

S 1125 IS

108th CONGRESS
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S. 1125

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

IN THE SENATE OF THE UNITED STATES

May 22, 2003

Mr. Hatch (for himself, Mr. Nelson of Nebraska, Mr. DeWine, Mr. Miller, Mr. Voinovich, Mr. Allen, and Mr. Chambliss) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE- This Act may be cited as the 'Fairness in Asbestos Injury Resolution Act of 2003' or the 'FAIR Act of 2003'.

(b) TABLE OF CONTENTS- The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purpose.

Sec. 3. Definitions.

TITLE I--ASBESTOS CLAIMS RESOLUTION

Subtitle A--United States Court of Asbestos Claims

Sec. 101. Establishment of Asbestos Court.

Subtitle B--Asbestos Injury Claims Resolution Procedures

Sec. 111. Filing of claims.

Sec. 112. General rule concerning no-fault compensation.

Sec. 113. Essential elements of eligible asbestos claim.

Sec. 114. Eligibility determinations and claim awards.
Sec. 115. Medical evidence auditing procedures.
Sec. 116. Claimant assistance program.

Subtitle C--Medical Criteria

Sec. 121. Essential elements of eligible asbestos claim.
Sec. 122. Diagnostic criteria requirements.
Sec. 123. Latency criteria requirements.
Sec. 124. Medical criteria requirements.
Sec. 125. Exposure criteria requirements.

Subtitle D--Awards

Sec. 131. Amount.
Sec. 132. Medical monitoring.
Sec. 133. Payments.
Sec. 134. Reduction in benefit payments for collateral sources.

Subtitle E--En Banc Review

Sec. 141. En banc review.

TITLE II--ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A--Asbestos Defendants Funding Allocation

Sec. 201. Definitions.
Sec. 202. Authority and tiers.
Sec. 203. Subtier assessments.
Sec. 204. Assessment administration.

Subtitle B--Asbestos Insurers Commission

Sec. 211. Establishment of Asbestos Insurers Commission.
Sec. 212. Duties of Asbestos Insurers Commission.
Sec. 213. Powers of Asbestos Insurers Commission.
Sec. 214. Personnel matters.
Sec. 215. Nonapplication of FOIA and confidentiality of information.
Sec. 216. Termination of Asbestos Insurers Commission.
Sec. 217. Authorization of appropriations.

Subtitle C--Office of Asbestos Injury Claims Resolution

Sec. 221. Establishment of the Office of Asbestos Injury Claims Resolution.

Sec. 222. Powers of the Administrator and management of the Fund.

Sec. 223. Asbestos Injury Claims Resolution Fund.

Sec. 224. Enforcement of contributions.

Sec. 225. Additional contributing participants.

TITLE III--JUDICIAL REVIEW

Sec. 301. Judicial review of decisions of the Asbestos Court.

Sec. 302. Judicial review of final determinations of the Administrator and of the Asbestos Insurers Commission.

Sec. 303. Exclusive review.

Sec. 304. Private right of action against reinsurers.

TITLE IV--MISCELLANEOUS PROVISIONS

Sec. 401. False information.

Sec. 402. Effect on bankruptcy laws.

Sec. 403. Effect on other laws and existing claims.

SEC. 2. PURPOSE.

The purpose of this Act is to create a privately funded, publicly administered fund to provide the necessary resources for an asbestos injury claims resolution program.

SEC. 3. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ADMINISTRATOR- The term 'Administrator' means the Administrator of the Office of Asbestos Injury Claims Resolution appointed under section 221(c).

(2) ASBESTOS- The term 'asbestos' includes--

(A) asbestos chrysotile;

(B) asbestos amosite;

(C) asbestos crocidolite;

(D) asbestos tremolite;

(E) asbestos winchite;

(F) asbestos richterite;

(G) asbestos anthophyllite;

(H) asbestos actinolite;

(I) any of the minerals listed under subparagraphs (A) through (H) that has been chemically treated or altered, and any asbestiform variety, type, or component thereof; and

(J) asbestos-containing material, such as asbestos-containing products, automotive or industrial parts or components, equipment, improvements to real property, and any other material that contains asbestos in any physical or chemical form.

(3) ASBESTOS CLAIM-

(A) IN GENERAL- The term 'asbestos claim' means any personal injury claim for damages or other relief presented in a civil action or bankruptcy proceeding, arising out of, based on, or related to, in whole or part, the health effects of exposure to asbestos, including loss of consortium, wrongful death, and any derivative claim made by, or on behalf of, any exposed person or any representative, spouse, parent, child or other relative of any exposed person.

(B) EXCLUSION- The term does not include claims for benefits under a workers' compensation law or veterans' benefits program, or claims brought by any person as a subrogee by virtue of the payment of benefits under a workers' compensation law.

(4) ASBESTOS CLAIMANT- The term 'asbestos claimant' means an individual who files an asbestos claim under section 111.

(5) ASBESTOS COURT; COURT- The terms 'Asbestos Court' or 'Court' means the United States Court of Asbestos Claims established under section 101.

(6) CIVIL ACTION- The term 'civil action' means all suits of a civil nature in State or Federal court, whether cognizable as cases at law or in equity or in admiralty, but does not include an action relating to any workers' compensation law, or a proceeding for benefits under any veterans' benefits program.

(7) COLLATERAL SOURCE- The term 'collateral source'--

(A) means all collateral sources, including--

- (i) disability insurance;
- (ii) health insurance;
- (iii) medicare;
- (iv) medicaid;
- (v) death benefit programs;
- (vi) defendants;
- (vii) insurers of defendants; and
- (viii) compensation trusts; and

(B) shall not include life insurance.

(8) ELIGIBLE DISEASE OR CONDITION- The term 'eligible disease or condition' means, to the extent that the illness meets the medical criteria requirements established under subtitle C of title I, asbestosis/pleural disease, severe asbestosis disease, mesothelioma, lung cancer I, lung cancer II, other cancers, and qualifying nonmalignant asbestos-related diseases.

(9) FUND- The term 'Fund' means the Asbestos Injury Claims Resolution Fund established under section 223.

- (10) LAW- The term 'law' includes all law, judicial or administrative decisions, rules, regulations, or any other principle or action having the effect of law.
- (11) PARTICIPANT- The term 'participant' means any person subject to the funding requirements of title II, including--
- (A) any defendant participant subject to an assessment for contribution under subtitle A of that title; and
 - (B) any insurer participant subject to an assessment for contribution under subtitle B of that title.
- (12) PERSON- The term 'person'--
- (A) means an individual, trust, firm, joint stock company, partnership, association, insurance company, reinsurance company, or corporation; and
 - (B) does not include the United States, any State or local government, or subdivision thereof, including school districts and any general or special function governmental unit established under State law.
- (13) STATE- The term 'State' means any State of the United States and also includes the District of Columbia, Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin islands, Guam, American Samoa, and any other territory or possession of the United States or any political subdivision of any of the entities under this paragraph.
- (14) VETERANS' BENEFITS PROGRAM- The term 'veterans' benefits program' means any program for benefits in connection with military service administered by the Veterans' Administration under title 38, United States Code.
- (15) WORKER'S COMPENSATION LAW- The term 'worker's compensation law'--
- (A) means a law respecting a program administered by a State or the United States to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries;
 - (B) includes the Longshore and Harbor Workers' Compensation Act (33 U.S.C. sections 901 et seq.) and chapter 81 of title 5, United States Code; and
 - (C) does not include the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, or damages recovered by any employee in a liability action against an employer.

TITLE I--ASBESTOS CLAIMS RESOLUTION

Subtitle A--United States Court of Asbestos Claims

SEC. 101. ESTABLISHMENT OF ASBESTOS COURT.

(a) IN GENERAL- Part I of title 28, United States Code, is amended by inserting after chapter 7 the following:

`CHAPTER 9--UNITED STATES COURT OF ASBESTOS CLAIMS

`Sec.

201. Establishment of the United States Court of Asbestos Claims.

202. Magistrates.

203. Retirement of judges of the United States Court of Asbestos Claims.

`Sec. 201. Establishment of the United States Court of Asbestos Claims

`(a) ESTABLISHMENT AND APPOINTMENT OF JUDGES-

(1) IN GENERAL- The President shall appoint, by and with the advice and consent of the Senate, 5 judges, who shall constitute a court of record known as the United States Court of Asbestos Claims.

(2) ARTICLE I COURT- The Court of Asbestos Claims is declared to be a court established under article I of the Constitution of the United States.

`(b) TERM; REMOVAL; COMPENSATION-

(1) TERM- Each judge appointed under subsection (a) shall serve for a term of 15 years, except that judges initially appointed shall serve for staggered terms as the President shall determine appropriate to assure continuity.

(2) REMOVAL- Judges may be removed by the President only for good cause.

(3) COMPENSATION- Each judge shall receive a salary at the rate of pay, and in the same manner, as judges of the district courts of the United States.

`(c) CHIEF JUDGE-

(1) IN GENERAL- The President shall designate 1 of the judges appointed under subsection (b)(1), who is less than 70 years of age, to serve as chief judge.

(2) TERM- The chief judge may continue to serve as such until--

(A) he or she reaches the age of 70 years;

(B) another judge is designated as chief judge by the President; or

(C) the expiration of his or her term under subsection (b)(1).

(3) CONTINUITY OF SERVICE- Upon the designation by the President of another judge to serve as chief judge, the former chief judge may continue

to serve as a judge of the Court of Asbestos Claims for the balance of the term to which he or she was appointed.

(4) POWERS OF CHIEF JUDGE- The chief judge is authorized to--

- `(A) prescribe rules and procedures for hearings and appeals of the Court of Asbestos Claims and its magistrates;
- `(B) appoint magistrates;
- `(C) appoint or contract for the services of such personnel as may be necessary and appropriate to carry out the responsibilities of the Court of Asbestos Claims; and
- `(D) make such expenditures as may be necessary and appropriate in the administration of the responsibilities of the Court of Asbestos Claims and the chief judge under this chapter and the Fairness in Asbestos Injury Resolution Act of 2003.

`(d) **TIME AND PLACES OF HOLDING COURT-**

`(1) **IN GENERAL-** The principal office of the Court of Asbestos Claims shall be in the District of Columbia, but the Court of Asbestos Claims may hold court at such times and in such places as the chief judge may prescribe by rule.

`(2) **LIMITATION-** The times and places of the sessions of the Court of Asbestos Claims shall be prescribed with a view to securing reasonable opportunity to citizens to appear before the Court of Asbestos Claims.

`(e) **OFFICIAL DUTY STATION; RESIDENCE-**

`(1) **DUTY STATION-** The official duty station of each judge of the Court of Asbestos Claims is the District of Columbia.

`(2) **RESIDENCE-** After appointment and while in active service, each judge of the Court of Asbestos Claims shall reside within 50 miles of the District of Columbia.

`Sec. 202. Magistrates

`(a) **APPOINTMENT-** The chief judge shall appoint such magistrates as necessary to facilitate the expeditious processing of claims.

`(b) **COMPENSATION-** The compensation of magistrates shall be determined by the chief judge, but shall not exceed the annual rate of basic pay of level V of the Executive Schedule, as prescribed by section 5316 of title 5.

`(c) **RETIREMENT-** For purposes of Federal laws relating to retirement, including chapters 83 and 84 of title 5, magistrates appointed under this section shall be deemed to be appointed under section 631 of this title.

`(d) **REGULATIONS-** Except as provided under subsection (c), chapter 43 shall not apply to magistrates appointed under this chapter, except the chief judge may prescribe rules similar to the provisions of chapter 43 to apply to magistrates.

`Sec. 203. Retirement of judges of the United States Court of Asbestos Claims

`(a) **IN GENERAL-** For purposes of Federal laws relating to retirement, judges of the Court of Asbestos Claims shall be treated in the same manner and to the same extent as judges of the Court of Federal Claims.

`(b) **REGULATIONS-** In carrying out this section--

`(1) the Director of the Administrative Office of the United States Courts shall promulgate regulations to apply provisions similar to section 178 of this title (including the establishment of a Court of Asbestos Claims Judges Retirement Fund) to judges of the Court of Asbestos Claims; and
`(2) the Director of the Office of Personnel Management shall promulgate regulations to apply chapters 83 and 84 of title 5 to judges of the Court of Asbestos Claims.'.

(b) TECHNICAL AND CONFORMING AMENDMENT- The table of chapters for part I of title 28, United States Code, is amended by striking the item relating to chapter 9, and inserting after the item relating to chapter 7 the following:
`9. United States Court of Asbestos Claims.'.

Subtitle B--Asbestos Injury Claims Resolution Procedures

SEC. 111. FILING OF CLAIMS.

(a) WHO MAY SUBMIT-

(1) GENERAL RULE- Any individual who has suffered from an eligible disease or condition that is believed to meet the requirements established under subtitle C (or the spouse, parent, child, or other relative of such individual in a representative capacity, or the executor of the estate of such individual) may file a claim with the Asbestos Court for an award with respect to such injury.

(2) RULES- The Asbestos Court may issue procedural rules to specify individuals who may file an asbestos claim as a representative of another individual.

(3) LIMITATION- An asbestos claim may not be filed by any person seeking contribution or indemnity.

(b) REQUIRED INFORMATION- To be valid, an asbestos claim filed under subsection (a) shall be notarized and include--

(1) the name, social security number, gender, date of birth, and, if applicable, date of death of the claimant;

(2) information relating to the identity of dependents and beneficiaries of the claimant;

(3) a detailed description of the work history of the claimant, including social security records or a signed release permitting access to such records;

(4) a detailed description of the asbestos exposure of the claimant, including information on the identity of any product or manufacturer, site, or location of exposure, plant name, and duration and intensity of exposure;

(5) a detailed description of the tobacco product use history of the claimant, including frequency and duration;

(6) an identification and description of the asbestos-related diseases of the claimant, including a written report by the claimant's physician with

medical diagnoses and test results necessary to make a determination of medical eligibility that complies

with the applicable requirements of this subtitle and subtitle C;

(7) a description of any prior or pending civil action or other claim brought by the claimant for asbestos-related injury or any other pulmonary, parenchymal or pleural injury, including an identification of any recovery of compensation or damages through settlement, judgment, or otherwise; and

(8) any other information that is required to be included under procedural rules issued by the Court.

(c) STATUTE OF LIMITATIONS-

(1) IN GENERAL- Except as provided in paragraphs (2) and (3), if an individual fails to file an asbestos claim with the Asbestos Court under this section within 2 years after the date on which the individual first--

(A) received a medical diagnosis of an eligible disease or condition as provided for under this subtitle and subtitle C; or

(B) discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to an eligible disease or condition,

any claim relating to that injury, and any other asbestos claim related to that injury, shall be extinguished, and any recovery thereon shall be prohibited.

(2) EFFECT ON PENDING CLAIMS- If an asbestos claimant has any timely filed claim for an asbestos-related injury that is pending in a Federal or State court or with a trust established under title 11, United States Code, on the date of enactment of this Act, such claimant shall file an asbestos claim under this section within 2 years after such date of enactment or be barred from receiving any award under this title.

(3) EFFECT OF MULTIPLE INJURIES- An asbestos claimant who receives an award under this title for an eligible disease or condition, and who subsequently develops another such injury, shall be eligible for additional awards under this title (subject to appropriate setoffs for such prior recovery of any award under this title and from any other collateral source) and the statute of limitations under paragraph (1) shall not begin to run with respect to such subsequent injury until such claimant obtains a medical diagnosis of such other injury or discovers facts that would have led a reasonable person to obtain such a diagnosis.

(4) RULE OF CONSTRUCTION- Paragraph (2) shall be interpreted as a statute of limitations and be construed to the benefit of the Fund and of any person who might otherwise have been made subject to an asbestos claim to which such paragraph is applied.

**SEC. 112. GENERAL RULE CONCERNING NO-FAULT
COMPENSATION.**

An asbestos claimant shall not be required to demonstrate that the asbestos-related injury for which the claim is being made resulted from the negligence or other fault of any other person.

SEC. 113. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS CLAIM.

To be eligible for an award under this subtitle for an asbestos-related injury, an individual shall--

- (1) file an asbestos claim in a timely manner in accordance with section 111; and
- (2) prove, by a preponderance of the evidence that--
 - (A) the claimant suffers from an eligible disease or condition, as demonstrated by evidence (submitted as part of the claim) that meets the medical criteria requirements and diagnostic criteria requirements established under subtitle C; and
 - (B) the claimant meets the latency criteria requirements and the exposure criteria requirements established under subtitle C.

SEC. 114. ELIGIBILITY DETERMINATIONS AND CLAIM AWARDS.

(a) CLAIMS EXAMINERS-

- (1) IN GENERAL- The Asbestos Court shall appoint, or contract for the services of, qualified individuals to assist magistrates by conducting eligibility reviews of asbestos claims filed with the Court.
- (2) CRITERIA- The Asbestos Court shall establish criteria with respect to the qualifications of individuals who are eligible to serve as claims examiners and, in developing such criteria, shall consult with such experts as the Court determines appropriate.

(b) REFERRAL OF ASBESTOS CLAIM- Not later than 20 days after the filing of an asbestos claim with the Asbestos Court, the Court shall refer such claim to a magistrate.

(c) INITIAL REVIEW-

- (1) IN GENERAL- Under the direction of a magistrate, a claims examiner shall make an initial review of an asbestos claim to determine whether all required information has been submitted by the claimant.
- (2) NOTICE OF INCOMPLETE CLAIM- If the claims examiner determines that all required information has not been submitted, the examiner--
 - (A) shall notify the claimant of such determination and require the submission of additional information necessary for a determination of eligibility;
 - (B) may compel the submission of any additional information;
 - (C) may request that the claimant undergo additional medical examinations and tests if information from such examinations or

tests is necessary to enable the examiner to make a determination of medical eligibility; and

(D) may require any releases necessary to enable the examiner to obtain medical or other information relevant to the determination of eligibility.

(d) EXPEDITIOUS DETERMINATIONS- The Asbestos Court shall prescribe rules to expedite claims for asbestos claimants with exigent circumstances.

(e) AUDIT AND PERSONNEL REVIEW PROCEDURES- The Asbestos Court shall establish audit and

personnel review procedures for evaluating the accuracy of eligibility recommendations of magistrates.

(f) ELIGIBILITY DETERMINATIONS-

(1) IN GENERAL- Not later than 60 days after the receipt by a magistrate of all required information and requested medical advice with respect to an asbestos claim, the magistrate shall transmit a recommendation of the amount of any award to which the claimant is entitled and findings of fact to a judge of the Asbestos Court.

(2) ADMISSIBILITY OF FINDINGS OF FACT- A determination under paragraph (1) shall include relevant findings of fact and shall be admissible as evidence in any judicial review.

(g) DECISION OF JUDGE-

(1) IN GENERAL- Not later than 30 days after receipt of a recommendation of a magistrate, a judge of the Asbestos Court shall make a final decision of any award to which the claimant is entitled.

(2) WAIVER OF JUDICIAL REVIEW- The final decision under paragraph (1) shall include an acceptance form by which the claimant may waive the right to judicial review and expedite payment of an award from the Fund.

(h) AWARDING OF COMPENSATION-

(1) IN GENERAL- If a judge of the Asbestos Court determines that an asbestos claimant is entitled to an award, the Court shall notify the Administrator to award the claimant an amount of the judge's decision from the Fund.

(2) CLAIM EXTINGUISHED- The acceptance of a payment under this Act shall extinguish all claims related to such payment.

SEC. 115. MEDICAL EVIDENCE AUDITING PROCEDURES.

(a) DEVELOPMENT- The Asbestos Court shall develop methods for auditing the medical evidence submitted as part of an asbestos claim, including methods to ensure the independent reading of x-rays and results of pulmonary function tests. The Court may develop additional methods for auditing other types of evidence or information received by the Court.

(b) REFUSAL TO CONSIDER CERTAIN EVIDENCE-

(1) IN GENERAL- If the Asbestos Court determines that an audit conducted in accordance with the methods developed under subsection (a) demonstrates that the medical evidence submitted by a specific physician or medical facility is not consistent with prevailing medical practices or the applicable requirements of this Act, the Court shall notify claims examiners and the magistrates that any medical evidence from such physician or facility shall be unacceptable for purposes of establishing eligibility for an award under this Act.

(2) NOTIFICATION- Upon a determination by the Asbestos Court under paragraph (1), the Court shall notify the physician or medical facility involved of the results of the audit. Such physician or facility shall have a right to appeal the determination of the Court under procedures issued by the Court.

SEC. 116. CLAIMANT ASSISTANCE PROGRAM.

(a) ESTABLISHMENT- The Asbestos Court shall establish an asbestos claimant assistance program to provide assistance to claimants in preparing and submitting asbestos claim applications and in responding to claimant inquiries.

(b) LEGAL ASSISTANCE-

(1) IN GENERAL- As part of the program established under subsection (a), the Asbestos Court shall establish a legal assistance program to provide assistance to asbestos claimants concerning legal representation issues.

(2) LIST OF QUALIFIED ATTORNEYS- As part of the program, the Court shall maintain a roster of qualified attorneys who have agreed to provide pro bono services to asbestos claimants under rules established by the Court. The claimants shall not be required to use the attorneys listed on such roster.

Subtitle C--Medical Criteria

SEC. 121. ESSENTIAL ELEMENTS OF ELIGIBLE ASBESTOS CLAIM.

To be eligible for an award under this title for an asbestos-related injury, an individual shall--

(1) file an asbestos claim under this title in a timely manner; and

(2) prove, by a preponderance of the evidence that--

(A) the claimant suffers from an eligible disease or condition, as demonstrated by evidence (submitted as part of the claim) that meets the diagnostic criteria requirements described in section 122 and the medical criteria requirements described in section 124; and
(B) the claimant meets the latency criteria requirements described in section 123 and the exposure criteria requirements described in section 125.

SEC. 122. DIAGNOSTIC CRITERIA REQUIREMENTS.

- (a) **IN GENERAL-** To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall demonstrate a medical diagnosis that meets the requirements of this section.
- (b) **DIAGNOSIS-** A medical diagnosis meets the requirements of this section if the diagnosis--
 - (1) is made by a physician who--
 - (A) treated, or is treating, the claimant;
 - (B) conducted an in-person medical examination of the claimant; and
 - (C) is licensed to practice medicine in the State in which the examination occurred and in which the diagnosis is rendered;
 - (2) includes a review by the physician of the work history, asbestos exposure pattern, and smoking history of the claimant, or other factors determined appropriate by the Asbestos Court;
 - (3) is independently verified with respect to the duration, proximity, regularity, and intensity of the asbestos exposure involved; and
 - (4) has excluded other more likely causes of the injury of the claimant.
- (c) **RESULTS OF MEDICAL EXAMINATIONS AND TESTS-**
 - (1) **IN GENERAL-** In making the demonstration required under subsection (a), an asbestos claimant shall submit--
 - (A) x-rays (including both films and B-reader reports);
 - (B) detailed results of pulmonary function tests (including spirometric tracings);
 - (C) laboratory tests; and
 - (D) the results of medical examination or reviews of other medical evidence.
 - (2) **PROCEDURAL REQUIREMENTS-** A submission under paragraph (1) shall comply with the requirements of this Act and recognized medical standards regarding equipment, testing methods, and procedures to ensure that such medical evidence is reliable.
- (d) **SUFFICIENCY OF MEDICAL EVIDENCE-** In making determinations under this section, a magistrate shall not make a determination unless the medical evidence provided in support of the asbestos claim is credible and consistent with this section, the medical criteria described in section 124, and recognized medical standards.
- (e) **ATTORNEY RETENTION AGREEMENTS-** An attorney retention agreement shall not be required as a prerequisite to a medical examination or medical screening for purposes of obtaining a medical diagnosis or other medical information under this section.
- (f) **RULES-** The Asbestos Court shall prescribe rules to implement the diagnostic criteria requirements to be used in applying this section.

SEC. 123. LATENCY CRITERIA REQUIREMENTS.

- (a) IN GENERAL- To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall demonstrate that the claimant was exposed to asbestos--
- (1) in a manner that meets the exposure requirements of sections 124 and 125;
 - (2) within the United States or its territories or possessions; and
 - (3) for at least 10 years before the initial diagnosis of any asbestos-related injury.
- (b) CONSISTENCY WITH MEDICAL CRITERIA- An asbestos claimant shall be required to demonstrate that any delay between asbestos exposure and the asbestos-related injury is consistent with medical criteria concerning the latency periods typically associated with the disease category for which the claim is being made.
- (c) VARIATIONS IN LATENCY PERIODS- Latency periods under this section may vary based on the eligible disease or condition involved.
- (d) RULES- The Asbestos Court shall prescribe rules, based on the medical literature or other appropriate medical evidence concerning latency periods, for the purpose of implementing the criteria used in applying this section.

SEC. 124. MEDICAL CRITERIA REQUIREMENTS.

- (a) DEFINITIONS- In this section, the following definitions shall apply:
- (1) BILATERAL ASBESTOS-RELATED NONMALIGNANT DISEASE- The term 'bilateral asbestos-related nonmalignant disease' means a diagnosis of bilateral asbestos-related nonmalignant disease based on--
 - (A) an x-ray reading of 1/0 or higher on the ILO scale; or
 - (B) an x-ray showing bilateral pleural plaques or pleural thickening, bilateral interstitial fibrosis, or bilateral interstitial markings.
 - (2) BILATERAL PLEURAL DISEASE OF B2- The term 'bilateral pleural disease of B2' means a chest wall pleural thickening or plaque with a maximum width of at least 5 millimeters and a total length of at least 1/4 of the projection of the lateral chest wall.
 - (3) FEV1- The term 'FEV1' means forced expiratory volume (1 second), which is the maximal volume of air expelled in 1 second during performance of the spirometric test for forced vital capacity.
 - (4) FVC- The term 'FVC' means forced vital capacity, which is the maximal volume of air expired with a maximally forced effort from a position of maximal inspiration.
 - (5) ILO GRADE- The term 'ILO grade' means the radiological ratings for the presence of lung or pleural changes as determined from a chest x-ray, all as established from time to time by the International Labor Organization.
 - (6) PATHOLOGICAL EVIDENCE OF ASBESTOSIS- The term 'pathological evidence of asbestosis' means proof of asbestosis based on

the pathological grading system for asbestosis described in the Special Issue of the Archives of Pathology and Laboratory Medicine, 'Asbestos-associated Diseases', Vol. 106, No. 11, App. 3 (October 8, 1982).

(7) PULMONARY FUNCTION TESTING- The term 'pulmonary function testing' means spirometry testing that is in compliance with the quality criteria established from time to time by the American Thoracic Society and is performed on equipment which is in compliance with the standards of the American Thoracic Society for technical quality and calibration.

(8) SIGNIFICANT OCCUPATIONAL EXPOSURE- The term 'significant occupational exposure' means employment for a cumulative period of at least 5 years, in an industry and an occupation in which the claimant--

(A) handled raw asbestos fibers on a regular basis;

(B) fabricated asbestos-containing products so that the claimant in the fabrication process was exposed on a regular basis to raw asbestos fibers;

(C) altered, repaired, or otherwise worked with an asbestos-containing product such that the claimant was exposed on a regular basis to asbestos fibers; or

(D) was employed in an industry and occupation such that the claimant worked on a regular basis in close proximity to workers engaged in the activities described under subparagraph (A), (B), or (C).

(9) TLC- The term 'TLC' means total lung capacity, which is the volume of air in the lung after maximal inspiration.

(b) REQUIREMENT- To be eligible for an award or medical monitoring reimbursement under this title, a

claimant shall establish that the claimant meets the medical criteria for 1 of the following categories:

(1) For Level I: Asymptomatic Exposure, the claimant shall provide--

(A) a diagnosis that meets the requirements of section 122 of a bilateral asbestos-related nonmalignant disease or an asbestos-related malignancy (except mesothelioma); and

(B) meaningful and credible evidence of 6 months of occupational exposure to asbestos before December 31, 1982.

(2) For Level II: Asbestosis/Pleural Disease A, the claimant shall provide--

(A) a diagnosis that meets the requirements of section 122 of a bilateral asbestos-related nonmalignant disease by B-reader certified chest x-rays; and

(B) meaningful and credible evidence of--

(i) 6 months of occupational exposure to asbestos before December 31, 1982; and

- (ii) significant occupational exposure.
- (3) For Level III: Asbestosis/Pleural Disease B, the claimant shall provide-

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- (A) a diagnosis that meets the requirements of section 122 of asbestosis by B-reader certified chest x-rays showing bilateral pleural disease of B2 or greater, or by pathological evidence of asbestosis;
 - (B) pulmonary function testing that shows--
 - (i) TLC less than 80 percent of predicted; or
 - (ii) FVC less than 80 percent of predicted, and a FEV1/FVC ratio of not less than 65 percent;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.
- (4) For Level IV: Severe Asbestosis, the claimant shall provide--
- (A) a diagnosis that meets the requirements of section 122 of asbestosis by B-reader certified chest x-rays of ILO Grade 2/1 or greater, or by pathological evidence of asbestosis;
 - (B) pulmonary function testing that shows--
 - (i) TLC less than 65 percent of predicted; or
 - (ii) FVC less than 65 percent of predicted, and a FEV1/FVC ratio greater than 65 percent;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the pulmonary condition in question.
- (5) For Level V: Other Cancer, the claimant shall provide--
- (A) a diagnosis that meets the requirements of section 122 of a primary laryngeal, esophageal, pharyngeal, or stomach cancer;
 - (B) evidence of an underlying bilateral asbestos-related nonmalignant disease;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation establishing asbestos exposure as a contributing factor in causing the other cancer in question.
- (6) For Level VI: Lung Cancer One, the claimant shall provide--

- (A) a diagnosis that meets the requirements of section 122 of a primary lung cancer;
 - (B) meaningful and credible evidence of 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (C) supporting medical documentation and certification by or on behalf of the claimant establishing asbestos exposure as a contributing factor causing the relevant lung cancer.
- (7) For Level VII: Lung Cancer Two, the claimant shall provide--
- (A) a diagnosis that meets the requirements of section 122 of a primary lung cancer;
 - (B) evidence of an underlying bilateral asbestos-related nonmalignant disease;
 - (C) meaningful and credible evidence of--
 - (i) 6 months of occupational exposure to asbestos before December 31, 1982; and
 - (ii) significant occupational exposure; and
 - (D) supporting medical documentation and certification by or on behalf of the claimant establishing asbestos exposure as a contributing factor causing the relevant lung cancer.
- (8) For Level VIII: Mesothelioma, the claimant shall provide--
- (A) a diagnosis that meets the requirements of section 122 of mesothelioma; and
 - (B) meaningful and credible evidence of exposure to asbestos before December 31, 1982.

SEC. 125. EXPOSURE CRITERIA REQUIREMENTS.

- (a) REQUIREMENT- To be eligible to receive an award under this title for an asbestos-related injury, the claim submitted by the asbestos claimant shall contain information to demonstrate that--
- (1) the claimant meets the minimum exposure requirements under this subtitle; and
 - (2) such exposure to asbestos occurred within the United States, its territories, or possessions.
- (b) BURDEN OF PROOF-
- (1) IN GENERAL- An asbestos claimant has the burden of demonstrating meaningful and credible exposure to asbestos for purposes of this subtitle.
 - (2) EVIDENCE- The demonstration under paragraph (1) may be established by--
 - (A) an affidavit submitted by the claimant, a coworker of the claimant, or a family member, in the case of a deceased claimant;
 - (B) employment records;
 - (C) invoices;
 - (D) construction or other similar records; or
 - (E) other credible evidence.
- (c) RULES-

(1) EXPOSURE INFORMATION- The Asbestos Court shall issue rules prescribing specific exposure information that shall be submitted to permit the Court to process an asbestos claim and prescribing a proof of claim form. Such rules may provide that a claims examiner or magistrate, as applicable, may require the submission of other or additional evidence of exposure when determined to be appropriate and necessary.

(2) REBUTTABLE PRESUMPTIONS- The Asbestos Court may prescribe rules identifying specific industries, occupations within those industries, time periods, and employment periods for which significant occupational exposure (as defined under section 124) may be a rebuttable presumption for asbestos claimants who provide meaningful and credible evidence that the claimant worked in that industry and occupation for the requisite period of time. The Administrator may provide evidence to rebut this presumption.

Subtitle D--Awards

SEC. 131. AMOUNT.

(a) IN GENERAL- An asbestos claimant who meets the requirements of section 113 shall be entitled to an award in an amount determined by reference to the benefit table contained in subsection (b).

(b) BENEFIT TABLE-

(1) IN GENERAL- An asbestos claimant with an eligible disease or condition established in accordance with section 124, other than an injury described in paragraph (2), shall be eligible for an award according to the following schedule:

Level	Scheduled Condition or Disease

	Scheduled Value

(2) SCHEDULED VALUES FOR LEVELS VI AND VII-

(A) DEFINITION- In this paragraph, the term `nonsmoker' means a claimant who--

- (i) never smoked; or
- (ii) has not smoked during any portion of the 12-year period preceding the diagnosis of the lung cancer.

(B) SCHEDULED VALUES- In accordance with subsection (a), a claimant--

- (i) who is a nonsmoker shall receive--
 - (I) \$50,000 for Level VI; and
 - (II) \$400,000 for Level VII; and
- (ii) who is not a nonsmoker shall receive--
 - (I) \$0 for Level VI; and
 - (II) \$100,000 for Level VII.

(3) MEDICAL MONITORING- An asbestos claimant with asymptomatic exposure or asbestosis/pleural disease A, based on the criteria under section 124(b)(1), shall only be eligible for medical monitoring reimbursement.

SEC. 132. MEDICAL MONITORING.

(a) RELATION TO STATUTE OF LIMITATIONS- The filing of an asbestos claim that seeks reimbursement for medical monitoring shall not be considered as evidence that the claimant has discovered facts that would otherwise commence the period applicable for purposes of the statute of limitations under section 111(c).

(b) COSTS- Reimbursable medical monitoring costs shall include the costs of a claimant not covered by health insurance for x-ray tests and pulmonary function tests every 3 years.

(c) REGULATIONS- The Administrator shall promulgate regulations that establish--

- (1) the reasonable costs for medical monitoring that is reimbursable; and
- (2) the procedures applicable to asbestos claimants.

SEC. 133. PAYMENTS.

(a) STRUCTURED PAYMENTS-

(1) IN GENERAL- An asbestos claimant who is entitled to an award shall receive the amount of the award through structured payments from the Fund, made over a period of not less than 3 years.

(2) ACCELERATED PAYMENTS- The Administrator shall develop guidelines to provide for accelerated payments to asbestos claimants who are mesothelioma victims and who are alive on the date on which the administrator receives notice of the eligibility of the claimant. Such payments shall be credited against the first regular payment under the structured payment plan for the claimant.

(3) EXPEDITED PAYMENTS- The Administrator shall develop guidelines to provide for expedited payments to asbestos claimants in cases of exigent circumstances or extreme hardship caused by asbestos-related injury.

(4) ANNUITY- An asbestos claimant may elect to receive any payments to which they are entitled under this title in the form of an annuity.

(b) LIMITATION ON TRANSFERABILITY- An asbestos claim shall not be assignable or otherwise transferable under this Act.

(c) CREDITORS- An award under this title shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, and such exemption may not be waived.

(d) TREATMENT FOR INTERNAL REVENUE PURPOSES- All amounts of an award received under this subtitle shall be deemed to be compensation for

personal physical injuries or physical sickness under section 104 of the Internal Revenue Code of 1986.

(e) MEDICARE AS SECONDARY PAYER- No award under this title shall be deemed a payment for purposes of section 1862 of the Social Security Act (42 U.S.C. 1395y).

SEC. 134. REDUCTION IN BENEFIT PAYMENTS FOR COLLATERAL SOURCES.

(a) IN GENERAL- The amount of an award otherwise available to an asbestos claimant under this title shall be reduced by the amount of collateral source compensation that the claimant received, or is entitled to receive, for the asbestos-related injury that is the subject of the compensation.

(b) EXCLUSIONS- In no case shall statutory benefits under workers' compensation laws and veterans benefits programs be deemed as collateral source compensation for purposes of this section.

Subtitle E--En Banc Review

SEC. 141. EN BANC REVIEW.

(a) IN GENERAL-

(1) EN BANC PANELS- The chief judge of the Asbestos Court shall--

(A) establish en banc panels to carry out this subtitle; and

(B) assign 3 judges of the Asbestos Court to each en banc panel.

(2) RANDOM ASSIGNMENT OF PANELS- In carrying out paragraph

(1), the chief judge shall--

(A) except as necessary to effectuate subparagraph (B), assign judges to panels randomly; and

(B) assign appeals to panels in a manner that results in no judge reviewing a decision made by that judge.

(3) FILING OF APPEAL- Not later than 30 days after receiving notice of the decision of a judge under section 114, a claimant may file an appeal for review with an en banc panel of the Asbestos Court.

(b) DE NOVO REVIEW- An Asbestos Court panel shall provide a de novo review of the magistrate's determination and the judge's decision.

(c) REPRESENTATION OF THE ADMINISTRATOR- The Administrator may appoint counsel to represent the interests of the Fund and the Administrator in all proceedings before a panel, including oral arguments and the submission of briefs.

(d) FEDERAL RULES OF APPELLATE PROCEDURE- An Asbestos Court panel shall apply the Federal Rules of Appellate Procedures to all proceedings before the panel.

(e) DECISION OF PANEL- An Asbestos Court panel shall enter a final decision on an appeal on the earlier date occurring--

- (1) not later than 30 days after the date of the conclusion of oral arguments; or
- (2) not later than 60 days after an appeal is filed under this section.

TITLE II--ASBESTOS INJURY CLAIMS RESOLUTION FUND

Subtitle A--Asbestos Defendants Funding Allocation

SEC. 201. DEFINITIONS.

In this subtitle, the following definitions shall apply:

- (1) **AFFILIATED GROUP-** The term `affiliated group'--
 - (A) means a defendant participant that is an ultimate parent and any person whose entire beneficial interest is directly or indirectly owned by that ultimate parent on the date of enactment of this Act; and
 - (B) shall not include any person that is a debtor or any direct or indirect majority-owned subsidiary of a debtor.
- (2) **DEBTOR-** The term `debtor'--
 - (A) means--
 - (i) a person that is subject to a case pending under a chapter of title 11, United States Code, on the date of enactment of this Act or at any time during the 1-year period immediately preceding that date, irrespective of whether the debtor's case under that title has been dismissed; and
 - (ii) all of the direct or indirect majority-owned subsidiaries of a person described under clause (i), regardless of whether any such majority-owned subsidiary has a case pending under title 11, United States Code; and
 - (B) shall not include an entity--
 - (i) subject to chapter 7 of title 11, United States Code, if a final decree closing the estate shall have been entered before the date of enactment of this Act; or
 - (ii) subject to chapter 11 of title 11, United States Code, if a plan of reorganization for such entity shall have been confirmed by a duly entered order or judgment of a court that is no longer subject to any appeal or judicial review.
- (3) **INDEMNIFIABLE COST-** The term `indemnifiable cost' means a cost, expense, debt, judgment, or settlement incurred with respect to an asbestos claim that, at any time before December 31, 2002, was or could have been subject to indemnification, contribution, surety, or guaranty.
- (4) **INDEMNITEE-** The term `indemnatee' means a person against whom any asbestos claim has been asserted before December 31, 2002, who has received from any other person, or on whose behalf a sum has been paid by such other person to any third person, in settlement, judgment, defense, or indemnity in connection with an alleged duty with respect to the

defense or indemnification of such person concerning that asbestos claim, other than under a policy of insurance or reinsurance.

(5) INDEMNITOR- The term `indemnitor' means a person who has paid under a written agreement at any time before December 31, 2002, a sum in settlement, judgment, defense, or indemnity to or on behalf of any person defending against an asbestos claim, in connection with an alleged duty with respect to the defense or indemnification of such person concerning that asbestos claim, except that payments by an insurer or reinsurer under a contract of insurance or reinsurance shall not make the insurer or reinsurer an indemnitor for purposes of this subtitle.

(6) PRIOR ASBESTOS EXPENDITURES- The term `prior asbestos expenditures'--

(A) means the gross total amount paid by or on behalf of a person at any time before December 31, 2002, in settlement, judgment, defense, or indemnity costs related to all asbestos claims against that person;

(B) includes payments made by insurance carriers to or for the benefit of such person or on such person's behalf with respect to such asbestos claims, except as provided in section 204(g);

(C) shall not include any payment made by a person in connection with any activities or disputes related to insurance coverage matters for asbestos-related liabilities; and

(D) shall not include any payment made by or on behalf of persons who are or were common carriers by railroad for asbestos claims brought under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, including settlement, judgment, defense, or indemnity costs associated with these claims.

(7) TRUST- The term `trust' means any person formed under section 524(g) of title 11, United States Code, or formed under any plan under section 1129 of title 11, United States Code, for any purpose, including administering and paying asbestos claims.

(8) ULTIMATE PARENT- The term `ultimate parent' means a person--

(A) that owned, as of December 31, 2002, the entire beneficial interest, directly or indirectly, of at least 1 other person; and

(B) whose entire beneficial interest was not owned, on December 31, 2002, directly or indirectly, by any other single person.

SEC. 202. AUTHORITY AND TIERS.

(a) ASSESSMENT-

(1) IN GENERAL- The Administrator shall assess from defendant participants contributions to the Fund in accordance with this section based on tiers and subtiers assigned to defendant participants.

(2) AGGREGATE CONTRIBUTION LEVEL- The total contribution required of all defendant participants over the life of the Fund shall be equal to \$45,000,000,000.

(b) TIER I- The Administrator shall assign to Tier I all debtors that, together with all of their direct or indirect majority-owned subsidiaries, have prior asbestos expenditures greater than \$1,000,000.

(c) TREATMENT OF TIER I BUSINESS ENTITIES IN BANKRUPTCY-

(1) DEFINITION- In this subsection, the term `bankrupt business entity' means a person that is not a natural person that--

(A) filed under chapter 11, of title 11, United States Code, before January 1, 2003;

(B) has not confirmed a plan of reorganization as of the date of enactment of this Act; and

(C) the Chief Executive Officer, Chief Financial Officer, or Chief Legal Officer of that business entity certifies in writing to the bankruptcy court presiding over the business entity's case, that asbestos liability was neither the sole nor precipitating cause for the filing under chapter 11.

(2) PROCEEDING WITH REORGANIZATION PLAN- A bankrupt business entity may proceed with the filing, solicitation, and confirmation of a plan of reorganization that does not comply with the requirements of this Act, including a trust and channeling injunction under section 524(g) of title 11, United States Code, notwithstanding any other provisions of this Act, if--

(A) the bankruptcy court presiding over the chapter 11 case of the bankrupt business entity determines that--

(i) confirmation is necessary to permit the reorganization of that entity and assure that all creditors and that entity are treated fairly and equitably; and

(ii) confirmation is clearly favored by the balance of the equities; and

(B) an order confirming the plan of reorganization is entered by the bankruptcy court within 9 months after the date of enactment of this Act or such longer period of time approved by the bankruptcy court for cause shown.

(3) APPLICABILITY- If the bankruptcy court does not make the required determination, or if an order confirming the plan is not entered within 9 months after the effective date of this Act or such longer period of time approved by the bankruptcy court for cause shown, the provisions of the Act shall apply to the bankrupt business entity notwithstanding the certification. Any timely appeal under title 11, United States Code, from a confirmation order entered during the applicable time period shall automatically extend the time during which this Act is inapplicable to the bankrupt business entity, until the appeal is fully and finally resolved.

(4) OFFSETS-

(A) PAYMENTS BY INSURERS- To the extent that a bankrupt business entity successfully confirms a plan of reorganization, including a trust under section 524(g) of title 11, United States Code, and channeling injunction that involves payments by insurers who are otherwise subject to this Act, an insurer who makes payments to the trust under section 524(g) of title 11, United States Code, shall obtain a dollar for dollar reduction in the amount otherwise payable by that insurer under this Act to the Fund.

(B) CONTRIBUTIONS TO FUND- Any cash payments by a bankrupt business entity, if any, to a trust under section 524(g) of title 11, United States Code, may be counted as a contribution to the Fund.

(d) TIERS II THROUGH VI- Except as provided in sections 202(b), 204(b), and 204(g), persons or affiliated groups shall be assigned to Tier II, III, IV, V, or VI according to the prior asbestos expenditures paid by such persons or affiliated groups as follows:

- (1) Tier II: \$75,000,000 or greater.
- (2) Tier III: \$50,000,000 or greater, but less than \$75,000,000.
- (3) Tier IV: \$10,000,000 or greater, but less than \$50,000,000.
- (4) Tier V: \$5,000,000 or greater, but less than \$10,000,000.
- (5) Tier VI: \$1,000,000 or greater, but less than \$5,000,000.

(e) ASSIGNMENTS AND COSTS-

(1) PERMANENT ASSIGNMENT- Subject to section 204(d), after the Administrator has assigned a person or affiliated group to a tier under this section, such person or affiliated group shall remain in that tier throughout the life of the Fund, regardless of subsequent events, including--

- (A) the filing of a petition under a chapter of title 11, United States Code;
- (B) a discharge from bankruptcy;
- (C) the confirmation of a plan of reorganization; or
- (D) the sale or transfer of assets to any other person or affiliated group.

(2) COSTS- The payment of contributions to the Fund by all persons that are the subject of a case under a chapter of title 11, United States Code, after the date of enactment of this Act--

- (A) shall constitute costs and expenses of administration of the case under section 503 of that title 11 and shall be payable in accordance with the payment provisions under this subtitle notwithstanding the pendency of the case under that title 11;
- (B) shall not be stayed or affected as to enforcement or collection by any stay or injunction power of any court; and
- (C) shall not be impaired or discharged in any current or future case under title 11, United States Code.

(f) SUPERSEDING PROVISIONS- Any plan of reorganization with respect to any debtor assigned to Tier I and any agreement, understanding, or undertaking

by any such debtor or any third party with respect to the treatment of any asbestos claim filed before the date of enactment of this Act and subject to confirmation of a plan under chapter 11 of title 11, United States Code, shall be superseded in their entirety by this Act. Any such plan of reorganization, agreement, understanding, or undertaking by any debtor or any third party shall be of no force or effect, and no person shall have any rights or claims with respect to any of the foregoing.

SEC. 203. SUBTIER ASSESSMENTS.

(a) IN GENERAL-

(1) **ASSESSMENTS-** Except as provided under subsections (a), (b), (d), (f), and (g) of section 204, the Administrator shall assess contributions to persons or affiliated groups within Tiers I through VII in accordance with this section.

(2) REVENUES-

(A) **IN GENERAL-** For purposes of this section, revenues shall be determined in accordance with generally accepted accounting principles, consistently applied, using the amount reported as revenues in the annual report filed with the Securities and Exchange Commission in accordance with section 13(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)(2)) for the most recent fiscal year ending on or before December 31, 2002. If the defendant participant does not file reports with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant would have reported as revenues under the rules of the Securities and Exchange Commission in the event that it had been required to file.

(B) **INSURANCE PREMIUMS-** Any portion of revenues of a defendant participant that is derived from insurance premiums shall not be used to calculate the contribution of that defendant participant under this subtitle.

(C) **PRIVATELY HELD COMPANIES-** If the defendant participant is not required to file an earnings report with the Securities and Exchange Commission, revenues shall be the amount that the defendant participant would have reported as revenues in the event that it had been required to file the report described under subparagraph (A).

(D) **DEBTORS-** Each debtor's revenues shall include the revenues of the debtor and all of the direct or indirect majority-owned subsidiaries of that debtor, except that the pro forma revenues of a person that is assigned to Subtier 2 of Tier I shall not be included in calculating the revenues of any debtor that is a direct or indirect majority owner of such Subtier 2 person.

(b) TIER I SUBTIERS-

(1) IN GENERAL- Except as provided under subsections (a), (b), (d), (f), and (g) of section 204, the Administrator shall assign each debtor in Tier I to subtiers. Each debtor or shall make contributions to the Fund as provided under this section.

(2) SUBTIER 1-

(A) IN GENERAL- All persons that are debtors with prior asbestos expenditures of \$1,000,000 or greater, shall be assigned to Subtier 1.

(B) ASSIGNMENT- Each debtor assigned to Subtier 1 shall make annual payments based on a percentage of its 2002 revenues.

(C) PAYMENT- Each debtor assigned to Subtier 1 shall pay on an annual basis the following with respect to the year of the establishment of the Fund:

(i) Years 1 through 5, 1.5005 percent of the debtor's 2002 revenues.

(ii) Years 6 through 8, 1.3504 percent of the debtor's 2002 revenues.

(iii) Years 9 through 11, 1.2154 percent of the debtor's 2002 revenues.

(iv) Years 12 through 14, 1.0938 percent of the debtor's 2002 revenues.

(v) Years 15 through 17, .9845 percent of the debtor's 2002 revenues.

(vi) Years 18 through 20, .8860 percent of the debtor's 2002 revenues.

(vii) Years 21 through 23, .7974 percent of the debtor's 2002 revenues.

(viii) Years 24 through 26, .7177 percent of the debtor's 2002 revenues.

(ix) Year 27, .1794 percent of the debtor's 2002 revenues.

(3) SUBTIER 2-

(A) IN GENERAL- Notwithstanding paragraph (2), all persons that are debtors that have no material continuing business operations but hold cash or other assets that have been allocated or earmarked for asbestos settlements shall be assigned to Subtier 2.

(B) ASSIGNMENT OF ASSETS- Not later than 30 days after the date of enactment of this Act, each person assigned to Subtier 2 shall assign all of its assets to the Fund.

(4) SUBTIER 3-

(A) IN GENERAL- Notwithstanding paragraph (2), all persons that are debtors other than those included in Subtier 2, which have no material continuing business operations and no cash or other assets allocated or earmarked for the settlement of any asbestos claim, shall be assigned to Subtier 3.

(B) ASSIGNMENT OF UNENCUMBERED ASSETS- Not later than 30 days after the date of enactment of this Act, each person

assigned to Subtier 3 shall contribute an amount equal to 50 percent of its total unencumbered assets.

(C) CALCULATION OF UNENCUMBERED ASSETS-

Unencumbered assets shall be calculated as the Subtier 3 person's total assets, excluding insurance related assets, less--

- (i) all allowable administrative expenses;
- (ii) allowed priority claims under section 507 of title 11, United States Code; and
- (iii) allowed secured claims.

(c) TIER II SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier II to 1 of 5 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with--

- (A) those persons or affiliated groups with the highest revenues assigned to Subtier 1;
- (B) those persons or affiliated groups with the next highest revenues assigned to Subtier 2;
- (C) those persons or affiliated groups with the lowest revenues assigned to Subtier 5;
- (D) those persons or affiliated groups with the next lowest revenues assigned to Subtier 4; and
- (E) those persons or affiliated groups remaining assigned to Subtier 3.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$25,000,000.
- (B) Subtier 2: \$22,500,000.
- (C) Subtier 3: \$20,000,000.
- (D) Subtier 4: \$17,500,000.
- (E) Subtier 5: \$15,000,000.

(d) TIER III SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier III to 1 of 5 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with--

- (A) those persons or affiliated groups with the highest revenues assigned to Subtier 1;
- (B) those persons or affiliated groups with the next highest revenues assigned to Subtier 2;
- (C) those persons or affiliated groups with the lowest revenues assigned to Subtier 5;
- (D) those persons or affiliated groups with the next lowest revenues assigned to Subtier 4; and
- (E) those persons or affiliated groups remaining assigned to Subtier 3.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$15,000,000.
- (B) Subtier 2: \$12,500,000.
- (C) Subtier 3: \$10,000,000.
- (D) Subtier 4: \$7,500,000.
- (E) Subtier 5: \$5,000,000.

(e) TIER IV SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier IV to 1 of 4 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 4. Those persons or affiliated groups with the highest revenues among those remaining will be assigned to Subtier 2 and the rest in Subtier 3.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$3,500,000.
- (B) Subtier 2: \$2,250,000.
- (C) Subtier 3: \$1,500,000.
- (D) Subtier 4: \$500,000.

(f) TIER V SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier V to 1 of 3 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$1,000,000.
- (B) Subtier 2: \$500,000.
- (C) Subtier 3: \$200,000.

(g) TIER VI SUBTIERS-

(1) IN GENERAL- The Administrator shall assign each person or affiliated group in Tier VI to 1 of 3 subtiers, based on the person's or affiliated group's revenues. Such subtiers shall each contain as close to an equal number of total persons and affiliated groups as possible, with those persons or affiliated groups with the highest revenues in Subtier 1, those with the lowest revenues in Subtier 3, and those remaining in Subtier 2.

(2) PAYMENT- Each person or affiliated group within an assigned subtier shall pay, on an annual basis, the following:

- (A) Subtier 1: \$500,000.
- (B) Subtier 2: \$250,000.
- (C) Subtier 3: \$100,000.

(h) TIER VII-

(1) IN GENERAL- Notwithstanding any assignment to Tiers II, III, IV, V, and VI based on prior asbestos expenditures under section 204(d), a person shall be assigned to Tier VII if the person--

(A) is subject to asbestos claims brought under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.) as a result of operations as a common carrier by railroad; and

(B) have paid not less than \$5,000,000 in settlement, judgment, defense, or indemnity costs relating to such claims.

(2) ADDITIONAL AMOUNT- The contribution requirement for persons assigned to Tier VII shall be in addition to any applicable contribution requirement that such person may be assessed under Tiers II through VI.

(3) SUBTIER 1- The Administrator shall assign each person or affiliated group in Tier VII with revenues of not less than \$5,000,000,000 to Subtier 1 and shall require each such person or affiliated group to make annual payments of \$10,000,000 into the Fund.

(4) SUBTIER 2- The Administrator shall assign each person or affiliated group in Tier VII with revenues of less than \$5,000,000,000, but not less than \$3,000,000,000 to Subtier 2, and shall require each such person or affiliated group to make annual payments of \$5,000,000 into the Fund.

(5) SUBTIER 3- The Administrator shall assign each person or affiliated group in Tier VII with revenues of less than \$3,000,000,000, but not less than \$500,000,000 to Subtier 3, and shall require each such person or affiliated group to make annual payments of \$500,000 into the Fund.

(6) JOINT VENTURE REVENUES AND LIABILITY-

(A) REVENUES- For purposes of this subsection, the revenues of a joint venture shall be included on a pro rata basis reflecting relative joint ownership to calculate the revenues of the parents of that joint venture. The joint venture shall not be responsible for a contribution amount under this subsection.

(B) LIABILITY- For purposes of this subsection, the liability under the Act of April 22, 1908 (45 U.S.C. 51 et seq.), commonly known as the Federal Employers' Liability Act, shall be attributed to the parent owners of the joint venture on a pro rata basis, reflecting their relative share of ownership. The joint venture shall not be responsible for a contribution amount under this provision.

SEC. 204. ASSESSMENT ADMINISTRATION.

(a) REDUCTION ADJUSTMENTS- The Administrator shall assess contributions based on amounts provided under this subtitle for each person or affiliated group

within Tiers II, III, IV, V, VI, and VII for the first 5 years of the operation of the Fund. Beginning in year 6, and thereafter, the Administrator shall reduce the contribution amount for each defendant participant in each of these tiers in proportion to the reductions in the schedule under subsection (h)(2).

(b) **SMALL BUSINESS EXEMPTION-** A person or affiliated group that is a small business concern (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), on December 31, 2002, is exempt from any contribution requirement under this subtitle.

(c) **PROCEDURES-** The Administrator shall prescribe procedures on how contributions assessed under this subtitle are to be paid.

(d) **EXCEPTIONS-**

(1) **IN GENERAL-** Under expedited procedures established by the Administrator, a defendant participant may seek adjustment of the amount of its contribution based on severe financial hardship or demonstrated inequity. The Administrator may determine whether to grant an adjustment and the size of any such adjustment, in accordance with this subsection. Such determinations shall not prejudice the integrity of the Fund and shall not be subject to judicial review.

(2) **FINANCIAL HARDSHIP ADJUSTMENTS-**

(A) **IN GENERAL-** A defendant may apply for an adjustment based on financial hardship at any time during the life of the Fund and may qualify for such adjustment by demonstrating that the amount of its contribution under the statutory allocation would constitute a severe financial hardship.

(B) **TERM-** A hardship adjustment under this subsection shall have a term of 3 years.

(C) **RENEWAL-** A defendant may renew its hardship adjustment by demonstrating that it remains justified.

(D) **LIMITATION-** The Administrator may not grant hardship adjustments under this subsection in any year that exceed, in the aggregate, 3 percent of the total annual contributions required of all defendant participants.

(3) **INEQUITY ADJUSTMENTS-**

(A) **IN GENERAL-** A defendant may qualify for an adjustment based on inequity by demonstrating that the amount of its contribution under the statutory allocation is exceptionally inequitable when measured against the amount of the likely cost to the defendant of its future liability in the tort system in the absence of the Fund.

(B) **TERM-** Subject to the annual availability of funds in the Orphan Share Reserve Account established under section 223(e), an inequity adjustment granted by the Administrator under this subsection shall remain in effect for the life of the Fund.

(C) **LIMITATION-** The Administrator may grant inequity adjustments only to the extent that--

(i) the financial condition of the Fund is sufficient to accommodate such adjustments;

(ii) the Orphan Share Reserve Account is sufficient to cover such adjustments for that year; and

(iii) such adjustments do not exceed 2 percent of the total annual contributions required of all defendant participants.

(4) ADVISORY PANELS-

(A) APPOINTMENT- The Administrator shall appoint a Financial Hardship Adjustment Panel and an Inequity Adjustment Panel to advise the Administrator in carrying out this subsection.

(B) MEMBERSHIP- The membership of the panels appointed under subparagraph (A) may overlap.

(C) COORDINATION- The panels appointed under subparagraph (A) shall coordinate their deliberations and recommendations.

(e) LIMITATION ON LIABILITY- The liability of each defendant participant to contribute to the Fund shall be limited to the payment obligations under this subtitle, and, except as provided in subsection (f), no defendant participant shall have any liability for the payment obligations of any other defendant participant.

(f) CONSOLIDATION OF CONTRIBUTIONS-

(1) IN GENERAL- For purposes of determining the contribution levels of defendant participants, any affiliated group including 1 or more defendant participants may irrevocably elect, as part of the submission to be made under subsection (i), to report on a consolidated basis all of the information necessary to determine the contribution level under this subtitle and contribute to the Fund on a consolidated basis.

(2) ELECTION- If an affiliated group elects consolidation as provided in this subsection--

(A) for purposes of this Act other than this subsection, the affiliated group shall be treated as if it were a single participant, including without limitation with respect to the assessment of a single annual contribution under this subtitle for the entire affiliated group;

(B) the ultimate parent of the affiliated group shall prepare and submit the submission to be made under subsection (i), on behalf of the entire affiliated group and shall be solely liable, as between the Administrator and the affiliated group only, for the payment of the annual contribution assessed against the affiliated group, except that, if the ultimate parent does not pay when due any contribution for the affiliated group, the Administrator shall have the right to seek payment of all or any portion of the entire amount due from any member of the affiliated group;

(C) all members of the affiliated group shall be identified in the submission under subsection (i) and shall certify compliance with this

subsection and the Administrator's regulations implementing this subsection; and

(D) the obligations under this subtitle shall not change even if, after the date of enactment of this Act, the beneficial ownership interest between any members of the affiliated group shall change.

(g) DETERMINATION OF PRIOR ASBESTOS EXPENDITURES-

(1) IN GENERAL- For purposes of determining a defendant participant's prior asbestos expenditure, the Administrator shall prescribe such rules as may be necessary or appropriate to assure that payments by indemnitors before December 31, 2002, shall be counted as part of the indemnitor's prior asbestos expenditure, rather than the indemnitee's prior asbestos expenditure, in accordance with this subsection.

(2) INDEMNIFIABLE COSTS- If an indemnitor has paid or reimbursed to an indemnitee any indemnifiable cost or otherwise made a payment on behalf of or for the benefit of an indemnitee to a third party for an indemnifiable cost before December 31, 2002, the amount of such indemnifiable cost shall be solely for the account of the indemnitor for purposes under this Act.

(3) INSURANCE PAYMENTS- When computing the prior asbestos expenditure with respect to an asbestos claim, any amount paid or reimbursed by insurance shall be solely for the account of the indemnitor, even if the indemnitor would have no direct right to the benefit of the insurance, if--

(A) such insurance has been paid or reimbursed to the indemnitor or the indemnitee, or paid on behalf of or for the benefit of the indemnitee, any indemnifiable cost related to the asbestos claim; and

(B) the indemnitor has either, with respect to such asbestos claim or any similar asbestos claim, paid or reimbursed to its indemnitee any indemnifiable cost or paid to any third party on behalf of or for the benefit of the indemnitee any indemnifiable cost.

(h) MINIMUM CONTRIBUTIONS- Minimum aggregate contributions of defendant participants to the Fund in any calendar year shall be as follows:

(1) For each of the first 5 years of the Fund, the aggregate contributions of defendant participants to the fund shall be at least \$2,500,000,000.

(2) After the 5th year, the minimum aggregate contribution shall be reduced as follows:

(A) For years 6 through 8, \$2,250,000,000.

(B) For years 9 through 11, \$2,000,000,000.

(C) For years 12 through 14, \$1,750,000,000.

(D) For years 15 through 17, \$1,500,000,000.

(E) For years 18 through 20, \$1,250,000,000.

(F) For years 21 through 26, \$1,000,000,000.

(G) For year 27, \$250,000,000.

(i) PROCEDURES TO DETERMINE FUND CONTRIBUTION ASSESSMENTS-

(1) NOTICE TO PARTICIPANTS- Not later than 60 days after the initial appointment of the Administrator, the Administrator shall--

(A) directly notify all reasonably identifiable defendant participants of the requirement to submit information necessary to calculate the amount of any required contribution to the Fund; and

(B) publish in the Federal Register a notice requiring any person who may be a defendant participant (as determined by criteria outlined in the notice) to submit such information.

(2) RESPONSE REQUIRED-

(A) IN GENERAL- Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Administrator with all the information requested in the notice at the earlier of--

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION- The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE OF INITIAL DETERMINATION-

(A) IN GENERAL- Not later than 60 days after receiving a response under paragraph (2), the Administrator shall send the participant a notice of initial determination assessing a contribution to the Fund, which shall be based on the information received from the participant in response to the Administrator's request for information.

(B) NO RESPONSE; INCOMPLETE RESPONSE- If no response is received from the participant, or if the response is incomplete, the initial determination assessing a contribution from the participant shall be based on the best information available to the Administrator.

(4) CONFIDENTIALITY- Any person may designate any information submitted under this subsection as confidential commercial or financial information for purposes of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act). The Administrator shall adopt procedures for designating such information as confidential.

(5) NEW INFORMATION-

(A) EXISTING PARTICIPANT- The Administrator shall adopt procedures for revising initial assessments based on new information received after the initial assessments are calculated.

(B) ADDITIONAL PARTICIPANT- If the Administrator, at any time, receives information that an additional person may qualify as a participant, the Administrator shall require such person to submit information necessary to determine whether an initial determination assessing a contribution from that person should be issued, in accordance with the requirements of this subsection.

(6) PAYMENT SCHEDULE- Any initial determination issued under this subsection may allow for periodic payments, if the full annual amount assessed is paid each year. Each participant shall pay its contribution to the Fund in the amount specified at the initial determination of assessment from the Administrator, according to the schedule specified in the initial determination.

(7) SUBPOENAS- The Administrator may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(8) REHEARING- A participant has a right to obtain rehearing of the Administrator's initial determination under section 202.

Subtitle B--Asbestos Insurers Commission

SEC. 211. ESTABLISHMENT OF ASBESTOS INSURERS COMMISSION.

(a) ESTABLISHMENT- There is established the Asbestos Insurers Commission (referred to in this subtitle as the 'Commission') to carry out the duties described in section 212.

(b) MEMBERSHIP-

(1) APPOINTMENT- The Commission shall be composed of 5 members who shall be appointed by the President, after consultation with--

- (A) the majority leader of the Senate;
- (B) the minority leader of the Senate;
- (C) the Speaker of the House of Representatives; and
- (D) the minority leader of the House of Representatives.

(2) QUALIFICATIONS-

(A) EXPERTISE- Members of the Commission shall have sufficient expertise to fulfill their responsibilities under this subtitle.

(B) CONFLICT OF INTEREST- No member of the Commission appointed under paragraph (1) may be an employee, former employee, or shareholder of any insurer participant, or an immediate family member of any such individual.

(C) FEDERAL EMPLOYMENT- A member of the Commission may not be an officer or employee of the Federal Government, except by reason of membership on the Commission.

(3) DATE- The appointments of the members of the Commission shall be made not later than 60 days after the date of enactment of this Act.

(4) PERIOD OF APPOINTMENT- Members shall be appointed for the life of the Commission.

(5) VACANCIES- Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(6) CHAIRMAN- The Commission shall select a Chairman from among its members.

(c) MEETINGS-

(1) INITIAL MEETING- Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(2) SUBSEQUENT MEETINGS- The Commission shall meet at the call of the Chairman as necessary to accomplish the duties under section 212.

(3) QUORUM- No business may be conducted or hearings held without the participation of all of the members of the Commission.

SEC. 212. DUTIES OF ASBESTOS INSURERS COMMISSION.

(a) DETERMINATION OF INSURER LIABILITY FOR ASBESTOS INJURIES-

(1) IN GENERAL- The Commission shall determine the amount that each insurer participant will be required to pay into the Fund to satisfy their contractual obligation to compensate claimants for asbestos injuries.

(2) ALLOCATION AGREEMENT-

(A) IN GENERAL- Not later than 30 days after the Commission issues its initial determination, the insurer participants may submit an allocation agreement, approved by all of the insurer participants, to--

(i) the Commission;

(ii) the Committee on the Judiciary of the Senate; and

(iii) the Committee on the Judiciary of the House of Representatives.

(B) CERTIFICATION- The authority of the Commission under this subtitle shall terminate on the day after the Commission certifies that an allocation agreement submitted under subparagraph (A) meets the requirements of this subtitle.

(3) GENERAL PROVISIONS-

(A) AGGREGATE CONTRIBUTION LEVEL- The total contribution required of all insurer participants over the life of the Fund shall be equal to \$45,000,000,000.

(B) DECLINING PAYMENTS- Since the payments from the Fund are expected to decline over time, the annual contributions from insurer participants is also expected to decline over time. The proportionate share of each insurer participant's contributions to the Fund will remain the same throughout the life of the Fund.

(C) SEVERAL LIABILITY- Each insurer participant's obligation to contribute to the Fund is several. There is no joint liability and the future insolvency of any insurer participant shall not affect the assessment assigned to any other insurer participant.

(4) ASSESSMENT CRITERIA-

(A) MANDATORY PARTICIPANTS- Insurers that have paid, or been assessed by a legal judgment or settlement, at least \$1,000,000 in defense and indemnity costs before the date of enactment of this Act in response to claims for compensation for asbestos injuries shall be mandatory participants in the Fund. Other insurers shall be exempt from mandatory payments.

(B) PARTICIPANT TIERS- Contributions shall be determined by assigning mandatory insurer participants into tiers, which shall be determined and defined based on--

(i) net written premiums received from policies covering asbestos that were in force at any time during the period beginning on January 1, 1940 and ending on December 31, 1986;

(ii) net paid losses for asbestos injuries compared to all such losses for the insurance industry;

(iii) net carried reserve level for asbestos claims on the most recent financial statement of the insurer participant; and

(iv) future liability.

(C) PAYMENT SCHEDULE- Any final determination of assessment issued under subsection (b) may allow for periodic payments, provided that the full annual amount assessed is paid each year. Each insurer participant shall pay its contribution to the Fund in the amount specified in the final determination of assessment from the Commission, according to the schedule specified in the final determination.

(b) PROCEDURE-

(1) NOTICE TO PARTICIPANTS- Not later than 30 days after the initial meeting of the Commission, the Commission shall--

(A) directly notify all reasonably identifiable insurer participants of the requirement to submit information necessary to calculate the amount of any required contribution to the Fund; and

(B) publish in the Federal Register a notice requiring any person who may be an insurer participant (as determined by criteria outlined in the notice) to submit such information.

(2) RESPONSE REQUIRED-

(A) IN GENERAL- Any person who receives notice under paragraph (1)(A), and any other person meeting the criteria specified in the notice published under paragraph (1)(B), shall respond by providing the Commission with all the information requested in the notice at the earlier of--

(i) 30 days after the receipt of direct notice; or

(ii) 30 days after the publication of notice in the Federal Register.

(B) CERTIFICATION- The response submitted under subparagraph (A) shall be signed by a responsible corporate officer, general partner, proprietor, or individual of similar authority, who shall certify under penalty of law the completeness and accuracy of the information submitted.

(3) NOTICE OF INITIAL DETERMINATION-

(A) IN GENERAL- Not later than 120 days after the initial meeting of the Commission, the Commission shall send each insurer participant a notice of initial determination assessing a contribution to the Fund, which shall be based on the information received from the participant in response to the Commission's request for information.

(B) NO RESPONSE; INCOMPLETE RESPONSE- If no response is received from an insurer participant, or if the response is incomplete, the initial determination assessing a contribution from the insurer participant shall be based on the best information available to the Commission.

(4) REVIEW PERIOD-

(A) COMMENTS FROM INSURER PARTICIPANTS- Not later than 30 days after receiving a notice of initial determination from the Commission, an insurer participant may provide the Commission with additional information to support limited adjustments to the assessment received to reflect exceptional circumstances.

(B) ADDITIONAL PARTICIPANTS- If, before the final determination of the Commission,

the Commission receives information that an additional person may qualify as an insurer participant, the Commission shall require such person to submit information necessary to determine whether a contribution from that person should be assessed, in accordance with the requirements of this subsection.

(C) REVISION PROCEDURES- The Commission shall adopt procedures for revising initial assessments based on information received under subparagraphs (A) and (B). Any adjustments to assessment levels shall comply with the criteria under subsection (a).

(5) SUBPOENAS- The Commission may request the Attorney General to subpoena persons to compel testimony, records, and other information relevant to its responsibilities under this section. The Attorney General may enforce such subpoena in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(6) NOTICE OF FINAL DETERMINATION-

(A) IN GENERAL- Not later than 60 days after the notice of initial determination is sent to the insurer participants, the Commission shall send each insurer participant a notice of final determination.

(B) JUDICIAL REVIEW- A participant has a right to obtain judicial review of the Commission's final determination under title III.

(c) DETERMINATION OF RELATIVE LIABILITY FOR ASBESTOS INJURIES- The Commission shall determine the percentage of the total liability of each participant identified under subsection (a).

(d) REPORT-

(1) RECIPIENTS- Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report, containing the information described under paragraph (2), to--

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives; and

(C) the Court of Asbestos Claims.

(2) CONTENTS- The report under paragraph (1) shall contain the amount that each insurer participant is required to contribute to the Fund, including the payment schedule for such contributions.

SEC. 213. POWERS OF ASBESTOS INSURERS COMMISSION.

(a) HEARINGS- The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) INFORMATION FROM FEDERAL AGENCIES- The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES- The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS- The Commission may not accept, use, or dispose of gifts or donations of services or property.

SEC. 214. PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS- Each member of the Commission shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission.

(b) TRAVEL EXPENSES- The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for

employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF-

(1) IN GENERAL- The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION- The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES- Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES- The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC. 215. NONAPPLICATION OF FOIA AND CONFIDENTIALITY OF INFORMATION.

(a) IN GENERAL- Section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) shall not apply to the Commission.

(b) CONFIDENTIALITY OF INFORMATION- All information submitted to the Commission shall be privileged and confidential information and shall not be disclosed to any person outside the Commission, unless such privilege is knowingly and intentionally waived by the person submitting the information. An appeal of an assessment to the Fund under this subtitle shall be deemed a waiver for

the purposes of this subsection unless the appellee participant makes a motion for an in camera review of its appeal.

SEC. 216. TERMINATION OF ASBESTOS INSURERS COMMISSION.

The Commission shall terminate 60 days after the date on which the Commission submits its report under section 212(c).

SEC. 217. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL- There are authorized to be appropriated to the Commission such sums as may be necessary for fiscal year 2004 to carry out the provisions of this subtitle.

(b) AVAILABILITY- Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

Subtitle C--Office of Asbestos Injury Claims Resolution

SEC. 221. ESTABLISHMENT OF THE OFFICE OF ASBESTOS INJURY CLAIMS RESOLUTION.

(a) IN GENERAL- There is established the Office of Asbestos Injury Claims Resolution.

(b) RESPONSIBILITIES- The Office shall be responsible for--

- (1) administering the Fund;
- (2) providing payments from the Fund to asbestos claimants who are determined to be eligible for awards; and
- (3) carrying out other applicable provisions of this title and other activities determined appropriate by the Administrator.

(c) ADMINISTRATOR-

- (1) APPOINTMENT- The Office shall be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate.
- (2) TERM; REMOVAL- The Administrator shall serve for a term of 5 years and may be removable by the President only for good cause.

SEC. 222. POWERS OF THE ADMINISTRATOR AND MANAGEMENT OF THE FUND.

(a) GENERAL POWERS- The Administrator shall have the following general powers:

- (1) To promulgate such regulations as the Administrator determines to be necessary to implement the provisions of this subtitle.
- (2) To appoint employees or contract for the services of other personnel as may be necessary and appropriate to carry out the provisions of this subtitle, including entering into cooperative agreements with other Federal agencies.
- (3) To make such expenditures as may be necessary and appropriate in the administration of this subtitle.
- (4) To take all actions necessary to prudently manage the Fund, including-

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- (A) administering, in a fiduciary capacity, the assets of the Fund for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries;
- (B) defraying the reasonable expenses of administering the Fund;
- (C) investing the assets of the Fund in accordance with subsection (b)(2); and
- (D) retaining advisers, managers, and custodians who possess the necessary facilities and expertise to provide for the skilled and prudent management of the Fund, to assist in the development, implementation and maintenance of the Fund's investment policies and investment activities, and to provide for the safekeeping and delivery of the Fund's assets.

(5) To have all other powers incidental, necessary, or appropriate to carrying out the functions of the Office.

(b) REQUIREMENTS RELATING TO FUND ASSETS-

(1) IN GENERAL- Amounts in the Fund shall be held for the exclusive purpose of providing benefits to asbestos claimants and their beneficiaries and to otherwise defray the reasonable expenses of administering the Fund.

(2) INVESTMENTS-

(A) IN GENERAL- Amounts in the Fund shall be administered and invested with the care, skill, prudence, and diligence, under the circumstances prevailing at the time of such investment, that a prudent person acting in a like capacity and manner would use.

(B) STRATEGY- The Administrator shall invest amounts in the Fund in a manner that enables the Fund to make current and future distributions to or for the benefit of asbestos claimants. In pursuing an investment strategy under this subparagraph, the Administrator shall consider, to the extent relevant to an investment decision or action--

- (i) the size of the Fund;
- (ii) the nature and estimated duration of the Fund;
- (iii) the liquidity and distribution requirements of the Fund;
- (iv) general economic conditions at the time of the investment;
- (v) the possible effect of inflation or deflation on Fund assets;
- (vi) the role that each investment or course of action plays with respect to the overall assets of the Fund;
- (vii) the expected amount to be earned (including both income and appreciation of capital) through investment of amounts in the Fund; and
- (viii) the needs of asbestos claimants for current and future distributions authorized under this Act.

(c) VIOLATIONS OF ENVIRONMENTAL AND OCCUPATIONAL HEALTH AND SAFETY REQUIREMENTS-

(1) ASBESTOS IN COMMERCE- If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under section 6(a)

of the Toxic Substances Control Act (15 U.S.C. 2605(a)), relating to the manufacture, importation, processing and distribution in commerce of asbestos-containing products, the Administrator may refer the matter to the Administrator of the Environmental Protection Agency and the United States Attorney for possible civil or criminal penalties under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)).

(2) ASBESTOS AS AIR POLLUTANT- If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Environmental Protection Agency under section 112(d) of the Clean Air Act (42 U.S.C. 7412(d)), relating to asbestos as a hazardous air pollutant, the Administrator may refer the matter to the Administrator of the Environmental Protection Agency and the United States Attorney for possible criminal and civil penalties under section 113 of the Clean Air Act (42 U.S.C. 7413).

(3) OCCUPATIONAL EXPOSURE- If the Administrator receives information concerning conduct occurring after the date of enactment of this Act that may have been a violation of standards issued by the Occupational Safety and Health Administration under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), relating to occupational exposure to asbestos, the Administrator may refer the matter to the United States Attorney for possible criminal prosecution under section 5(a) of such Act (29 U.S.C. 654(a)), and to the Secretary of Labor for possible civil penalties under section 17 (a)-(d) of such Act (29 U.S.C. 666 (a)-(d)).

SEC. 223. ASBESTOS INJURY CLAIMS RESOLUTION FUND.

(a) ESTABLISHMENT- There is established in the Office of Asbestos Injury Claims Resolution, the Asbestos Injury Claims Resolution Fund, which shall be available to pay--

- (1) claims for awards for an eligible disease or condition determined under title I;
- (2) claims for reimbursement for medical monitoring determined under title I;
- (3) principal and interest on borrowings under subsection (c); and
- (4) administrative expenses to carry out this subtitle.

(b) LIMITATIONS ON CONTRIBUTIONS BY MANDATORY

PARTICIPANTS- The aggregate contributions of all mandatory participants to the Fund may not exceed \$5,000,000,000 in any calendar year.

(c) **BORROWING AUTHORITY-** The Administrator is authorized to borrow, in any calendar year, an amount not to exceed anticipated contributions to the Fund in the following calendar year for purposes of carrying out the obligations of the Fund under this Act.

(d) **GUARANTEED PAYMENT ACCOUNT-**

(1) **IN GENERAL-** The Administrator shall establish a guaranteed payment account within the Fund to insure payment of the total amount of contributions required to be paid into the Fund by all participants.

(2) **SURCHARGE-** The Administrator shall impose, on each participant required to pay contributions into the Fund under this Act, in addition to the amount of such contributions, a reasonable surcharge to be paid into the guaranteed payment account in an amount that the Administrator determines appropriate to insure against the risk of nonpayment of required contributions by any such participant.

(3) **PROCEDURE-** The surcharge required under this section shall be paid in such manner, at such times, and in accordance with such procedures as the Administrator determines appropriate.

(4) **USES OF GUARANTEED PAYMENT ACCOUNT-** Amounts in the guaranteed payment account shall be used as necessary to pay claims from the Fund, to the extent that amounts in the Fund are insufficient to pay such claims due to nonpayment by any participant.

(5) **ENFORCEMENT-** The enforcement of the payment of a surcharge under this subsection may be enforced in the same manner and to the same extent as the enforcement of a contribution under section 224.

(e) **ORPHAN SHARE RESERVE ACCOUNT-**

(1) **IN GENERAL-** To the extent the total amount of contributions of the participants in any given year exceed the maximum aggregate contribution under section 204(h), the excess monies shall be placed in an orphan share reserve account established within the Fund by the Administrator.

(2) **USE OF ACCOUNT MONIES-** Monies from the orphan share reserve account shall be preserved and administered like the remainder of the Fund, but shall be reserved and may be used only--

(A) in the event that a petition for relief is filed and not withdrawn for the participant under title 11, United States Code, after the date of enactment of this Act and the participant cannot meet its obligations under this subtitle; and

(B) to the extent the Administrator grants a participant relief for severe financial hardship or demonstrated inequity under this section.

SEC. 224. ENFORCEMENT OF CONTRIBUTIONS.

(a) **DEFAULT-** If any participant fails to make any payment in the amount and according to the schedule specified in a determination of assessment, after demand and 30 days opportunity to cure the default, there shall be a lien in favor of the United States for the amount of the delinquent payment (including interest)

upon all property and rights to property, whether real or personal, belonging to such participant.

(b) BANKRUPTCY- In the case of a bankruptcy or insolvency proceeding, the lien imposed under subsection (a) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the provisions of title 11, United States Code, or section 3713(a) of title 31, United States Code.

(c) CIVIL ACTION-

(1) IN GENERAL- In any case in which there has been a refusal or neglect to pay the liability imposed by the final determination under section 202 or 212, the Administrator may bring a civil action in the Federal district court for the District of Columbia to--

(A) enforce such liability and the lien of the United States under this section; or

(B) subject any property, of whatever nature, of the participant, or in which the participant has any right, title, or interest, to the payment of such liability.

(2) DEFENSE LIMITATION- In any proceeding under this subsection, the participant shall be barred from bringing any challenge to the assessment if such challenge could have been made during the review period under section 202(b)(4) or 212(b)(4), or a judicial review proceeding under title III.

SEC. 225. ADDITIONAL CONTRIBUTING PARTICIPANTS.

(a) DEFINITION- In this section, the term 'additional contributing participant' means any defendant in an asbestos claim that is not a mandatory participant under subtitle A and is likely to avoid future civil liability as a result of this Act.

(b) ASSESSMENT- In addition to contributions assessed under subtitle A, the Administrator may assess additional contributing participants for contributions to the Fund. Any additional contributing participant assessed under this section shall be treated as a defendant participant for purposes of procedures and appeals under this Act.

(c) ASSESSMENT LIMITATIONS- The Administrator may assess under subsection (b), over the life of the Fund, an amount not to exceed \$14,000,000,000 from all additional contributing participants.

TITLE III--JUDICIAL REVIEW

SEC. 301. JUDICIAL REVIEW OF DECISIONS OF THE ASBESTOS COURT.

(a) EXCLUSIVE JURISDICTION- The United States Court of Appeals for the District of Columbia shall have exclusive jurisdiction over any action to review a final decision of the Asbestos Court.

(b) PROCEDURE FOR APPEALS-

(1) PERIOD FOR FILING APPEAL- An appeal under this section shall be filed not later than 30 days after the issuance of a final decision by the Asbestos Court.

(2) TRANSMITTAL OF RECORD- Upon the filing of an appeal, a copy of the filing shall be transmitted by the clerk of the court to the Asbestos Court, and the Asbestos Court shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(3) STANDARD OF REVIEW-

(A) IN GENERAL- The court shall uphold the decision of the Asbestos Court if the court determines, upon review of the record as a whole, that the decision is not arbitrary and capricious.

(B) EFFECT OF DETERMINATION- If the court determines that a final decision of the Asbestos Court is arbitrary and capricious, the court shall remand the case to the Asbestos Court.

(4) FINALITY OF DETERMINATION- The decision of the United States Court of Appeals for the District of Columbia shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.

SEC. 302. JUDICIAL REVIEW OF FINAL DETERMINATIONS OF THE ADMINISTRATOR AND OF THE ASBESTOS INSURERS COMMISSION.

(a) EXCLUSIVE JURISDICTION- The United States District Court for the District of Columbia shall have exclusive jurisdiction over any action to review a final determination by the Administrator or the Asbestos Insurers Commission regarding the assessment of a contribution to the Fund from a participant.

(b) PROCEDURE FOR APPEAL-

(1) PERIOD FOR FILING APPEAL- An appeal under this section shall be filed not later than 30 days after the issuance of a final determination by the Administrator or the Commission.

(2) TRANSMITTAL OF RECORD- Upon the filing of an appeal, a copy of the filing shall be transmitted by the clerk of the court to the Administrator or the Commission.

(c) STANDARD OF REVIEW-

(1) IN GENERAL- The United States District Court for the District of Columbia shall uphold the final determination of the Administrator or the Commission with respect to the assessment of a contribution to the Fund from a participant if such determination is not arbitrary and capricious.

(2) EFFECT OF DETERMINATION- If the court determines that a final determination with respect to the amount of a contribution to the Fund by a participant may not be upheld, the court shall remand the decision to the Administrator or the Commission, with instructions to modify the final determination.

(3) NO STAYS- The court may not issue a stay of payment into the Fund pending its final judgment.

(4) FINALITY OF DETERMINATION- The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court, as provided in section 1254 of title 28, United States Code.

SEC. 303. EXCLUSIVE REVIEW.

(a) EXCLUSIVITY OF REVIEW- An action of the Asbestos Court, the Administrator, or the Asbestos Insurers Commission for which review could have been obtained under section 301 or 302 shall not be subject to judicial review in any other proceeding, including proceedings before the Asbestos Court.

(b) CONSTITUTIONAL REVIEW-

(1) IN GENERAL- Notwithstanding any other provision of law, any interlocutory or final judgment,

decree, or order of a Federal court holding this Act, or any provision or application thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court.

(2) PERIOD FOR FILING APPEAL- Any such appeal shall be filed not more than 30 days after entry of such judgment, decree, or order.

SEC. 304. PRIVATE RIGHT OF ACTION AGAINST REINSURERS.

(a) IN GENERAL- Any insurer participant may file a claim in the United States District Court for the District of Columbia against any reinsurer that is contractually obligated to reimburse such insurer participant for a portion of costs incurred as a result of payment of asbestos related claims.

(b) EXPEDITED PROCEDURES-

(1) IN GENERAL- A claim filed under subsection (a) shall be subject to expedited procedures, as prescribed by the United States District Court for the District of Columbia.

(2) EVIDENTIARY STANDARD- The plaintiff shall not recover in a claim under subsection (a) unless the plaintiff demonstrates the right to recover by a preponderance of the evidence.

(3) FINAL JUDGMENT- A final judgment shall be issued on a claim filed under subsection (a) not later than 30 days after such filing.

(c) APPEALS-

(1) IN GENERAL- An appeal from a decision under subsection (b) may be filed with the Court of Appeals for the District of Columbia.

(2) STANDARD OF REVIEW- The final judgment of the district court shall be upheld unless the court of appeals finds the judgment to be arbitrary and capricious.

(3) FINAL JUDGMENT- A final judgment shall be issued on an appeal filed under paragraph (1) not later than 30 days after such filing.

TITLE IV--MISCELLANEOUS PROVISIONS

SEC. 401. FALSE INFORMATION.

Any person who knowingly provides false information in connection with an assessment of contributions, a claim for an award, or an audit under this Act shall be subject to--

- (1) criminal prosecution under section 1001 of title 18, United States Code; and
- (2) civil penalties under section 3729 of title 31, United States Code.

SEC. 402. EFFECT ON BANKRUPTCY LAWS.

(a) NO AUTOMATIC STAY- Section 362(b) of title 11, United States Code, is amended--

- (1) in paragraph (17), by striking 'or' at the end;
- (2) in paragraph (18), by striking the period at the end and inserting '; or';
- and
- (3) by inserting after paragraph (18) the following:
'(19) under subsection (a) of this section of the enforcement of any payment obligations under section 204 of the Fairness in Asbestos Injury Resolution Act of 2003, against a debtor, or the property of the estate of a debtor, that is a participant (as that term is defined in section 3 of that Act).'

(b) ASSUMPTION OF EXECUTORY CONTRACTS- Section 365 of title 11, United States Code, is amended by adding at the end the following:

'(q) If a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the trustee shall be deemed to have assumed all executory contracts entered into by the participant under section 204 of that Act. The trustee may not reject any such executory contract.'

(c) ALLOWED ADMINISTRATIVE EXPENSES- Section 503 of title 11, United States Code, is amended by adding at the end the following:

'(c)(1) Claims or expenses of the United States, the Attorney General, or the Administrator (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003) based upon the asbestos payment obligations of a debtor that is a Participant (as that term is defined in section 3 of that Act), shall be paid as an allowed administrative expense. The debtor shall not be entitled to either notice or a hearing with respect to such claims.

'(2) For purposes of paragraph (1), the term 'asbestos payment obligation' means any payment obligation under subtitle B of title II of the Fairness in Asbestos Injury Resolution Act of 2003.'

(d) NO DISCHARGE- Section 523 of title 11, United States Code, is amended by adding at the end the following:

'(f) A discharge under section 727, 1141, 1228, or 1328 of this title does not discharge any debtor that is a participant (as that term is defined in section 3 of

the Fairness in Asbestos Injury Resolution Act of 2003) of the payment obligations that is a debtor under subtitle B of title II of that Act.'.

(e) PAYMENT- Section 524 of title 11, United States Code, is amended by adding at the end the following:

`(i) PARTICIPANT DEBTORS-

`(1) IN GENERAL- Paragraphs (2) and (3) shall apply to a debtor who--

`(A) is a participant that has made prior asbestos expenditures (as such terms are defined in the Fairness in Asbestos Injury Resolution Act of 2003); and

`(B) is subject to a case under this title that is pending--

`(i) on the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2003; or

`(ii) at any time during the 1-year period preceding the date of enactment of that Act.

`(2) TIER I DEBTORS- A debtor that has been assigned to tier I under section 202 of the Fairness in Asbestos Injury Resolution Act of 2003 shall make payments in accordance with sections 202 and 203 of that Act.

`(3) TREATMENT OF PAYMENT OBLIGATIONS- All payment obligations of a debtor under

sections 202 and 203 of the Fairness in Asbestos Injury Resolution Act of 2003 shall--

`(A) constitute costs and expenses of administration of a case under section 503 of this title;

`(B) notwithstanding any case pending under this title, be payable in accordance with section 202 of that Act;

`(C) not be stayed;

`(D) not be affected as to enforcement or collection by any stay or injunction of any court; and

`(E) not be impaired or discharged in any current or future case under this title.'.

(f) TREATMENT OF TRUSTS- Section 524 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

`(j) ASBESTOS TRUSTS-

`(1) IN GENERAL- A trust shall assign a portion of the corpus of the trust to the Asbestos Injury Claims Resolution Fund (referred to in this subsection as the 'Fund') as is required under section 202 of the Fairness in Asbestos Injury Resolution Act of 2003 if the trust qualifies as a 'trust' under section 201 of that Act.

`(2) TRANSFER OF TRUST ASSETS-

`(A) IN GENERAL- Except as provided under subparagraphs (B) and (C), the assets in any trust established to provide compensation for asbestos claims (as defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003) shall be transferred to the Fund not later than 6 months after the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2003. Except as

provided under subparagraph (B), the Administrator of the Fund shall accept such assets and utilize them for any purposes of the Fund under section 223 of such Act, including the payment of claims for awards under such Act to beneficiaries of the trust from which the assets were transferred. After such transfer, each trustee of such trust shall have no liability to any beneficiary of such trust.

`(B) AUTHORITY TO REFUSE ASSETS- The Administrator of the Fund may refuse to accept any asset that the Administrator determines may create liability for the Fund in excess of the value of the asset.

`(C) ALLOCATION OF TRUST ASSETS- If a trust under subparagraph (A) has beneficiaries with claims that are not asbestos claims, the assets transferred to the Fund under subparagraph (A) shall not include assets allocable to such beneficiaries. The trustees of any such trust shall determine the amount of such trust assets to be reserved for the continuing operation of the trust in processing and paying claims that are not asbestos claims. Such reserved amount shall not be greater than 3 percent of the total assets in the trust and shall not be transferred to the Fund.

`(D) SALE OF FUND ASSETS- The investment requirements under section 222 of the Fairness in Asbestos Injury Resolution Act of 2003 shall not be construed to require the Administrator of the Fund to sell assets transferred to the Fund under subparagraph (A).

`(E) LIQUIDATED CLAIMS- A trust shall not make any payment relating to asbestos claims unless such claims were liquidated in the ordinary course and the normal and usual administration of the trust consistent with past practices before the date of enactment of the Fairness in Asbestos Injury Resolution Act of 2003.

`(3) INJUNCTION- Any injunction issued as part of the formation of a trust described in paragraph (1) shall remain in full force and effect until the assignment required under paragraph (1) has been made.'.

(g) NO AVOIDANCE OF TRANSFER- Section 546 of title 11, United States Code, is amended by adding at the end the following:

`(h) Notwithstanding the rights and powers of a trustee under sections 544, 545, 547, 548, 549, and 550 of this title, if a debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the trustee may not avoid a transfer made by the debtor pursuant to its payment obligations under section 202 or 203 of that Act.'.

(h) CONFIRMATION OF PLAN- Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

`(14) If the debtor is a participant (as that term is defined in section 3 of the Fairness in Asbestos Injury Resolution Act of 2003), the plan provides for the continuation after its effective date of payment of all

payment obligations under title II of that Act.'.

SEC. 403. EFFECT ON OTHER LAWS AND EXISTING CLAIMS.

(a) **EFFECT ON FEDERAL AND STATE LAW-** The provisions of this Act shall supersede any and all Federal and State laws insofar as they may relate to any asbestos claim filed under this Act.

(b) **SUPERSEDING PROVISIONS-**

(1) **IN GENERAL-** Any agreement, understanding, or undertaking by any person or affiliated group assigned to Tiers II through VI with respect to the treatment of any asbestos claim filed before the date of enactment of this Act that requires future performance by any party shall be superseded in its entirety by this Act.

(2) **NO FORCE OR EFFECT-** Any such agreement, understanding, or undertaking by any such person or affiliated group shall be of no force or effect, and no person shall have any rights or claims with respect to any of the foregoing.

(c) **EXCLUSIVE REMEDY-** The remedies provided under this Act shall be the exclusive remedy for any asbestos claim under any Federal or State law.

(d) **BAR ON ASBESTOS CLAIMS-**

(1) **IN GENERAL-** No asbestos claim may be pursued in any Federal or State court, except for enforcement of claims for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review before the date of enactment of this Act.

(2) **PREEMPTION-** Any action asserting an asbestos claim in a court of any State, except actions for which an order or judgment has been duly entered by a court that is no longer subject to any appeal or judicial review before the date of enactment of this Act, is preempted by this Act.

(3) **DISMISSAL-** No judgment other than a judgment of dismissal may be entered in any such action, including an action pending on appeal, or on petition or motion for discretionary review, on or after the date of enactment of this Act. A court may dismiss any such action on its motion. If the district court denies the motion to dismiss, it shall stay further proceedings until final disposition of any appeal taken under this Act.

(4) **REMOVAL-**

(A) **IN GENERAL-** If an action under paragraph (2) is not dismissed, or if an order entered after the date of enactment of this Act purporting to enter judgment or deny review is not rescinded and replaced with an order of dismissal within 30 days after the filing of a motion by any party to the action advising the court of the provisions of this Act, any party may remove the case to the district court of the United States for the district in which such action is pending.

(B) **TIME LIMITS-** For actions originally filed after the date of enactment of this Act, the notice of removal shall be filed within

the time limits specified in section 1441(b) of title 28, United States Code.

(C) PROCEDURES- The procedures for removal and proceedings after removal shall be in accordance with sections 1446 through 1450 of title 28, United States Code, except as may be necessary to accommodate removal of any actions pending (including on appeal) on the date of enactment of this Act.

(D) JURISDICTION- The jurisdiction of the district court shall be limited to--

- (i) determining whether removal was proper; and
- (ii) ruling on a motion to dismiss based on this Act.

END