggest issues remain unresolved.

"I don't think we are going to get labor and business to agree on a dollar amount," Becker said. Congress might have to just pick a number, he says.

Hatch pushed a \$140 billion fund, which was OK'd by business and insurers but opposed by labor as insufficient.

Trial lawyers, who would have been largely excluded by the no-fault payments, also objected.

Few Enjoy Sunset

Specter's sunset provision is an effort to break that impasse. It would, in theory, settle most claims. But claimants could return to court if cases remain after a set period. Specter's proposal doesn't address some other key issues such as whether to include claims involving other lung illnesses -- "mixed dust" cases.

A group of businesses, including Exxon Mobil and Federal-Mogul, wrote Specter last week to object to the proposal.

"As presently drafted, the trust funding arrangement would impose payment obligations on our companies that would substantially exceed the asbestos-related costs we reasonably anticipate under the existing tort system," said the Jan. 3 letter.

Insurers aren't any happier with Specter. They want any fund to provide "finality," said Dennis Kelly, spokesman for the American Insurance Association.

"Instead we face the possibility of paying twice: once into the trust fund and again later in court," he said.

Specter's concessions drew tepid applause from labor and trial lawyers. The lawyers have said they want a \$200 billion fund, though labor has indicated it would settle for closer to \$150 billion.

Peg Seminario, the AFL-CIO's chief negotiator, has told Specter the awards values for individual claims in his plan are still too low.

The Association of Trial Lawyers of America ([news - web sites](#)) is the main proponent of a sunset clause. Despite its inclusion, Michael Forscey, an attorney representing the ATLA, said Specter's draft goes "only part of the way" and criticized the "inflexibility shown by other

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stakeholders."

Specter Plans Fast Action

Specter remains convinced that a deal is possible. He hopes to have a bill taken up by the full Senate by next month.

"I believe in unrealistic timetables," he said. "If you have an unrealistic timetable, you're likely to get it done sooner."

Asbestos is a fire-resistant material that was widely used in manufacturing until exposure to it was linked in the 1970s to lung cancer. It is still used in some products like brake pads.

Revelations of its harmful nature spawned a massive, and still growing, civil litigation industry. There are about 600,000 asbestos-related lawsuits pending, including 100,000 filed in 2003 alone, according to a Rand Institute survey. *2nd witness 100,000*

Corporations have paid out more than \$70 billion in asbestos-related claims in the last three decades, with another \$130 billion in payments likely. About 70 businesses have already been forced into bankruptcy.

✓ The Supreme Court has repeatedly called for Congress to step in and resolve the issue.

✓ Litigation has grown so frequent that various studies have found that new filings often involve people without cancer and suffering no ailments at all.

A 2003 American Bar Association study found that the lawsuits are "no longer driven solely or even primarily by the occurrence of disabling asbestos-related diseases."

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