

EU Financial Services BRIEFING



June 2007

US Asbestos Liabilities

This briefing provides an update on developments in asbestos legislation in the United States, in particular the legislative efforts to create what has popularly been called an "asbestos compensation trust fund".

Background

In February 2006, Senator Arlen Specter tried to pass legislation (S 852 and S 3274) to establish an asbestos trust fund. If it had been adopted, S 852 would have led to the creation of a US\$ 140 billion trust fund, financed by defendant companies and their insurers. In addition, most lawsuits seeking compensation for the health effects of asbestos exposure would have been removed from federal and state courts, and victims' claims would instead have been channeled through a government office which would have used set criteria for determining compensation

S 852 was defeated by a technical rule (a budget point of order) which prohibits legislation from authorizing more than US\$5 billion in spending during any 10-year period. Specter's supporters in the Senate tried to waive this point of order, but did not have a large enough majority to do so.

In May 2006, Specter and Patrick J. Leahy introduced a second attempt to create an asbestos fund. The proposed legislation (S 3274) was different from S 852, in that claimants from the fund would have been subject to additional requirements, and it also recalculated the contributions which would be required from small and midsize companies with insurance coverage. S 3274 failed to make progress in the Senate.

In the November 2006 elections the Democratic Party gained control of the

Senate, and Specter lost his post as Chairman of the Senate Judiciary Committee. However Leahy, the co-sponsor of S 3274, is now Chairman.

Developments in 2007

So far in 2007, no Senator or Congressman (including Specter or Leahy) has introduced asbestos trust fund legislation. However, future action on such a bill can be expected.

On March 2007 the point of order which had been the obstacle to the passage of S 852 was amended. Specter issued a statement saying that the amendment (S.A. 613) "preserves hope for asbestos victims who cannot receive compensation from an irrational tort system."

In comments made during 2007, Specter has also said that he will restructure the trust fund legislation this year "to make it ironclad that the federal government will not have to pay anything" and that the fund will be established by asbestos manufacturers "interested in avoiding the crush of litigation." According to Specter, bankruptcy trusts formed since 2006 have "very substantially" decreased the US\$ 140 billion previously available for the fund. In contrast to S 852 and S3274, which were very broad in their scope, Specter expects any new bill to be narrower, dealing largely with victims of mesothelioma. Specter has also said that Leahy will co-sponsor the expected bill.

The issue of an asbestos trust fund therefore remains one which needs to be kept under watch.

Other asbestos-related bills have been introduced in 2007 and remain pending in

committee. These include legislation which would ban the import, manufacture and distribution of products containing asbestos in the United States.

If you would like further information on these issues, please ask Angus Rodger in London (arodger@steptoe.com), John Jacobus in Washington DC (jjacobus@steptoe.com) or your usual Steptoe & Johnson contact.

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