

1999 DRAFTING REQUEST

Assembly Joint Resolution

Received: 02/14/2000

Received By: dykmapj

Wanted: Soon

Identical to LRB:

For: Tom Sykora (608) 266-1194

By/Representing: Sara Jermstad

This file may be shown to any legislator: NO

Drafter: dykmapj

May Contact:

Alt. Drafters:

Subject: Memorials - Congress to

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Support asbestos litigation

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	dykmapj 02/14/2000	jgeller 02/14/2000	jfrantze 02/14/2000	_____	lrb_docadmin 02/14/2000	lrb_docadmin 02/29/2000	

FE Sent For:

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/?	dykmapj	1 2/14 JLS	2/14	Jb/hh 2/14			

FE Sent For:

<END>

Jermstad, Sara

From: Chris Varones [cvarones@mww.com]
Sent: Thursday, February 10, 2000 3:36 PM
To: sara.jermstad@legis.state.wi.us
Subject: joint resolution in WI legislature



NEW one-pager.doc

Sara:

Thank you for meeting with us yesterday about the asbestos tort reform legislation. Bob and Rep. Sykora's office have been a great help to date.

I just wanted to drop this note and ask if you needed anything else to submit your proposal to your legislative reference bureau so it can be rolled into a resolution.

Essentially, the key points of the legislation are located in the one-pager in the packet we gave you.

I have attached another for your information.

Some other key points:

-There are more asbestos lawsuits in state and federal courts than any other kind of civil case today.

-The Supreme Court has repeatedly called on Congress to act to resolve the asbestos litigation crisis.

-The Fairness in Asbestos Compensation Act carries bi-partisan support in Congress and would fairly and promptly those asbestos victims who are truly sick.

-The key principles of the Fairness in Asbestos Compensation Act were originally agreed to in a class action settlement (the Georgine Settlement in 1994) by members of the trial bar, labor unions, and former asbestos manufacturers.

-The U.S. Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist in 1991, found that the typical asbestos case took 31 months - nearly three years - to wind its way to resolution through the court system, compared with 18 months for a typical liability suit

I hope this is the kind of language you're looking for. Please don't hesitate to call me with any questions. Thanks...Chris Varones

P.S. we're sorry we couldn't treat you to at least lunch for the support Bob and Rep. Sykora have lent us already. We understand that the rules must be observed. They don't call Wisconsin the state of clean politics for nothing.

LEGISLATIVE REFERENCE BUREAU**BILL REQUEST FORM**

Legal Section, 5th Floor, 100 N. Hamilton St.
 (608) 266-3561

Use of this form is optional. It is often helpful to talk directly with the LRB attorney who will draft the bill.
 Use this form only for **BILL** drafts. Attach more pages if necessary.

Date of request: 2/11/00	Legislator or agency requesting this draft: Rep. Sykora
Name/phone number of person submitting request: Tom Sykora 6-1194	
Persons to contact for questions about this draft (names and phone numbers please): Sara Jermstad 6-1195	
Describe the problem, including any helpful examples. How do you want to solve the problem? AJR urging Congress to support asbestos litigation legislation (H.R. 1283 / S 758) See attached information	
If you know of any statute sections that might be affected, please list them or provide a marked (not re-typed) copy.	

Please attach a copy of any correspondence or material that may help us. You may also attach a marked (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67):

Requests are confidential unless stated otherwise.

May we tell others that we are working on this for you? YES NO
 If yes, anyone who asks? YES NO
 Any legislator? YES NO ONLY the following persons:

Do you consider this urgent? YES NO If yes, please indicate why:

Is this request of higher priority than other pending request(s) you have made?
 YES NO If yes, please sign your name here:



COALITION FOR
ASBESTOS
RESOLUTION

SUPREME COURT CALLS FOR CONGRESS TO SOLVE THE ASBESTOS LITIGATION CRISIS

- * For the second time in two years, the United States Supreme Court called on Congress to solve the asbestos litigation crisis facing this country.
- * **The Fairness in Asbestos Compensation Act of 1999 (H.R. 1283/S.758) is designed to heed the calls of the court and fix the badly broken system currently in place to address asbestos litigation.** Unfortunately, inefficiencies in the current system result in long delays to compensated claimants. Consequently, those truly sick suffering asbestos-related diseases are the most victimized – once by their impairment and then by the current system.
- * Again on June 24, 1999, the Supreme Court, Ortiz v. Fibreboard, called upon Congress to resolve the asbestos litigation crisis. This ruling reiterates prior Supreme Court statements indicating that Congress has a responsibility to address this crisis.
- * Writing for the majority, **Justice Souter** referred to asbestos cases as an “**elephantine mass.**” He said the problem posed in such settlements “**defies customary judicial administration and calls for national legislation.**”
- * In his concurring opinion, **Chief Justice Rehnquist** forcefully argued that the flaws in the current asbestos litigation system and the “**elephantine mass of asbestos cases’ ... cries out for a legislative solution.**” This ruling emphasizes the tremendous and immediate need for Congress to act expeditiously on H.R. 1283 and S. 758.
- * Attached is a one-page summary of comments many in the judiciary have made calling upon Congress to legislate a solution.

**THE COALITION FOR ASBESTOS RESOLUTION
CONCURS WITH THE SENTIMENTS OF THE
SUPREME COURT AND STRONGLY URGES
CONGRESS TO ACT ON
H.R. 1283 AND S. 758.**

JUDICIAL CALLS FOR A LEGISLATIVE SOLUTION TO THE ASBESTOS LITIGATION CRISIS

- **Justice Souter**, writing in Ortiz v. Fiberboard Corp. (1999) referred to asbestos cases as an **“elephantine mass.”** He said the problem posed in such settlements **“defies customary judicial administration and calls for national legislation.”**
- In his concurring opinion on the Ortiz v. Fiberboard Corp. (1999), **Chief Justice Rehnquist** stated **“the ‘elephantine mass of asbestos cases,’ cries out for a legislative solution.”**
- H.R. 1283 and S. 758 are modeled after the Amchem (1997) settlement. Although, Amchem was denied on procedural grounds, **Justice Ginsburg** stated in 1997 that **“the argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure. Congress, however, has not adopted such a solution. And Rule 23 . . . cannot carry the large load . . . heaped upon it.”**
- The United States Judicial Conference Ad Hoc Committee on Asbestos Litigation appointed by Chief Justice Rehnquist in 1991 to examine the problem of asbestos litigation stated **“the committee recognizes that virtually all of the issues relating to a so-called ‘national solution’ are primarily matters of policy for the Congress . . . The Committee firmly believes that the ultimate solution should be legislation recognizing the national proportions of the problem . . . In the final analysis, the committee has concluded that congressional action is necessary.”**
- Before the Amchem settlement was sent to the Supreme Court, the Third Circuit Court of Appeals stated in 1996 that **“asbestos litigation has burdened the dockets of many state and federal courts, and has particularly challenged the capacity of the federal judicial system. The resolution posed in this settlement is arguably a brilliant partial solution to the scourge of asbestos that has heretofore defied global management in any venue.”**
- The Third Circuit also stated **“[the asbestos crisis requires] innovation in the management of mass tort litigation . . . But reform must come from the policy-makers, not the courts. . . . The most direct and encompassing solution would be legislative action.”**

RESOLVING THE ASBESTOS LITIGATION CRISIS

PROBLEM

With nearly 200,000 asbestos cases pending in state and federal courts and 30,000 to 50,000 new cases filed every year, the asbestos litigation problem is national in scope and demands a national solution. Those truly injured by exposure to asbestos must wait years for compensation and find that an average of two-thirds of every dollar spent on asbestos litigation is eaten up by attorneys' fees and other transaction costs. More disturbing is the fact that a majority of the claims filed are by individuals who are not sick who may simply have been exposed to asbestos.

In two separate rulings in the past few years, the Supreme Court has recognized the escalating crisis in asbestos litigation, and on both occasions concluded that an administrative claims system would best serve the true victims of asbestos. Most recently, in June of 1999 the Supreme Court ruled on *Ortiz v. Fibreboard*. Justice Souter forcefully stated that asbestos litigation is an **"elephantine mass"** which **"defies customary judicial administration and calls for national legislation."** In the same ruling, Chief Justice Rehnquist echoed Souter's opinion stating that the current asbestos litigation system **"cries out for a national solution."** Justice Ginsburg similarly commented in the 1997 *Amchem* decision that an administrative claims process **"would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure."**

SOLUTION

As a result of the Supreme Court's repeated calls, legislation was drafted that would create an administrative mechanism to expedite fair and prompt compensation to asbestos victims. H.R. 1283 and S. 758 were introduced by Representative Henry Hyde (R-IL) and Senator John Ashcroft (R-MO), respectively, with strong bipartisan support. Currently, the House Judiciary Committee is considering a compromise draft of H.R. 1283 which includes the following key tenets of the original legislation:

- ◆ Creates an administrative mechanism to resolve asbestos claims without going to court. This system would be funded entirely by the asbestos defendants, **not** with federal dollars.
- ◆ Utilizes objective medical criteria to screen for true victims of asbestos illness – criteria that have been endorsed by the American College of Chest Physicians.
- ◆ Allows plaintiffs who contract an asbestos-related illness to recover full compensatory damages, while ensuring the availability of funds for future sick claimants.
- ◆ Waives statute of limitations and similar defenses to ensure all victims are compensated.
- ◆ Preserves a claimant's right to sue if they meet the medical criteria but are unable to reach resolution of their claim.

A new asbestos claims handling system would achieve many important public policy objectives:

- ◆ Benefit victims with faster and less expensive processing of claims.
- ◆ Fix the problem in the current system by which the sick are lumped in with the non-sick.
- ◆ Reduce the extreme backlog of civil litigation cases that have overwhelmed the courts.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4541/1

PJD...:...

SOON

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jlg

1999 ASSEMBLY JOINT RESOLUTION

1 **Relating to:** urging Congress[✓] to pass asbestos litigation legislation.

2 Whereas, there are more asbestos[✓] lawsuits in state and federal courts than any
3 other kind of civil case today; and

4 Whereas, with nearly 200,000 asbestos cases pending in state and federal
5 courts and 30,000 to 50,000 new cases filed every year, the asbestos litigation
6 problem is national in scope and demands a national solution; and

7 Whereas, those truly injured by exposure to asbestos must wait years for
8 compensation and find that an average of two-thirds of every dollar spent on
9 asbestos litigation is eaten up by attorneys' fees and other transaction costs; and

10 Whereas, more disturbing is the fact that a majority of the claims filed are by
11 individuals who are not sick^{and} who may simply have been exposed to asbestos; and

12 Whereas, in ²~~two~~ separate rulings in the past few years, the ~~United States~~^{Wisconsin}
13 Supreme Court has recognized the escalating crisis in asbestos litigation, and on
14 both occasions concluded that an administrative claims system would best serve the
15 true victims of asbestos; and

1

Whereas, in June ^{of} 1999, the Supreme Court ⁱⁿ ^{U.S.} ^{Ortiz v. Fibreboard,} Justice Souter forcefully stated that asbestos litigation is an ^{plain} "elephantine mass" ^{that} which "defies customary judicial administration and calls for national legislation"; and in the same ruling, Chief Justice Rehnquist echoed Justice Souter, stating that the current asbestos litigation system "cries out for a national solution"; and

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Whereas, Justice Ginsburg similarly commented in the 1997 *Amchem* decision that an administrative claims process "would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure"; and

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Whereas, ~~The~~ Fairness in Asbestos Compensation Act ^(ACT) carries bipartisan support in Congress and would fairly and promptly compensate those asbestos victims who are truly sick; and

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Whereas, the key principles of the Act were originally agreed to in a class action settlement in 1994 by members of the trial bar, labor unions and former asbestos manufacturers; and

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13

14

Whereas, ^{ed} The U.S. Judicial Conference Ad Hoc Committee on Asbestos Litigation, appointed by Chief Justice William Rehnquist in 1991, found that the typical asbestos case took 31 months to wind its way to resolution through the court system, compared with 18 months for a typical liability suit; now, therefore, be it ✓

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Resolved by the assembly, the senate concurring, That the legislature of the state of Wisconsin hereby urges Congress to pass asbestos litigation legislation (H.R. 1283 and S. 758); and, be it further ✓

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Resolved, That the assembly chief clerk shall provide a copy of this joint resolution to the president and secretary of the U.S. senate, to the speaker and clerk of the U.S. ✓ house of representatives and to each member of the congressional

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1 delegation from this state attesting the adoption of this joint resolution by the 1999
2 legislature of the state of Wisconsin.

3

(END) ✓

Barman, Mike

From: Barman, Mike
Sent: Tuesday, February 15, 2000 11:45 AM
To: Jermstad, Sara
Subject: 99-4541/1 (per your request)



99-4541/1

Mike Barman

Mike Barman - Senior Program Asst. (PH. 608-266-3561)
(E-Mail: mike.baman@legis.state.wi.us) (FAX: 608-264-6948)

State of Wisconsin
Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 02/14/2000

To: Representative Sykora

Relating to LRB drafting number: LRB-4541

Topic

Support asbestos litigation

Subject(s)

Memorials - Congress to

1. **JACKET** the draft for introduction _____



in the Senate ____ or the Assembly (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Attorney Peter J. Dykman, General Counsel
Telephone: (608) 266-7098