



ENVIRONMENTAL RISK & PFAS LITIGATION CONFERENCE

The New York City Bar Association | June 17-18, 2025

Outlook on Mass Tort Reform



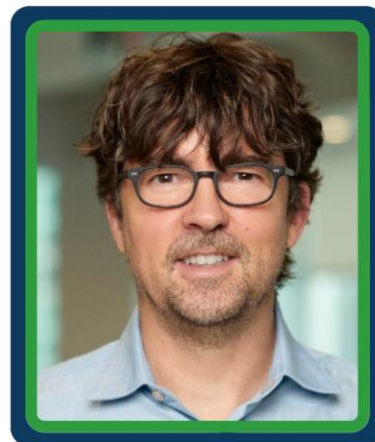
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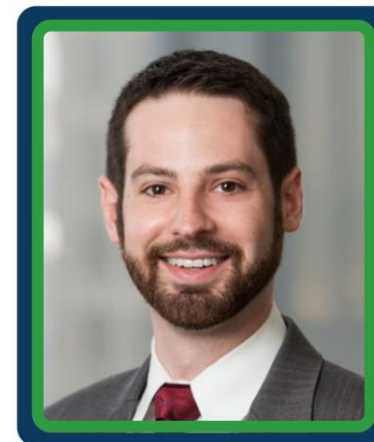
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TORT REFORM PANEL

June 17-18, 2025, New York City Bar Association



- Jurisdictional Updates/State Level Efforts
- History of Federal Tort Report (911 and Asbestos Litigation)
- Fair Act & Current PFAS Federal Legislative Efforts
- Framework for PFAS Tort Reform
- Prospects for Future Reform



- ▷ Tort Reform vs. tort
- ▷ Larger Efforts in Georgia and Florida
 - ❑ Senate Bills 68 and 69 (2025)
 - ❑ HB 837/Senate Bill-238 (2023)

Illinois

Likely Going the Other Direction

- ❖ In 2019 Governor Pritzker passed SB 1596
- ❖ Martin v. Goodrich
- ❖ Outlier BIPA (2024)



Illinois

PFAS

- ❖ House Bill 1295
- ❖ Introduced by rep Michael J. Kelly
- ❖ Product bans as early as 2026
- ❖ Mirrors efforts in states like Maine, targeting cleaning products, kitchen items, and cosmetics
- ❖ Targeting a total ban by 2033



Is it time for Mass Tort Reform? The Curious Case of Missouri



- ❖ Missouri has had a Republican controlled state legislature since 2002 and essentially controls the entire Missouri Government.
- ❖ Missouri has not enacted what most would consider significant tort reform for a deep red state.
 - Senate Bill 47: Passed in April 2025 only brings Missouri in line with federal standards in class action
 - Missouri has a 5-year Statute of Limitations in Personal Injury Claims
 - Efforts to Cap Damages and Forum Shopping – Successful? Maybe not.

MO Republicans, MO Pesticides, MO Failure



- ❖ Senate Bill 14 proposed to prevent companies for being sued over the contents of pesticide labels if the labels were EPA approved.
- ❖ *Anderson v. Monsanto* – MO Court of Appeals (WD) upholds \$611 Million Verdict
- ❖ What is a MO Republican?



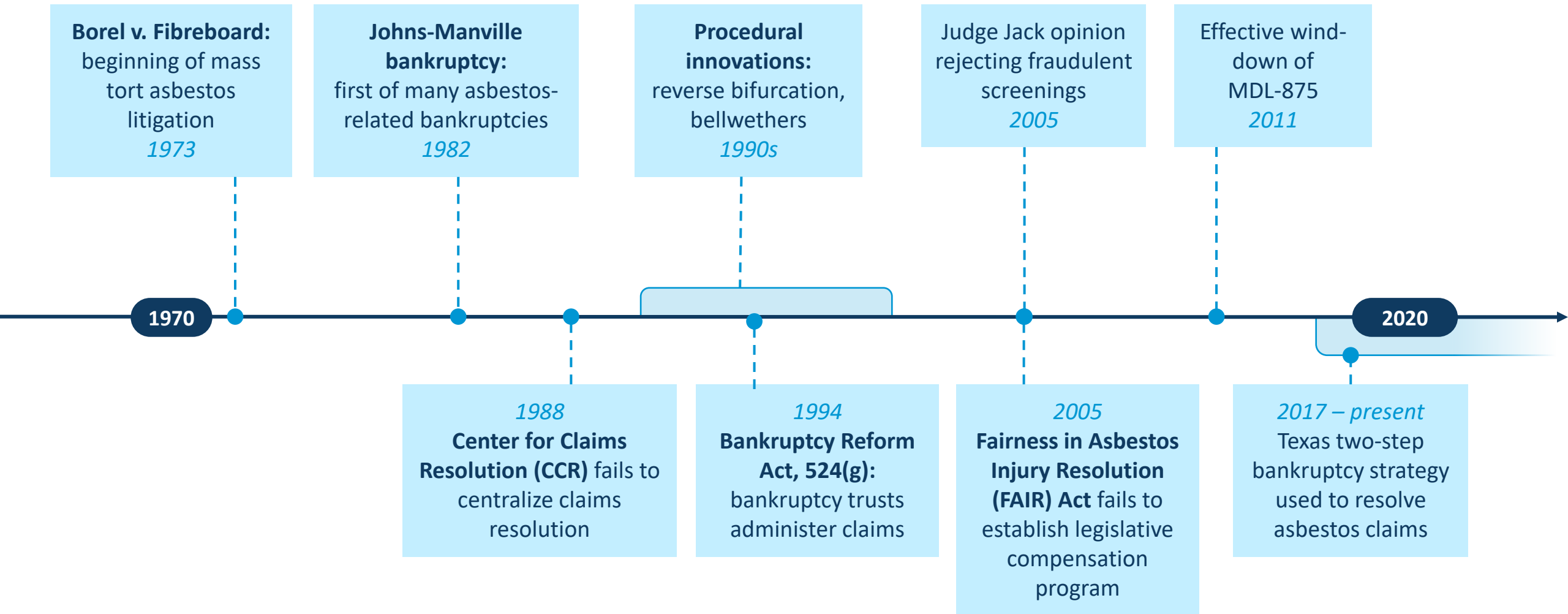


Am I a...populist?

❖ Missouri Republican Senator Josh Hawley

- Opposes Medicaid Cuts (sort of)
- Walked the UAW Picket Line and received union endorsement in his campaign
- Proposed bill to cap interest on credit cards
- Co-sponsoring bill to raise federal minimum wage with democrats
- Insurance Company Questioning

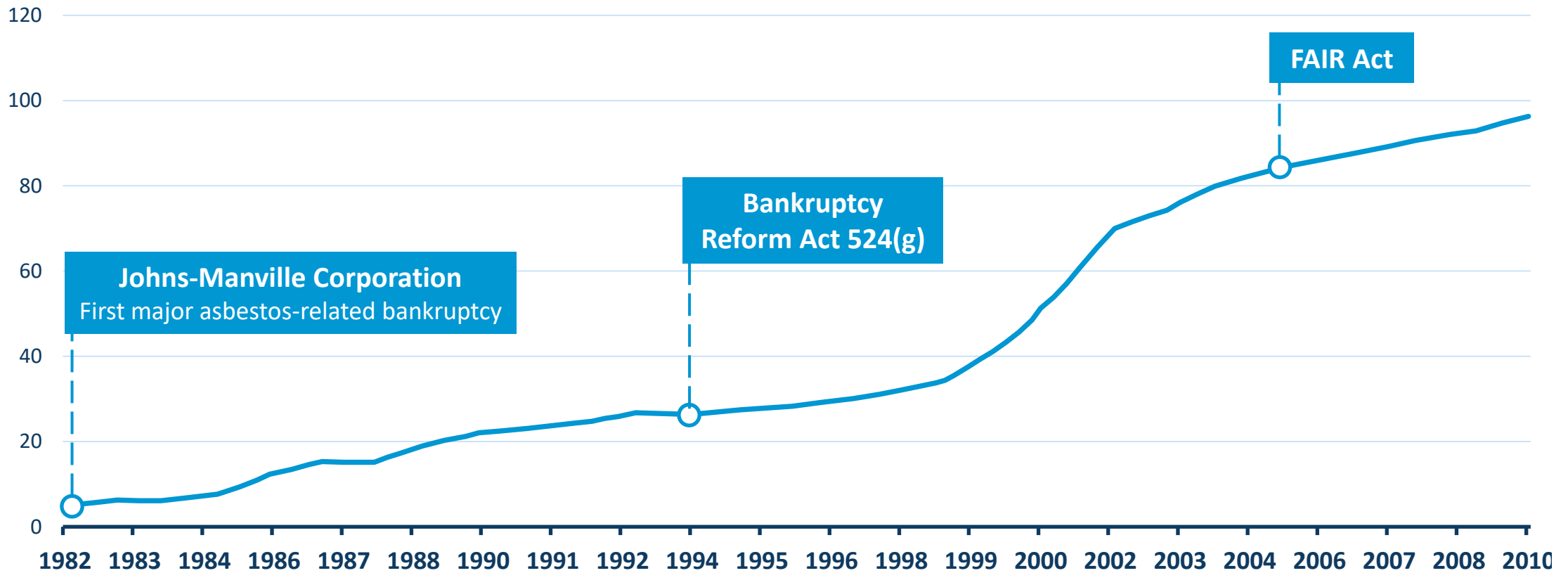
Asbestos Litigation Timeline



Asbestos-Related Bankruptcies



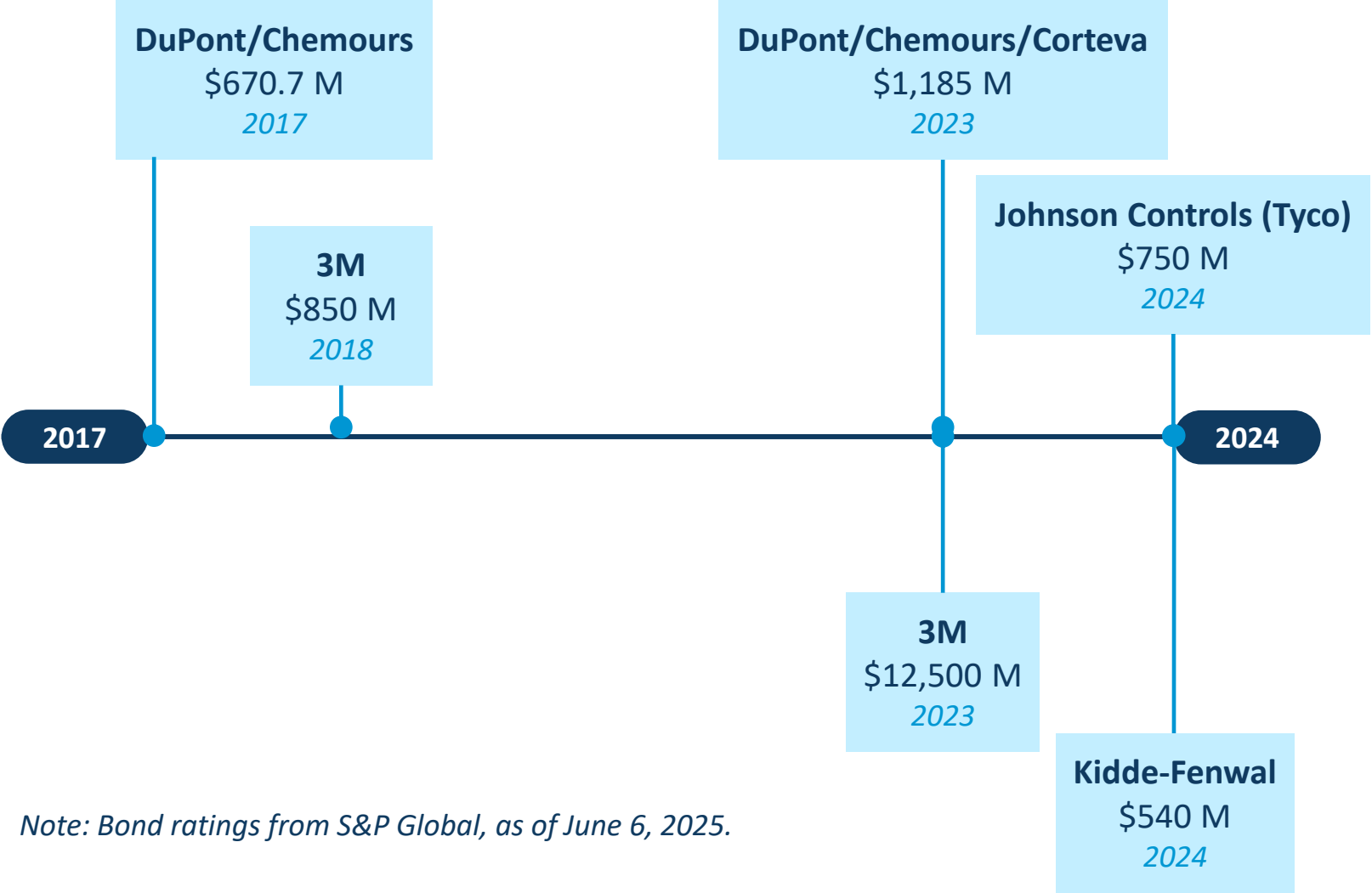
Cumulative Number of Asbestos-Related Bankruptcies



Source: RAND, "Asbestos Bankruptcy Trusts." 2010.



PFAS Bankruptcy and Select Settlements



Note: Bond ratings from S&P Global, as of June 6, 2025.

CURRENT BOND RATINGS

- Kidde-Fenwal
Filed for Bankruptcy
- Johnson Controls (Tyco)
BBB+
- 3M
BBB+
- DuPont
BBB+
- Chemours
BB-
- Corteva
A-

Asbestos vs PFAS



	Asbestos	PFAS
Causation	<ul style="list-style-type: none"> • Mesothelioma is a “signature disease” 	<ul style="list-style-type: none"> • Kidney and testicular cancer – "probable link" (C8 Science Panel)
Latency	<ul style="list-style-type: none"> • Median 40 years 	<ul style="list-style-type: none"> • Latency from recent exposure still manifesting
Non-Cancer Injuries	<ul style="list-style-type: none"> • Non-malignant cases overwhelmed courts until 2005 	<ul style="list-style-type: none"> • Diagnosed high cholesterol, ulcerative colitis, thyroid disease, and pregnancy-induced hypertension
Scope of Tort Exposure	<ul style="list-style-type: none"> • Few primary suppliers • Many secondary suppliers and product manufacturers 	<ul style="list-style-type: none"> • Similar industry structure to asbestos • Extensive use in downstream consumer products
Legal Conditions	<ul style="list-style-type: none"> • Class action treatment failed • Courts overwhelmed by unimpaired claims • Extensive bankruptcies 	<ul style="list-style-type: none"> • Innovations in bankruptcy resolution • MDL + bellwether → settlement • Claims brought by State Attorneys General
Tort Reform	<ul style="list-style-type: none"> • 524(g) (1994) • FAIR Act – not passed (2005) • Legal innovations: NYCAL 	<ul style="list-style-type: none"> • Texas Two-Step • Third Party Release • Claim verification reform



Will PFAS Mass Tort Litigation Motivate Tort Reform?

Weaker motivation for reform

- Lower apparent bankruptcy risk
- Absence of non-malignant claims explosion that fed asbestos crisis

Challenge for solvent companies

- Resolution in the tort system is highly inefficient and risky

Litigation targets may expand to secondary manufacturers and other sites

Uncertainty in ongoing availability of bankruptcy to resolve liability

- Uncertain prospects for Texas two-step
- Argument to expand 524(g)

The Fairness in Asbestos Injury Resolution Act of 2005



Overview and Implications of S. 852

Establish a national, no-fault compensation system for individuals suffering from asbestos-related diseases.

Date Introduced: June 16, 2005

- This proposal sought to replace the existing tort system with a more efficient and predictable process for claimants and defendants alike.

Trust Fund Structure and Funding



The Act proposed a \$140 billion trust fund, primarily funded by:

\$90 billion

From defendant companies that have been exposed to asbestos claims.

\$46 billion

From insurers of these companies.

\$4 billion

From existing confirmed asbestos compensation trusts.

These contributions were to be made over a 27-year period, with provisions for adjustments based on financial hardship and inequity among participants.

Compensation Criteria



Compensation eligibility was based on standardized medical criteria, categorized by the severity of the asbestos-related disease.

Claimants were not required to prove causation with respect to a pool of defendants or show that their claim was not caused by their own negligence.

Administration and Claims Process



The Act proposed the establishment of an Office of Asbestos Disease Compensation within the Department of Labor to administer the fund.

- This office would oversee the processing of claims, ensure compliance with medical criteria, and manage the distribution of compensation.
- Claimants would submit their cases to this office, where eligibility would be determined based on the established medical criteria.
- Approved claims would then be compensated from the trust fund.

The FAIR Act of 2005: Why did it fail?



Despite bipartisan support, the bill failed to pass a test vote in the Senate in early 2006. The bill did not advance due to issues related to:

- Funding Adequacy
- Compensation Levels
- Administration Details

Opposition led by coalition of stakeholders including:

- asbestos victims' advocates
- labor unions
- trial lawyers
- Certain insurers and defendants who thought their funding obligations were disproportionate

1. Funding Adequacy



Main concern: The \$140 billion trust fund might be insufficient to cover all legitimate claims over the life of the program.

Specific Issues:

- **Uncertain number of future claims:** Critics argued that the number of claimants could exceed projections, especially as new asbestos-related diseases emerged over time or as diagnostic criteria improved.
- **Underestimated liabilities:** Estimates used to design the trust relied heavily on historical claim rates, which may not have accounted for future growth or previously unknown exposures.
- **Taxpayer liability risk:** Though the fund was supposed to be privately financed, there were fears that, if underfunded, the federal government (i.e., taxpayers) might be pressured to step in.
- **Payment timing vs. funding stream:** Contributions were to be made over 27 years, but a large number of claims were expected early in the program, creating concerns about cash flow and liquidity.

2. Compensation Levels



Main concern: The standardized compensation amounts were seen as wither too low for severely ill claimants or too generous for those with minimal impairment.

Specific Issues:

- **Fixed award schedules:** The Act provided predetermined payouts for different categories of disease, with amounts ranging from a few thousand to over a million dollars, depending on severity.
- **Inflexibility:** Critics said this “one-size-fits-all” approach ignored individual circumstances, such as loss of income, medical costs, or pain and suffering.
- **Lack of jury trials:** Victims who might have received higher awards through litigation would be forced into the trust system and barred from suing.
- **Claims from “non-malignant” diseases:** Some believed compensation for these conditions (e.g., asbestosis or pleural plaques) was too generous and could drain the fund at the expense of future cancer victims.

3. Administrative Details



Main Concern: The proposed bureaucracy to manage claims was viewed as overly complex and possibly inefficient.

Specific Issues:

- **New federal office:** The Act created the Office of Asbestos Disease Compensation within the Department of Labor—a major new administrative apparatus with unclear capacity to handle millions of claims.
- **Delays and bottlenecks:** Critics worried the new system could create long wait times for claimants, similar to problems seen in other federal compensation programs (e.g., the 9/11 Victim Compensation Fund).
- **Medical criteria disputes:** Some feared that strict qualifying standards would unfairly exclude legitimate victims, while others believed they could be gamed, especially by mass-screening clinics.
- **Unclear appeals process:** Although the Act allowed claimants to challenge adverse decisions, there were concerns that this process could be too legalistic or costly, especially for sick or elderly individuals.

Might a legislative solution succeed with PFAS claims?



The Firefighter PFAS Injury Compensation Act (H.R. 7788 / S. 4013 introduced March 21, 2024)

Claims

Eligible claimants must submit a claim form with proof of diagnosis and service history.

Two years after regulations or two years post-mortem

Eligibility

Diagnosis of PFAS-related health conditions such as:

- **Cancers** (e.g. kidney, prostate bladder, colon)
- **Thyroid disease**
- **Ulcerative colitis**
- **Other conditions** approved by the Secretary of Health and Human Services

Compensation

- Claimants **can receive compensation** for one cancerous and one non-cancerous condition
- **Payments issued no later than 20 days** after award determination.

PFAS TRUST FUND-Funding Sources



Excise tax on PFAS Manufacturers

This tax applies to manufacturers producing PFAS-containing products. Specifically, it imposes a tax on the sale of such products after the enactment date of the legislation. The exact tax rate and the list of taxable PFAS substances are to be determined through subsequent regulatory guidance.

Tax on PFAS-related litigation awards

In addition to the manufacturer's tax, the legislation imposes a **10% excise tax** on the present value of any **qualifying PFAS litigation award**. A "qualifying PFAS litigation award" is defined as a payment made pursuant to any final court order or settlement to compensate any person for harm suffered as a result of exposure to PFAS, excluding claims for personal injury.

Destined for the same fate as the FAIR Act, or can Congress solve for those shortcomings?

Why Now?



- ▷ Aligns with the Current Administration's Goals
- ▷ Potential Bipartisan Support
- ▷ Relatively Early in the Litigation
- ▷ Less Organized Opposition

Obstacles



- ▷ Multi-jurisdictional vs. focused
- ▷ Who are the stakeholders?
- ▷ What is a PFAS?
- ▷ Adequate Funding
- ▷ Administrative Focus



THANK YOU