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The Status of Asbestos Claims Against
The Federal Government

Statement of
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Governmental Relations, Committee on
The Judiciary
House of Representatives



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SUMMARY

Asbestos claims and litigation have emerged as potentially large and costly problems for the federal government. Thousands who suffer from job-related asbestos diseases have filed compensation claims under several acts with the Department of Labor, and others have filed civil suits for damages against asbestos manufacturers, suppliers, and processors. Also, corporations that provided asbestos under federal contracts have sued the federal government, arguing that since the asbestos was provided under such contracts, the government should assume some risk for the third-party personal injuries.

In a recent review, GAO found gaps in available information on the number of claims and lawsuits filed, amounts of benefit payments, case processing times, and administrative costs to the government. But GAO was able to compile certain information on asbestos claims, court cases, and costs. Overall, GAO found that asbestos claims filed by federal employees have been decreasing over the past several years since 1983 (from 1,428 in 1983 to only 891 in 1986), as have new asbestos cases filed in federal district courts against the federal government (from 1,002 in 1984 to only 138 in 1987).

In contrast, asbestos cases filed in federal district courts, predominantly against parties other than the government, have been increasing (from 3,538 in 1984 to 6,943 in 1987). Also, asbestos claims pending in Labor that were filed by longshoremens and harbor workers have increased (from 3,600 in 1983 to 4,349 in 1987), as have asbestos cases pending at Justice (from 1,785 in 1983 to 2,901 in 1987).

Administrative cost information was available only for Justice and the federal district courts. It shows that such costs to the federal government have increased since 1983, but overall these costs are not large.

The federal government has paid monetary claims for court awards and settlements in only one asbestos-related case. In 1978, the federal government paid \$5.75 million to 445 individuals to settle a civil lawsuit in Tyler, Texas.

A case with a large potential federal government liability--the Johns-Manville suit for damages against the government for work in federally controlled shipyards--was dismissed by a lower court in August 1987 and is now being appealed.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to provide information on the status of claims against the federal government and against suppliers of asbestos for injuries relating from the use of asbestos in performing government contracts.

Asbestos, a fibrous mineral, is strong and flexible, as well as resistant to fire, heat, and corrosion. It has been used in thousands of commercial products commonly found in work and home environments, including roofing and flooring, fireproofed textiles, reinforced material in cement and pipes, and thermal and acoustical insulations. Asbestos has also been used in shipbuilding. Inhaling asbestos fibers may result in asbestosis, lung cancer, or mesothelioma (tumors).

Asbestos claims and litigation have emerged as potentially large and costly problems for the federal government. Thousands of individuals--longshoremens and harbor workers as well as federal employees--who suffer from diseases or disabilities they believe to be associated with job-related asbestos exposure have filed compensation claims. Longshoremens and harbor workers file under the Longshore and Harbor Workers' Compensation Act (the Longshore Act) and federal employees file under the Federal Employees' Compensation Act (FECA). The Office of Workers' Compensation Programs (OWCP) in the Department of Labor administers both acts.

Other individuals, alleging injury from exposure to asbestos, have filed suits in state or federal courts or both against asbestos mine owners, manufacturers, suppliers, and processors. In turn, some asbestos manufacturers and suppliers who have been sued, sued the federal government because some of the alleged injuries were attributed to asbestos materials used in ships and military products that the government ordered and purchased during and after World War II. Manufacturers and suppliers have argued that the federal government should assume some of the risk of losses for third-party personal injuries.

The Torts Branch in the Justice Department's Civil Division is responsible for defending all litigation involving asbestos injury claims against the federal government and for compiling data on Justice's asbestos caseload and litigation costs.

By letter dated May 14, 1987, the Chairman, Subcommittee on Labor Standards, House Committee on Education and Labor, expressed concern to us about increases in asbestos claims and cases. He requested that we obtain (1) the most recent information on asbestos claims against the United States and (2) costs associated with processing the claims and defending the court cases in which the federal government is the defendant, under the Longshore Act and the Federal Tort Claims Act. This testimony statement presents the results of our work as included

in our report Asbestos: Growth of Federal Claims, Court Cases, and Litigation Costs, (GAO/HRD-88-53, Apr. 21, 1988).

Overall, the number of new asbestos claims filed under FECA has been decreasing over the past several years, as has the number of new asbestos cases filed in federal district courts against the government. In contrast, asbestos cases filed in federal district courts against parties other than the federal government have been increasing. Claims pending under the Longshore Act and asbestos cases pending at Justice also have been increasing.

We found gaps in the available information on the number of claims and lawsuits, amounts of benefit payments, case processing time from date of filing to award or settlement, and administrative costs to the government. Where administrative cost information is available, it shows such costs to the federal government have increased, but overall these costs are not large.

LABOR'S ASBESTOS CLAIMS FILED
UNDER FECA HAVE DECREASED

FECA, enacted in 1916, provides medical benefits, money allowances for traumatic injuries, and compensation for lost wages to federal civilian employees for work-related injuries and occupational diseases such as asbestos. In addition to the 3 million federal employees, others eligible for FECA benefits

are federal retirees and certain nonfederal employees, such as law enforcement officers, injured in connection with federal crimes.

OWCP provided information for calendar years 1980 through 1986 on the asbestos-case filings under FECA. Since 1983, a general downward trend has occurred. To illustrate, 1,428 cases were filed in 1983 compared with 891 filed in 1986.

Under FECA, the federal government paid an average estimated \$1.1 billion annually in compensation payments in fiscal years 1985 through 1987. During fiscal year 1985, of the total benefits paid out, about \$13.2 million were for asbestos claims; the average payment for the 3,222 claims was \$4,100. Benefit payments for asbestos totaled about \$56.7 million over the fiscal years 1980 through 1985.

LABOR'S PENDING ASBESTOS
CLAIMS UNDER THE LONGSHORE
ACT HAVE INCREASED

The Longshore Act, enacted in 1927, originally covered only certain maritime employees injured, disabled, or killed while working on navigable waters. A series of extensions in other acts led to this act's extension to a variety of other employees, such as those working on overseas military, air, and naval bases; under federal agencies' public works contracts; and in the District of Columbia. The Longshore Act covers about half

a million longshore and harbor workers or other employees. It provides medical benefits, compensation for lost wages, and rehabilitation services to covered employees who are injured or who contract an occupational disease (including asbestos-related) during their employment.

At the time of our review, OWCP could not provide us with the number of asbestos cases filed, closed, and pending under the Longshore Act in the current or prior fiscal years. OWCP provided information only on pending cases as of August 1983 and August 1987. This information shows that claims pending under the Longshore Act increased from 3,600 in August 1983 to 4,349 in August 1987. Labor could not provide data showing the asbestos claims portion of the benefit payments under the Longshore Act.

LABOR'S PROCESSING TIME FOR
FECA AND LONGSHORE ASBESTOS CLAIMS

We obtained data from OWCP on the time for processing a FECA claim from filing to adjudication for calendar years 1985 and 1986. The average time from filing to approving or denying a claim within OWCP took 255 calendar days for the 828 asbestos claims filed in 1985, and 167 days for the 891 filed in 1986.

OWCP does not have a centralized database from which we could determine the average processing time for Longshore cases. According to a division official, each district office maintains its own case files.

We visited OWCP's Baltimore District Office to obtain filing and processing data for 254 asbestos claims pending as of September 30, 1987. Because of the Subcommittee's concern with the aging of Longshore cases, we focused on the 100 of the 254 claims that we believed were the oldest. In examining these claims, we were able to obtain the processing time for only 63 of them. Of these claims, 49 had been in process for 4 years or more, and of these, 12 had been in process for 6 to over 8 years. We were unable to determine how long the remaining 37 claims were in process because the filing dates were inaccurately recorded as the dates the cases were entered into the database rather than the dates the claims were actually filed.

LABOR'S COSTS FOR ADMINISTERING
ASBESTOS CLAIMS UNDER FECA AND THE
LONGSHORE ACT NOT DETERMINABLE

OWCP could not tell us how much of its costs for administering claims under FECA or the Longshore Act are for administering asbestos claims. This is because OWCP's management information and accounting systems are not designed to provide data segregating Labor's costs for administering asbestos claims under either act.

JUSTICE'S PENDING ASBESTOS CASES
HAVE INCREASED BUT NEW COURT CASES
FILED HAVE DECREASED

The Justice Department has responsibility for defending all asbestos injury claims against the federal government in federal

courts; this includes those cases filed by claimants who bring suit under the Federal Tort Claims Act. According to the director of the Torts Branch, only a very small portion of its total asbestos caseload--less than 1 percent--are actions or suits by individuals against the federal government. In a predominate number of these cases, according to the director, the claimants are corporations that have been sued and in turn have sued the federal government. Some of these corporations, which are manufacturers and suppliers that provided asbestos under federal contracts, argue that because the asbestos was provided under such contracts, the federal government should bear some of the risk of losses or damages for third-party personal injuries.

Justice records showed that new asbestos cases received have decreased substantially since fiscal year 1984. For example, 1,002 cases were received in 1984, but only 138 new cases in 1987. Although some progress has been made in terminating cases, pending cases have increased from 1,785 on October 1, 1983, to 2,901 on September 30, 1987. The 2,901 pending cases in fiscal year 1987 include 91,186 claimants with an estimated \$13.6 billion in claim damages or awards at issue.

JUSTICE'S COSTS FOR
ASBESTOS LITIGATION

Justice's records show that costs for defending asbestos court cases have increased--from about \$5.9 million in 1984 to about \$10.2 million in 1987. Of Justice's total costs,

expenditures for automation contracts (for an automated litigation support system) represent the largest increase--about \$3.7 million. According to Justice officials, this system is used to acquire, analyze, and store about 1.6 billion asbestos-related documents. Justice officials stated that the automated system enables its attorneys to quickly locate key documents and use them in defending asbestos-related claims.

FEDERAL COURTS' ASBESTOS CASELOAD
HAS INCREASED SIGNIFICANTLY

The Administrative Office of the United States Courts is responsible for compiling and maintaining data on the operations of the federal courts, including asbestos-type claims that are filed in the district courts and courts of appeals. While relatively few file suits against the federal government, thousands of individuals alleging injury from exposure to asbestos are filing suits in state or federal courts against asbestos mine owners, manufacturers, suppliers, and processors.

The Administrative Office began compiling statistics on asbestos-related cases as a separate category in November 1983 and could provide us with data only on the caseload in district courts. The office does not compile or have readily available asbestos caseload data on the courts of appeals.

The data provided on the federal district courts showed a general increase in new asbestos cases. In fiscal year 1984,

for example, 3,538 new cases were received, while in fiscal year 1987, 6,943 new cases were received. Additionally, terminations of asbestos cases lag far behind new filings. During the 4 years ending September 30, 1987, federal district courts received 21,067 cases, but only 6,898 were closed. As a result, the pending caseload has increased from 8,995 at the end of 1984 to 20,278 at the end of 1987.

FEDERAL COURTS' COSTS FOR
ASBESTOS CASES HAVE INCREASED

The Administrative Office provided us cost estimates for the asbestos caseload at district courts as well as courts of appeals. The records show that the district and appeals courts' costs increased from about \$10.1 million in 1984 to about \$13.4 million in 1987.

In providing the cost information, the Administrative Office's chief, Financial Management Division, advised us that the office's cost estimates for asbestos cases may be understated. The estimated court time and costs for processing asbestos-related cases were based on a 1979 study of the percentage of personal injury product liability cases for asbestos. Relative to the court's total cases, very few asbestos cases, however, were in the courts when the study was conducted.

COURT AWARD AND SETTLEMENTS
PAID BY THE FEDERAL GOVERNMENT
IN ASBESTOS-RELATED CASES

A Justice official told us that as of October 1987, the federal government had paid monetary claims for court awards and settlements in only one asbestos-related case--in 1978, an asbestos lawsuit in Tyler, Texas, paying \$5.75 million to 445 individuals.

In another asbestos case, on July 9, 1983, Johns-Manville Corporation and Johns-Manville Sales Corporation (collectively referred to as Johns-Manville) sued the federal government for settlements, judgments, and damages resulting from 58 personal injury closed claims or suits brought against Johns-Manville. All the underlying claims or suits arose during World War II from the exposure of workers to asbestos in public shipyards--either owned or allegedly controlled by the U.S. Department of the Navy--or in private shipyards--allegedly controlled by the U.S. Maritime Commission. On August 6, 1987, a federal court concluded that Johns-Manville had failed to establish by a preponderance of the evidence its entitlement to recovery of any damages. Accordingly, the court dismissed the complaint. In October 1987, Johns-Manville appealed the claims court decision; the appeal was still pending as of June 27, 1988.

In closing, I also want to note that another GAO report (Product Liability: Extent of "Litigation Explosion" in Federal

Courts Questioned, (GAO/HRD-88-36BR, Jan. 28, 1988) examined the broader trends in product liability litigation in federal district courts. We found that from 1976 through 1986, asbestos cases accounted for 60 percent of the total growth in federal product liability filings. In 1987 asbestos-related cases comprised 50 percent of all product liability cases filed.

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Mr. Chairman, this concludes my prepared statement. I will be pleased to respond to any questions that you or other members of the Subcommittee may have.