

KEY VOTE ALERT!

March 8, 2017

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce and the U.S. Chamber Institute for Legal Reform (ILR) support H.R. 985 the “Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017,” and urge the House to pass this important legal reform legislation. The Chamber will consider including votes related to it in its 2017 *How They Voted* scorecard.

This combined bill would reform class action and mass tort multi-district litigation (MDL) proceedings along with bringing important transparency to the asbestos litigation system. The class action and MDL provisions of this legislation address multiple problems associated with overbroad and procedurally abusive class actions and MDLs. These actions subject businesses to burdensome and expensive litigation that raises prices for consumers and leaves business owners with fewer resources to innovate and hire employees.

Consumers and class members are rarely “winners” in class action cases. Although these lawsuits almost always settle once a class is certified, the settlements rarely deliver any meaningful benefit to class members, while the attorneys “representing” the classes receive potentially millions of dollars in contingency fees. **In many class settlements, the lawyer receives more money than all the class members combined.**

In addition, some federal courts have contorted elements of the Federal Rules of Civil Procedure to certify classes in circumstances where they were clearly never intended to be certified. For example, a person who has a problem with a product (or service) is often allowed to sue on behalf of all other individuals who purchased the product (or service), despite these other individuals never having suffered any injury. Further, some courts have allowed class actions to proceed by certifying only a particular issue for class treatment, making a clear end-run around U.S. Supreme Court-mandated fairness requirements. These are just a few examples of the pervasive abuses in class and mass action proceedings.

H.R. 985 would help correct many of the abuses that have turned class actions and mass tort MDL proceedings into cash machines for the plaintiffs’ trial bar. This bill would require conflicts of interest between class members, class representatives, and class counsel to be disclosed. Class members would receive any payment due to them prior to class counsel being paid. Furthermore, under this legislation, class actions only would be allowed to proceed if class members have experienced the same type and scope of injury as the purported class representative. MDLs would have various commonsense fairness requirements applied to them such as requiring



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the lawyer filing the case to show that they did an initial factual investigation of whether the case actually has merit.

Finally, this bill would require the disclosure of secret hedge fund investments in class actions, among other provisions.

The asbestos provisions of this bill would shine much needed light on asbestos personal injury settlement trust funds and ensure their finite resources are reserved for true victims, not drained by fraudulent claims.

Section 524(g) of the federal bankruptcy code authorizes bankrupt companies to establish trusts to receive and pay asbestos related claims. When Congress enacted 524(g), it intended to guarantee all present and future claimants equal access to compensation for their asbestos-related injuries. However, it appears that Congress's intent is being frustrated by the filing of inconsistent and fraudulent claims that are drawing down the trusts' funds and endangering future victims' recoveries.

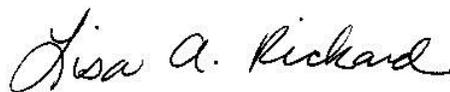
Questionable trust claims have been uncovered throughout the country in the course of tort litigation, and reviews conducted by independent experts at both the Government Accountability Office and RAND Corporation concluded that asbestos trusts are susceptible to abuse and may pay improper claims. The simple transparency requirements in H.R. 985 would help protect asbestos trusts from fraud. They would also ensure that still-solvent tort defendants, many of whom were only peripherally involved in the manufacture or distribution of asbestos or asbestos-containing products, are not driven into bankruptcy by claims that should be resolved, in whole or in part, by asbestos trusts.

This important legislation would help bring equity back into the judicial system by discouraging fraud and abuse in a wide variety of civil cases. The Chamber and ILR strongly support H.R. 985 and urges its favorable consideration by the House.

Sincerely,



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