Federal Occupational Disease Legislation

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Attending a seminar and discussing the future of occupational disease legislation and compensation systems sometimes becomes an exercise in riding merry-go-round. It is not exactly clear to me why we have suddenly decided to ride the horse again, but I welcome the opportunity. I particularly welcome the fact that there is renewed public scrutiny of this serious social issue.

My purpose today is two-fold: first, to review the background of congressional consultation of this issue; second, to review and comment on some of the major policy issues involved in this particular legislative activity.

I believe we have finally reached a point in our policy development where we can safely say that most of the relevant issues have surfaced, been examined and explored, and been given reasonable public consideration. That is not to say that there is any agreement on where we go and how we get there.

By way of contrast, when the question of occupational illness was first broached during consideration of the Occupa-
tional Safety and Health Act of 1970, there was perceived to be an almost complete lack of information on this subject. The number of organizations paying attention to the issue was miniscule. The focus, if any, was on the question of respiratory diseases, principally pneumoconiosis (Black Lung).

The National Commission on State Workmen’s Compensation Laws actually commissioned some interesting work on occupational disease. Those studies recognized that there were coverage and other questions which needed to be considered in the reform process. Nonetheless, the focus of that Commission’s report was not on the emerging problems of occupational illness and compensation thereof.

Following the Commission’s report, the emphasis shifted to concerns about state workers’ compensation systems and the process of legislative reform. Very little time was actually spent on how occupational illness would fit into this compensation system, except along the lines of an adjunct to the underlying need to have a uniform system for injury as well as illness. Thus, even though occupational disease has always been a significant element in the policy and political considerations surrounding such legislation, it has not been recognized as such until recently.

Why, one might ask, did this situation exist? It may be attributed in part to the complacency of the state workers’ compensation system administrators and the insurance industry, who saw few occupational disease claims, and assumed that the problem in actuality was far less than experiences reflected. Moreover, awareness of toxic substances, carcinogens, and their impact on individuals has only emerged to its true dimensions in recent years. Again, that is not to say that such things were not known, but the focus tended to be on identifiable situations such as Black Lung and not on the whole host of other occupational ill-
nesses for which the existing state laws are generally quite restrictive.

The next plateau in our consideration rests with the work of the Department of Labor's Interdepartmental Task Force, which spent several years and a fair amount of public funds in exploring a number of workers' compensation issues including problems of occupational disease, product liability and third party issues.

Unfortunately, the problems of commissioning an inquiry and ultimately bringing it to fruition can become quite unmanageable. In this case much of the work of that group commissioned in 1975 and 1976 was not completed until 1978 or 1979 and was not published until 1981. I know not how these documents become lost in the Government Printing Office. However, each of these studies has provided invaluable information about the nature of the problem.

One may cut through all of the complexities and come to the realization that this very serious problem of disability compensation can readily be solved if only it could fit within the existing system.

After all, if in this day and age we have reached a state of public acceptance that those who are made ill by toxic substances should be duly compensated and properly cared for, there is no great public consensus to be built on the underlying issue.

We know that the ideal law should cover any and all occupational illnesses arising out of and in the course of employment. We know that the ideal system should deliver prompt, reasonable benefits for permanent and partial disability and should provide full medical treatment, opportunity for rehabilitation and all of the other facets of a "good" workers' compensation program. Unfortunately, we have a few odds and ends of matters about which we have
not quite reached agreement—for example, should this be done on the state or national level, should it cover all illnesses and diseases, or should the legislation be disease-specific; what is a "reasonable" level of benefits and who should pay for them; how should benefits be financed; and, who should administer the program?

I do not come here today with any great conceptual framework about which we can gather to create this new holy writ of a disability compensation law. Most of you are aware that there have been several legislative proposals pending in Congress that represent what might reasonably be considered a fresh start to the process.¹

There are a number of basic elements that any proposed bill should have in order to make a disability compensation system effective. They include the federal role, coverage, benefit levels, claim processing and funding. A review of these elements might suggest that the major issue is over what diseases should be covered by any compensation scheme. However, in my judgment the major issue is really whether an improved occupational disease compensation program should be created as a new system or be part of the existing state compensation systems.

**Federal Role**

Some 10 years ago, I was the advocate for a workers' compensation system that would have provided fully for a federal program administered through the state agencies, including a full occupational disease component. At that time Congress, the Executive Branch, and many scholars on the subject suggested that the federal government's takeover of the state workers' compensation systems, if not unconstitutional, was certainly unconscionable. If one learns nothing else over a period of time in our nation's capitol, it is that you cannot climb the same greased pole twice. Accordingly,
I believe that we are now talking about a compensation system that does not impact on the state agency’s operations. Indeed, we are looking at a proposal that was too revolutionary for 1973, that is, preempting the state law with respect to occupational disease claims and administration totally at the federal level. The strongest argument for federal preemption is in the interests of uniformity. Judgments about the effects of toxic substances and the causal relation to the workplace are difficult enough for one agency to develop. Spread to more than 50 jurisdictions, the problem becomes quite unmanageable. Moreover, the political interests of many state agencies do not appear to lend themselves to comprehensive treatment of occupational disease and appropriate benefit levels.

Coverage

What is covered under this new scheme is indeed the second most serious question. It arises because the onset and causality of an occupational disease are simply not as simple as in straight cases of injury. There are, as we know, long latency periods, complications arising from the combination of on and off the job exposure and numerous other scientific and medical problems to solve before one can reasonably suggest that a particular disease did arise out of and in the course of employment. Nonetheless, much is known about many diseases, both in the U.S. experience and elsewhere in the western world. The fact is that to deal with the occupational disease issue in a fair manner, we are going to have to adopt something called “presumptions.” Now if there was any single issue which caused more confusion and difficulty than the Black Lung program, it was the question of presumptions.

Somehow we have established in some quarters a view that presumptions are either a) unscientific, b) unfair, or c) load-
ed against the employer. In the context of the Black Lung program, Congress confused the issue by legislating different kinds of presumptions without fully explaining the particular political purpose for each one. For example, with respect to the presumptions regarding time worked in the mines and indications of Black Lung, one can argue that there was some medical evidence relating to the development of pneumoconiosis after long exposure to coal mining. On the other hand, creating a set of presumptions relating to pneumoconiosis based on affidavits, nonmedical evidence and other criteria in order to provide compensation to widows of Black Lung victims does not rise to the level of scientific support. There is nothing wrong with providing such a political presumption if indeed it is not characterized as medical criteria. My own view is that Congress, in enacting the Black Lung Law, created a hybrid mechanism of some parts medical, some parts compensation and large parts combat pay. The difficulty, aside from the administrative problems of handling that law, is that it was unfortunately characterized as a workers' compensation program, although it had many of the elements of a pension program or a social security compensation system and an insufficient number of the elements of a true disability compensation program. The worthiness of it should not be in dispute, merely the nomenclature under which it was presented through Congress to the public.

In viewing presumptions for occupational disease, the underlying need is to eliminate the concept that in each individual case an entire system of proof need be offered to establish both the illness and its causal relationship to employment. There is no reason to create a system that would thrive on having expert medical testimony repeat and repeat and repeat the same well-known and established fact that certain exposure to certain types of chemicals and toxic substances in the workplace can and will, over a reasonable
period of time, lead to the development of certain occupational illnesses.

The mechanism of developing such presumptions is not easy to achieve. It will require some form of impartial handling, and it will involve judgment calls by some form of neutral or independent agency to promulgate the presumptions against which diseases will be compensated. The fact that it may be a difficult mechanism does not make it the wrong way. In point of fact, there are a number of models from the European experience that could be utilized in the way in which the scientific and medical criteria are developed for purposes of creating such a presumption. Indeed, creating a series of properly medically based presumptions or "good" presumptions is the only way in which a comprehensive occupational disease compensation system can function.

**Benefit Levels**

The next area that should be addressed in our model compensation system is one involving the appropriate benefit levels. Once again, we are confronted with a serious dilemma in the way in which we approach workplace disability and occupational disease compensation. If we are talking about an income replacement, or so-called wage loss concepts, we approach perhaps half the problem. Indeed, it is not so different from the disagreements which have been raging in other areas of occupational injury for some years. Perhaps a major difference is that the partially disabled worker with occupational disease has a more than reasonable chance of that disease eventually pushing that worker into total disability and death. Unlike most injuries, occupational illness is not necessarily a discrete result.

Consequently, we're looking at an entirely new compensation system. One should not be narrow-minded in looking at benefit levels and levels of compensation. In particular,
should there be some provision that goes beyond income replacement or wage loss, and provides some form of compensation for the pain and suffering as a result of the disease? I think the answer is yes. One result of toxic exposure is harm to an organ which does not interfere with work ability. So the equivalent of a "scheduled" award is worth examining. Should benefit levels be higher for occupational disease than for injury? My response would be probably not. But in developing any new law, we should not accept current levels of compensation as the norm, because by and large they are far below reasonable economic protection.

Moreover, we may be procedurally faced with a situation where there is a family trauma and not just an individual situation, because family members may also be affected by the results of the exposure to a toxic substance. Likewise, the question of a maximum level of compensation in order to provide an incentive to return to work may be a somewhat specious criterion when one is confronted with an occupational disease problem where the result is often permanent disability or death, or progressive deterioration.

Claims Processing

One of the more difficult problems in dealing with an occupational disease compensation system is the question of claims management and claims handling. Always we are confronted with the question of providing appropriate due process and appropriate procedures for handling administrative and judicial review in a fair and reasonable fashion. The question becomes, to some degree, due process for whom? In a preemption situation, we are clearly looking at a uniform federal system in an area where the federal government has not always been known for its clarity of claims handling.
I suggest that the system, whatever it be, become simple, that it be designed to keep adjudication to a minimum and to focus on eliminating controversy and the adversary mentality. Insofar as the medical side of the claims handling is concerned, this area lends itself to the creation of some form of impartial medical evaluation. It may be advisable to create one group of physicians who will determine causality and a different group of physicians who will be the panel to review degree of impairment or disability caused by such exposure.

A major concern about the due process mechanism of any claims proceeding is the determination of who will pay. If some form of a group requirement or group responsibility is created, it then is very important to create a mechanism that does not provide a "super employer" to challenge each and every claim. The concept of super employer is currently embodied in the "pool" arrangement of HR 3175. In that proposal, the pool represents all of the employers and has the right to challenge claims pending before the Department of Labor. If that be the case, it might be better to keep pushing at the states to adopt improved systems of handling occupational disease claims matters, rather than subject individual claimants to the potential of opposition by a single entity representing all employers.

**Funding**

In each of these scenarios, one must determine both who should pay and how they should pay it. There are a number of different criteria which have been suggested for a funding mechanism, ranging from assessments to direct taxes to insurance pooling arrangements and a whole spectrum in between. I suspect that as this process continues over the next several years, someone will even invent a voucher system for handling the cost of the compensation program.
On the other hand, in administering such a super-fund program, we may well have reached the point where it would be useful to examine not just the public or the private sector, but also whether we need to create some quasi-public or private agency to handle the paperwork and financial transactions this sort of a fund would entail. Even though the political process of enacting a pool arrangement based on a tax is formidable, I believe it may be the only viable mechanism. The concept of an insurance pool is interesting, but the ability to administer such a process may be beyond our current capabilities.

While I have used up a great deal of verbiage in describing these various components of a disability system, there are at least two more considerations that I would suggest in thinking about the necessary mechanisms for dealing with this problem. First, we have put the cart before the horse somewhat in dealing with these compensation legislation recommendations because we have not emphasized enough the preventive and risk assessment screening programs that are urgently required to protect the workforce against these new and emerging occupational maladies. This is peculiarly an area where investment in prevention, investment in risk assessment and investment in screening will not only pay vast dividends to workers who will be given opportunities for treatment or cure at early stages of their disease, but can also result in enormous cost savings to employers.

Second, having described the basic elements required of any system, I am not at all sure that they constitute the ideal system.\(^3\) I would say to you that while we need to implement this process and have a legislative solution as soon as possible, we ought also consider the longer-range implications of workplace disability, particularly in the occupational disease area.
Because we are confronted with difficulties in causal relationships in occupational illness, there is reason to consider the possibility of an integrated benefit system. It may be time to consider the notion that if one is afflicted with an occupational illness or disease, the question of whether it happened on or off the job is perhaps less relevant than in other compensation systems. One could legitimately view an occupational disease compensation system as the beginning of an integrated approach to disability compensation.\(^4\)

There is an area that I have thus far deliberately not mentioned in this paper. That is the question of whether a program such as I have outlined here should be provided only if it is the exclusive remedy for exposure to occupational hazards in a workplace situation. Under its other name, it is called exclusive liability or elimination of third party liabilities. It may even be one of the criteria for enactment of a product liability statute.

I am not sure that I can add to the many statements made on both sides of this issue.\(^5\) Suffice it to say that it seems to me it is not the relevant consideration for looking at a compensation system that hurdles a problem relating to the employer and employee. In point of fact, the so-called manufacturer is indeed a third party. I would say that the employment contract runs from the worker to the employer. The tort system has traditionally provided a remedy, as between the employer and the manufacturer, or as is now so frequently, between the individual and the manufacturer under various product liability standards. It is indeed strange to see the U.S. Congress, in this area of liability, being forced into denying workers' rights they have yet to receive. I think it is the wrong bargain and the wrong form.

Finally, there is the question of whether or not occupational disease legislation can be enacted. No one ever knows
the direction in which the political process will move on a given issue. It is safe to say that there is more interest now in occupational disease than ever in history. There is more interest now in providing a disability compensation system than in any time in recent years. There is also a greater understanding of the scope of certain federal or federally-administered compensation programs such as Black Lung and FECA. These programs have been widely criticized as costly and inefficient. The fact that they were poorly administered and never provided proper funding or management until recently does not mean that they are not fundamentally sound from a public policy and worker protection point of view.

Is all the above feasible? Who knows. But if I can review from the beginning, there is nothing new or novel. There is no lightning rod to come down upon us. The studies have been done. We must recognize that only 3 percent of occupational disease cases are filed through the existing workers' compensation system in the face of vastly more numbers being afflicted. This is the time to be considering such matters. There is an interest now, thanks to the Environmental Protection Agency. There is an interest now, thanks to Johns-Manville and asbestos, asbestos, asbestos.

We do not need any more study commissions or any more large groups to evaluate public policy. We now need to design and implement the program.
NOTES

1. See, for example, the bills introduced by Congressman Miller and Senator Hart in the 97th Congress (HR 5735 and S 1643). Also note HR 3175 Occupational Disease Compensation Act of 1983, introduced May 26, 1983.

2. E.g., Belgium, Germany, Netherlands, Sweden, U.K. In most of these statutes the descriptions have taken the form of a list of diseases. Once the exposure to a listed disease through a period of employment is established, causation is no longer an issue.

3. Appendix A is a copy of recent testimony of the AFL-CIO that lays out in brief form the way in which these elements could be put together for a reasonably successful, if not ideal, system.

4. The European systems noted above are examples of integrated benefit programs. Some are all government run and some have strong elements of the private sector. Some, such as in the Netherlands, pay the same benefits regardless of on or off the job illness. Most have some differentials, but none as disparate as those found in the U.S.


6. Recent criticism that the Administrator of EPA was not properly enforcing the environmental laws led to a congressional investigation.
For the AFL-CIO: Kenneth Young, Executive Assistant to the President of the AFL-CIO
For the Industrial Union Department: William H. Bywater, President, International Union of Electrical, Radio and Machine Workers
For the Building and Construction Trades Department: Robert Georgine, President

Statement of Mr. Kenneth Young, Executive Assistant to the President of the American Federation of Labor and Congress of Industrial Organizations

June 13, 1983

The AFL-CIO, the Industrial Union Department and the Building and Construction Trades Department are appearing today jointly to present views on H.R. 3175, which would establish a system for compensating workers and survivors in cases of disability or death caused by occupational exposure to asbestos and other toxic substances.

We thank the committee for this opportunity to appear and we commend you, Mr. Chairman, for your attention and diligent efforts in seeking a solution to a serious deficiency in the workers’ compensation system and to relieve the suffering of tens of thousands of victims of these diseases.
This legislation, introduced by the chairman and co-sponsored by other members of this subcommittee, offers the Congress, organized labor, the insurance carriers, the manufacturers and processors and other interested parties an opportunity to come forward to discuss this proposal in serious pursuit of solutions to the pressing social, economic, legal and political problems that occupational diseases cause our society. The moral and ethical issues are so serious that common sense tells us that it is time to resolve this problem for the welfare of the stricken workers and their families and for the good of our nation.

We believe that we can agree on several basic concerns:

1. The need for a federal program. State workers' compensation laws governing occupational disease and disability do not provide prompt, adequate and equitable compensation to workers exposed to toxic and hazardous substances. Reform of this inadequate system is long overdue.

2. The need is evident for a system that adequately meets the economic and medical needs of workers stricken by occupational diseases, and for their families.

3. The need is evident for a system that provides swift and certain remedies without delay.

4. The need is evident for a system that provides for expansion of coverage of diseases in an ever-widening world of risk factors and incidences.

5. The need is evident for a system that is adequately financed and properly administered.

6. The need is evident for a system with mechanisms for protecting workers from exposure in the workplace.

Mr. Chairman, none of us is an expert in this field, though we are familiar with the problems and the need for solutions from our direct experience in the labor movement.

While workers' compensation laws in all states cover disability that results from occupational disease, this coverage most often is in name only. There is no uniformity of procedures to determine occupational disease compensability. Many states have in their laws restrictive eligibility provisions or arbitrary compensation standards. Claims procedures are generally too costly and time-consuming. Many occupational diseases are not adequately covered by the workers' compensation system. Thus, millions of workers who suffer the disabling effects of exposure to hazardous agents in the workplace receive no benefits.
The occupational disease effects of new and changing technology are increasingly being borne by workers themselves rather than the system designed to compensate them. Thousands of workers die each year from the effects of asbestos, radiation, cotton dust, vinyl chloride, benzene and hundreds of other hazardous agents to which they were exposed, sometimes many years ago. Millions of workers are at risk of irreversible diseases of the heart, nerves, muscles, bones and lungs. Many of the toxic agents that cause these diseases have found their way into workers' homes and communities, claiming as victims an unknown number of family bystanders as well. Many of these victims are uninformed about the fact that they are at risk as well as about what must be done to reduce the risk.

The AFL-CIO, and our Industrial Union and Building Trades Departments, therefore, have called for the establishment of a federal program to compensate workers and their families for death or disability resulting from occupational diseases. Attached to our testimony is the February 28, 1983 statement by the AFL-CIO Executive Council, and the companion Resolution of the Industrial Union Department urging Congress to enact legislation that will establish a comprehensive occupational disease compensation program as well as a program to identify, notify and diagnose workers who are at high risk as a result of occupational health hazards.

There are provisions in H.R. 3175 that we support. However, there are elements of the bill about which we have concerns: specifically, the level of disability benefits, the death benefit, the wage loss provision as well as the procedure for filing and determining claims. While we will not address in our testimony, today, all of these features, we look forward to working with the Committee to resolve the problems of concern and to strengthen this legislation.

At this time I wish to address one problem: the matter of exclusive remedy.

The AFL-CIO has long endorsed the traditional concepts of exclusivity with respect to workers' compensation as between the employer and his employees. The certainty of the compensation payment weighed against the uncertainty of traditional common law actions and defenses has been the cornerstone of the workers' compensation system for more than 70 years in this country.

H.R. 3175 continues this approach by including within the exclusive remedy limitations the employer, insurance carriers, collective bargaining agents and fellow employees.
There is much to argue for this approach. Experience has shown that where workers have had to seek redress in the courts, the time consumed has been extensive, the outcome uncertain and the awards when they come often net the worker very little after lawyer fees and costs.

Also, uncertainty on the employer's part transfers to the worker: If a company does not know its liability, then its workers can have no sense of protection.

There are two points, however, which we would like to make regarding the notion of exclusive remedy. First, in the area of occupational illnesses related to toxic substances, we believe that the exclusive remedy protection granted to employers should not extend to those actions of willful or intentional misconduct which cause harm to employees.

We have seen too many examples of employers with knowledge of the dangerous substances or the dangerous conditions, willfully exposing their workers to these dangers.

Second, we do not believe that the exclusive remedies should be extended to extinguish the traditional third-party rights of actions that employees would have against manufacturers. We believe that these workers should be entitled to their full rights against such manufacturers for additional damages including pain, suffering, loss of consortium and punitive damages as appropriate.

Limiting the manufacturing liability to that of an employer reduces the incentives on that manufacturer to operate with a high standard of testing and production as well as comprehensive warning requirements.

Statement of Mr. William H. Bywater, Vice President and Member of the Executive Council of the Industrial Union Department, AFL-CIO, and President, International Union of Electrical, Radio and Machine Workers, AFL-CIO

Mr. Chairman and members of the committee. On behalf of the Industrial Union Department, AFL-CIO, we are very pleased to be here to testify in support of occupational disease compensation legislation.

As stated in the companion testimony of the AFL-CIO, occupational disease is a many-faceted workplace problem. The focus of public attention has been on cancer and asbestos because of the enormous, well-publicized impact it has had on thousands of workers exposed to that substance. Nonetheless, rubber workers who develop leukemia from
benzene, plastics workers who develop liver cancer because they must breathe vinyl chloride, miners who die of lung cancer because of ionizing radiation, electroplaters in my own industry who breathe cadmium fumes and die of prostate cancer—all sicken and die just as easily as men and women exposed to asbestos.

Their suffering and the suffering inflicted upon their families should not be less because their tragedy draws less attention in the media.

Cancer is not our only occupational disease. Cotton dust disease, nerves destroyed by lead, mercury and solvents; all are worthy of our concern.

We hope that the Committee recognizes that the effects of other toxic processes and substances should be covered in the compensation scheme. We believe a mechanism for doing so is essential with respect to some of the requisite elements contained in this Bill.

The provisions contained in Section 16 of the Bill provide a framework for coverage of additional diseases and populations. Fleshing out of these provisions is necessary if this section is to be successfully implemented, and diseased workers compensated. Experience with standard setting for toxic substances and processes under other statutes and legislative history, has shown that absent specific Congressional direction in the statute promulgation of effective standards is seriously hindered.

We are concerned that the legislative directions make clear the Secretary of Labor's responsibility to promulgate a suitable regulation in a specific time frame. It is important that workers not become caught in the cross-fire of inter-agency disputes, and suffer long delays in obtaining relief. For those occupational diseases and populations at risk already recognized and well documented such as byssinosis among cotton textile workers, the Congress should set a maximum time limit for coverage of these diseases and workers under this legislation.

The Bill at a minimum should direct the Secretary of Labor to set standards for additional discrete diseases, populations at risk, and substances or processes which consider exposure criteria, diseases and disease sites to be covered, and diagnostic criteria.

The Bill should also make clear that the criteria transmitted to the Secretary of Labor should contain to the extent feasible specific presumptions relating to causality so as to eliminate the challenges to the
eligibility where medical evidence is sufficient to warrant the finding of a connection between the occupation and the disease.

H.R. 3175 already contains such presumptions for asbestos-related diseases. The Bill correctly makes irrebuttable the presumption that asbestosis is caused by breathing asbestos because the scarring of the lung and calcification observed by the physician is typically found among exposed workers. The chance is very small that the same conditions can be found in the absence of asbestos exposure.

The proposal makes a similar presumption for mesothelioma.

In this complex struggle with problems of causation and in understanding what happens to populations and groups of workers, we must deal with scientific information as it emerges and relate this knowledge to the legal formulations in order to accomplish our compensation scheme. The traditional requirement of compensating diseases "arising out of and in the course of employment" can and must be reconciled through appropriate redefinitions and qualifications to reflect the state of knowledge about disease causation. The acceptance of presumptions as a basis for clarifying causation and thereby determining compensation is essential.

Presumptions are a method of recognizing the advancement as well as the limits of science; they are valuable only when used fairly and consistently.

We believe that it will not be difficult for NIOSH to make the same determinations for workers exposed to other toxic substances and processes that reflect the increased burden of risk. Those who have borne this risk and developed cancer or other diseases because they are coke-oven workers, welders, textile workers, uranium miners, painters or oil refinery workers are no less entitled than asbestos workers to compensation.

Consideration should also be given to including a "general protection" provision which would allow claimants to seek compensation for work-related disease even though the specific effects have not been explicitly listed as compensable.

All of those provisions requiring consultation with the insurance pool insofar as it would permit a veto of additional coverage should be eliminated from this legislation. In our judgment the question of additional coverage should be limited to assessment of risk or disease and not
confused with a criterion of whether there is an insurance mechanism for funding a particular compensation program. We also believe that there is no need for Congressional review of each new disease regulation.

Mr. Chairman, this is not wishful thinking about problems down the road. As is amply shown in my colleagues’ testimony this morning, the need for additional coverage for occupational illness is urgent. There are afflicted workers and their families who need help now. There are a number of groups of workers in high-risk populations which should be covered within a short period of time after passage of this statute. The Secretary’s timeframe should be far shorter than one year for promulgation of such additional regulations.

We support the approach taken for the medical considerations in H.R. 3175 because we believe that there is an understanding that this complexity of occupational diseases is not explainable in terms of simple single causes and simple single effects. The language of the proposed statute implies recognition of the concepts of risk factors and thinking in terms of populations which need to be the focus of the process of assessment that delineates work-related illness.

Finally, we would like to make clear that our interest is not just in compensation alone. The basic process of risk assessment useful in a compensation scheme is also important and has application in the reduction of suffering and death.

One of the most important realities repeatedly established for environmentally induced chronic disease is the long period of clinical latency between the onset of effective exposure and the first evidence of the disease. This "silent period" between initial exposure and the discovery of disease is of more than theoretical interest. It offers an opportunity, a possibility that intervention during this time might be successful in breaking the chain of events between exposure to an agent and the onset of uncontrollable disease. For cancer alone, the American Cancer Society estimates that nearly a third of the expected deaths could be prevented by existing clinical methods of early detection and treatment. There is even some evidence of reversing the development of disease before it is found when the exposure has been stopped. Consequently, an integrated program of early detection is an urgent need including the identification and notification of high-risk groups, resources for the diagnosis and verification of disease effects, community and family resources for continuous and lifetime surveillance, and referral and counseling.
We believe that these elements are essential to an effective program of occupational disease prevention. We can not focus totally on compensation without bringing to bear an understanding of this need as well.

Mr. Chairman, the Industrial Union Department joins with the AFL-CIO and the Building Trades Department in underscoring the importance of this legislative effort. We are pleased that you lead the Congressional effort to enact legislation and we intend to spare no effort to help achieve a law that is so needed by our membership.

We are attaching to our statement additional remarks which we ask be included in the record of this hearing.

Statement of Mr. Robert Georgine, President, Building and Construction Trades Department, AFL-CIO

I am very pleased to join with my colleagues from the AFL-CIO and the Industrial Union Department to speak to this committee today on behalf of the Building and Construction Trades Department.

My belief is that now is the time for all of the groups concerned over the problems created by hazardous materials to accept the responsibility for the solution to the ultimate problem—how to make whole, and fully and fairly compensate, the diseased workers, and to eliminate the dangerous work practices causing these diseases. No facet of our society can be complacent because they have solved their individual piece of the problem. This legislation certainly addresses the issue of society’s restoration of, and financial restitution to, diseased workers and their families.

This is not a matter of abstract concern to the trade union movement. The effort to design and evaluate a comprehensive approach to the occupation disease problem is urgently needed. I also recognize that as the solutions begin to evolve, the potential for conflict will arise. This is so, because there are so many interested parties—labor, producers and manufacturers of asbestos itself, mining, quarrying, packaging, and the processing of the products using asbestos, plus the builders, the consumers, the insurance companies who underwrite risks, the people who are exposed, and the health and welfare services who must tend the victims, plus governments and courts who must administer, interpret and enforce laws.
All of us in construction remember the decade between 1960-69 when more than 40,000 tons of fireproofing material were sprayed annually in highrise buildings. The estimate today is that more than one million tons of asbestos material remain in place aboard ships, in buildings, and in process industries. We know that asbestos dust fills the air when it is damaged or has to be replaced. Fortunately, through our apprenticeship and training programs we have promoted the use of better work practices, means of isolation, and engineering controls to minimize the exposure during removal or repair of in-place asbestos that is easily crushed and releases fibers readily into the job-site atmosphere. Laborers, Asbestos Workers, Painters, are exposed in rip-out work; I could name every International Union in the Building Trades, and I'm sure that they could provide additional situations of exposure.

Boilermakers, similar to many other craft unions, also have lodges or locals that represent workers in an industrial setting; but they have worked on construction sites where it has been estimated that 10,000 to 20,000 tons of asbestos were applied annually to pipes, boilers, and other high-temperature equipment in factories, refineries and power plants.

We have tried to control the exposure of construction workers to in-place asbestos during rip-out work by encouraging the development of specialty contractors to do this work, and discouraging the use of contractors without experience and knowledge.

Researchers at the Mount Sinai School of Medicine have estimated that 7.5 million construction workers are at some degree of risk of developing an asbestos-associated disease. Within the next 20 years annual excess deaths from asbestos-related lung cancer among construction workers are estimated to range from 1,405 persons to 1,893. When other cancer deaths are projected, it adds an additional 1,000 to 1,500 deaths.

There are other toxic substances which I will talk about for a few minutes. An Ironworker told me recently,

"We used to bring bottles or cartons of milk with us to do the job when we were welding. We would drink this milk thinking that it would reduce the upchucking when we were welding galvanized steel, or over the surface of steel that had been painted with lead in it."

Of course, we all know that it didn't work very well, but I use this as an illustration of the immediate and violent reaction of a respiratory system that is being overloaded with welding fumes. Apply this to confined
spaces, and add Plumbers and Pipefitters and the toxic atmosphere problem is magnified. NIOSH has listed deaths due to respiratory disabilities as the number one cause of death among the occupational diseases.

Painters are exposed to the fumes of paints and solvents in the construction trades. Roofers are exposed to coal and asphalt tar pitch fumes. Tile Setters, Plasterers, Cement Masons, Carpenters, Bricklayers are also exposed to mixtures and epoxies from which toxic fumes can be present. Laborers handle bags, barrels, boxes, cans, drums, cylinders, and other containers which may contain hazardous substances, and all crafts on a construction site are exposed to many kinds of dusts and vapors. Ironworkers, Pipefitters and Plumbers handle materials, cut, shape and weld coverings with paint and anti-corrosive materials that are too numerous to mention. Carpenters, Operating Engineers, Electricians—pick any craft, and you will find a potential group of construction workers for exposure to asbestos and other toxic substances.

It is against this background of danger that a special Building and Construction Trades Department Committee was appointed to study and coordinate efforts with other AFL-CIO departments concerning all occupational disease compensation programs. That Committee developed several basic questions about such a compensation system. They are:

1. How will our members, who are potential risks to exposure, gain entry to any system devised to meet their health, economic and social needs? Not only for themselves but their families when they are deceased, or worse yet, suffering a "living death"?
2. What will be the mechanisms to identify and to label, as well as to define, the very best procedures and equipment needed to protect those who are presently exposed at their workplace, or may face work assignments in the future that will expose them?
3. How can we insure that the delivery system will not be outmoded, and constantly require upgrading in the future to serve the people dependent upon it?
4. How can we insure that such a program will be adequately financed?
5. How can we insure that it will be properly administered?
(6) How can such a program be designed so that it will become the catchment basin for all such future problems as may arise, and not be done on a piecemeal basis as we have done in the past, and then only after there has been great suffering by our working people?

Our Committee report to me indicates that their impression of this Bill now pending before the Subcommittee is that it does not answer all of these questions as specifically as is necessary but it does offer an opportunity for substantial improvement over the present situation, and a great deal of opportunity for real progress towards the day that our country will achieve a comprehensive compensation program for working people who are disabled or die as a result of an unsafe or harmful health environment. Our comments are offered in this spirit.

The testimony of the AFL-CIO has outlined in detail the reason why this legislative effort to provide occupational disease compensation is so critical to American workers.

I would like to comment more specifically on the funding mechanics.

This aspect of the proposed legislation is of particular importance to both construction workers and their employers. Construction is an occupation with a high degree of mobility. Most of our members work for many different employers during their normal career. Our industry long ago set up multi-employer health and pension funds to accommodate this mobility.

With the long latency periods and multi-exposure problems of occupational diseases, we believe that it is essential to have a financing system that will fairly compensate our workers made ill and not place the entire cost on the "last employer," whose involvement may be minimal.

We believe that the responsibility for compensating the workers and their families made ill through asbestos exposure and other toxic substances should be placed squarely on those who are responsible for the harm. Any mechanism for paying compensation should place the burden of payment on the employers or manufacturers of the toxic substance; because of latency and multiple exposure factors it is appropriate that a compensation fund be created that will have an industry-by-industry orientation.

We do not believe that the American public should pay for the workplace disability caused by exposure to toxic substances.
We recognize that there are many possibilities for funding mechanisms, one of which is the insurance pool arrangement embodied in H.R. 3175. This is a complex issue and we would be willing to work closely with the subcommittee to develop a mechanism that will provide certainty of payment, reasonable financing, and fairness of process to the injured workers and their families.

We have serious reservations about the insurance pool arrangement from at least two aspects as it is now constituted in H.R. 3175. First, the pool arrangement gives substantial rights to the pool to challenge individual claims coming before the Secretary of Labor. The claims consideration and adjudication process should be simple as we have stated and principally rest with adjudications by the Secretary of Labor. We do not believe it is appropriate to create a process whereby the pool becomes a "super employer" able to challenge claims. Under the pool arrangement, as currently set forth in H.R. 3175, the various provisions of the pool and claims-handling permitting constant challenge to the claim will create a mechanism that will be litigation-prone and will be an injustice to the workers' interest.

Second, we do not believe that the pool should have any say in whether or not additional diseases will be recognized as eligible for compensation under the statute. The pool arrangement appears to give the insurance industry a veto over whether or not additional diseases will be the subject of compensation. This is not an acceptable process for the workers' interest.

Mr. Chairman and members of the Committee, this is a very serious effort you have started. It means a great deal to our membership in the Construction Industry. As we have stated, it is not an abstract proposition for us. It is an urgent need and we hope the Congress will be responsive to this urgency.

Statement by the AFL-CIO Executive Council on Occupational Disease Compensation and Prevention
February 28, 1983
Bal Harbour, Fla.

About 100,000 workers die each year from the accumulated effects of exposure to carcinogens and other chemical hazards. Another one million workers become disabled each year from the same cause.
When occupational disease episodes are publicized, attention is drawn to the tragic situation of the victims of radiation, asbestos, cotton dust, kepone, vinyl chloride, benzidine, and hundreds of other hazardous agents. The vast majority of those who have been harmed are not afforded assistance; often they do not even know that they are at risk. And only a very small percentage of the most severely disabled workers receive benefits from state workers' compensation systems, which are designed to deal primarily with traumatic injury, not disease.

A federal program is needed to compensate workers and their families for death or disability from occupational disease. The AFL-CIO is encouraged in this respect by current legislative initiatives. Both Rep. George Miller (D-Calif.) and Sen. Edward M. Kennedy (D-Mass.) have announced an intention to introduce legislation that would establish a comprehensive federal program to provide adequate and equitable compensation.

Any such legislation: should include generous time limits for filing claims that take account of the long latency periods for occupational diseases; should include eligibility requirements that give workers a fair opportunity to prove that their disabling disease is caused by exposure to a toxic substance; and should cover known occupational health hazards and provide for coverage through administrative action of additional hazards as they become known.

While a comprehensive compensation program is essential, it is not sufficient in itself. A program to identify, notify and diagnose workers who are at high risk as a result of an occupational health hazard is also necessary. Legislation should be developed to authorize the National Institute of Occupational Safety and Health (NIOSH) to carry out medical research to isolate occupational diseases and to assist populations at risk.

We strongly object to the denial to workers on grounds of alleged bankruptcy of compensation to which they are entitled for job-related injury and disease. Legislation should be enacted to correct this injustice.

Working men and women need and deserve a nationwide effort by the federal government to prevent occupational disease and to assist those who are paying the price in pain, in suffering and in the lost ability to provide for themselves and their families for years of inaction by employers and by the states.
About 100,000 workers die and one million become disabled every year because of past and continuing exposure to toxic agents in their workplaces. Millions of workers are at risk of irreversible diseases of the heart, nerves, muscles, bones, and lungs. Many of the toxic agents that cause these diseases have found their way into workers' homes and communities, claiming as victims an unknown number of family bystanders as well.

When occupational disease episodes are publicized by the media, attention is drawn to the tragedy and pain suffered by victims of radiation, asbestos, cotton dust, kepone, vinyl chloride, benzidine, and hundreds of other hazardous agents. But when the television cameras are turned off, the vast majority of victims remain completely unassisted. They are uninformed about the fact that they are at risk as well as about what must be done to reduce the risk, and only a very small percentage—10 percent in 1978—of even the most severely disabled workers receive benefits from state workers' compensation systems, which are designed to deal with traumatic injury, not disease.

Past legislative efforts have focused solely on the compensation issue, in recent months focused on asbestos victims. Workers and their families need help to prevent disease, those who do develop work-related diseases need assistance, and legislation cannot be restricted to the effects of one or two agents. There must be a mechanism for helping all workers made sick by conditions at work.

A comprehensive program to identify, notify, screen, diagnose, aid, and compensate populations of both workers and their families who are at high risk of dying or becoming disabled as a result of an occupationally-attributable disease is critical if we are to end this chronic, massive national epidemic based on ignorance, apathy and inaction.

A two-fold national program is needed. This first part would be administered by NIOSH, which would conduct medical research to identify and assist populations at risk and administer a Risk Assessment Board. Coverage for known populations at risk would be based on an epidemiologic trigger. Additional workers would be included as new information is collected through research.
The second part would be administered by an independent federal agency that would compensate disabled workers and their families through industry trust funds gathered from employers, adjudicate claims, and initiate a national recordkeeping system. Compensation would be virtually automatic where occupation is a factor in causing a worker's disease or disability, on a no-fault basis. Workers and the agency would have the right to sue both corporation and individual corporate officers in cases of criminal and gross negligence, and workers would be protected from exclusion from coverage under existing health insurance.

The Executive Council and Conventions of the Industrial Union Department have adopted resolutions on this issue in the past. These have been confirmed as policy statements of the labor movement by action of the Executive Council and Conventions of the AFL-CIO.

NOW, THEREFORE, BE IT RESOLVED:

That the Industrial Union Department, AFL-CIO, mount a campaign to implement these policies, that the Department call on all affiliates and Departments of the AFL-CIO to join us in a national campaign to correct the injustices of the past.