

Legislative History for Connecticut Act

HB 5930	(PA 90-91)	1990
Senate	2763-2764, 2784	(3p)
House	3033-3042	(10p)
Jud.	1051-1056, 1068-1069, 1087-1088	(8p)

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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1990

VOL. 33  
PART 9  
2675-2972

MONDAY  
May 7, 1990

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aak

Without objection, so ordered.

THE CLERK:

Calendar Page 7, Calendar 383, File 405 and 588,  
Substitute HB5930, AN ACT CONCERNING PRODUCT LIABILITY  
CLAIMS. As amended by House Amendment Schedule "A".  
Favorable Report of the Committee on JUDICIARY.

THE CHAIR:

Senator Blumenthal.

SENATOR BLUMENTHAL:

I move acceptance of the Joint Committee's  
Favorable Report and passage of the bill in concurrence  
with the House.

THE CHAIR:

Will you remark?

SENATOR BLUMENTHAL:

Yes, Mr. President. This bill concerns product  
liability lawsuits that are based on allegations of  
personal injury or death by persons who are exposed to  
asbestos and contend that the cause of that injury is  
to that exposure. The current law requires that such a  
lawsuit be brought within 30 years of the exposure.  
This bill would extend that to 60 years. It would not  
apply to property damage as a result of the amendment  
that was added by the House.

If there is no objection, Mr. President, I would

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ask that it be placed on Consent.

THE CHAIR:

Senator Upson.

SENATOR UPSON:

Mr. President, I don't have objections. One question, through you, to Senator Blumenthal.

THE CHAIR:

You may proceed.

SENATOR UPSON:

Does this pertain only to asbestos cases? Through you, Mr. President.

THE CHAIR:

Senator Blumenthal.

SENATOR BLUMENTHAL:

Through you, Mr. President. That is correct.

SENATOR UPSON:

Thank you, Mr. President.

THE CHAIR:

Further remarks? Senator Blumenthal.

SENATOR BLUMENTHAL:

I would renew my motion that it be placed on Consent.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

MONDAY  
May 7, 1990

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Please give your attention the Clerk who will read the items that have been referred to the Consent Calendar. Mr. Clerk.

THE CLERK:

Mr. President the second Consent Calendar begins on Calendar Page 3, Calendar 275, Substitute HB6009. Calendar Page 5, Calendar 371, HB5179. Calendar Page 6, Calendar 378, Substitute HB5187. Calendar Page 7, Calendar 383, Substitute HB5930. Calendar Page 9, Calendar 412, Substitute HB5734.

Mr. President, that completes the second Consent Calendar.

THE CHAIR:

Are there changes or omissions? We are now voting on Consent Calendar #2. The machine is open. Please record your vote. Has everyone voted? The machine is closed. Clerk please tally the vote.

The result of the vote.

34 Yea

0 Nay

Consent Calendar #2 is adopted.

Senator O'Leary.

SENATOR O'LEARY:

Thank you, Mr. President. I would move that we send the matters that are going to the House to the

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CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1990

VOL. 33  
PART 9  
2703-3074

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3033

House of Representatives

Wednesday, April 18, 1990

REP. FRANKEL: (121st)

Thank you, Mr. Speaker. Before making that motion to recess until 2:00 p.m., I believe there was an announcement made about a meeting to take place during the dinner break. I should like to alert the Chamber to the fact that it is not our intention to break for dinner this evening, but rather to work through dinner.

And with that, Mr. Speaker, at this time I would to move that the House stand in recess, subject to the Call of the Chair, with the intention of reconvening in approximately thirty minutes.

SPEAKER BALDUCCI:

Is there objection? Seeing none, the House stands in recess.

On motion of Representative Frankel of the 121st, the House recessed at 1:30 o'clock p.m., to reconvene at 2:00 o'clock p.m.

The House reconvened at 2:22 o'clock p.m., Speaker Balducci in the Chair.

SPEAKER BALDUCCI:

The House will please come to order.

CLERK:

Page 6, Calendar 319, Substitute for House Bill 5930, AN ACT CONCERNING PRODUCT LIABILITY CLAIMS.

Favorable Report of the Committee on JUDICIARY.

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**3034**

House of Representatives      Wednesday, April 18, 1990

REP. LEVIN: (40th)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Levin of the 40th.

REP. LEVIN: (40th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

SPEAKER BALDUCCI:

The question is on passage. Will you remark?

REP. LEVIN: (40th)

Yes, thank you, Mr. Speaker. This bill does two things. It first of all recognizes the scientific fact that exposure to asbestos may not cause cancer or other asbestos-related illness for up to a period in excess of fifty years and therefore increases the time in which a claim may be brought for exposure and illness caused by exposure to asbestos to sixty years.

And secondly, somewhat broadens the defense to product liability actions, that is the defense of product liability actions by recognizing that often a product is given by a manufacturer to someone who then must distribute it to a large number of people who may not actually see the warnings on a particular product. So, in its final section, it points out that a warning

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House of Representatives Wednesday, April 18, 1990

would be adequate if it is given to the person who is best able to recommend to a third party what precautions they should take from exposure to a product.

And Mr. Speaker, to make it absolutely clear that this bill is designed to provide an opportunity for people who have suffered personal injury to bring claims when they have accrued in a period in excess of thirty and less than sixty years, the Clerk has an amendment, LCO3260. If the Clerk could call the amendment, and if I could be allowed to summarize?

SPEAKER BALDUCCI:

Clerk, please call LCO3260, designated House "A".

CLERK:

LCO3260, designated House Amendment Schedule "A", offered by Representative Jaekle, 122nd District et al.

SPEAKER BALDUCCI:

The question is on summarization. Is there objection? Seeing none, Representative Levin.

REP. LEVIN: (40th)

Thank you, Mr. Speaker. This bill makes it clear again that the extension of the statute of limitations affects only personal injuries, injuries to the person and not injuries to property. I would move adoption.

SPEAKER BALDUCCI:

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House of Representatives

Wednesday, April 18, 1990

Will you remark further on the amendment?

Representative Ward of the 83rd.

REP. WARD: (86th)

86th, Mr. Speaker.

SPEAKER BALDUCCI:

86th, excuse me.

REP. WARD: (86th)

Thank you, Mr. Speaker. Mr. Speaker, through you, a question to Representative Levin.

SPEAKER BALDUCCI:

Proceed, sir.

REP. WARD: (86th)

Through you, Mr. Speaker, Representative Levin, by taking out the property damage or the extension on the property damage, do you know if we will be affecting in any way any municipalities' claims under the John Mansville property damage trust that may be from a school built, say, 35 years ago? Are we going to--? Do you have any idea if we are affecting any of those claims that are out there now? There are a number of towns that are processing those claims for the expensive removal of asbestos at this time.

SPEAKER BALDUCCI:

Representative Levin, do you care to respond?

REP. LEVIN: (40th)

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I will attempt to respond, Mr. Speaker. I can say that I don't know with any definiteness. But I would certainly think that unlike a personal injury, it should be readily clear to anyone who has a piece of property that has been insulated with, or asbestos has been used in the construction, that that is a fact well before thirty years from the time in which the initial exposure occurred.

SPEAKER BALDUCCI:

Representative Ward.

REP. WARD: (86th)

Just so that I am clear, is the 30 years--? The thirty years does not then run from the construction of the building but from when they should have known that the use of asbestos is a dangerous matter? So, they may not have known that until say, 20 years after they built the building with that product? Am I correct in that interpretation?

SPEAKER BALDUCCI:

Representative Levin.

REP. LEVIN: (40th)

Through you, Mr. Speaker, that is correct.

REP. WARD: (86th)

Thank you, Mr. Speaker. I don't see a problem with the amendment, but I want to make sure that the intent

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is clear that we are not trying to affect any municipalities' present claims under the John Mansville property trust fund. And I think from that explanation, it is clear that we should not be, and so I would have no objection to the amendment.

SPEAKER BALDUCCI:

Will you remark further on the amendment? Will you remark? If not, we will try your minds. All those in favor of the amendment, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER BALDUCCI:

Opposed, nay. The ayes have it. The amendment is adopted, ruled technical.

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House Amendment Schedule "A":

In line 55, after "that" insert "(1)"  
In line 56, after "action" insert "FOR PERSONAL INJURY OR DEATH"  
In line 59, after "asbestos" insert "AND (2) NO SUCH ACTION FOR DAMAGE TO PROPERTY MAY BE BROUGHT BY THE CLAIMANT LATER THAN THIRTY YEARS FROM THE DATE OF LAST CONTACT WITH OR EXPOSURE TO ASBESTOS."

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SPEAKER BALDUCCI:

Will you remark further on the bill as amended?  
Representative Farr of the 19th.

REP. FARR: (19th)

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Mr. Speaker.

SPEAKER BALDUCCI:

Representative Farr.

REP. FARR: (19th)

A question for Representative Levin? I am sorry. I thought your answer to the last question was that you have thirty years from the date you should have discovered it. And the language seems to say that no such action may be brought for any claim later than sixty years. I don't-- Are you saying that that clear language is not accurate? That you would still, despite that language that says no action may be brought later than sixty years, that you could in fact still bring an action later than sixty years, if you just hadn't discovered the fact that this was dangerous?

Through you, Mr. Speaker, to Representative Levin?

REP. LEVIN: (40th)

Through you, Mr. Speaker, no, that wouldn't be my intention. You have sixty years in which, from the last time you were exposed to the product, in which you should know of that exposure or have learned frankly that you have become ill. And then from that point in time, you have three years to bring an action.

SPEAKER BALDUCCI:

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Representative Farr.

REP. FARR: (19th)

Okay, that is based upon the amendment. Through you, Mr. Speaker, to Representative Levin. You are relying upon the language in the amendment that gives you the thirty years. It is-- The sixty years still applies, in addition to the thirty? Is that correct? Through you, to Representative Levin.

REP. LEVIN: (40th)

Through you, Mr. Speaker, that is correct.

REP. FARR: (19th)

And is the sixty years-- Doesn't the sixty years absolutely bar all claims after sixty years?

REP. LEVIN: (40th)

Through you, Mr. Speaker, that is correct.

REP. FARR: (19th)

Thank you. I misunderstood that answer. All right. Thank you.

SPEAKER BALDUCCI:

Will you remark further on the bill as amended? Will you remark? If not, staff and guests, to the Well. Staff and guests, please to the Well. Staff and guests, to the Well. Members, please be seated. The machine will be opened.

CLERK:

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House of Representatives      Wednesday, April 18, 1990

The House of Representatives is voting by roll call. Members, please report to the Chamber. The House is voting by roll call. Members, to the Chamber please.

SPEAKER BALDUCCI:

Have all the members voted, and is your vote properly recorded? If so, the machine will be locked. If all the members have voted, the machine will be locked. Clerk, take a tally.

Representative Marotta of the 5th.

REP. MAROTTA: (5th)

In the affirmative.

SPEAKER BALDUCCI:

Representative Marotta, in the affirmative. Clerk, please announce the tally.

CLERK:

House Bill 5930, as amended by House Amendment Schedule "A".

Total Number Voting	147
Necessary for Passage	74
Those Voting Yea	139
Those Voting Nay	8
Those absent and not Voting	4

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117 3042

House of Representatives Wednesday, April 18, 1990

SPEAKER BALDUCCI:

The bill as amended is passed.

Are there any announcements or points of personal privilege at this time?

REP. STOLBERG: (93rd)

Mr. Speaker?

SPEAKER BALDUCCI:

Representative Stolberg.

REP. STOLBERG: (93rd)

Mr. Speaker, for an introduction please?

SPEAKER BALDUCCI:

Proceed.

REP. STOLBERG: (93rd)

Those of us who were over at the 4H breakfast this morning at 8:00 o'clock, I think Representative Gordes and myself were rewarded. I was rewarded by being assigned six lovely Shadows who have been running around with me all morning. And I would like them all to stand at this time, and I will introduce them.

We have Chantelle Yuen and Amanda Porter, Tanya Lanyon and Wendy Lanyon, Becky Augur and Sarah Bidder from New Haven County from Milford, Orange, Durham and Beacon Falls. It is my pleasure to introduce them to the Chamber at this time, and I would ask the Chamber to welcome them in our usual fashion.

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 3  
723-1089

1990

ATTY. MATTHEW SHAFFNER: I'm Matthew Shaffner, a lawyer from Groton, Connecticut and I'm here on behalf of the Connecticut Trial Lawyers Association to speak to HB5930 and HB5932, the acts concerning the statute of repose as it's applied to the Products Liability Act.

Two weeks ago a gentleman walked into my office. He was 49 years old. He was married and he had three children. He was the manager of a (inaudible) business and about three months earlier he had been having chest pain and he went to the doctor and he had a chest x-ray and the diagnosis came back that he had Mesophelioma. Mesophelioma is a cancer of the lining around the chest, the plural lining around the chest.

The doctors in various communities have tried radiation therapy. They've tried chemotherapy. They've tried surgical resection of the plural lining around the chest. The cancer is so aggressive that the time it can be discovered, it is too late. The average length of survival of all mesophiliomas is approximately one year after diagnosis.

This gentlemen had worked for one year as a pipefitter and that's the only place he had asbestos exposure and the only known cause of this dreaded disease mesophiliomas is asbestos exposure.

Because it was 25 years ago, we can file suit for him and we are in the process of doing so and arranging to take his videotapped deposition because it is unlikely he will survive long enough for his trial. If he had had a stronger immune system, as many of his co-workers did and do, he would not have gotten the disease until some years later. With the 30 year statute of repose which now exists in the current law, these people will not be able to file suit.

So I guess the good news is they have a strong immune system. The bad news is if they come down with the dreaded disease, their families and survivors cannot do anything about it. I think when the Statute of Repose was enacted what everyone was concerned with was heavy equipment or

tangible goods like lawnmowers and power presses, not with chemicals which cause diseases of long latencies.

And I suppose if there's any guiding rule of fairness in this kind of thing, it should be that no cause of action, no cause of action should be prohibited before it can arise and I would think that all parties on any side of the fence could agree to that sort of basic elemental fairness.

Because of the difference in the immune systems, the difference in when these kind of cancers arise, it's not just mesophiliomas, but other cancers as well, has great variability. I've attached some of the charts that appear in Dr. Sellikoff's text on asbestosis disease at the end of my paper and their range is anywhere from 22 to 70 years in latency and there's a chart on Table 10-4 on the next to the last page that shows the years from the onset of exposure for lung cancers, 109 out of 172 start 30 years after exposure. For plural mesophiliomas, 11 out of 15 start after 30 years. 38 out of 45 peritoneal mesophiliomas, that's the lining around the abdomen. Even asbestosis itself, that's a simple scarring within the lung, it's not cancer. It just chokes the breath out of people, 41 out of 62 start 30 years after.

So set ten years obviously makes no sense. It would cover nobody. The 30 years was a great help, but actually, the fact of the matter is to set any kind of year or date or period is an arbitrary thing and you exclude people and I don't think anybody intended to exclude anyone.

The ones who benefit from that type of, I think, unintended legislation is a few asbestosis manufacturers who are still solvent, and interestingly enough, the Johns Manville Settlement Trust which has emerged out of bankruptcy and has a \$2.5 billion trust fund for these people if they satisfy the requirements of the states where their suits are filed and so most people around the country would be covered, there would be a number of people from Connecticut who will be excluded from the benefits of that trust because of this restrictive legislation. That's HB5930.

The other HB5932 has to do with a peculiarity in our existing law in which a person who is not subject to our Workers' Compensation Act and who is a victim of a product which has a useful and expected life use beyond a ten-year period can bring suit no matter when the injury occurs.

Well, it no longer make sense to have the Workers' Compensation restriction in that clause, that's Subsection C of Section 577a. It no longer makes sense to have that restriction because Workers' Compensation already has an offset against any recovery of damages for products liability action, so it makes sense to eliminate that and that's what HB5932 does, it eliminates that clause.

I'd also like to refer you to HB5930, if I may, and there's some problem with the language that's proposed. I think generally the intent is an excellent one. I'd like to call your attention in Subsection E on Page 2 of the bill, the new language will state, "If the harm caused within such ten-year period did not manifest itself until after the expiration of such period," then it does, it's excluded from the ten-year period, but it's inconsistent and if you eliminate those six words, "caused within such ten-year period," you will clean it up greatly and eliminate any source of confusion. I think the whole problem is the harm does not arise within ten years, if it did, we would have never needed the 30-year provision for asbestos cases. It's the harm occurs long after ten years and frequently after 30 years.

I would suggest and recommend, unless I'm reading it wrong, that those words, "caused within such ten-year period," should be eliminated from the proposal. I'm sorry. Yes.

SEN. AVALONE: Thank you very much. Kevin Randolph.

ATTY. KEVIN RANDOLPH: Good afternoon. My name is Kevin Randolph and I'm a staff attorney for the Connecticut Business and Industry Association. I'm here to comment on HB5930 and also HB5932. In general, HB5930 bars claims arising more than ten years after the product has left the hands, the control or possession of a manufacturer.

The exception, though, is if the product caused that harm within the useful, safe life of that product. I'll quite right to the quick. We believe that the current legislation tames a very delicate balance and that balance on one side is allowing all injured persons to recover within a certain window of exposure for manufacturers and on the other hand, allowing manufacturers to have some of the exposure limited after that ten-year statute of proposed period.

On the ten years it appears to make sense because it's likely that after ten years have passed, third parties have made modifications to a product or third parties have made repairs or simply third parties have adopted the product to difference uses or put the product in different environments and put them to different uses.

If I was to paint a picture, the delicate balance which is struck is the protection of the injured worker on the one side, the protection of the manufacturer on the other side and the fulcrum in the device would be that ten year statute of reposed period.

We think it's a well resonable attempt to balance all of the interests involved and this bill, HB5932, would expand the universe of litigants and also expand or open up the window of liability during which claims can be filed.

The essence of what we're saying is not that injured people should not be able to recover, but that there are mechanisms by which injured people can recover and there also must needs be a protection for manufacturers.

REP. TULISANO: Okay, now I've got my head smashed a couple of times on trying to get it opened up with DES, but then asbestosis did get up for a corrected ten year statute request?

ATTY. KEVIN RANDOLPH: It went to 30 years.

REP. TULISANO: Yes, okay. One of the reasons way back when, 1979, this was going to be the model for the nation and it would allow out manufacturers to

compete nationally because everybody would have the same thing and our then somewhat limited Statute of Limitations, no Statute of Limitations on product liability would not have been affected.

Have, in this 20 years, the other states followed our enlightened lead by cutting off people's rights? It's a loaded question.

ATTY. KEVIN RANDOLPH: I have not, Representative Tulisano, seen a survey of legislation in other states.

REP. TULISANO: Well, I mean do most states cut them off at ten years? Do you have any idea at all?

ATTY. KEVIN RANDOLPH: No, I do not.

REP. TULISANO: Okay, I'll find it. Okay, thanks.

ATTY. KEVIN RANDOLPH: Finally, on HB5930, that bill allows injured people who have been injured within that ten-year statute of reposed period to recover after that period has expired if the harm has not manifested itself until after those ten years.

Our concern here is that it's unlikely that a manufacturer will know all of the potential risks of any product he or she produces. Certainly a manufacturer cannot protect himself from all unforeseen claims, most likely cannot reserve enough money to protect him or herself against those claims and there probably would be a chilling effect on research and development, marketing of certain products and not allowing certain products that very well may be useful and at this point the best minds could not determine would cause some harm in the future, preventing those products from coming to market.

So we suggest and we urge this committee to also reject HB5930. In essence, what we're saying is that HB5930 imputes to manufacturers some sort of aggregious or villainous activity and the balance that has been struck so far allows for reasonable assessment that manufacturers indeed are not in the business of wreaking a malice upon the population

and they should be protected in some sense from unlimited exposure to some indefinite period in the future.

SEN. AVALLONE: Thank you, sir. Are there any questions? If not, thank you very much.

ATTY. KEVIN RANDOLPH: Thank you very much. Geraldine Roberts.

GERALDINE ROBERTS: Good evening. I'm testifying on three bills. I'll keep it short and sweet. I'm with the Department of Mental Health. We support SB412 and HB5958. Other speakers after me will address those in more detail, but we want to be on record as supporting those.

We also want to on record as opposing HB5769, AN ACT CONCERNING SUBSTANCE ABUSE TREATMENT FACILITIES. The reason we oppose this bill is that we feel it's unnecessary. The Law Review Commission has drafted HB5693, AN ACT CONCERNING ALCOHOL AND DRUG ABUSE CIVIL LAWS, which we feel is a more appropriate and comprehensive bill.

The Law Review Commission bill was given a Joint Favorable by the Substance Abuse Committee and referred to the Judiciary Committee, so we're asking that you give a Joint Favorable to the Law Review Commission Bill and take no action on HB5769. Okay.

SEN. AVALLONE: Thank you. Al Smith.

ATTY. AL SMITH: Good evening, Senator Avallone, Members of the Committee. My name is Al Smith. I'm an attorney with Mertha, Kliner and Pinney here in Hartford. I have with me Mr. Robert Snyder who represents the Intercon Gas Company and he has some comments on Raised HB5981.

ROBERT SNYDER: Senator, other Members of the Judiciary Committee. I appreciate the opportunity of making testimony before you today regarding Raised HB5981. My name is Robert S. Snyder. I am testifying on behalf of my company, Intercon Gas, Inc., which is proposing to build the Thames River Pipeline, a pipeline which will provide natural gas to Southeastern Connecticut.

The federal government, since the National Bank of 1864 has consistently made it clear that banks may not engage in insurance activities generally. Briefly, the reasons for maintaining the distinction between banking and insurance include potential tie-ins, regulatory conflicts and bank solvency.

Connecticut has followed the federal rule in acting the Anti-affiliation Act in 1973.

SEN. AVALLONE: The next bill, Patty.

ATTY. PATRICIA SHEA: What this bill would do is circumvent those federal and state laws for just non-bank banks.

SEN. AVALLONE: The next bill.

ATTY. PATRICIA SHEA: The next bill I'm going to testify on is HB5930, AN ACT CONCERNING PRODUCT LIABILITY CLAIMS INVOLVING LATENT HARM. We oppose this bill because it would completely eliminate the Statute of Repose for product liability claims permitting lawsuits to be brought against the manufacturer indefinitely. The existing Statute of Repose is either ten years from the date the manufacturer last parted with control of the product or longer if the injury occurred during the useful, safe life of the product. In any event, liability cannot be assessed against a manufacturer after the product's useful life has expired.

We think that this is adequate. To go beyond the useful, safe life of the product is prejudicial to the manufacturer. It would also cause evidentiary problems. The evidence, after a long period of time would become unreliable.

I should address Matt Shaffner's testimony. I did have the pleasure of working Attorney Shaffner as defense counselor on many asbestos cases. We represented a minor player who was a distributor in Connecticut and we had any given time 1,500 cases in the office.

There is -- the 30-year State of Repose is adequate. Most of the medical evidence indicates that the latency period for minor lung disease, asbestosis is about ten years, for mesophiliomas it's about 25 years. This bill, however, speaks to the more broader issue of opening up liability for all product liability claims, not just asbestosis and this would create, of course, a wild expansion of liability and it would be very difficult for the manufacturer and its insurer to plan for its losses actuarially and this would ultimately, of course, increase liability for all the manufacturers in the state.

HB5932, AN ACT CONCERNING THE STATUTE OF REPOSE IN PRODUCT LIABILITY CLAIMS. We also oppose this bill because it would permit a claimant who is entitled to receive Workers' Compensation benefits to bring an action beyond the ten-year Statute of Repose.

The reason behind this limitation, not allowing him to sue until the useful, safe life of the product is because he's already being compensated. So the feeling was that why should there be a double recovery. He's already receiving his medical benefits and his disability, his permanent disability and other benefits that are available to him under the Workers' Compensation and why should we expand the manufacturer's liability in those circumstances.

REP. WOLLENBERG: What if he could pick or he got credit if he recovered under the other?

ATTY. PATRICIA SHEA: He can't pick. I mean the way the system works now we can't pick.

REP. WOLLENBERG: No, I know that, not the way the system is now, but what if he were to do that and he were to recover, what if it was an offset as to what he had been paid for Workmen's Comp?

ATTY. PATRICIA SHEA: Would we like to do away with the Workers' Compensation Act? I mean I suppose we could probably live with that if there was only one way to recover.

ability of the deaf or hearing impaired patients to communicate and to understand what is being communicated to them.

Our concern on that topic focuses on Section 1, Subsection H, concerned informed consent. Our change by a few words is in line 58 of the bill and would read this way with the insertion included. Informed consent means permission given voluntarily on the basis of knowledge presented in language usually used for communication by the patient and understanding of the implications, etc.

If this detail is not otherwise provided for by context or in other portions of appropriate General Statutes, we urge that this clarification be added to the section. That concludes my statement. Thank you.

SEN. AVALLONE: Thank you very much. I started this way. I'll get back to you.

WAYNE TYSON: Senator Avallone and Members of the Committee, thank you for extending the hearing, I think twice, from 7:00 to 7:30 and now past 7:30. I appreciate your staying. My name is Wayne Tyson. I'm here on behalf of the Bristol-Myers Squibb Company, a research-intensive pharmaceutical company with a major facility in Wallingford, research facility.

We're here on HB5930, the so-called latent harm bill. We do have problems with it. I think it has been indicated by some of the other testimony that there needs to be a balancing of all things. It is difficult when someone cannot recover, but there are risks in life and when we create a lifesaving pharmaceutical and we are a regulated industry and when no one could know about a potential side effect that may manifest itself more than ten years, perhaps 20, we heard 30 and beyond years later, that's not a balancing. It would have a chilling effect on research in pharmaceuticals.

We are under great pressure, as you know, particular in the area of AIDS, but also in other areas to bring forth very rapidly new pharmaceuticals to deal with life threatening illnesses.

We are also, I'm sure you're aware, under great pressure to try and hold down, as everyone else in the medical field is, hold down costs. We cannot do all these things. We cannot bring out new pharmaceuticals to deal with life threatening diseases on a early basis before they've gone through all their clinical trials and at the same time be exposed forever and a day for a liability that we could not know about at the time we brought it out under government pressure and at the same time hold down our costs because we have to build into our costs preparation for that liability.

If, as was suggested by the first person to testify in favor of this bill, the goal is to deal with asbestosis or asbestos-caused illnesses, the bill isn't written properly. I don't think that is the intent of the bill as stated in the Statement of Purpose and that is to open up the Statute of Repose for all latent harm situations.

(cass 4)

I urge you not to do that for our industry. We cannot continue to serve the health needs of this nation if we are going to be forever liable for something that was inherently unknowable at the time we brought it out. Thank you.

LAZARUS DONABEDIAN: My name is Laz Donabedian and I would like to speak in favor of HB5962 concerning fraudulent claims for Workers' Compensation benefits. I am the administrator and a principal in Centers for Physical Therapy, a private practice which specializes in testing and evaluating injured workers. I'm not a physical therapist, but I'm representing the two physical therapists who do own the practice.

I want to preface my comments by saying that the overwhelming majority of workers we treat and evaluate are conscientious with their rehab programs and willing to do whatever is necessary to prepare themselves to return to work. There is, however, a small minority who are fakers, symptom magnifiers and loafers.