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February 14, 2006

The Honorable Bill Frist
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Arlen Specter, Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy, Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Frist, Reid, Specter and Leahy:

I am writing to you on behalf of the American Bar Association regarding S. 852, legislation now being considered on the Senate floor to create an asbestos trust fund as an alternative administrative remedy for compensating workers exposed to asbestos. The Association has long been concerned about problems surrounding the asbestos litigation situation.

Today, I am writing to let you know that yesterday, at the Midyear Meeting of our House of Delegates in Chicago, the ABA adopted the attached four recommendations that we would urge Congress to consider in fashioning any asbestos trust fund legislation. The resolutions were adopted upon recommendation of a task force of our Tort Trial and Insurance Practice Section. The task force was well-balanced, having representation from plaintiff and defense trial lawyers, insurance companies, asbestos manufacturers, and organized labor. The ABA has not

taken a position on the advisability of establishing an asbestos trust fund to serve as the exclusive mechanism for the compensation of asbestos-related injuries, nor has it taken a position on S. 852. However, should Congress choose to create such a fund, the ABA believes that the attached resolutions address important interests that should be considered.

Although the ABA has not taken a specific position of S. 852, we applaud efforts to build consensus in addressing the asbestos problem. In recent years, we have offered a wide range of policy recommendations, including a case management order, a model statute of limitations, medical criteria for filing claims, and standards for mass screenings. We developed these policies in the hopes that our expertise may contribute to a solution. I am happy to provide you with copies of these other policies at your request.

Thank you for considering our recommendations. Please let me know if you have any questions.

Sincerely yours,

A handwritten signature in cursive script that reads "Robert D. Evans". The signature is written in black ink and is positioned to the left of the typed name below it.

Robert D. Evans

RESOLUTION ADOPTED
BY THE
HOUSE OF DELEGATES
OF THE
AMERICAN BAR ASSOCIATION

February 13, 2006

RESOLVED, That the American Bar Association, without taking a position on the advisability of the establishment of an administrative process as an exclusive mechanism for the compensation of an asbestos-related injury subject to tort-based claims, recommends that any legislation establishing an administrative process in lieu of state, territorial or federal tort-based asbestos-related claims should insure access by claimants to adequate representation in the claims process, including:

1. A claimant's assistance program with adequate funding, personnel, and resources to provide effective representation as to all aspects of submitting and presenting a claim, at no cost to the claimant. This should include investigation of work and medical history and other relevant facts necessary for meeting eligibility and payment standards and criteria. It should also include reasonable medical evaluations as needed.
2. In cases pending in the courts or administrative systems on the effective date of any legislation foreclosing further litigation in the courts or administrative systems, provisions that would adequately compensate claimants and their attorneys for attorney services and costs reasonably expended or incurred on their behalf in the terminated litigation in the courts or administrative systems.
3. Access to private attorneys without unreasonable restrictions as to fees or other aspects of necessary representation in the claims process, if desired by a claimant.

RESOLUTION ADOPTED
BY THE
AMERICAN BAR ASSOCIATION
HOUSE OF DELEGATES
February 13, 2006

RESOLVED, That the American Bar Association, without taking a position on the advisability of the establishment of an administrative process as an exclusive mechanism for the compensation of an asbestos-related injury subject to tort-based asbestos-related claims, recommends that any legislation establishing an administrative process in lieu of state, territorial or federal tort-based claims should (1) insure that awards to claimants not be depleted by subrogation from any private or governmental entity, (2) apply existing laws concerning taxation of awards to claimants (which generally are not subject to taxation), and (3) not unduly foreclose independent claims existing under state, territorial, or federal law relating to safety or other obligations of employers.

**RESOLUTION OF THE
AMERICAN BAR ASSOCIATION
ADOPTED BY THE
HOUSE OF DELEGATES
February 13, 2006**

RESOLVED, That the American Bar Association, without taking a position on the advisability of an administrative process as an exclusive mechanism for the compensation of an asbestos-related injury subject to tort-based claims, recommends that any legislation establishing an administrative process in lieu of state, territorial or federal tort-based asbestos-related claims should contain the following provisions to insure adequate up-front financing and disclosure of certain information concerning the contributors.

1. Any exclusive administrative mechanism should ensure that there is adequate funding to meet anticipated claims, with priority given to more serious cases, including, in the first five years, short-term financing.
2. Before declaring any exclusive administrative mechanism operational, the administrator should insure that he or she has received adequate information identifying the contributors to any exclusive administrative mechanism and the amount of their contribution and as to their ability to meet their contribution obligations as they come due. The declaration that any exclusive administrative mechanism is operational should not take effect for at least 30 days after the administrator certifies that he or she has received the requisite information described in the sentence above and has disclosed the information in an official publication, such as the federal register for the federal government.
3. Until the administrator declares any exclusive administrative mechanism operational and it becomes operational, pending lawsuits should continue in the courts unabated.

RESOLUTION
ADOPTED BY THE HOUSE OF DELEGATES
OF THE
AMERICAN BAR ASSOCIATION

February 13, 2006

RESOLVED, That the American Bar Association, without taking a position on the establishment of an administrative process as an exclusive mechanism for the compensation of an asbestos- related injury subject to tort-based claims, recommends that any legislation establishing an administrative process in lieu of state, territorial or federal tort-based asbestos-related claims should contain the following contingent provisions to respond to any potential occurrence of a shortfall of funds:

1. A mechanism should be established whereby the administrator determines and announces on a speedy basis when the administrative process has encountered or anticipates a shortfall.
2. If there are not sufficient funds to pay claims, there should be a remedy in the courts. The claims should be allowed to be filed in State, Territorial, or Federal Court as provided under those jurisdictions' statutes and rules of civil procedure. Nothing in this resolution should be interpreted to suggest the extension of jurisdiction or venue beyond that which already exists under those jurisdictions' statutes and rules.
3. Claimants with mesothelioma and/or whom a physician has certified have a reasonable life expectancy of less than twelve months, should be allowed immediately to file suit in any appropriate court, as stated herein. No court should be prevented from establishing case management orders, scheduling orders, or other appropriate orders to administer and adjudicate the cases transferred to the court system.
4. Any applicable statute of limitations or statute of repose should be tolled during the existence of any administrative process and for a period of 180 days after the time that the claimant is eligible to return to the court system to file or refile suit, unless applicable State, Federal, or Territorial law provides for a longer tolling period within such jurisdiction.