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4 MARKUP OF H.R. 982, THE FURTHERING ASBESTOS CLAIM

5 TRANSPARENCY (FACT) ACT OF 2013

6 Tuesday, May 21, 2013

7 House of Representatives

8 Committee on the Judiciary

9 Washington, D.C.

10 The committee met, pursuant to call, at 10:10 a.m., in
11 Room 2141, Rayburn Office Building, Hon. Bob Goodlatte
12 [chairman of the committee] presiding.

13 Present: Representatives Goodlatte, Sensenbrenner,
14 Coble, Smith, Chabot, Bachus, Issa, Forbes, King, Franks,
15 Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy, Amodei,
16 Labrador, Farenthold, Holding, Collins, DeSantis, Conyers,

17 Nadler, Scott, Watt, Lofgren, Jackson Lee, Cohen, Johnson,
18 Pierluisi, Chu, Deutch, Gutierrez, Bass, Richmond, DelBene,
19 Garcia, and Jeffries.

20 Staff present: Shelley Husband, Staff Director;
21 Branden Ritchie, Deputy Chief of Staff/Chief Counsel;
22 Allison Halataei, Parliamentarian; Daniel Flores, Counsel;
23 Kelsey, Deterding, Clerk; Perry Apelbaum, Minority Staff
24 Director; Danielle Brown, Minority Parliamentarian; and
25 Susan Jensen, Minority Counsel.

26

27 Chairman Goodlatte. Good morning. The Committee on the
28 Judiciary will come to order.

29 Without objection, the chair is authorized to declare a
30 recess at any time.

31 Pursuant to notice, I now call up H.R. 982 for purposes
32 of a markup. The clerk will report the bill.

33 Ms. Deterding. H.R. 982, to amend Title 11 of the
34 United States Code to require the public disclosure by trust
35 established under Section --

36 Chairman Goodlatte. Without objection, the bill is
37 considered as read and open for amendment at any point.

38 [The information follows:]

39

40 Chairman Goodlatte. And I will begin by recognizing
41 myself and the ranking member for opening statements.

42 The history of asbestos litigation is filled with human
43 tragedy, culminating in what the Supreme Court described as
44 "an asbestos litigation crisis" in the pivotal case of
45 *Amchem v. Windsor*. As businesses were forced to declare
46 bankruptcy as a last resort to manage their liability, the
47 prospect of full compensation for asbestos victims, not to
48 mention current employees' livelihoods, grew dimmer.

49 In 1994, Congress attempted to address the crisis
50 through legislation. Specifically, Congress added Section
51 524(g) to the Bankruptcy Code. Section 524(g) allowed
52 companies in Chapter 11 bankruptcy to form trusts that would
53 become responsible for receiving, processing, and paying all
54 featured claims by asbestos victims. This trust system was
55 designed to relieve pressure on the courts, allow businesses
56 to emerge from Chapter 11, and continue operations and
57 stream line the compensation process for asbestos victims.

58 Most of the largest and deepest pocketed defendants have
59 gone through bankruptcy and formed trusts under Section
60 524(g). As a result, plaintiffs' attorneys have now moved

61 on to suing secondary targets in courts while filing
62 separate claims with the trusts, continuing the process that
63 one plaintiff's lawyer described as "the endless search for
64 a solvent bystander."

65 Unfortunately, there is growing evidence of fraud and
66 abuse in the asbestos trust compensation system. The law
67 provides that victims of tortuous conduct should be made
68 whole, and this is no less true for asbestos victims. They
69 should receive the compensation they are due. But no one
70 should be able to recover twice or more than twice by
71 pleading one set of facts in court and then a different,
72 perhaps contradictory, set of facts to an asbestos trust.
73 Bringing greater transparency to the asbestos trust system
74 will discourage this sort of conduct in the first place and
75 help to expose it when it happens.

76 The Subcommittee on the Constitution examined these
77 matters in a September 2011 hearing. In addition, H.R.
78 4369, the Furthering Asbestos Claim Transparency Act of
79 2012, or the FACT Act, was the subject of a legislative
80 hearing before the Subcommittee on Courts, Commercial and
81 Administrative Law in May 2012. That bill was ultimately

82 ordered reported by the full committee with an amendment
83 last June.

84 I am very pleased that Mr. Farenthold reintroduced this
85 important bipartisan legislation this Congress. H.R. 982,
86 the FACT Act of 2013, will protect trust assets reserved for
87 current and future victims by striking the proper balance
88 between much needed transparency and preservation of the
89 dignity and medical privacy of asbestos victims.

90 The Subcommittee on Regulatory Reform, Commercial and
91 Antitrust held a legislative hearing on this bill on March
92 13 of this year. At that hearing, witnesses offered still
93 more evidence demonstrating the need for the bill's reforms.
94 This included evidence of fraud and the trend of bankruptcy
95 trusts to continue to underestimate future liabilities, pay
96 current claims at unsustainable rates, and ultimately face
97 the need to reduce payments to future claimants.

98 Recent investigative reporting by the *Wall Street*
99 *Journal*, moreover, has revealed additional evidence of the
100 fraud that threatens trust assets and their availability to
101 pay future claims. The *Journal* reported, for example, on a
102 payment of \$26,250 made by one trust to a non-existent

103 person. The *Journal* also found evidence that claims had
104 been paid to nearly 2,700 people who claimed to have been
105 injured by asbestos injuries while working in labor
106 intensive occupations before the age of 12. Further, it
107 found that more than 300 people submitted mesothelioma
108 claims to the Manville Trust, but then described their
109 disease as lung cancer in public court filings. The
110 Manville Trust assigns a standard value of \$17,500 to
111 mesothelioma claims, but \$4,750 to lung cancer claims.

112 If asbestos trusts are to have assets available to pay
113 the claims of deserving future claimants, Congress must take
114 steps to assure that trust assets are better protected
115 today. I encourage my colleagues to support this important
116 legislation.

117 And I now recognize the ranking member of the committee,
118 the gentleman from Michigan, Mr. Conyers, for his opening
119 statement.

120 Mr. Conyers. Thank you, Chairman Goodlatte, and members
121 of the committee. While the bill before us today prohibits
122 disclosure of an asbestos claimant's confidential medical
123 records and full social security number, it presents other

124 problems of a privacy nature because it does not mandate
125 that the trust publicly report the claimant's name and
126 exposure history, as well as the basis of any payment that
127 the trust made to the claimant. In other words, this is an
128 advertisement that will attract all of the wrong people.

129 And so I want to start this discussion off by saying
130 this bill is not about protecting the interests of the
131 victims, as I have heard someone on the committee assert
132 earlier. Given the fact that all of this information would
133 be potentially available on the Internet, just imagine what
134 insurers, potential employers, prospective lenders, and data
135 collectors could do with this private information.

136 Essentially, what the bill does is allows asbestos
137 victims to be re-victimized by exposing their health
138 information to the public, information that has absolutely
139 nothing to do with compensation for asbestos exposure. And
140 so I plan to offer an amendment to deal with this at the
141 earliest possible moment.

142 Now, larger than that, the bill is fundamentally
143 inequitable. The bill shifts some of the cost of discovery
144 away from those who injured millions of unsuspecting

145 Americans to asbestos bankruptcy trust, the entities that
146 Congress authorized to help compensate the victims.
147 Existing discovery rules already require an extensive amount
148 of disclosure with respect to compensation received by
149 asbestos claimants.

150 H.R. 982 is nothing more than an end-run by asbestos
151 defendants around the discovery process available under non-
152 bankruptcy law. We should keep in mind that in exchange for
153 agreeing to fund these trusts, companies are able to shed
154 their massive asbestos tort liability and reenter the
155 business community on a competitive basis for the benefit of
156 their creditors and those who they injured. In fact, this
157 bill does nothing to advance the interests of asbestos
158 victims. I am not aware of one single asbestos victim who
159 supports this legislation.

160 Now, do not forget this is one of the deadliest diseases
161 in our history ever since about 1935, and I want you to know
162 that the asbestos industry has denied and fought these
163 claims for decades before we were able to get something
164 amounting to a fair resolution of the problem for asbestos
165 victims.

166 Next, we should consider as this markup moves on that
167 the endemic fraud warranting such an invasive measure as
168 H.R. 982 does not exist. There is no evidence of endemic
169 fraud. Joan Claybrook's response to the *Wall Street*
170 *Journal*, and I have looked at it more than once, both the
171 *Wall Street Journal* and the Claybrook statement, and it is
172 true. There is no massive fraud. There is occasional
173 fraud. There are wrongdoers on every statute.

174 But it is not just my opinion. The Government
175 Accountability Office, whom we talked to directly, has been
176 unable to find any empirical evidence of fraud with respect
177 to the trusts claims processing system. And so that is why
178 the Public Citizen, the Environmental Working Group, the
179 U.S. Public Interest Research Group, the Alliance for
180 Justice, the American Association for Justice, and various
181 asbestos victims, asbestos trusts, and legal representatives
182 for future asbestos personal injury claimants, join us in
183 opposing the measure.

184 And I conclude by noting that there is a larger issue
185 raised. Starting next year, the Affordable Care Act will
186 ensure that individuals who suffer from asbestos-related

187 illnesses will have a right to receive health insurance from
188 their employer, the new State-based health insurance
189 exchanges, or through Medicaid.

190 And so I urge my colleagues to carefully reexamine the
191 measure that is before us. And I thank the chairman for my
192 additional time.

193 Chairman Goodlatte. I thank the ranking member.

194 And the chair is now pleased to recognize the sponsor of
195 the bill, the gentleman from Texas, Mr. Farenthold, for his
196 opening statement.

197 Mr. Farenthold. Thank you, Mr. Chairman. In this
198 Congress, we have talked a lot about waste, fraud, and
199 abuse. And one of the most fraudulent abusive practices in
200 our bankruptcy system concerns our system of compensation
201 for victims of asbestos-related diseases. That is why I
202 introduced H.R. 982, the Furthering Asbestos Claims
203 Transparency Act, the FACT Act, of 2013. It is designed to
204 ensure the elimination of waste, fraud, and abuse in our
205 bankruptcy system.

206 This bill is for the victims of asbestos-related
207 diseases who deserve full compensation for their injuries,

208 including those not yet showing symptoms. I am committed to
209 not only protecting today's victims, but those still
210 undiscovered victims.

211 Congress has conducted three hearings on the topic and
212 have heard many stories about inconsistent, questionable,
213 and potentially fraudulent claims. Fraud in and of itself
214 is bad enough, but the fact is there are limited resources
215 in these trusts that were formed from bankrupt asbestos
216 defendants. Someday that money will run out, hopefully not
217 before all claims of future victims are provided for.

218 According to the *Wall Street Journal*, roughly half of
219 the trust had been forced to reduce their payments to
220 victims in recent years in response to an unexpected glut of
221 claims. Congress must act to protect these future victims
222 and their families.

223 There is a clear record that the asbestos trust lacks
224 transparency, which has created an environment conducive for
225 fraud. This committee has heard numerous cases of
226 questionable claims and blatantly fraudulent behavior
227 associated with the asbestos trust system. One judge, who
228 presided over a number of trusts alleging asbestos, called

229 it the worst deception he had seen in almost 22 years.
230 Another noted the core of the case was fraudulent, and this
231 egregiously bad behavior "happens a lot in this litigation."
232 These trusts will be unable to offer reasonable compensation
233 to legitimate victims if they continue to pay bogus and
234 duplicative claims today.

235 When attorneys and their clients bring false or
236 exaggerated claims to the trust, they take assets from
237 deserving victims. The FACT Act will discourage this kind
238 of abuse by shining a light on the trust systems as sunlight
239 is known to be the best disinfect. This legislation
240 provides enough transparency to let the sun shine in and
241 level the playing field so that all parties, including other
242 asbestos trusts and State court judges, have access to
243 information to spot abuse while not subjecting victims to an
244 unnecessary invasion of privacy.

245 Amending the Bankruptcy Code to require asbestos trusts
246 to file quarterly reports with the Bankruptcy Court
247 detailing claimants' name, the amount paid to each claimant,
248 and the basis for such payment is a simple way to provide
249 transparency to the system. It will allow existing

250 bankruptcy rules to protect personally-identifiable
251 information. Listen, there are very few stronger privacy
252 advocates in this Congress than I am, and this legislation
253 was carefully crafted to strike the proper balance between
254 requiring the necessary transparency and providing claimants
255 with sufficient privacy protections. The information being
256 disclosed in the reports is no more than would be typically
257 filed in a State court tort pleading.

258 Overall, the FACT Act will help ensure the asbestos
259 trust achieve their designed goal: preserving funds to
260 provide compensation to parties that have been truly
261 aggrieved by exposure to asbestos. The minimum costs
262 associated with FACT Act reporting will be more than
263 outweighed if even a single fraudulent mesothelioma claim is
264 deterred.

265 It is in the best interests of the victims of asbestos-
266 related diseases to protect these trusts from running out of
267 money before America runs out of asbestos victims. Congress
268 cannot sit back and watch attorneys game the system.
269 Asbestos disease is truly tragic. Victims suffer horribly,
270 and their loved ones must be compensated adequately with the

271 limited resources that are available.

272 Congress has taken up this bill a number of times in the
273 past few years, and I know we will hear today about the
274 victims who claimed they were not allowed to testify. The
275 record shows despite these claims, our colleagues did not
276 ask to have victims testify in three previous hearings on
277 the topic, and the victims were given a chance to voice
278 their concerns to members of Congress after a recent
279 hearing. They declined. My staff tells me that as sponsor
280 of the bill, no one has requested a meeting with me.

281 We also have several victim statements in the record,
282 and I fully believe the issues raised by these victims will
283 be adequately covered in this bill because this
284 legislation's chief priority is to protect those suffering
285 from asbestos-related illness.

286 In conclusion, the FACT Act ensures that both current
287 and future victims of asbestos claims are not left without
288 compensation for their injuries. This is a victim
289 protection bill. We want to preserve funds for victims and
290 their families, not those who are manipulating the status
291 quo for financial gain. This legislation strikes the right

292 balance of transparency and privacy, and I am proud to have
293 worked on something that is going to help people get the
294 financial support they need and deserve.

295 Thank you, and I yield back.

296 Chairman Goodlatte. I thank the gentleman.

297 The chair now recognizes the gentleman from Tennessee,
298 Mr. Cohen, for his opening statement.

299 Mr. Cohen. Thank you, Mr. Chairman. It has been said
300 that we have heard a lot about waste, fraud, and abuse in
301 this Congress, and indeed we have. We have not heard enough
302 about justice, fairness, and logic, which predominated this
303 Congress in the 110th and 111th.

304 On its face, the Furthering Asbestos Claim Transparency
305 Act of 2013, or FACT Act, sounds like a reasonable measure,
306 but "sounds like" and "is" are two totally different things.

307 I have listened to the witnesses in several hearings
308 both in this and previous Congresses, and I am unconvinced
309 that this bill addresses an actual problem. In fact, it is
310 the proverbial solution looking for a problem. And yet it
311 also creates more problems.

312 H.R. 982 would impose a number of new reporting and

313 information sharing requirements on trusts that have been
314 established under the Bankruptcy Code to compensate victims
315 of insolvent asbestos manufacturers. The fact is, this bill
316 is for the defendants. It is for the asbestos
317 manufacturers. And it is not for the victims. In fact, all
318 the victims groups oppose this bill, and I have a letter
319 from the Asbestos Disease Awareness Organization. I would
320 like to ask unanimous consent to enter it into the record
321 without opposition. Unanimous consent so ordered, granted.

322 Chairman Goodlatte. Without objection, it will be made
323 a part of the record.

324 [The information follows:]

325

326 Mr. Cohen. Thank you. A little lead.

327 As I stated last year and in the subcommittee hearings
328 on this bill, and as Ranking Member Conyers has so
329 eloquently expressed, the bill threatens victims' privacy
330 interests. It is inequitable and unnecessary given the lack
331 of evidence of any endemic fraud. The fact is the error
332 rate is .42 percent, an amount far lower than similar large
333 trust systems. And to the extent that any fraud has been
334 found, these can be appropriately remedied by State court.
335 In light of these concerns and others, I oppose and ask my
336 colleagues to oppose this bill.

337 The process was unusual. At the subcommittee hearing,
338 there were several victims groups present and the wives of
339 several victims. They did not get a chance to testify.
340 Indeed, as the minority we had one witness. The majority
341 had three. And I want to commend in what was somewhat of a
342 legislative, I think, heroic act, our chairman, Spencer
343 Bachus, who agreed to postpone the hearing for 30 days in
344 light of concerns raised by the victims, and stood as a
345 congressman should on his own principles and not what he was
346 being maybe instructed to do by others, who are not members

347 of this body.

348 And he wanted to give those people a chance to testify.
349 They unfortunately did not get that, but what he did was the
350 right thing for openness and for transparency, and for the
351 opportunity for the public to have access to Congress and to
352 voice their concerns. Chairman Bachus was reasonable and
353 open minded. He did all he could to accommodate those
354 concerns I am sure, and is to be commended for his work as
355 the subcommittee chairman.

356 As we proceed today, I just wanted the members on both
357 sides of the aisle to appreciate the work of our
358 subcommittee chairman, and also know that the victims of
359 this bill oppose it, not just because they did not get a
360 chance to be heard, but because they do not feel this takes
361 any steps that will see that their loved and they get the
362 compensation that they are due for this awful, awful, awful
363 disease.

364 I thank the chairman for the time, and I yield back the
365 remainder thereof.

366 Chairman Goodlatte. I thank the gentleman for his
367 statement. And the chair recognizes himself for the purpose

368 of responding to the gentleman.

369 The committee has held three subcommittee hearings on
370 this legislation and its predecessor bill from the 112th
371 Congress and in the 113th Congress. Over the course of
372 these hearings, an abundance of evidence has been heard and
373 examined concerning the need for the legislation. A good
374 deal of that evidence has concerned the impact of the
375 legislation on asbestos victims. This includes evidence of
376 whether the legislation is needed to protect the interests
377 of asbestos victims who will file future claims. It also
378 includes evidence of whether the legislation in any way
379 helps or harms asbestos victims with pending or past claims.

380 For the hearing held on March 13, 2012, in the
381 Subcommittee on Regulatory Reform, Commercial and Antitrust
382 Law, my colleagues across the aisle asked that five separate
383 letters containing statements by asbestos victims be
384 included in the record. Each of those letters was duly
385 received into the hearing record. In none of those letters
386 did any victim request an additional hearing on the FACT
387 Act, nor did any of my colleagues across the aisle request
388 an additional hearing at that time.

389 Nevertheless, after the close of business on the eve of
390 the subcommittee's March 20, 2012 markup, the committee
391 received through counsel for three of the victims who had
392 submitted hearing record letters a request for an additional
393 hearing. This hearing was requested exclusively for the
394 reception of additional victim witness testimony.

395 The committee understands and respects the desires of
396 witnesses of all kinds to be heard by the committee. In an
397 effort to be as accommodating as possible, Subcommittee
398 Chairman Bachus offered at the markup to receive the
399 information of the three individuals concerned through a
400 supplemental procedure. I commend the subcommittee chairman
401 for his effort.

402 The supplemental procedure consisted of an opportunity
403 for these individuals to submit additional statements for
404 the record and a subsequent opportunity to meet with
405 members, provide information orally, and to receive and
406 answer any member's questions. This procedure ensured that,
407 above and beyond the committee's original hearing record
408 from the 112th and 113 Congresses, all members would have
409 the opportunity to hear and consider these individuals'

410 information before a markup was concluded on the bill.

411 On April 5, 2013, and again on April 9, 2013, the
412 committee received letters from the individuals rejecting
413 the supplemental procedure offered. As a result, and with
414 all due respect to all individuals concerned, I considered
415 the committee's hearing record to be complete and the
416 question of additional hearings to be closed. I do not,
417 however, object to my colleagues' request to include in the
418 record of today's markup the individuals' additional letter
419 of May 20, 2013.

420 Are there amendments to H.R. 982?

421 Mr. Nadler. Mr. Chairman?

422 Chairman Goodlatte. For what purpose does the gentleman
423 from New York seek recognition?

424 Mr. Nadler. Strike the last word.

425 Chairman Goodlatte. The gentleman is recognized for 5
426 minutes.

427 Mr. Nadler. Thank you, Mr. Chairman. I could not let
428 your summary of the events pass without some emendations to
429 it.

430 This bill supposedly is about transparency. And the one

431 thing these three victims were not given was an opportunity
432 to state in public their experiences that are relevant to
433 this bill. It is all well and good to talk about a private
434 meeting and private information session with members, but
435 that is not in public.

436 And in their May 20th letter, which you alluded to, they
437 say as follows: "Instead of a public hearing as originally
438 promised, we were invited to participate in an informal and
439 private 'information session' that would be closed off to
440 the public and everyone else except subcommittee members and
441 their staff. We were told that this would be a 'closed door
442 conversation' that would not be recorded or become part of
443 the official record of the legislation.

444 This was insulting, and disturbingly ironic for a bill
445 with the word 'transparency' in its title. We may not be
446 Washington insiders, but we know the difference between
447 official witnesses and being treated as invisible people who
448 need to be hidden behind closed doors and then forgotten.
449 We rejected this offer because we felt it was not a serious
450 effort to ensure that our views and those of other asbestos
451 victims who would be most affected by this one-sided

452 legislation were heard and considered before the bill moves
453 forward.

454 To add insult to injury, after a congressmen
455 specifically asked you to give us some advanced notice when
456 a markup was scheduled so that we could be present to
457 witness the debate and vote on the bill, we learned last
458 Friday the bill would be marked up tomorrow."

459 Mr. Chairman, this is insulting toward the victims. It
460 is insulting to the intelligence of everyone to suggest that
461 a closed information session in which no transcript is kept
462 is equivalent in any way to a public hearing.

463 I should not ask the question. I was about to. The
464 question I was about to ask is, what are you afraid of?
465 Answer, we know what you are afraid of: information about
466 this bill. This bill is a fraud. The victims would have
467 identified it as a fraud. And that is why the Republican
468 majority on the committee was afraid to let the victims
469 testify at a public hearing.

470 I yield back.

471 Chairman Goodlatte. Would the gentleman yield?

472 Mr. Nadler. I just yielded back. Yes, I will yield.

473 Chairman Goodlatte. I appreciate the gentleman
474 yielding.

475 Mr. Nadler. Reclaiming my time, I will yield.

476 Chairman Goodlatte. I thank the gentleman for yielding.
477 I just want to point out to him that in three hearings held
478 in this committee, not a single time during those three
479 hearings did the ranking member of the subcommittee call a
480 victim as a witness in the hearing. Secondly, the
481 opportunity for witnesses beyond the three hearings that
482 were held on this to come and make a presentation to
483 committee members was for the public record. And we
484 continue to welcome and have made a part of the record any
485 statement from any victim brought forward by those who are
486 opposed to this legislation.

487 Mr. Nadler. Reclaiming my time, I would point out I
488 believe that the hearings you are talking about were not in
489 this Congress. Two of them were not in this Congress. And
490 in the one hearing in this Congress, the minority only gets
491 one witness. It is difficult to call three victims when you
492 have only one witness, and you might want the one witness to
493 be someone who can testify not simply as a victim, but as an

494 expert on the law. So that is not the substitute, and it
495 does not invalidate the major point I made.

496 I yield back.

497 Chairman Goodlatte. Are there amendments to H.R. 982?

498 Mr. Conyers. I have an amendment.

499 Chairman Goodlatte. The clerk will report the
500 amendment.

501 Ms. Deterding. Amendment to H.R. 982, offered by Mr.
502 Conyers of Michigan, page 2, strike lines 4 through 26 --

503 Chairman Goodlatte. Without objection, the amendment
504 will be considered as read.

505 [The amendment of Mr. Conyers follows:]

506

507 Chairman Goodlatte. And the gentleman from Michigan is
508 recognized for 5 minutes to explain his amendment.

509 Mr. Conyers. I thank the chairman. I thank the
510 gentleman from New York, Mr. Nadler, who was there and tried
511 to see that fairness was reached in terms of this
512 availability.

513 You know, the asbestos industry has a huge record, a
514 long record, of covering up, of destabilizing the lay of the
515 land, and asbestos victims have had one of the most
516 difficult records of trying to recover of anybody.

517 And so my amendment addresses the principle flaws of
518 this act, namely the failure to protect the privacy of
519 asbestos victims who seek payment from bankruptcy trusts.
520 What we will be doing in effect is re-victimizing the
521 victims of asbestos injuries. And we revise the bill's
522 reporting requirement in this amendment with a provision
523 requiring the trust to report only aggregate information
524 about payments made to claimants. The amendment also
525 strikes the bill's burdensome discovery requirements.

526 It is a common sense amendment that will help protect
527 unsuspecting asbestos victims from being further victimized,

528 because H.R. 982 requires victims' personally identifiable
529 information and details about their illness to be made
530 publicly available to anyone who has access to the Internet.
531 Such information once irretrievably released into the public
532 domain can be used by data collectors and other entities for
533 purposes that have absolutely nothing to do with
534 compensation for asbestos insurance.

535 Just think of what insurance companies as well as
536 prospective employers and lenders could do with this
537 information. And I quote from the widow of Congressman
538 Bruce Vento of Minnesota, who sent us a letter yesterday
539 where she warned, "The information on this public register
540 could be used to deny employment, credit, health, life, and
541 disability insurance. We are also concerned that victims
542 would be more vulnerable to identify thieves, con men, and
543 other types of predators." And I ask unanimous consent that
544 Mr. Vento's letter be included in the record, as well as the
545 Joan Claybrook refutation of the *Wall Street Journal*
546 allegations.

547 Chairman Goodlatte. Without objection, they will be
548 made a part of the record.

549 [The information follows:]

550

551 Mr. Conyers. And I return the balance of my time.

552 Chairman Goodlatte. I thank the gentleman. And the
553 chair recognizes the gentleman from Texas, Mr. Farenthold,
554 for 5 minutes.

555 Mr. Farenthold. Thank you very much. I oppose this
556 amendment. The whole purpose of the FACT Act was to
557 increase transparency to combat fraud committed against the
558 asbestos trust. This amendment strikes the requirement that
559 the asbestos trust publish the very data that would be
560 necessary to detect the fraud between the trust and State
561 tort proceedings.

562 In its place, the amendment calls for a quarterly
563 report, only do the aggregate data. I have no problem doing
564 the aggregate data in addition to the individual data. But
565 the whole purpose is to find out and make public the
566 information necessary to detect waste, fraud, and abuse.
567 Aggregate information would not be useful at all with
568 respect to detecting those committing waste, fraud, and
569 abuse.

570 The gentleman points out concerns about privacy. Again,
571 this is only information that if you were going to go sue in

572 almost any court of law in the land, you would be required
573 to disclose your name and what medical condition that you
574 are seeking damage on. The minority expresses concerns
575 about the fact that this data might be misused by insurance,
576 while just in their opening statements they point out the
577 fact that the Affordable Care and Patient Protection Act
578 would allow insurance to be available to folks with these
579 preexisting claims under the exchanges. They talk about
580 employers using this information. There is volumes of
581 existing law. The Americans with Disabilities Act, for
582 instance, would prohibit discrimination based on the
583 information disclosed in here.

584 They are bringing up a bunch of non sequiters here that
585 are covered in other areas of law. We are trying to protect
586 patients' or victims' privacy, but we are also trying to
587 protect against fraud, and asking no more information than
588 is typically included in personal injury pleadings.

589 I urge my colleagues to oppose this amendment that guts
590 the FACT Act.

591 Chairman Goodlatte. Does any other member seek
592 recognition?

593 The gentleman from Virginia, Mr. Scott, is recognized.

594 Mr. Scott. Thank you, Mr. Chairman. Let me start by
595 saying that I am acutely aware of the devastating impact
596 that asbestos exposure has had on working men and women in
597 this country because I represent a shipyard area. In my
598 district alone, in the last few decades, several thousand
599 local shipyard workers have developed asbestosis, lung
600 cancer, and mesothelioma from asbestos exposure that
601 occurred between the 1940s and 70s. Hundreds of these
602 workers have already died, and asbestos deaths and
603 disabilities are continuing due to the long latency period
604 associated with the illness.

605 Now, I think it is important that we review who the
606 people are that caused this problem. Court findings,
607 Supreme Court in New Jersey found, "It is indeed appalling
608 to us that the company had so much information on the
609 hazards of asbestos workers as early as the mid-1930s, and
610 that it not only failed to use that information to protect
611 these workers, but, more egregiously, it also attempted to
612 withhold this information from the public." That is a 1986
613 case. And this is the court that heard from both sides and

614 concluded.

615 Another court; "The jury here was justified in
616 concluding that both defendants, fully appreciating the
617 nature, extent, and gravity of the risk in exposing the
618 plaintiffs to asbestos; nevertheless, made a conscious and
619 cold-blooded business decision in utter and flagrant
620 disregard to the rights of others to take no protective or
621 remedial action."

622 Another court held: "The clear and convincing evidence
623 in this case reveal that for more than 30 years, the company
624 concealed what it knew about the dangers of asbestos. In
625 fact, the company's conduct was even worse than concealment.
626 It also included intentional and knowing misrepresentations
627 concerning the danger of asbestos containing products."
628 Now, that is who we are talking about, and who will benefit
629 from this legislation.

630 Any suggestion that people are getting paid more than
631 once is absolutely absurd. The fact of the matter is
632 because of the bankruptcies, most of them are not getting
633 anywhere close to what they actually have been awarded.

634 This bill delays the proceedings and will result in

635 victims getting even less than they get now, because the
636 fact of the matter is because of the delay, many of the
637 victims will die before they ever get to court. And that
638 helps the guilty corporations because who have inflicted
639 this harm on innocent victims, because if the plaintiff dies
640 before they can get to court, then their pain and suffering
641 damages are extinguished. So, if you can delay it enough so
642 that it will die, the corporations not only get to delay
643 their payments, when they ever get to pay they do not have
644 to pay as much. So those that have made the conscious and
645 cold-blooded business decisions will benefit from this bill.

646 Now, the information required in the bill is
647 unnecessary. All of the necessary information can already
648 be obtained through the normal civil procedures. This will
649 just allow the corporations to delay the proceedings and
650 punish the victims. The Conyers amendment makes an
651 improvement. It does not cure all of the problems in the
652 bill, but certainly makes an improvement by removing some of
653 the unnecessary information, and, therefore, his amendment
654 ought to be adopted.

655 I yield back the balance of my time.

656 Chairman Goodlatte. Who seeks recognition? The chair
657 recognizes himself in opposition to the amendment, and joins
658 the gentleman from Texas in expressing real concern that if
659 we are going to have real transparency here, like you have
660 in State court. When you file a bill of complaint in State
661 court, you list the basis for your claim, and that certainly
662 relates to the medical condition that the individual claims
663 that they have a right to be compensated.

664 The same information should be made available in the
665 bankruptcy proceeding, both from the standpoint of having
666 the information in the aggregate, which certainly is good,
667 but also for the purpose of the process of the case and
668 making sure that there are not duplicative claims or
669 conflicting claims where a claimant is making two different
670 claims on the basis of two different illnesses related to
671 the same matter.

672 And, therefore, I urge my colleagues to oppose the
673 amendment.

674 The chair now recognizes the gentleman from Tennessee,
675 Mr. Cohen, for 5 minutes.

676 Mr. Cohen. Thank you, Mr. Chairman. I support the

677 amendment because it is a restriction or an imposition on
678 privacy, and unnecessary. The amendment tries to point out
679 what I said in my opening statement, that this is really a
680 bill for the defendants and not for the victims.

681 But what I would like to do is a point of personal
682 privilege. The chairman I respect. I respect the previous
683 chairman. I respect our subcommittee chairman. But my name
684 was brought up as the ranking member of the committee, and
685 suggesting that I did not call the victims as witnesses. I
686 was well defended by Mr. Nadler, and I thank him for that.

687 But to suggest that I am fault when I have one witness
688 to call, and there is the need to call an attorney to
689 respond to technical points in the law, and there are three
690 witnesses for the majority, I think is unfair. There is
691 joint and several liability of law, and there is joint and
692 several liability in the decision of this committee to pick
693 witnesses. And when three witnesses are for the majority
694 and one for the minority, and the minority has to have one
695 person to represent all the interests, it is wrong to
696 suggest that the the ranking member on the subcommittee
697 erred. And I take umbrage at that, and feel it necessary to

698 make that statement.

699 And with that, I yield back the balance of my time.

700 Chairman Goodlatte. Would the gentleman yield?

701 Mr. Cohen. Yes, sir.

702 Chairman Goodlatte. I certainly do not want the
703 gentleman to take my comments as suggesting that he erred.
704 I am simply pointing out that he made a decision, and that
705 decision did not include calling witnesses. The gentleman's
706 point is well taken with regard to the ratio of witnesses.
707 That has always been the case, no matter which party has
708 been in the majority, that we have these ratios. And
709 recognizing that there are many other people who want to
710 have input than the time or size of these panels allows for,
711 we have generously made available not only the standard
712 procedure of allowing victims or others to put statements in
713 the record, but also the special procedure that was put
714 together as a result of Mr. Bachus' effort.

715 So I do not want the gentleman to in any way take my
716 statement as stating that he erred, but that he made a
717 decision. And that we all have to make difficult choices at
718 times, and your point with regard to that is well taken.

719 Mr. Cohen. Thank you, Mr. Chairman. I would like to
720 respond. It is much more difficult to make a decision when
721 you only have one decision and not three. So I would submit
722 that the majority is three times as much at fault, and to
723 try to share blame, fault, or judgment is wrong. And I
724 yield back.

725 Chairman Goodlatte. Well, if the gentleman would yield
726 further, I would just say to the gentleman I have been in
727 that situation myself in the minority.

728 Mr. Nadler. Would the gentleman yield?

729 Mr. Cohen. Yes, sir.

730 Mr. Nadler. I just want to know in suggesting fault to
731 the majority, were you suggesting that it would have been a
732 good idea for the majority perhaps with respect to this
733 legislation supposedly to help victims actually to have
734 called a victim perhaps?

735 Chairman Goodlatte. Would the gentleman yield?

736 Mr. Cohen. Yes, sir.

737 Chairman Goodlatte. Well, certainly --

738 Mr. Nadler. I was asking Mr. Cohen.

739 Chairman Goodlatte. Okay. Well, fine.

740 Mr. Nadler. You can answer, too, I mean --

741 Chairman Goodlatte. If he is yielding to me, I will
742 just say --

743 Mr. Cohen. I yield to you.

744 Chairman Goodlatte. I will just say that I was not
745 involved with the selection of the witnesses on any of those
746 subcommittee hearings. But I certainly --

747 Mr. Nadler. Oh, reclaiming. I was not commenting on
748 the chair at all. I was just asking Mr. Cohen if he thought
749 it might have been a good idea with respect to this
750 legislation supposedly to help victims, if the majority,
751 which had the room, might have seen fit to call a victim.

752 Mr. Cohen. Sir, I do, and I think the Latin legal term
753 *res ipsa loquitur* speaks well to this point. The fact that
754 they did not choose a victim to testify speaks loudly to
755 what the real purpose of this law is. It is not for the
756 victims. It is for the defendants.

757 Chairman Goodlatte. Would the gentleman yield further?

758 Mr. Cohen. This is the most yielding I have ever done.

759 Chairman Goodlatte. Well, you are a yielding kind of
760 man, and we appreciate that.

761 I would just say that the purpose of this bill, as
762 expressed by the sponsor of the legislation and by myself
763 and others is to protect future victims from finding that
764 they are in a situation where there are no funds any longer
765 available because funds have been used up by people who have
766 spurious claims.

767 So, it is very difficult to call a future witness to
768 testify when they do not yet know that they are a victim of
769 an asbestos claim.

770 Mr. Conyers. Would the gentleman yield to me once?

771 Mr. Cohen. I would be glad to yield to the ranking
772 member.

773 Mr. Conyers. Thank you. I appreciate this conversation
774 because the General Accounting Office has found no incidents
775 of a pattern of fraud involved. There are wrongdoing
776 claimants, but that certainly is a far cry from the hubris
777 around which this hearing has been called.

778 Mr. Cohen. Thank you, Mr. Chairman. And it does appear
779 that this is somewhat of a version of trickle down tort
780 allowing because what they are looking at are these victims
781 that do not exist now in the future, and it is a trickle-

782 down theory. And the victims today will suffer as a result
783 thereof.

784 I yield back.

785 Chairman Goodlatte. The question is on the amendment
786 offered by the gentleman from Michigan.

787 All those in favor of the amendment, respond by saying
788 aye.

789 Those opposed, no.

790 In the opinion of the chair, the noes have it.

791 Mr. Conyers. May I have a record vote?

792 Chairman Goodlatte. A record vote is requested, and the
793 clerk will call the roll.

794 Ms. Deterding. Mr. Goodlatte?

795 Chairman Goodlatte. No.

796 Ms. Deterding. Mr. Goodlatte votes no.

797 Mr. Sensenbrenner?

798 [No response.]

799 Ms. Deterding. Mr. Coble?

800 Mr. Coble. No.

801 Ms. Deterding. Mr. Coble votes no.

802 Mr. Smith?

803 Mr. Smith. No.

804 Ms. Deterding. Mr. Smith votes no.

805 Mr. Chabot?

806 Mr. Chabot. No.

807 Ms. Deterding. Mr. Chabot votes no.

808 Mr. Bachus?

809 Mr. Bachus. No.

810 Ms. Deterding. Mr. Bachus votes no.

811 Mr. Issa?

812 [No response.]

813 Ms. Deterding. Mr. Forbes?

814 [No response.]

815 Ms. Deterding. Mr. King?

816 Mr. King. No.

817 Ms. Deterding. Mr. King votes no.

818 Mr. Franks?

819 Mr. Franks. No.

820 Ms. Deterding. Mr. Franks votes no.

821 Mr. Gohmert?

822 Mr. Gohmert. No.

823 Ms. Deterding. Mr. Gohmert votes no.

824 Mr. Jordan?

825 [No response.]

826 Ms. Deterding. Mr. Poe?

827 [No response.]

828 Ms. Deterding. Mr. Chaffetz?

829 Mr. Chaffetz. No.

830 Ms. Deterding. Mr. Chaffetz votes no.

831 Mr. Marino?

832 Mr. Marino. No.

833 Ms. Deterding. Mr. Marino votes no.

834 Mr. Gowdy?

835 Mr. Gowdy. No.

836 Ms. Deterding. Mr. Gowdy votes no.

837 Mr. Amodei?

838 [No response.]

839 Ms. Deterding. Mr. Labrador?

840 [No response.]

841 Ms. Deterding. Mr. Farenthold?

842 Mr. Farenthold. No.

843 Ms. Deterding. Mr. Farenthold votes no.

844 Mr. Holding?

845 Mr. Holding. No.

846 Ms. Deterding. Mr. Holding votes no.

847 Mr. Collins?

848 Mr. Collins. No.

849 Ms. Deterding. Mr. Collins votes no.

850 Mr. DeSantis?

851 [No response.]

852 Ms. Deterding. Mr. Conyers?

853 Mr. Conyers. Aye.

854 Ms. Deterding. Mr. Conyers votes aye.

855 Mr. Nadler?

856 Mr. Nadler. Aye.

857 Ms. Deterding. Mr. Nadler votes aye.

858 Mr. Scott?

859 Mr. Scott. Aye.

860 Ms. Deterding. Mr. Scott votes aye.

861 Mr. Watt?

862 [No response.]

863 Ms. Deterding. Ms. Lofgren?

864 Ms. Lofgren. Aye.

865 Ms. Deterding. Ms. Lofgren votes aye.

866 Ms. Jackson Lee?
867 [No response.]
868 Ms. Deterding. Mr. Cohen?
869 Mr. Cohen. Aye.
870 Ms. Deterding. Mr. Cohen votes aye.
871 Mr. Johnson?
872 Mr. Johnson. Aye.
873 Ms. Deterding. Mr. Johnson votes aye.
874 Mr. Pierluisi?
875 Mr. Pierluisi. Aye.
876 Ms. Deterding. Mr. Pierluisi votes aye.
877 Ms. Chu?
878 Ms. Chu. Aye.
879 Ms. Deterding. Ms. Chu votes aye.
880 Mr. Deutch?
881 Mr. Deutch. Aye.
882 Ms. Deterding. Mr. Deutch votes aye.
883 Mr. Gutierrez?
884 [No response.]
885 Ms. Deterding. Ms. Bass?
886 Ms. Bass. Aye.

887 Ms. Deterding. Ms. Bass votes aye.

888 Mr. Richmond?

889 Mr. Richmond. Aye.

890 Ms. Deterding. Mr. Richmond votes aye.

891 Ms. DelBene?

892 Ms. DelBene. Aye.

893 Ms. Deterding. Ms. DelBene votes aye.

894 Mr. Garcia?

895 Mr. Garcia. Aye.

896 Ms. Deterding. Mr. Garcia votes aye.

897 Mr. Jeffries?

898 Mr. Jeffries. Aye.

899 Ms. Deterding. Mr. Jeffries votes aye.

900 Chairman Goodlatte. The gentleman from Wisconsin.

901 Mr. Sensenbrenner. No.

902 Ms. Deterding. Mr. Sensenbrenner votes no.

903 Chairman Goodlatte. The gentleman from Virginia.

904 Mr. Forbes. No.

905 Ms. Deterding. Mr. Forbes votes no.

906 Chairman Goodlatte. The gentleman from North Carolina.

907 Mr. Watt. Aye.

908 Ms. Deterding. Mr. Watt votes aye.

909 Chairman Goodlatte. Are there other members who wish to
910 be recorded?

911 The clerk will report.

912 Ms. Deterding. Mr. Chairman, 15 members voted aye, 16
913 members votes nay.

914 Chairman Goodlatte. And the amendment is not agreed to.

915 Are there other amendments?

916 The gentleman from Tennessee.

917 Mr. Cohen. Thank you, Mr. Chairman. I have an
918 amendment at the desk.

919 Chairman Goodlatte. The clerk will report the
920 amendment.

921 Ms. Deterding. Amendment to H.R. 982 --

922 Mr. Cohen. I ask unanimous consent the bill be
923 considered as read.

924 Chairman Goodlatte. Without objection, the amendment
925 will be considered as read.

926 [The amendment of Mr. Cohen follows:]

927

928 Chairman Goodlatte. And the gentleman is recognized to
929 explain his amendment for 5 minutes.

930 Mr. Cohen. Thank you, Mr. Chairman. This amendment
931 ensures that H.R. 982 will not apply to trusts that have an
932 internal claims audit program to ensure that claims are
933 valid and supported.

934 Proponents of H.R. 982 argue that its reporting and
935 other information sharing requirements are necessary in
936 order to ensure that asbestos victims are not committing
937 fraud by recovering money from trusts and through the tort
938 system as well, thereby double dipping. While proponents of
939 the bill have yet to point to any empirical evidence of
940 systemic fraud and others have shown there is not such an
941 objective study within this process, H.R. 982, if enacted,
942 will impose unnecessary burdens and costs, particularly
943 large costs, on trusts. That will take away from future
944 victims in the trickle-down theory, and expose claimants'
945 private information to the unnecessary risk of inappropriate
946 exposure.

947 H.R. 982's additional requirements on trusts will raise
948 their administrative costs significantly. The money used to

949 pay these costs ultimately leads to less money to compensate
950 those asbestos victims in futuro.

951 This is particularly problematic in light of the fact
952 that defendants can already obtain that information that
953 they want by using discovery tools without requiring
954 compensation, undermining compensation for legitimate
955 claims.

956 The reporting requirement in H.R. 982 also raises, of
957 course, privacy concerns. And while I recognize the bill
958 specifically prohibits trusts from making public any medical
959 records or full social security numbers, the bill would
960 still require trusts to make public claimant's name and
961 exposure history. I also recognize the limited additional
962 privacy protections available under Rule 107 of the
963 Bankruptcy Code.

964 Nonetheless, these measures are insufficient to fully
965 protect claimant's privacy. As noted by colleagues, once
966 out in the public, such information can be used for any
967 purpose. Potential employers, insurance companies, lenders,
968 and even those who may seek to harm an asbestos victim in
969 some way can gain access without the victim's permission or

970 knowledge.

971 In light of these concerns and notwithstanding the lack
972 of any evidence of systemic fraud, this amendment ensures
973 that to the extent that a trust already has measures in
974 place to ferret out potential fraudulent claims, it should
975 not have to bear the cost burdens and privacy risks
976 presented here. If, in fact, proponents are primarily
977 concerned about potential fraud in the asbestos claims
978 process, they should have little trouble supporting this
979 amendment that recognizes processes already in place to
980 address fraud, while also addressing some of the concerns of
981 those who oppose this bill.

982 I would urge my colleagues to support this amendment.

983 I yield back the balance of my time.

984 Chairman Goodlatte. I thank the gentleman, and the
985 chair recognizes himself in opposition to the amendment.

986 I again say to the gentleman and those that are
987 concerned about transparency, any other case for personal
988 injury brought in any other court would have pleadings filed
989 as a part of the public record that would be available to
990 anyone who wishes to inspect that record and those pleadings

991 would of necessity have to include pleading the nature of
992 the illness and certain aspects of the individual's medical
993 condition. That is the basis for the claim.

994 This amendment would exclude asbestos trusts that have
995 in place internal audit systems from the requirements of the
996 FACT Act. The record before the committee does not
997 establish that trusts with internal reporting systems are
998 free from fraud. On the contrary, the General Accounting
999 Office concluded that the trust system currently is
1000 conducive to fraud. Regarding trust system audit processes,
1001 the GAO simply reported that trust audit processes are
1002 designed to ensure compliance with internal trust
1003 procedures, not to remedy the fraud that the bill seeks to
1004 address.

1005 Excluding certain asbestos trusts from the legislation
1006 would eliminate critical sources of information that can
1007 facilitate the reduction of fraud. Furthermore, the
1008 amendment would not address the problem presented by
1009 plaintiffs who assert inconsistent allegations between the
1010 State court tort system and the asbestos trust.

1011 And I urge my colleagues to oppose the amendment.

1012 For what purpose does the gentlewoman from Washington
1013 seek recognition?

1014 Ms. DelBene. I move to strike the last word.

1015 Chairman Goodlatte. The gentlewoman is recognized for 5
1016 minutes.

1017 Ms. DelBene. Thank you, Mr. Chair. I support
1018 Representative Cohen's amendment. As a member of the
1019 subcommittee on Regulatory Reform, which initially held a
1020 hearing on this bill earlier this year, I am disappointed by
1021 the process that has led to today's full committee markup.

1022 However, the data presented at that hearing did not make
1023 it clear that this bill would be useful or beneficial to
1024 asbestos victims in any meaningful way. Instead, by
1025 requiring asbestos trusts to publicly disclose information
1026 about claimants and their settlements, this legislation will
1027 compromise the privacy rights and confidential information
1028 of asbestos victims.

1029 Meanwhile, the purported purpose of adding these new
1030 requirements is to address abuse and fraud in the trust
1031 process. However, the record from that hearing did not show
1032 evidence of any significant fraud in the current trust

1033 process system. Rather, we have learned that GAO's recent
1034 2011 report found that 98 percent of the trusts reviewed by
1035 the GAO required a claims audit program. If a trust has an
1036 internal review process that can ensure that only legitimate
1037 claims are paid, the transparency requirements are
1038 unnecessary and will only impose burdens on victims and
1039 compromise their privacy.

1040 I urge my colleagues to vote in favor of this amendment.
1041 And I yield my time to Mr. Cohen, if he has a further
1042 statement.

1043 Mr. Cohen. Thank you. I appreciate your yielding, and
1044 I appreciate the position that you have well stated.

1045 I would like to ask the chair if we could introduce the
1046 GAO report as a matter of record because it will speak
1047 volumes of truth.

1048 Chairman Goodlatte. Without objection, the GAO report
1049 will be made a part of the record.

1050 [The information follows:]

1051

1052 Mr. Cohen. Thank you. Thank you.

1053 Mr. Conyers. Would the gentlelady yield to me?

1054 Mr. Cohen. I yield to whoever is there.

1055 Chairman Goodlatte. The gentlewoman from Washington
1056 controls the time.

1057 Ms. DelBene. Yes, I yield to the ranking member.

1058 Mr. Conyers. Thank you very much. I just wanted to add
1059 that the General Accounting Office, contrary to what the
1060 chairman stated, says that it is not aware of any subsequent
1061 reports of endemic fraud since 2004 with respect to asbestos
1062 claims, and it did not uncover any evidence of over fraud
1063 during its examination of asbestos trusts last year. And we
1064 have followed it up even with a telephone call to the
1065 director of Homeland Security and Justice Issues to confirm
1066 that.

1067 There is not endemic fraud going on that is claimed in
1068 this bill as the basis of it. And I think that this is very
1069 clear. I do not where he read his information from, but we
1070 not only got it from the report, but we called the
1071 inspector, the director of Homeland Security as well, the
1072 director who was the author of the report.

1073 And I thank the gentlelady for yielding to me.

1074 Mr. Johnson. Would the gentlelady yield?

1075 Ms. DelBene. I yield to Mr. Johnson.

1076 Mr. Johnson. Thank you. I want to take issue with any
1077 thinking that the rules of any court in the Nation would
1078 require in filing a complaint that privileged medical
1079 conditions would be included or would be necessary for
1080 inclusion in the pleadings.

1081 And I would also interject that this legislation, the
1082 overall legislation, is protective of not bankruptcy
1083 defendants, but really solvent defendants who are trying to
1084 avoid exposure to financial claims against it. Most
1085 importantly, I think probably Georgia Pacific is the biggest
1086 asbestos or is the largest asbestos producing firm that is
1087 not a bankrupt defendant. It is actually a solvent
1088 defendant. And this bill is for the purpose of protecting
1089 Georgia Pacific and its owners, the Koch brothers.

1090 And so there is no fraud that is the reason for this
1091 bill. This bill is a solution to a problem that does not
1092 exist. And whenever we have a bill that is a solution to a
1093 problem that does not really exist, I think we must look at

1094 the motivation of those who are introducing and supporting
1095 the bill. And I believe that the true intent is to protect
1096 the money of the Koch brothers, and I think the public knows
1097 how much money the Koch brothers and other spent trying to
1098 control the last presidential election. They are also
1099 spending money in States and in congressional races as well.
1100 So let there be no dispute about the true rationale for this
1101 bill.

1102 And with that, I will yield back.

1103 Chairman Goodlatte. The time of the gentlewoman has
1104 expired.

1105 The question is on the amendment offered by the
1106 gentleman from Tennessee.

1107 All those in favor, respond by saying aye.

1108 Those opposed, no.

1109 In the opinion of the chair, the noes have it.

1110 [Laughter.]

1111 Chairman Goodlatte. Are there further amendments?

1112 Mr. Cohen. I would ask for a recorded vote just to
1113 verify your hearing.

1114 Chairman Goodlatte. The gentleman requests a recorded

1115 vote, and the clerk will call the roll.

1116 Ms. Deterding. Mr. Goodlatte?

1117 Chairman Goodlatte. No.

1118 Ms. Deterding. Mr. Goodlatte votes no.

1119 Mr. Sensenbrenner?

1120 [No response.]

1121 Ms. Deterding. Mr. Coble?

1122 Mr. Coble. No.

1123 Ms. Deterding. Mr. Coble votes no.

1124 Mr. Smith?

1125 Mr. Smith. No.

1126 Ms. Deterding. Mr. Smith votes no.

1127 Mr. Chabot?

1128 Mr. Chabot. No.

1129 Ms. Deterding. Mr. Chabot votes no.

1130 Mr. Bachus?

1131 Mr. Bachus. No.

1132 Ms. Deterding. Mr. Bachus votes no.

1133 Mr. Issa?

1134 Mr. Issa. No.

1135 Ms. Deterding. Mr. Issa votes no.

1136 Mr. Forbes?

1137 [No response.]

1138 Ms. Deterding. Mr. King?

1139 Mr. King. No.

1140 Ms. Deterding. Mr. King votes no.

1141 Mr. Franks?

1142 Mr. Franks. No.

1143 Ms. Deterding. Mr. Franks votes no.

1144 Mr. Gohmert?

1145 Mr. Gohmert. No.

1146 Ms. Deterding. Mr. Gohmert votes no.

1147 Mr. Jordan?

1148 [No response.]

1149 Ms. Deterding. Mr. Poe?

1150 [No response.]

1151 Ms. Deterding. Mr. Chaffetz?

1152 Mr. Chaffetz. No.

1153 Ms. Deterding. Mr. Chaffetz votes no.

1154 Mr. Marino?

1155 [No response.]

1156 Ms. Deterding. Mr. Gowdy?

1157 Mr. Gowdy. No.

1158 Ms. Deterding. Mr. Gowdy votes no.

1159 Mr. Amodei?

1160 [No response.]

1161 Ms. Deterding. Mr. Labrador?

1162 Mr. Labrador. No.

1163 Ms. Deterding. Mr. Labrador votes no.

1164 Mr. Farenthold?

1165 Mr. Farenthold. No.

1166 Ms. Deterding. Mr. Farenthold votes no.

1167 Mr. Holding?

1168 Mr. Holding. No.

1169 Ms. Deterding. Mr. Holding votes no.

1170 Mr. Collins?

1171 Mr. Collins. No.

1172 Ms. Deterding. Mr. Collins votes no.

1173 Mr. DeSantis?

1174 Mr. DeSantis. No.

1175 Ms. Deterding. Mr. DeSantis votes no.

1176 Mr. Conyers?

1177 Mr. Conyers. Aye.

1178 Ms. Deterding. Mr. Conyers votes aye.
1179 Mr. Nadler?
1180 Mr. Nadler. Aye.
1181 Ms. Deterding. Mr. Nadler votes aye.
1182 Mr. Scott?
1183 Mr. Scott. Aye.
1184 Ms. Deterding. Mr. Scott votes aye.
1185 Mr. Watt?
1186 Mr. Watt. Aye.
1187 Ms. Deterding. Mr. Watt votes aye.
1188 Ms. Lofgren?
1189 [No response.]
1190 Ms. Deterding. Ms. Jackson Lee?
1191 [No response.]
1192 Ms. Deterding. Mr. Cohen?
1193 Mr. Cohen. Aye.
1194 Ms. Deterding. Mr. Cohen votes aye.
1195 Mr. Johnson?
1196 Mr. Johnson. Aye.
1197 Ms. Deterding. Mr. Johnson votes aye.
1198 Mr. Pierluisi?

1199 Mr. Pierluisi. Aye.

1200 Ms. Deterding. Mr. Pierluisi votes aye.

1201 Ms. Chu?

1202 Ms. Chu. Aye.

1203 Ms. Deterding. Ms. Chu votes aye.

1204 Mr. Deutch?

1205 [No response.]

1206 Ms. Deterding. Mr. Gutierrez?

1207 [No response.]

1208 Ms. Deterding. Ms. Bass?

1209 Ms. Bass. Aye.

1210 Ms. Deterding. Ms. Bass votes aye.

1211 Mr. Richmond?

1212 Mr. Richmond. Aye.

1213 Ms. Deterding. Mr. Richmond votes aye.

1214 Ms. DelBene?

1215 Ms. DelBene. Aye.

1216 Ms. Deterding. Ms. DelBene votes aye.

1217 Mr. Garcia?

1218 Mr. Garcia. Aye.

1219 Ms. Deterding. Mr. Garcia votes aye.

1220 Mr. Jeffries?

1221 Mr. Jeffries. Aye.

1222 Ms. Deterding. Mr. Jeffries votes aye.

1223 Chairman Goodlatte. The gentleman from Virginia?

1224 Mr. Forbes. No.

1225 Ms. Deterding. Mr. Forbes votes no.

1226 Chairman Goodlatte. The gentleman from Wisconsin?

1227 Mr. Sensenbrenner. No.

1228 Ms. Deterding. Mr. Sensenbrenner votes no.

1229 Chairman Goodlatte. The gentleman from Pennsylvania.

1230 Mr. Marino. No.

1231 Ms. Deterding. Mr. Marino votes no.

1232 Chairman Goodlatte. Are there other members who wish to

1233 be recorded?

1234 The clerk will report.

1235 Ms. Deterding. Mr. Chairman, 13 members voted aye, 19

1236 members voted nay.

1237 Chairman Goodlatte. And the amendment is not agreed to.

1238 Are there further amendments?

1239 For what purpose does the gentleman from New York seek

1240 recognition?

1241 Mr. Nadler. I have an amendment, Mr. Chairman.

1242 Chairman Goodlatte. The gentleman is recognized, and
1243 the clerk will report the amendment.

1244 Ms. Deterding. Amendment to H.R. 982, offered by Mr.
1245 Nadler of New York, page 2 --

1246 Chairman Goodlatte. Without objection, the amendment
1247 will be considered as read.

1248 [The amendment of Mr. Nadler follows:]

1249

1250 Chairman Goodlatte. And the gentleman from New York is
1251 recognized for 5 minutes to explain his amendment.

1252 Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman,
1253 this amendment would require asbestos defendants to report
1254 information about their asbestos containing products when it
1255 pertains to the protection of public health and safety.

1256 A typical asbestos defendant who settles a case in the
1257 tort system demands confidentiality as a condition of
1258 settlement in order to ensure that other victims cannot
1259 learn how much they paid or for which asbestos products the
1260 defendant is paying compensation.

1261 This amendment should receive the enthusiastic support
1262 of members who are supporting the bill. It would ensure
1263 that the transparency they demand from the victims of the
1264 asbestos industry will also be applied to the corporations
1265 that have inflicted so much damage and so much suffering
1266 over the years. The information it seeks is reasonable,
1267 even modest. It would simply require that any defendant
1268 seeking the information this bill would make available, that
1269 that defendant provide information relevant to the case that
1270 pertains to the protection of public health or safety to any

1271 other person, or to any Federal or State entity that has the
1272 authority to enforce a law regulating an activity relating
1273 to such information.

1274 This would go a long way to addressing the longstanding
1275 efforts by these corporations to conceal the facts
1276 surrounding their actions from the public, from their
1277 victims, and from government agencies charged with enforcing
1278 their health and safety laws. Too often cases are settled
1279 specifically in order to prevent evidence of wrongdoing from
1280 becoming public. More importantly, because of the secrecy
1281 of these settlements, other people who have been injured
1282 have no way of gaining important information about their
1283 exposure, their illnesses, or the settled liability of the
1284 companies that made them sick.

1285 Information about the concealment of wrongdoing never
1286 becomes public, and the people who have suffered have no way
1287 of knowing about the wrongdoing or its extent. Governmental
1288 agencies that are charged with protecting the public health
1289 whether in the workplace or in the home are deprived of the
1290 information they need to enforce the laws we have enacted.

1291 If the sponsors of this legislation really mean what

1292 they say about the need for transparency and accountability,
1293 they will support this amendment. There has been too long a
1294 record over too many decades of concealment, disassembly,
1295 and lawlessness, and too many lives destroyed because of
1296 that illegal conduct for us to tolerate the continued cover
1297 up. This amendment will go a long way toward remedying that
1298 situation, and toward correcting the unjust imbalance in the
1299 current system.

1300 Without this amendment and the openness and clarity it
1301 would provide, this bill would merely favor those who
1302 inflicted the harm and give them yet another advantage over
1303 the victims. We should stand with the people whose lives
1304 have been destroyed, not with the corporations whose illegal
1305 and immoral conduct destroyed those lives forever.

1306 This amendment would prevent the situation where as part
1307 of a settlement by a corporation or by the trust of the
1308 corporation agreeing to compensate a victim some portion of
1309 his damages that he suffered as a result of the torts by the
1310 defendant. Nonetheless, the settlement is kept secret, and
1311 other people will not learn that a given product contains
1312 asbestos, or that a given product leaked asbestos, and

1313 therefore, will not know that they potentially were harmed.
1314 And government agencies may not learn facts necessary to
1315 exercise their responsibility to protect the public.

1316 At the very least, we should be even handed and demand
1317 of the wrongdoers the same transparency that this bill
1318 demands of their victims, a transparency which will enable
1319 other victims to understand their remedies and which will
1320 enable government agencies to better enforce the law.
1321 Unless we want to assist tort feasons and wrongdoers to
1322 conceal the effects of their wrongdoing, we will support
1323 this amendment.

1324 I urge the adoption of this amendment.

1325 Mr. Conyers. Will the gentleman yield?

1326 Mr. Nadler. Yes, I will yield.

1327 Mr. Conyers. I want to commend the gentleman for this
1328 sunshine amendment because it ensures that transparency will
1329 apply to the wrongdoers, the asbestos industry, and not just
1330 to the victims of the asbestos industry.

1331 Mr. Nadler. Reclaiming my time. I thank the gentleman,
1332 and he is entirely correct in his observation.

1333 I will make one further observation before yielding

1334 back, and that is that this amendment will help prevent
1335 future victims, because people will be able to know that
1336 certain products or other things have asbestos or have
1337 leaked asbestos, and this will help prevent future victims,
1338 a goal which the sponsors of the legislation claim they
1339 share.

1340 So on every ground -- transparency, safety, helping
1341 government to do its job in protecting the public, and
1342 preventing future victims -- this amendment should be
1343 supported by everyone, but particularly by the supporters of
1344 the legislation, assuming they are being forthright about
1345 their motives in supporting this legislation.

1346 I urge the adoption of the amendment, and I yield back.

1347 Chairman Goodlatte. For what purpose does the gentleman
1348 from Texas seek recognition?

1349 Mr. Farenthold. Mr. Chairman, I would like to speak in
1350 opposition to the amendment and --

1351 Chairman Goodlatte. The gentleman is recognized for 5
1352 minutes.

1353 Mr. Farenthold. The gentleman from New York is taking
1354 me back to my first year torts class with Charles Cantu at

1355 St. Mary's University where we talked about the whole
1356 process of the tort system in this country, and why we have
1357 confidential settlements in the first place so we do not bog
1358 down the courts with litigation. And so the parties are
1359 encouraged to work out their claims so the victims are
1360 fairly compensated when their lawyers on both sides and the
1361 victim in the tort feasons agree on an overall compensation
1362 scheme. That is the way the system was designed to work.
1363 Our entire justice system, the plea bargaining system in
1364 criminal law, and the settlement system in tort law was
1365 designed to allow companies to work out.

1366 This amendment with just one paragraph inserted into the
1367 law just completely strikes that down and will actually, I
1368 think, discourage companies to settle with defendants who
1369 are suffering from asbestos-related diseases. And it goes
1370 against centuries of tort law.

1371 We are looking to avoid waste, fraud, and abuse. This
1372 greatly expands where we are trying to go. I understand and
1373 appreciate the gentleman's concern, but I just do not think
1374 we need to in a one paragraph amendment undo centuries of
1375 tort law and the underpinnings of our entire tort system.

1376 The FACT Act is designed for one sole purpose, and that
1377 is to reduce or, to the best of our ability, eliminate fraud
1378 and abuse in our system by simply asking to get the name and
1379 what injury is being claimed, made available publicly. That
1380 is all we are after, and we are doing that to make sure
1381 there is money in these trusts left for future defendants.
1382 If they run out of money, there is no going back to these
1383 companies in bankruptcy and asking for more money. There is
1384 just no money to compensate the victims. We are trying to
1385 protect the victims here, not redo tort law.

1386 And I urge my colleagues to oppose this amendment.

1387 Chairman Goodlatte. The chair thanks the gentleman.

1388 For what purpose does the gentleman from Virginia seek
1389 recognition?

1390 Mr. Scott. Mr. Chairman, move to strike the last word.

1391 Chairman Goodlatte. The gentleman is recognized for 5
1392 minutes.

1393 Mr. Scott. Mr. Chairman, this bill is supposed to be
1394 about transparency, and if the amendment passes, there will
1395 be transparency, but only to the extent that it pertains to
1396 the protection of public health and safety. I would hope

1397 that we would protect public and safety with the
1398 transparency and not allow those secrets to be kept.

1399 I yield the balance of my time to the gentleman from New
1400 York.

1401 Mr. Nadler. Thank you. Mr. Chairman, I may have
1402 attended a different torts class at Fordham Law School than
1403 the gentleman from Texas attended. We were not taught that
1404 the purpose of settlements enshrined in hundreds of years of
1405 tort law was to conceal information that could be used to
1406 harm the public health or safety. I never learned that. I
1407 learned the purpose of settlements was to make a fair
1408 settlement between the parties and save the time of the
1409 court system.

1410 But secrecy, which is not enshrined by centuries of tort
1411 law as far as I know, secrecy, when it pertains to the
1412 public health or safety, does damage exactly to that, the
1413 public health or safety. All this amendment does, it does
1414 not upset hundreds of years of tort law. And by the way, if
1415 that were the fact of hundreds of years of tort law, then it
1416 ought to be upset. It is not, but that is a matter of
1417 historical interest only.

1418 The fact is the current practice of secrecy in
1419 settlements in many cases is a good thing, but not when it
1420 conceals facts that are necessary to protect the public
1421 health or safety, and it enables the tort feisor to continue
1422 doing the dangerous things so that the next guy will also be
1423 damaged. And that is why I said that this helps future
1424 victims. Secrecy that enables continuing dangers to
1425 continue to occur or that enables a tort feisor to continue
1426 to market a product that they know may leak asbestos or not
1427 warn people about asbestos containing things that exist now
1428 is not good for the public health or safety.

1429 So if we are talking about preventing future victims, we
1430 are not talking about upsetting centuries of tort law. We
1431 are simply saying that where the information that is going
1432 to be secret in a settlement, where it pertains to the
1433 protection of public health or safety to any other person,
1434 that we owe that other person, we owe the government which
1435 has the duty of protecting those third parties, this
1436 knowledge. We do not owe to the tort feisor secrecy so as
1437 to be protected from claims by future victims. And that is
1438 what you are saying really.

1439 And if one of the motives of settlement is to keep
1440 information secret so that people will continue to be
1441 injured, that is what this amendment would prevent. Insofar
1442 as that is not the motivation for the settlement, insofar as
1443 the motivation for the settlement is legitimate, this
1444 amendment will have no impact at all, because all it says is
1445 the information relevant to such action that pertains to the
1446 protection of public health or safety of any other person.
1447 That is all it talks about.

1448 There is no public reason, no public policy that would
1449 sanction keeping information that would protect the public
1450 health or safety secret as a result of a private deal. The
1451 only reason to keep that information secret is to protect
1452 the tortfeasor from the future effects of his tort, and
1453 that is not legitimate public policy, and that should not be
1454 what we do here. And that is why this amendment is so
1455 essential.

1456 I thank the gentleman for yielding, and I will yield
1457 back to him.

1458 Mr. Conyers. Would the gentleman yield?

1459 Mr. Scott. I will yield to the gentleman.

1460 Mr. Conyers. Well, there is a transparency, but it only
1461 applies to the plaintiff, to the victim. It does not apply
1462 to the asbestos industry. And what I read into this
1463 amendment that makes it extremely important is that it has
1464 got to apply the principle of transparency to both sides,
1465 both the asbestos industry and the victim as well.

1466 And I urge that the members carefully consider this
1467 amendment.

1468 Mr. Scott. And I yield to the gentleman from New York.

1469 Mr. Nadler. Thank you. As the gentleman from Michigan
1470 points out, the bill strikes at the secrecy of the
1471 settlements. So what Mr. Farenthold said upsets hundreds of
1472 years of tort law is the bill.

1473 What the amendment does is saying if we are striking at
1474 the secrecy of settlements, we should strike not only at the
1475 secrecy for the plaintiffs, the victim of the tort, but also
1476 at the secrecy of the defendant, the tort feisor, but only
1477 insofar as that is necessary to deal with public health and
1478 safety. A very modest amendment.

1479 Chairman Goodlatte. The time of the gentleman has
1480 expired.

1481 For what purpose does the gentleman from South Carolina
1482 seek recognition?

1483 Mr. Gowdy. Thank you, Mr. Chairman.

1484 Chairman Goodlatte. The gentleman is recognized for 5
1485 minutes to strike the word.

1486 Mr. Gowdy. Thank you, Mr. Chairman. I am trying to
1487 make sense of the Federal Rule of Evidence 408, which
1488 specifically proscribes the admission of all offers and
1489 settlements of offer from being in front of a jury. And I
1490 am trying to reconcile how the Federal Rules of Evidence
1491 would make specific mention of keeping that from the jury.
1492 But my colleagues on the other side of the aisle think that
1493 we are turning hundreds of years of common law on its head.
1494 That is codified in the Federal Rules of Evidence that
1495 settlements are inadmissible, offers to settle are
1496 inadmissible, offers of plea. I am trying to reconcile how
1497 the Federal Rules of Evidence could have such a different
1498 view of this.

1499 Mr. Nadler. Would the gentleman yield?

1500 Mr. Gowdy. I will be happy to.

1501 Mr. Nadler. The purpose of that is entirely different.

1502 And, first of all, let me point out that this amendment has
1503 nothing to do with juries. It does not say a jury should
1504 see it.

1505 Mr. Gowdy. No, I am just trying to figure out --

1506 Mr. Nadler. Well, I will answer your question --

1507 Mr. Gowdy. -- why if it is good enough to keep in front
1508 of a jury --

1509 Mr. Nadler. I will answer your question --

1510 Mr. Gowdy. -- which is, by definition --

1511 Mr. Nadler. I will answer your --

1512 Mr. Gowdy. -- that is small government, right, 12
1513 people making a --

1514 Mr. Nadler. Well, I do not know if it is small or big.
1515 That is not the point.

1516 Mr. Gowdy. If you like small government, you ought to
1517 love juries.

1518 Mr. Nadler. Okay, I do love juries. I am not so sure
1519 about small government. But in any event --

1520 Mr. Gowdy. Well then, why do we keep this information
1521 from a jury?

1522 Mr. Nadler. For the obvious reason -- for the evident

1523 reason, I should say, that if you are considering -- well,
1524 it is not guilt or innocence. If you are considering the
1525 liability of a defendant, I sued you for a million dollars
1526 because I alleged that you harmed me in such and such a
1527 manner. Then evidence that you offered me half a million
1528 dollars to settle might prejudice a jury as to the
1529 underlying merits, whereas in fact, as you know, settlements
1530 are often done because it is cheaper to get a settlement
1531 than to carry it to, you know, to a verdict.

1532 And it is improper, therefore, and I agree with the
1533 Federal Rule of Evidence. It is improper, therefore, to
1534 give the jury prejudicial information which would seem to
1535 indicate, well, the plaintiff is willing to pay half a
1536 million. He must be admitting his liability. That
1537 prejudices a jury on the central question that they are to
1538 judge.

1539 This amendment has nothing to do with that. This
1540 amendment is simply saying that where information relevant
1541 to the settlement would help protect the public health and
1542 safety, it should not be secret, not from a jury, but from
1543 the public or from the government agency in charge of

1544 enforcing the public safety.

1545 Mr. Gowdy. Well, reclaiming my time. When I was
1546 listening to the conversation between you and Mr.
1547 Farenthold, I just could not help but note that the Federal
1548 Rules of Evidence do not allow settlements, offers to
1549 settle, plea negotiations to be in front of the 12 people
1550 who are supposed to decide the facts. So I was just
1551 curious. The newfound infatuation with transparency and
1552 full disclosure seems to turn the Federal Rules of Evidence
1553 on its head.

1554 But with that, Mr. Chairman, I would be happy to yield
1555 back.

1556 Chairman Goodlatte. The question occurs on the
1557 amendment offered by the gentleman from Virginia.

1558 Mr. Johnson. Mr. Chairman --

1559 Chairman Goodlatte. For what purpose does the gentleman
1560 from -- actually, for what purpose does the gentleman from
1561 Georgia seek recognition?

1562 Mr. Johnson. To address the body for 5 minutes.

1563 Chairman Goodlatte. The gentleman is recognized for 5
1564 minutes.

1565 Mr. Johnson. Revise and extend, I am sorry. I am all
1566 messed up, but thank you.

1567 I will ask my friend, Representative Gowdy, to please
1568 sign on to my arbitration bill. I think if you love jury
1569 trials so much, then you hate arbitration. And so I would
1570 you to join onto my arbitration bill as soon as possible.

1571 Mr. Gowdy. Well, I would be delighted to look at the
1572 gentleman from Georgia's bill, but I would also hasten to
1573 add that if you can give up your right to remain silent and
1574 you can give up your right to a trial, you ought to be able
1575 to waive just about any right you can possibly have,
1576 including your right to a jury trial.

1577 Mr. Johnson. And you can do that even under my
1578 arbitration bill. But you will not be forced to do it
1579 because you have signed an agreement to not do it before the
1580 dispute arose.

1581 Mr. Gowdy. If you sign the agreement, how are you
1582 forced to do it?

1583 Mr. Johnson. Well, because you are barred from going to
1584 a jury trial if you sign the agreement.

1585 Mr. Nadler. Would the gentleman yield? Would the

1586 gentleman yield?

1587 Mr. Johnson. I will yield.

1588 Mr. Nadler. I would simply point out you are forced to
1589 do it because, in effect, you are signing a contract of
1590 adhesion. Every time you buy a cell phone or anything else,
1591 in the fine print that nobody reads is an agreement that any
1592 dispute shall go to arbitration. You are not thinking about
1593 that. There is no dispute. Your cell phone blows up in
1594 your face and damages you health wise or whatever. Suddenly
1595 there is a dispute, and now you cannot go to court.

1596 At that point, Mr. Johnson would say you should be able
1597 to give up your right to go to court and go to arbitration
1598 if you want to, but should not be held to it by the contract
1599 of adhesion that you signed earlier.

1600 Mr. Johnson. Thank you.

1601 Chairman Goodlatte. Would the gentleman from Georgia
1602 yield?

1603 Mr. Johnson. I will.

1604 Chairman Goodlatte. I thank the gentleman for yielding,
1605 and this is an interesting and intellectual discussion, but
1606 we are getting far afield from the measure at hand.

1607 Mr. Johnson. My question or my statement was
1608 rhetorical, but it was responded to. So with that, I will
1609 yield back.

1610 Mr. Conyers. Would the gentleman yield?

1611 Mr. Johnson. Well, I will yield to the gentleman from
1612 Michigan.

1613 Mr. Conyers. You know, all the discussion of the jury
1614 involvement from the gentleman from South Carolina misses
1615 the point that we are extracting all the transparency from
1616 the victims of the asbestos industry, and all the Nadler
1617 amendment is trying to do is have it apply to both sides of
1618 this discussion. And I think that is the central and
1619 important issue where safety is concerned.

1620 Chairman Goodlatte. Would the gentleman from Georgia
1621 yield?

1622 Mr. Johnson. I will.

1623 Chairman Goodlatte. Thank you very much. The gentleman
1624 from Michigan is getting back on track, and I think that is
1625 a valid point. But that goes to the very point of looking
1626 for guidance, like the Federal Rules of Civil Procedure and
1627 civil procedure of virtually any State court as well.

1628 When you file a bill of complaint seeking judgment
1629 against somebody, you have to make disclosure of the nature
1630 of your claim. And that is the foundation of Mr.
1631 Farenthold's legislation. You should be required to make
1632 that same public disclosure of the basis of the claim. Then
1633 being consistent with the Federal Rules of Civil Procedure,
1634 the court looks with disfavor upon disclosing things like
1635 settlements for the reasons, the public policy reasons, of
1636 promoting settlements and working things out.

1637 So I think that the position that we need more
1638 transparency in these bankruptcy proceedings is consistent
1639 with the gentleman from Texas and the gentleman from South
1640 Carolina's opposition to this amendment. I join them in
1641 opposing the amendment.

1642 Mr. Johnson. Well, reclaiming my time, I would point
1643 out that these rules of pleading in the States and in the
1644 Federal court system do not require the disclosure of
1645 privileged medical information, medical conditions, in the
1646 pleadings. That information does become available during
1647 discovery. And that is the way that it should be.

1648 I will yield to the gentleman from Michigan.

1649 Mr. Conyers. I heard the chairman of this committee
1650 refer to transparency, but what I think he may not have
1651 recognized is that the transparency as it now applies only
1652 to the victims. And what the Nadler amendment seeks to do
1653 is make the transparency component apply to the asbestos
1654 industry.

1655 Mr. Nadler. And only for safety.

1656 Mr. Conyers. And only for safety. It is extremely
1657 moderate and a limited amendment. And it seems to me that
1658 as long as we avoid making it equally applicable to both
1659 sides, we are not doing justice to the Nadler amendment,
1660 which would in some -- in an important but small way bring
1661 some sunshine in on both sides of this dispute.

1662 Chairman Goodlatte. The time of the gentleman has
1663 expired.

1664 For what purpose does the gentleman from North Carolina
1665 seek recognition?

1666 Mr. Coble. Mr. Chairman, move to strike the last word.

1667 Chairman Goodlatte. The gentleman is recognized for 5
1668 minutes.

1669 Mr. Coble. Mr. Chairman, I will not use 5 minutes.

1670 Several references today have been alluding to the three/one
1671 disparity in the witness panel. I want to remind my
1672 colleagues that the three/one disparity is not a case of
1673 first impression. I mean, when my Democratic friends were
1674 in the majority, the three/one disparity existed there,
1675 three, of course, being reserved to the majority, and that
1676 is the present case today. I just wanted to allude to that,
1677 Mr. Chairman, in the case there was some confusion that
1678 surrounded it.

1679 And I would yield back.

1680 Chairman Goodlatte. The gentleman yields back.

1681 For what purpose does the gentleman from Louisiana seek
1682 recognition?

1683 Mr. Richmond. Mr. Chairman, I would move to strike the
1684 last word.

1685 Chairman Goodlatte. The gentleman is recognized for 5
1686 minutes.

1687 Mr. Richmond. And, Mr. Chairman, in response to the
1688 last statement, and I have not been for a while, and I do
1689 not dispute that the three/one ratio has always been done on
1690 both sides. But I would just add that just because it is

1691 always been done that way does not necessarily make it right
1692 or make it fair.

1693 Let me just say about the Nadler amendment, I think it
1694 strikes a very delicate balance. And I know that we have
1695 had a debate about the promotion of settlements and the
1696 public policy behind settlements, but most of the time when
1697 you think of a settlement, you think of two parties with
1698 equal bargaining power.

1699 And in these settlements, you absolutely do not have
1700 that. I mean, the average life span once you get diagnosed
1701 with one of these illnesses, you are talking 4 to 18 months.
1702 So for the tort feisor or for the defendant, they can play
1703 necessarily a waiting game, but they have the upper hand.
1704 And in those cases, the plaintiff or our sick constituent is
1705 forced to settle because if they want to live to see any
1706 part of the settlement, then they must settle quickly. And
1707 too oftentimes, they will take the confidentiality clause
1708 simply so that they can live out their final days with some
1709 dignity, some peace, some sense of pride.

1710 So in the amendment, it still says it has to be for
1711 public interest. And so as we are here debating a lot of

1712 technical terms and we are debating efficiency, waste,
1713 fraud, and abuse, I think his amendment goes to maybe saving
1714 lives in the future. And remember, we are not saying always
1715 disclose it, but if it is a matter of public safety and
1716 public health, if it is a matter of saving lives, it should
1717 be disclosed.

1718 And I do not see, at least when I come here, I come to
1719 fight for people who really do not have a voice or for the
1720 little man, or the little worker, or the little woman. I
1721 mean, this amendment makes their life a little bit better
1722 because if there is something out there that will make them
1723 sick, something that will cause them harm, they should know
1724 about it.

1725 And I do not understand the objection to transparency in
1726 that very, very narrow scenario that it poses a risk to
1727 public health. And I think that I would just add that I
1728 think we as public servants have an obligation that if we
1729 know that something causes a risk to public health, we ought
1730 not allow people to disclose it in terms of a settlement
1731 because I think we are giving up our duty, and we are really
1732 doing a disservice to the people who will be affected by

1733 those illnesses in the future.

1734 And with that, Mr. Chairman, I yield back.

1735 Chairman Goodlatte. The chair thanks the gentleman.

1736 The question occurs on the amendment offered by the

1737 gentleman from New York, Mr. Nadler.

1738 All those in favor, respond by saying aye.

1739 Those opposed, no.

1740 In the opinion of the chair, the noes have it.

1741 Mr. Nadler. Chairman, roll call, please.

1742 Chairman Goodlatte. The gentleman from New York

1743 requests a roll call vote, and the clerk will call the roll.

1744 Ms. Deterding. Mr. Goodlatte?

1745 Chairman Goodlatte. No.

1746 Ms. Deterding. Mr. Goodlatte votes no.

1747 Mr. Sensenbrenner?

1748 [No response.]

1749 Ms. Deterding. Mr. Coble?

1750 Mr. Coble. No.

1751 Ms. Deterding. Mr. Coble votes no.

1752 Mr. Smith?

1753 [No response.]

1754 Ms. Deterding. Mr. Chabot?

1755 Mr. Chabot. No.

1756 Ms. Deterding. Mr. Chabot votes no.

1757 Mr. Bachus?

1758 Mr. Bachus. No.

1759 Ms. Deterding. Mr. Bachus votes no.

1760 Mr. Issa?

1761 Mr. Issa. No.

1762 Ms. Deterding. Mr. Issa votes no.

1763 Mr. Forbes?

1764 [No response.]

1765 Ms. Deterding. Mr. King?

1766 Mr. King. No.

1767 Ms. Deterding. Mr. King votes no.

1768 Mr. Franks?

1769 [No response.]

1770 Ms. Deterding. Mr. Gohmert?

1771 Mr. Gohmert. No.

1772 Ms. Deterding. Mr. Gohmert votes no.

1773 Mr. Jordan?

1774 [No response.]

1775 Ms. Deterding. Mr. Poe?
1776 [No response.]
1777 Ms. Deterding. Mr. Chaffetz?
1778 Mr. Chaffetz. No.
1779 Ms. Deterding. Mr. Chaffetz votes no.
1780 Mr. Marino?
1781 Mr. Marino. No.
1782 Ms. Deterding. Mr. Marino votes no.
1783 Mr. Gowdy?
1784 Mr. Gowdy. No.
1785 Ms. Deterding. Mr. Gowdy votes no.
1786 Mr. Amodei?
1787 [No response.]
1788 Ms. Deterding. Mr. Labrador?
1789 Mr. Labrador. No.
1790 Ms. Deterding. Mr. Labrador votes no.
1791 Mr. Farenthold?
1792 Mr. Farenthold. No.
1793 Ms. Deterding. Mr. Farenthold votes no.
1794 Mr. Holding?
1795 Mr. Holding. No.

1796 Ms. Deterding. Mr. Holding votes no.
1797 Mr. Collins?
1798 Mr. Collins. No.
1799 Ms. Deterding. Mr. Collins votes no.
1800 Mr. DeSantis?
1801 Mr. DeSantis. No.
1802 Ms. Deterding. Mr. DeSantis votes no.
1803 Ms. Deterding. Mr. Conyers?
1804 Mr. Conyers. Aye.
1805 Ms. Deterding. Mr. Conyers votes aye.
1806 Mr. Nadler?
1807 Mr. Nadler. Aye.
1808 Ms. Deterding. Mr. Nadler votes aye.
1809 Mr. Scott?
1810 Mr. Scott. Aye.
1811 Ms. Deterding. Mr. Scott votes aye.
1812 Mr. Watt?
1813 Mr. Watt. Aye.
1814 Ms. Deterding. Mr. Watt votes aye.
1815 Ms. Lofgren?
1816 [No response.]

1817 Ms. Deterding. Ms. Jackson Lee?

1818 [No response.]

1819 Ms. Deterding. Mr. Cohen?

1820 [No response.]

1821 Ms. Deterding. Mr. Johnson?

1822 Mr. Johnson. Aye.

1823 Ms. Deterding. Mr. Johnson votes aye.

1824 Mr. Pierluisi?

1825 Mr. Pierluisi. Aye.

1826 Ms. Deterding. Mr. Pierluisi votes aye.

1827 Ms. Chu?

1828 Ms. Chu. Aye.

1829 Ms. Deterding. Ms. Chu votes aye.

1830 Mr. Deutch?

1831 Mr. Deutch. Aye.

1832 Ms. Deterding. Mr. Deutch votes aye.

1833 Mr. Gutierrez?

1834 [No response.]

1835 Ms. Deterding. Ms. Bass?

1836 Ms. Bass. Aye.

1837 Ms. Deterding. Ms. Bass votes aye.

1838 Mr. Richmond?

1839 Mr. Richmond. Aye.

1840 Ms. Deterding. Mr. Richmond votes aye.

1841 Ms. DelBene?

1842 Ms. DelBene. Aye.

1843 Ms. Deterding. Ms. DelBene votes aye.

1844 Mr. Garcia?

1845 Mr. Garcia. Aye.

1846 Ms. Deterding. Mr. Garcia votes aye.

1847 Mr. Jeffries?

1848 Mr. Jeffries. Aye.

1849 Ms. Deterding. Mr. Jeffries votes aye.

1850 Chairman Goodlatte. The gentleman from Wisconsin.

1851 Mr. Sensenbrenner. No.

1852 Ms. Deterding. Mr. Sensenbrenner votes no.

1853 Chairman Goodlatte. The gentleman from Virginia.

1854 Mr. Forbes. No.

1855 Ms. Deterding. Mr. Forbes votes no.

1856 Chairman Goodlatte. The gentleman from Arizona.

1857 Mr. Franks. No.

1858 Ms. Deterding. Mr. Franks votes no.

1859 Chairman Goodlatte. The gentleman from Tennessee.

1860 Ms. Deterding. Not recorded, sir.

1861 Mr. Cohen. Aye.

1862 Ms. Deterding. Mr. Cohen votes aye.

1863 Mr. Nadler. Mr. Chairman?

1864 Chairman Goodlatte. For what purpose does the gentleman

1865 from New York seek recognition?

1866 Mr. Nadler. To inquire of the clerk as to how I am

1867 recorded on this.

1868 Ms. Deterding. Mr. Nadler votes aye.

1869 Mr. Nadler. Are you sure of that?

1870 Ms. Deterding. Yes.

1871 Mr. Nadler. I thank you very much.

1872 Mr. Johnson. Mr. Chairman?

1873 Chairman Goodlatte. The gentleman from Georgia.

1874 Mr. Johnson. May I ask how am I recorded?

1875 Ms. Deterding. Mr. Johnson votes aye.

1876 Mr. Johnson. Are you pretty sure about that?

1877 Ms. Deterding. Yes.

1878 Mr. Johnson. Okay. All right.

1879 Chairman Goodlatte. The clerk will report.

1880 Ms. Deterding. Mr. Chairman, 14 members voted aye, 18
1881 members voted nay.

1882 Chairman Goodlatte. And the amendment is not agreed to.

1883 Are there further amendments?

1884 For what purpose does the gentleman from Virginia seek
1885 recognition?

1886 Mr. Scott. Mr. Chairman, I have an amendment at the
1887 desk, Scott 07.

1888 Chairman Goodlatte. The clerk will report the
1889 amendment.

1890 Ms. Deterding. Amendment to H.R. 982, offered by Mr.
1891 Scott of Virginia, page 2, line 11 --

1892 Chairman Goodlatte. Without objection, the amendment
1893 will be considered as read.

1894 [The amendment of Mr. Scott follows:]

1895

1896 Chairman Goodlatte. And the gentleman from Virginia is
1897 recognized for 5 minutes to explain his amendment.

1898 Mr. Scott. Thank you, Mr. Chairman. Mr. Chairman,
1899 although the purported purpose of the bill is to increase
1900 transparency, we need to make sure that we are not
1901 compromising the privacy of claimants in the process.

1902 The bill will do two things. It will require the trust
1903 to publicly disclose extensive individual and personal claim
1904 information, including information about a victim's exposure
1905 and work history, and then it would allow any asbestos
1906 defendant to demand any additional information from any of
1907 the trusts on virtually any person.

1908 Now, Part A, as I said, does include a provision that
1909 suggests that it should not intrude on any confidential
1910 medical record or claimant's full social security number.
1911 Part B, which gives anybody who is involved in asbestos
1912 litigation, any party, to ask where it says, "provide in a
1913 timely manner any information related to payment from or
1914 demands for payment from such trust, subject to
1915 appropriation protective orders, any party to any action in
1916 law or equity if the subject is asbestos exposure." So, you

1917 are talking about people asking for information about people
1918 when they are not even a party to the suit. They get to ask
1919 all this stuff.

1920 Now, you can get a protective order if you want to wait
1921 and go into court and drag it out some more, but the fact of
1922 the matter is that once somebody is diagnosed with
1923 mesothelioma, they have only got about 18 months to live.
1924 And they can spend a couple of those months trying to get
1925 protective orders and all that kind of stuff. Otherwise,
1926 their personalized information, without the protection in A-
1927 2, any information, whether it complies with HIPAA or not.

1928 All this amendment does is if you are going to give out
1929 all this information, that it be protected like confidential
1930 health information is under HIPAA. That is all it does. So
1931 that all these people that get the information have to
1932 protect it and cannot publicize it.

1933 Mr. Chairman, I yield back the balance of my time.

1934 Chairman Goodlatte. The chair thanks the gentleman.

1935 The chair recognizes himself in opposition to the amendment.

1936 The amendment treats information in the quarterly
1937 reports as protected health information under HIPAA, the

1938 Health Insurance Portability and Accountability Act. This
1939 amendment is unnecessary. The FACT Act already specifically
1940 prohibits the disclosure of "any confidential medical
1941 record."

1942 Furthermore, the Bankruptcy Code already requires an
1943 asbestos trust to comply with all applicable laws under
1944 HIPAA. Additionally, because the required quarterly reports
1945 are filed with the presiding bankruptcy court, the privacy
1946 provisions of the Bankruptcy Code and the Federal Rules of
1947 Bankruptcy Procedure also apply. These provisions, Section
1948 107 of the Bankruptcy Code and Rule 9037 of the Bankruptcy
1949 Rules, grant the presiding bankruptcy judge broad discretion
1950 to exclude confidential or sensitive information from the
1951 public record. Accordingly, if the bankruptcy court
1952 concludes that disclosures to be made in the quarterly
1953 report would violate HIPAA, it already has the discretion to
1954 exclude or redact the publication of the information.

1955 The FACT Act in its current form is a measured approach
1956 that requires the disclosure of a cursory amount of
1957 information, the same type of information that typically is
1958 included in State court pleadings. Placing additional

1959 restrictions on the amount of information to be disclosed is
1960 unnecessary, and I urge my colleagues to oppose the
1961 amendment.

1962 Mr. Scott. Mr. Chairman, would the gentleman yield?

1963 Chairman Goodlatte. I would be happy to yield to the
1964 gentleman from Virginia.

1965 Mr. Scott. Mr. Chairman, you have accurately described
1966 Part A of Section 2 of the bill. You have ignored Part B.
1967 Part A has a provision that says it does not include
1968 confidential medical records or the claimant's full social
1969 security number. That is Part A. Part B is anybody who is
1970 involved in asbestos litigation, whether the person is party
1971 or not, can get any information related to payment from and
1972 demands for. I mean, if you are making a demand, any
1973 information related to the claim has got to be medical
1974 information. There is no protection of confidentiality in
1975 Part B.

1976 Chairman Goodlatte. Well, reclaiming my time, I would
1977 point out to the gentleman that in Part B, the appropriate
1978 discovery rules in the underlying State court proceeding
1979 would apply, and, therefore, the same protections that are

1980 accorded in any State court proceeding would apply with
1981 regard to the bankruptcy court.

1982 Mr. Scott. Will the gentleman yield?

1983 Chairman Goodlatte. I would be happy to yield?

1984 Mr. Scott. Where is that in Part B that says upon
1985 written request you have to provide the information?

1986 Chairman Goodlatte. The bankruptcy court would have its
1987 underlying authority to protect the information in the
1988 bankruptcy court, and then the State court proceeding would
1989 determine under what circumstances it would be used in the
1990 State court proceeding.

1991 Mr. Nadler. Mr. Chairman?

1992 Chairman Goodlatte. Reclaiming my time, specifically
1993 Section 107 of the Bankruptcy Code and Bankruptcy Rule 9037
1994 grants the presiding bankruptcy judge broad discretion to
1995 exclude confidential or sensitive information from the
1996 public record. Specifically, Section 107 of the Bankruptcy
1997 Code provides in relative part that the bankruptcy court for
1998 cause may protect an individual with respect to the
1999 following types of information, to the extent the court
2000 finds that disclosure of such information would create undue

2001 risk of identity theft or other unlawful injury to the
2002 individual or the individual's property.

2003 It then goes on to list the two categories of
2004 information that are covered under the court's discretion.
2005 The first category is any means of identification as
2006 identified in Section 1028(d) of Title 18, contending of
2007 paper filed or to be filed in the case of this title. The
2008 second category is other information contained in a paper
2009 described in the first category.

2010 Means of identification is defined by Section 1028(d) of
2011 Title 18 as any name or number that may be used alone or in
2012 conjunction with any other information to identify a
2013 specific individual, including any name, social security
2014 number, date of birth, official state or government issued
2015 driver's license or identification number, alien
2016 registration number, government passport number, employer or
2017 taxpayer identification number; unique biometric data, such
2018 as fingerprint, voice print, retina, or iris image, or other
2019 unique physical representation; unique electronic
2020 identification number, address, or routing code, or
2021 telecommunication identifying information or access device

2022 as defined in Section 1029(e).

2023 As you can see, the existing protections in the
2024 Bankruptcy Code are broad and provide a bankruptcy court
2025 judge with ample discretion to redact or exclude
2026 confidential information. But in addition to that, the
2027 State court proceeding would also be able to apply the rules
2028 of the State court with regard to the protection of privacy.

2029 The time of the gentleman has expired.

2030 For what purpose does the gentleman from New York seek
2031 recognition?

2032 Mr. Nadler. Strike the last word.

2033 Chairman Goodlatte. The gentleman is recognized for 5
2034 minutes.

2035 Mr. Nadler. Thank you, Mr. Chairman. I support the
2036 amendment sponsored by the gentleman from Virginia. I think
2037 the key word in what you just read was discretion, but I
2038 will now yield to the gentleman from Virginia.

2039 Mr. Scott. Thank you. And that is exactly the point.
2040 To exercise the discretion, you have to have a hearing as to
2041 what you are exercising the discretion on. Part B on line
2042 18 says upon written request, that the trust has to provide

2043 in a timely manner any information related to payment from
2044 and demands for payment from such trust, subject to
2045 appropriate protective orders.

2046 I mean, you got people who are diagnosed, have 18 months
2047 to live, and they are going to sit up in court arguing about
2048 what has to be released, and what can be released, and what
2049 is not. And this is not just to a party to the case. This
2050 is to any party, to any action in law or equity, if the
2051 subject concerns liability to asbestos exposure.

2052 So I could sit up here and sue Jerry, call it asbestos
2053 exposure, and then go looking around for everybody's
2054 information, because I am a party to action in law or equity
2055 subject to asbestos exposure. I mean, this is broad.
2056 Anybody involved in litigation can get anything from anybody
2057 subject to discretion, and you can argue about it after the
2058 fact.

2059 All this says if you are going to get all that
2060 information, you ought to treat it like confidential health
2061 information.

2062 Mr. Conyers. Would the gentleman yield?

2063 Mr. Nadler. Yes, I will yield.

2064 Mr. Conyers. Thank you very much, because what we are
2065 now beginning to recognize is that this title is really
2066 overbroad, "furthering asbestos claim transparency." And
2067 what we now see is that this gets us into an incredible
2068 legal process usually in the courts that we would be having
2069 to bring numerous motions merely to protect the privacy of
2070 asbestos victims. And I think that that is what makes this
2071 amendment a very important one, and I support it.

2072 I yield back.

2073 Mr. Nadler. Thank you. And again, it is one thing as
2074 this amendment does to treat the information as protected
2075 health information automatically. It is another thing to
2076 say the information is available to all, but the victim, who
2077 has four to 18 months to live, can spend a lot of that time
2078 by going to court to try to protect this information based
2079 on the discretion of the judge. That is wrong, and the
2080 amendment is necessary to protect the victim in this
2081 instance. So I support the amendment.

2082 And I yield back.

2083 Chairman Goodlatte. The question occurs on the
2084 amendment offered by the gentleman from Virginia.

2085 All those in favor, respond by saying aye.

2086 Those opposed, no.

2087 In the opinion of the chair, the noes have it.

2088 The gentleman from Virginia.

2089 Mr. Scott. I would ask for a recorded vote.

2090 Chairman Goodlatte. The gentleman requests a recorded

2091 vote, and the clerk will call the roll.

2092 Ms. Deterding. Mr. Goodlatte?

2093 Chairman Goodlatte. No.

2094 Ms. Deterding. Mr. Goodlatte votes no.

2095 Mr. Sensenbrenner?

2096 [No response.]

2097 Ms. Deterding. Mr. Coble?

2098 Mr. Coble. No.

2099 Ms. Deterding. Mr. Coble votes no.

2100 Mr. Smith?

2101 [No response.]

2102 Ms. Deterding. Mr. Chabot?

2103 Mr. Chabot. No.

2104 Ms. Deterding. Mr. Chabot votes no.

2105 Mr. Bachus?

2106 Mr. Bachus. No.

2107 Ms. Deterding. Mr. Bachus votes no.

2108 Mr. Issa?

2109 [No response.]

2110 Ms. Deterding. Mr. Forbes?

2111 Mr. Forbes. No.

2112 Ms. Deterding. Mr. Forbes votes no.

2113 Mr. King?

2114 Mr. King. No.

2115 Ms. Deterding. Mr. King votes no.

2116 Mr. Franks?

2117 Mr. Franks. No.

2118 Ms. Deterding. Mr. Franks votes no.

2119 Mr. Gohmert?

2120 [No response.]

2121 Ms. Deterding. Mr. Jordan?

2122 Mr. Jordan. No.

2123 Ms. Deterding. Mr. Jordan votes no.

2124 Mr. Poe?

2125 [No response.]

2126 Ms. Deterding. Mr. Chaffetz?

2127 Mr. Chaffetz. No.

2128 Ms. Deterding. Mr. Chaffetz votes no.

2129 Mr. Marino?

2130 Mr. Marino. No.

2131 Ms. Deterding. Mr. Marino votes no.

2132 Mr. Gowdy?

2133 Mr. Gowdy. No.

2134 Ms. Deterding. Mr. Gowdy votes no.

2135 Mr. Amodei?

2136 Mr. Amodei. No.

2137 Ms. Deterding. Mr. Amodei votes no.

2138 Mr. Labrador?

2139 Mr. Labrador. No.

2140 Ms. Deterding. Mr. Labrador votes no.

2141 Mr. Farenthold?

2142 Mr. Farenthold. No.

2143 Ms. Deterding. Mr. Farenthold votes no.

2144 Mr. Holding?

2145 Mr. Holding. No.

2146 Ms. Deterding. Mr. Holding votes no.

2147 Mr. Collins?

2148 Mr. Collins. No.

2149 Ms. Deterding. Mr. Collins votes no.

2150 Mr. DeSantis?

2151 Mr. DeSantis. No.

2152 Ms. Deterding. Mr. DeSantis votes no.

2153 Mr. Conyers?

2154 Mr. Conyers. Aye.

2155 Ms. Deterding. Mr. Conyers votes aye.

2156 Mr. Nadler?

2157 Mr. Nadler. Aye.

2158 Ms. Deterding. Mr. Nadler votes aye.

2159 Mr. Scott?

2160 Mr. Scott. Aye.

2161 Ms. Deterding. Mr. Scott votes aye.

2162 Mr. Watt?

2163 Mr. Watt. Aye.

2164 Ms. Deterding. Mr. Watt votes aye.

2165 Ms. Lofgren?

2166 [No response.]

2167 Ms. Deterding. Ms. Jackson Lee?

2168 [No response.]

2169 Ms. Deterding. Mr. Cohen?

2170 Mr. Cohen. Aye.

2171 Ms. Deterding. Mr. Cohen votes aye.

2172 Mr. Johnson?

2173 Mr. Johnson. Aye.

2174 Ms. Deterding. Mr. Johnson votes aye.

2175 Mr. Pierluisi?

2176 [No response.]

2177 Ms. Deterding. Ms. Chu?

2178 [No response.]

2179 Ms. Deterding. Mr. Deutch?

2180 Mr. Deutch. Aye.

2181 Ms. Deterding. Mr. Deutch votes aye.

2182 Mr. Gutierrez?

2183 Mr. Gutierrez. Aye.

2184 Ms. Deterding. Mr. Gutierrez votes aye.

2185 Ms. Bass?

2186 Ms. Bass. Aye.

2187 Ms. Deterding. Ms. Bass votes aye.

2188 Mr. Richmond?

2189 Mr. Richmond. Aye.

2190 Ms. Deterding. Mr. Richmond votes aye.

2191 Ms. DelBene?

2192 Ms. DelBene. Aye.

2193 Ms. Deterding. Ms. DelBene votes aye.

2194 Mr. Garcia?

2195 Mr. Garcia. Aye.

2196 Ms. Deterding. Mr. Garcia votes aye.

2197 Mr. Jeffries?

2198 Mr. Jeffries. Aye.

2199 Ms. Deterding. Mr. Jeffries votes aye.

2200 Chairman Goodlatte. The gentlewoman from California.

2201 Ms. Chu. Aye.

2202 Ms. Deterding. Ms. Chu votes aye.

2203 Chairman Goodlatte. The gentleman from California.

2204 Mr. Issa. No.

2205 Ms. Deterding. Mr. Issa votes no.

2206 Chairman Goodlatte. Are there other members who wish to

2207 be recorded?

2208 The clerk will report.

2209 Ms. Deterding. Mr. Chairman, 14 members voted aye, 18

2210 members voted nay.

2211 Chairman Goodlatte. And the amendment is not agreed to.

2212 It is time for lunch, so the committee will stand in
2213 recess until 1:15 p.m. when we will reconvene.

2214 Mr. Conyers. 1:15?

2215 Chairman Goodlatte. 1:15, sir.

2216 [Whereupon, at 11:15 a.m., the committee recessed, to
2217 reconvene at 1:15 p.m., the same day.]

2218 Chairman Goodlatte. The committee will reconvene. When
2219 the committee recessed, we were considering amendments to
2220 H.R. 982. Are there further amendments?

2221 For what purpose does the gentleman from Virginia seek
2222 recognition?

2223 Mr. Scott. Mr. Chairman, I have an amendment at the
2224 desk.

2225 Chairman Goodlatte. The Clerk will report the
2226 amendment.

2227 Ms. Deterding. Amendment to H.R. 982, offered by Mr.
2228 Scott of Virginia. Page 2, line 6 --

2229 Chairman Goodlatte. Without objection, the amendment is
2230 considered as read.

2231 [The amendment of Mr. Scott follows:]

2232

2233 Chairman Goodlatte. And the gentleman from Virginia is
2234 recognized for 5 minutes.

2235 Mr. Scott. I was waiting until we know we've got the
2236 right one. She can read a little more?

2237 Chairman Goodlatte. Okay. Keep reading.

2238 Ms. Deterding. Page 2, line 6, inserting subject to
2239 subparagraph C after A. Page 2, line 18, insert subject to
2240 subparagraph C after D.

2241 Mr. Scott. I withdraw my objection.

2242 Chairman Goodlatte. The amendment will now be
2243 considered as read, and the gentleman from Virginia is
2244 recognized for 5 minutes.

2245 Mr. Scott. Mr. Chairman, this amendment would simply
2246 exempt veterans from the pain inflicted from the bill.
2247 During World War II, asbestos use in Navy ships and other
2248 Armed Forces applications greatly expanded as asbestos
2249 manufacturing companies began producing more products and
2250 infrastructure for the U.S. Navy in building ships, causing
2251 hundreds of thousands of workers and sailors to be
2252 unknowingly exposed to dangerous asbestos dust as they cut
2253 and manipulated insulation products. As a result, many of

2254 those men and women contracted asbestos-related diseases
2255 decades later.

2256 Now, veterans comprise only 8 percent of the U.S.
2257 population but 30 percent of all the asbestos-related
2258 deaths. If you served in the Navy before the mid-1970s, you
2259 were probably exposed to asbestos aboard a ship. Now, the
2260 fact is that the additional hurdles imposed by the bill will
2261 delay justice maybe a month, maybe two months, but you have
2262 to remember that once you have been diagnosed with these
2263 diseases, you may only have a few months to live, maybe 18
2264 months, and you don't want to spend the next three or four
2265 or five or six months in court trying to get a remedy.

2266 The fact is that if the delays can cause death, that
2267 helps the corporations that caused all this mess because
2268 pain and suffering is not allowable if you don't get to
2269 court before the claimant dies.

2270 And remember, this information that you are getting, if
2271 it is relevant to the case, can already be obtained. So we
2272 are talking about things that are totally unnecessary for
2273 the conduct of a trial, but this bill, under Section 2(b)
2274 says that anybody can get the information and get in the

2275 middle of a trial and slow things up if you have a pending
2276 asbestos-related case. So I can sue Representative Nadler.
2277 That empowers me to go looking all over the country for
2278 cases and getting information.

2279 Well, if you are going to be doing all that, I would
2280 just hope we wouldn't inflict that confusion into a case
2281 involving a veteran.

2282 And so, Mr. Chairman, I would hope that we would exempt
2283 veterans from the complications and delay in this bill by
2284 adopting the amendment, and I yield back the balance of my
2285 time.

2286 Chairman Goodlatte. The Chair thanks the gentleman.

2287 For what purpose does the gentleman from Texas seek
2288 recognition?

2289 Mr. Farenthold. I am opposed to the amendment, sir.

2290 Chairman Goodlatte. The gentleman is recognized for 5
2291 minutes.

2292 Mr. Farenthold. This amendment would prevent the
2293 asbestos trust from disclosing information submitted by
2294 veterans and veteran servicemen in response to the
2295 information request. Clearly, if there are two groups of

2296 individuals who need not worry about committing fraud, it is
2297 our nation's veterans and service members. At the same
2298 time, however, there is no reason to distinguish between the
2299 disclosure obligations of veteran service members and the
2300 disclosure obligation of ordinary citizens.

2301 Further, to the extent the relevant information is not
2302 already affirmatively disclosed, the amendment would require
2303 asbestos trusts to determine which claimants qualify in
2304 these categories and which don't, and it would actually slow
2305 the overall process. It was designed, actually, to be a
2306 quick, easy, fast process. It would also require veterans
2307 and service members to disclose their military status when
2308 they may not want to.

2309 The FACT Act should apply uniformly to all claimants,
2310 and it should impose no disparate burdens on veterans,
2311 service members, or the asbestos trust. It was designed to
2312 be quick, simple and easy, designed to only release that
2313 information that is necessary and that would otherwise be
2314 released in a normal tort case, and I urge my colleagues to
2315 oppose the amendment.

2316 Chairman Goodlatte. For what purpose does the gentleman

2317 from Illinois seek recognition?

2318 Mr. Gutierrez. I support the amendment.

2319 Chairman Goodlatte. The gentleman is recognized for 5
2320 minutes.

2321 Mr. Gutierrez. Thank you so much, Mr. Chairman. I rise
2322 in support of the amendment of Congressman Scott and yield
2323 to him the balance of my time.

2324 Mr. Scott. Mr. Chairman, when people say this is the
2325 normal thing that happens in a tort case, that is absurd.
2326 If you are not a party to the case, you can't get
2327 information regarding the case. Section B says, "Upon
2328 written request, the trust has to provide in a timely manner
2329 any information related to payment from or demand for
2330 payments from such trust to any party to any action in law
2331 or equity if the subject of such action concerns liability
2332 for asbestos exposure," limited only by if you go to court
2333 and get a protective order. I don't know any case where you
2334 can go in and get information about a pending case when you
2335 are not even a party.

2336 So when you say it is just like every other case, no.

2337 Just like in every other case, you can get whatever

2338 information you want. The defendant can get any information
2339 they want from the plaintiff. But you can't get information
2340 from the case if you are not even a party. That is the
2341 difference. That is why this thing is so broad, and I just
2342 hope we wouldn't inflict this on veterans.

2343 I thank the gentleman from Illinois for yielding, and I
2344 yield back.

2345 Mr. Conyers. Will the gentleman yield, Mr. Gutierrez?
2346 Will the gentleman yield? Thank you very much.

2347 I just wanted to take a moment to express my view that I
2348 thought at least there could be rapid agreement on the Scott
2349 amendment that would exempt claimants from disclosure
2350 requirements because they are in the armed services, or
2351 were. That sounded like a pretty easy one, especially since
2352 30 percent of all the mesothelioma deaths come from
2353 veterans, who only make up 8 percent of the population.

2354 So here is where we could be very helpful. We praise
2355 and salute our military day in and day out, and now we have
2356 an amendment that would exempt them and we say, well, no,
2357 let's leave everybody in.

2358 I think although the Veterans Administration treats

2359 qualified veterans with asbestosis or mesothelioma cancer,
2360 it is difficult to claim asbestos health problems as a
2361 service-related disability. So I urge that we begin the
2362 afternoon by supporting the Scott amendments, and I thank
2363 the gentleman for yielding.

2364 Mr. Scott. Will the gentleman yield again?

2365 Mr. Gutierrez. Yes.

2366 Mr. Scott. Thank you.

2367 The sponsor of the bill has suggested that veterans may
2368 not want to reveal their veteran status. I think that is
2369 the first thing they would want to reveal. What they don't
2370 want to reveal is confidential medical records or claimant's
2371 full Social Security number and things like that.

2372 The last amendment we considered was an amendment to
2373 keep confidential health information under HIPAA. We
2374 defeated that amendment, and there is no protection from
2375 revealing this. It is subsequently passed legislation that
2376 gives them access to that unless they can talk a judge into
2377 a specific protective order. The limitation on confidential
2378 medical records or claimant's full Social Security number
2379 only applies to Part B -- excuse me -- Part A of what you

2380 are asking for. Part B, this anybody-can-ask-for-anything-
2381 from-anybody part of the bill does not have that limitation.

2382 So the veterans, all the veteran's medical records,
2383 post-traumatic stress and everything else, is made part of
2384 the record that you can get unless a veteran can go into
2385 court and hold things up and get a protective order. Now,
2386 one of the things that, if you have already completed your
2387 case, you may not even know the information is being spread
2388 all over town on you. So I would hope that we would at
2389 least protect our veterans from this unreasonable
2390 legislation.

2391 I thank the gentleman.

2392 Chairman Goodlatte. The Chair thanks the gentleman, and
2393 recognizes himself in opposition to the amendment. As we
2394 covered earlier, the underlying legislation protects the
2395 privacy of individuals. It does not provide for the release
2396 of Social Security numbers and other information, and it is
2397 designed to only give sufficient information so that we can
2398 make sure there are not fraudulent or duplicative claims
2399 being brought under different legal recovery theories.

2400 With regard to veterans, we want to make sure that same

2401 protection is afforded to those veterans who are
2402 disproportionately being affected, being victims of
2403 asbestosis and related illnesses, and therefore protecting
2404 future veterans' claims as equally as important as
2405 protecting the claims of others. It would not be
2406 appropriate, in my opinion, to single out different groups
2407 of people and have a different reporting requirement for
2408 those groups. So I would urge my colleagues to oppose the
2409 amendment.

2410 Mr. Scott. Mr. Chairman?

2411 Chairman Goodlatte. I would be happy to yield to the
2412 gentleman from Virginia.

2413 Mr. Scott. Mr. Chairman, you said that you couldn't get
2414 the Social Security number. The limitation on Social
2415 Security numbers applies only to Part A and not to Part B.
2416 So where is the limitation in Part A, unless you can go and
2417 get a protective order?

2418 Chairman Goodlatte. The limitation in Part B is related
2419 to the authority of the bankruptcy court under existing
2420 bankruptcy law which we read into the record earlier that
2421 gives that authority to the judges, just like it does in

2422 state court proceedings, which are traditionally where most
2423 asbestos cases have originated.

2424 Mr. Scott. And further inquiry?

2425 Chairman Goodlatte. Be happy to yield.

2426 Mr. Scott. Is there any limitation on Part B to past
2427 cases? Because it says any information related to payment
2428 from any party to any action in law if it was an asbestos
2429 case. That would clearly, it seems to me, include past
2430 cases where the veteran wouldn't even know that his
2431 information is being disclosed pursuant to this law. He
2432 wouldn't even know to ask for a protective order.

2433 Chairman Goodlatte. Well, he would have that protection
2434 under the current bankruptcy rules. I don't believe that
2435 the veteran would be required to get a protective order.
2436 The rules of the bankruptcy court are going to provide that
2437 protection based upon what they allow to be disclosed. If
2438 you file a bankruptcy petition, information like your Social
2439 Security number is not made available to the general public
2440 in that proceeding.

2441 The question occurs on the amendment offered by the
2442 gentleman from Virginia, Mr. Scott.

2443 All those in favor, respond by saying aye.

2444 Those opposed, no.

2445 In the opinion of the chair, the noes have it. The
2446 amendment is not agreed to.

2447 The gentleman from Virginia requests a recorded vote,
2448 and the Clerk will call the roll.

2449 Ms. Deterding. Mr. Goodlatte?

2450 Chairman Goodlatte. No.

2451 Ms. Deterding. Mr. Goodlatte votes no.

2452 Mr. Sensenbrenner?

2453 [No response.]

2454 Ms. Deterding. Mr. Coble?

2455 Mr. Coble. No.

2456 Ms. Deterding. Mr. Coble votes no.

2457 Mr. Smith?

2458 [No response.]

2459 Ms. Deterding. Mr. Chabot?

2460 [No response.]

2461 Ms. Deterding. Mr. Bachus?

2462 [No response.]

2463 Ms. Deterding. Mr. Issa?

2464 [No response.]

2465 Ms. Deterding. Mr. Forbes?

2466 [No response.]

2467 Ms. Deterding. Mr. King?

2468 Mr. King. No.

2469 Ms. Deterding. Mr. King votes no.

2470 Mr. Franks?

2471 Mr. Franks. No.

2472 Ms. Deterding. Mr. Franks votes no.

2473 Mr. Gohmert?

2474 Mr. Gohmert. No.

2475 Ms. Deterding. Mr. Gohmert votes no.

2476 Mr. Jordan?

2477 [No response.]

2478 Ms. Deterding. Mr. Poe?

2479 [No response.]

2480 Ms. Deterding. Mr. Chaffetz?

2481 [No response.]

2482 Ms. Deterding. Mr. Marino?

2483 Mr. Marino. No.

2484 Ms. Deterding. Mr. Marino votes no.

2485 Mr. Gowdy?

2486 Mr. Gowdy. No.

2487 Ms. Deterding. Mr. Gowdy votes no.

2488 Mr. Amodei?

2489 [No response.]

2490 Ms. Deterding. Mr. Labrador?

2491 Mr. Labrador. No.

2492 Ms. Deterding. Mr. Labrador votes no.

2493 Mr. Farenthold?

2494 Mr. Farenthold. No.

2495 Ms. Deterding. Mr. Farenthold votes no.

2496 Mr. Holding?

2497 Mr. Holding. No.

2498 Ms. Deterding. Mr. Holding votes no.

2499 Mr. Collins?

2500 Mr. Collins. No.

2501 Ms. Deterding. Mr. Collins votes no.

2502 Mr. DeSantis?

2503 Mr. DeSantis. No.

2504 Ms. Deterding. Mr. DeSantis votes no.

2505 Mr. Conyers?

2506 Mr. Conyers. Aye.

2507 Ms. Deterding. Mr. Conyers votes aye.

2508 Mr. Nadler?

2509 [No response.]

2510 Ms. Deterding. Mr. Scott?

2511 Mr. Scott. Aye.

2512 Ms. Deterding. Mr. Scott votes aye.

2513 Mr. Watt?

2514 Mr. Watt. Aye.

2515 Ms. Deterding. Mr. Watt votes aye.

2516 Ms. Lofgren?

2517 [No response.]

2518 Ms. Deterding. Ms. Jackson Lee?

2519 Ms. Jackson Lee. Aye.

2520 Ms. Deterding. Ms. Jackson Lee votes aye.

2521 Mr. Cohen?

2522 [No response.]

2523 Ms. Deterding. Mr. Johnson?

2524 Mr. Johnson. Aye.

2525 Ms. Deterding. Mr. Johnson votes aye.

2526 Mr. Pierluisi?

2527 Mr. Pierluisi. Aye.

2528 Ms. Deterding. Mr. Pierluisi votes aye.

2529 Ms. Chu?

2530 Ms. Chu. Aye.

2531 Ms. Deterding. Ms. Chu votes aye.

2532 Mr. Deutch?

2533 [No response.]

2534 Ms. Deterding. Mr. Gutierrez?

2535 Mr. Gutierrez. Aye.

2536 Ms. Deterding. Mr. Gutierrez votes aye.

2537 Ms. Bass?

2538 [No response.]

2539 Ms. Deterding. Mr. Richmond?

2540 Mr. Richmond. Aye.

2541 Ms. Deterding. Mr. Richmond votes aye.

2542 Ms. DelBene?

2543 Ms. DelBene. Aye.

2544 Ms. Deterding. Ms. DelBene votes aye.

2545 Mr. Garcia?

2546 Mr. Garcia. Aye.

2547 Ms. Deterding. Mr. Garcia votes aye.

2548 Mr. Jeffries?

2549 Mr. Jeffries. Aye.

2550 Ms. Deterding. Mr. Jeffries votes aye.

2551 Chairman Goodlatte. The gentleman from California, Mr.

2552 Issa.

2553 Mr. Issa. No.

2554 Ms. Deterding. Mr. Issa votes no.

2555 Chairman Goodlatte. The gentleman from Virginia, Mr.

2556 Forbes.

2557 Mr. Forbes. No.

2558 Ms. Deterding. Mr. Forbes votes no.

2559 Chairman Goodlatte. The gentleman from Alabama, Mr.

2560 Bachus.

2561 Mr. Bachus. No.

2562 Ms. Deterding. Mr. Bachus votes no.

2563 Chairman Goodlatte. The gentleman from Florida, Mr.

2564 Deutch.

2565 Mr. Deutch. Aye.

2566 Ms. Deterding. Mr. Deutch votes aye.

2567 Mr. Scott. We have one more coming.

2568 Chairman Goodlatte. Is any member not recorded who

2569 wishes to vote?

2570 Mr. Scott. Mr. Chairman, I think that we have one
2571 member who took the long way around.

2572 Ms. Jackson Lee. Mr. Chairman?

2573 Chairman Goodlatte. For what purpose does the
2574 gentlewoman from Texas seek recognition?

2575 Ms. Jackson Lee. Mr. Chairman, how am I recorded?

2576 Chairman Goodlatte. I think you are recorded as an aye.
2577 Just guessing.

2578 Ms. Jackson Lee. Oh. Thank you, Mr. Chairman.

2579 [Laughter.]

2580 Chairman Goodlatte. The gentlewoman from California.

2581 Ms. Bass. Aye.

2582 Ms. Deterding. Ms. Bass votes aye.

2583 Chairman Goodlatte. The Clerk will report.

2584 Ms. Deterding. Mr. Chairman, 14 members voted aye, 15
2585 members voted nay.

2586 Chairman Goodlatte. And the amendment is not agreed to.

2587 Are there further amendments?

2588 For what purpose does the gentleman from Georgia seek
2589 recognition?

2590 Mr. Johnson. Mr. Chairman, I have an amendment at the
2591 desk.

2592 Chairman Goodlatte. The Clerk will report the
2593 amendment.

2594 Do you have more than one amendment?

2595 Mr. Johnson. I do. I would like for them both,
2596 actually, to be considered en bloc.

2597 Chairman Goodlatte. Without objection, the two
2598 amendments of the gentleman from Georgia will be considered
2599 en bloc, and the Clerk will report the amendments.

2600 Ms. Deterding. Amendment to H.R. 982, offered by Mr.
2601 Johnson.

2602 Mr. Johnson. I will ask that both amendments be
2603 considered as read.

2604 Chairman Goodlatte. Without objection, the amendments
2605 will be considered as read.

2606 [The amendments of Mr. Johnson follow:]

2607

2608 Chairman Goodlatte. And the gentleman from Georgia is
2609 recognized for 5 minutes to explain his amendments.

2610 Mr. Johnson. Well, Mr. --

2611 Chairman Goodlatte. We might consider a request for
2612 additional time if the gentleman needs it, but 5 minutes
2613 will be a good start.

2614 Mr. Johnson. I would respectfully ask the Chairman to
2615 hold out some option of being able to provide me with my
2616 full time on both amendments, but we can get to that bridge
2617 when we get to it. I will be brief.

2618 First, I offer an amendment that replaces the bill's
2619 reporting and document production provisions with a
2620 requirement that the trust file a report describing demands
2621 it receives, including the names and exposure histories of
2622 the claimants, as well as the basis for any payments on a
2623 confidential basis. This amendment would restrict access to
2624 a party that is a defendant in an action concerning asbestos
2625 exposure, with the access limited to the information in the
2626 report that was relevant to the plaintiff in such action,
2627 and only when such information is relevant to such action.

2628 This amendment would ensure that the privacy interests

2629 of asbestos victims are respected by restricting access to
2630 the information contained in the reports to only those
2631 parties that have a need to know.

2632 I also offer a second amendment that excludes all
2633 personally identifiable information regarding the claimants
2634 to a trust. Asbestos victims who seek compensation for
2635 their injuries should receive the same privacy protections
2636 as other patients.

2637 These mutually reinforcing amendments would achieve the
2638 stated goal of the FACT Act. They would empower asbestos
2639 litigation defendants with relevant information at trial,
2640 and also provide the public with additional reporting on
2641 asbestos trusts. Most importantly, they would do this
2642 without compromising the privacy of asbestos victims and
2643 their families.

2644 Without the amendments that I just described, I have
2645 serious concerns with this so-called FACT Act. Not only
2646 does the bill create a hurdle for families already facing
2647 the insurmountable fight against asbestos-related disease,
2648 but it would also violate their privacy by publicizing
2649 sensitive information about the claimants. This information

2650 is already discoverable, if relevant, to a claim or defense
2651 at trial. Without adding important privacy safeguards,
2652 little would stop third parties from collecting and
2653 monetizing claimants' medical history or using this
2654 information to discriminate against victims and their
2655 families.

2656 Federal and state Rules of Civil Procedure already allow
2657 a defendant to gain all relevant information about a
2658 claimant's exposure during discovery. Defendants are often
2659 wealthy corporations represented by experienced, powerful
2660 litigators who have the knowledge and resources to handle
2661 discovery. But even if both parties were on equal footing,
2662 how does a defendant's need for materials outside of
2663 discovery justify a major privacy intrusion on a vulnerable
2664 class of persons? This question is especially troubling
2665 when we stop to consider the equities of these actions where
2666 defendants and claimants are rarely on equal footing during
2667 discovery or in any other stage of the litigation.

2668 Rather than providing for broader transparency for both
2669 parties in litigation, the FACT Act creates significant
2670 hurdles for asbestos victims while doing nothing to address

2671 the other party to the litigation. But these problems are
2672 only the tip of the iceberg when it comes to my concerns
2673 with the FACT Act.

2674 I am also troubled by the committee's process for
2675 considering this legislation. During the subcommittee
2676 hearing on the bill -- by the way, the bill just filed back
2677 in, I think, March. And during the subcommittee hearing on
2678 the bill, I attempted to express my concerns with a witness'
2679 potential for bias as an attorney employed by a large
2680 asbestos litigation defense firm. But rather than allow me
2681 to proceed with that line of questioning on a highly
2682 relevant topic, whether a witness representing the very
2683 clients who would be directly aided by the passage of the
2684 FACT Act had ulterior motives for testifying, I was
2685 interrupted with a baseless point of order. These questions
2686 remained unanswered at the subcommittee markup of this bill
2687 because it occurred during the grace period for submitting
2688 questions for the record.

2689 The committee has likewise ignored and disregarded the
2690 hardships and testimony of asbestos victims and their
2691 families. At no point were victims or family members

2692 invited to testify about a bill that would seriously affect
2693 their lives. But after promising a public hearing, this
2694 committee retracted the offer and instead decided to open
2695 its doors to discuss a transparency bill in a private
2696 information session closed to the public.

2697 Worse still, the committee did not provide adequate
2698 notice for victims and family members to attend the markup.
2699 This behavior is unacceptable for members of Congress and
2700 this committee. Evading the tough questions, scheduling
2701 markups without time to properly consider legislation, and
2702 treating victims and their family members as invisible
2703 people has become par for the course for this majority. It
2704 smacks of the same thing --

2705 Mr. Issa. Could we have regular order, please? The
2706 gentleman has asked for regular order. It appears as though
2707 his time has long expired.

2708 Chairman Goodlatte. The gentleman has two amendments
2709 being considered, and the Chair indicated that he would
2710 certainly entertain a request for additional time. So the
2711 gentleman is recognized for 2 additional minutes, and we
2712 will see where that takes us.

2713 Mr. Johnson. Thank you, Mr. Chairman. I was just about
2714 ready to conclude when my friend on the other side
2715 interposed his objections to what I was saying once again.
2716 So I have come to expect that from my friend from
2717 California. Thank you, sir.

2718 It smacks of the same majority policies that favor tax
2719 cuts for the ultra-wealthy and mega corporations but leaves
2720 the common person out to dry.

2721 And with that, I will yield back.

2722 Chairman Goodlatte. The Chair thanks the gentleman.

2723 For what purpose does the gentleman from Texas, Mr.
2724 Farenthold, seek recognition?

2725 Mr. Farenthold. I am opposed to the amendments.

2726 Chairman Goodlatte. The gentleman is recognized for 5
2727 minutes.

2728 Mr. Farenthold. Thank you very much, Mr. Chairman.

2729 Both of these amendments go to the heart of what we are
2730 trying to do in the bill, which is to require transparency
2731 from asbestos trusts. Any attempt to limit the type or
2732 amount of information publicly disclosed only increases the
2733 chance for fraudulent activity. The information to be

2734 disclosed in the reports is no more than would typically be
2735 included in state court complaints, and these amendments
2736 place an unnecessary barrier to this helpful information.

2737 The legislation was carefully crafted to include
2738 safeguards to protect claimants' privacy in the bankruptcy
2739 code, as we have discussed before. It contains all sorts of
2740 privacy protections. The FACT Act only requires disclosure
2741 of cursory information in the public quarterly reports, and
2742 it specifically prohibits any confidential medical record or
2743 the claimant's full Social Security number.

2744 Furthermore, the reports are filed with the presiding
2745 bankruptcy court. So the privacy provisions in the
2746 bankruptcy code and Federal Rules of Bankruptcy Procedure
2747 apply as well. Section 107 of the Bankruptcy Code and Rule
2748 9037 grant the presiding bankruptcy board or judge -- I am
2749 sorry, the judge -- broad discretion to exclude confidential
2750 or sensitive information.

2751 With respect to the personally identifying information
2752 exclusion that the gentleman from Georgia has proposed, it
2753 is actually two full pages of exceptions. It includes any
2754 information you would send to a bank or disclose to a

2755 doctor. Well, you would disclose your name. We are asking
2756 for that. You have to disclose that in both of them. And
2757 the medical condition, we are not trying to get into the
2758 details of the medical record. We are just trying to get
2759 sufficient information to ascertain the claims in
2760 consistency with what you would see in pleadings in a
2761 typical tort case, and I would urge my colleagues to oppose
2762 this amendment.

2763 Mr. Johnson. Would the gentleman yield?

2764 Mr. Farenthold. Certainly.

2765 Mr. Johnson. Yes, thank you. What we would get is just
2766 a repository of information available to the public at large
2767 about particular claimants, and this information can be used
2768 for many purposes, and those purposes not being in the best
2769 interest of the claimants, but certainly in the best
2770 interest of those seeking the information for whatever
2771 secret purpose that they might have.

2772 Mr. Farenthold. And in reclaiming my time, the concerns
2773 that I have heard throughout this markup today deal
2774 primarily with healthcare and job discrimination as a result
2775 of information that might, might be obtained under this,

2776 both of which are protected under other Federal laws.
2777 Health insurance claims, clearly taken care of by the
2778 Affordable Care Act. Nobody is going to be able to
2779 discriminate. You will be able to fall back to the
2780 exchanges. The American Disabilities Act would protect
2781 folks with the jobs.

2782 So I understand and am a strong advocate of privacy.
2783 This was really narrowly tailored legislation designed to
2784 make sure that adequate information was available to judge
2785 the validity of claims and weed out conflicting claims made
2786 by the same person in different venues.

2787 Mr. Johnson. Would the gentleman yield once again?

2788 Mr. Farenthold. Certainly.

2789 Mr. Johnson. For an elderly person suffering on their
2790 deathbed with an asbestos-related illness, being close to
2791 death and then hauled into court for the purpose of
2792 protecting their own confidential medical information is
2793 just not --

2794 Mr. Farenthold. And I believe that information is
2795 protected under additional Federal laws, reclaiming my time.
2796 We are getting away from, in these amendments, the true

2797 purpose of this, and this is to protect the person who is
2798 suffering and dying of mesothelioma or asbestosis 10 or 20
2799 years in the future when these funds have exhausted all the
2800 money that these bankrupt corporations have, and there will
2801 be zero relief available to those if we don't protect these
2802 from wasteful --

2803 Mr. Johnson. Would the gentleman please yield?

2804 Mr. Farenthold. -- and potentially fraudulent and
2805 abusive claims. We are trying to protect the victims here
2806 with a narrowly tailored piece of legislation, and I yield
2807 back my time.

2808 Chairman Goodlatte. The Chair recognizes the gentleman
2809 from Michigan, Mr. Conyers, for 5 minutes.

2810 Mr. Conyers. Thank you, Mr. Chairman. I just want to
2811 add this to the Johnson amendments, because what we are
2812 trying to do here -- and I would like him to feel free to
2813 correct me if I need some more information -- we are trying
2814 to ensure that personally identifiable information about an
2815 asbestosis victim, claimant, is protected from disclosure.
2816 It includes within the definition of the amendment
2817 personally identifiable information, information pertaining

2818 to the claimant's health and finances. The Federal Trade
2819 Commission has told us that identity theft is one of the top
2820 complaints received by the Federal Trade Commission. Last
2821 year, 18 percent of the complaints were related to identity
2822 theft, and the Johnson amendments would protect against
2823 disclosure of personally identifiable information of
2824 claimants.

2825 I have to mention, as one of those who served proudly
2826 with the late member from Minnesota, Bruce Vento, that it
2827 was his widow who said this: "The information on this
2828 public registry could be used to deny employment, credit,
2829 health, life and disability insurance. We are also
2830 concerned that victims would be more vulnerable to identity
2831 thieves, con men, and other types of predators."

2832 Does that capture the thrust, I say to my colleague from
2833 Georgia, of his amendments?

2834 Mr. Johnson. Well stated, Mr. Chairman.

2835 Mr. Conyers. Well, I thank you very much, and I will
2836 yield back my time, sir.

2837 Chairman Goodlatte. Who seeks time? The Chair
2838 recognizes the gentleman from Virginia, Mr. Scott, for 5

2839 minutes.

2840 Mr. Scott. Thank you, Mr. Chairman. We keep hearing
2841 that this bill is designed or the purpose is to protect
2842 victims. The only people supporting it are those supporting
2843 the defendant side of the equation. So you can't just say
2844 this is protecting victims. It is not. It is going to ruin
2845 many victims by having them die before they ever get to
2846 court by delaying things.

2847 There is also a suggestion that, just like any other
2848 state laws, I am unaware of any state law that allows people
2849 to subpoena private information from a pending lawsuit that
2850 they are not even a party to. There is nowhere in the bill
2851 any limitation on what kind of information you can get
2852 because it says that they have to provide in a timely manner
2853 any information related to payment from or demand for
2854 payment from the trust. There is no limitation on that.
2855 They say, well, it will be reasonable. Yes, it will be
2856 reasonable when you go into court and argue if you find out
2857 that they are giving up your information.

2858 This bill, if it passes today, will override previously
2859 passed bills in terms of privacy. We just defeated an

2860 amendment that would make that clear to make sure that HIPAA
2861 privacy acts would actually apply. You can't defeat that
2862 amendment and say, well, you are going to have your privacy
2863 protected.

2864 There is no reason why private personal information
2865 should be available to people that aren't even parties to
2866 the litigation, and that is why the Johnson amendment makes
2867 sense. It removes the requirement of personally
2868 identifiable information. If you want broad-based
2869 information, general information, maybe that is okay. It is
2870 unprecedented to be able to allow people who are not even
2871 parties to the lawsuit to intervene, but it shouldn't be
2872 personally identifiable information, and that is what the
2873 Johnson amendment provides, and I hope we will adopt it.

2874 I yield back.

2875 Chairman Goodlatte. The question occurs on the
2876 amendments to be considered en bloc offered by the gentleman
2877 from Georgia. These are amendments 001 and 003.

2878 All those in favor of the amendments en bloc, respond by
2879 saying aye.

2880 Those opposed, no.

2881 In the opinion of the Chair, the noes have it, and the
2882 amendments are not agreed to.

2883 Mr. Johnson. Request for a recorded vote.

2884 Chairman Goodlatte. A recorded vote is requested by the
2885 gentleman from Georgia, and the Clerk will call the roll.

2886 Ms. Deterding. Mr. Goodlatte?

2887 Chairman Goodlatte. No.

2888 Ms. Deterding. Mr. Goodlatte votes no.

2889 Mr. Sensenbrenner?

2890 [No response.]

2891 Ms. Deterding. Mr. Coble?

2892 Mr. Coble. No.

2893 Ms. Deterding. Mr. Coble votes no.

2894 Mr. Smith?

2895 [No response.]

2896 Ms. Deterding. Mr. Chabot?

2897 [No response.]

2898 Ms. Deterding. Mr. Bachus?

2899 Mr. Bachus. No.

2900 Ms. Deterding. Mr. Bachus votes no.

2901 Mr. Issa?

2902 Mr. Issa. No.

2903 Ms. Deterding. Mr. Issa votes no.

2904 Mr. Forbes?

2905 [No response.]

2906 Ms. Deterding. Mr. King?

2907 Mr. King. No.

2908 Ms. Deterding. Mr. King votes no.

2909 Mr. Franks?

2910 Mr. Franks. No.

2911 Ms. Deterding. Mr. Franks votes no.

2912 Mr. Gohmert?

2913 Mr. Gohmert. No.

2914 Ms. Deterding. Mr. Gohmert votes no.

2915 Mr. Jordan?

2916 Mr. Jordan. No.

2917 Ms. Deterding. Mr. Jordan votes no.

2918 Mr. Poe?

2919 [No response.]

2920 Ms. Deterding. Mr. Chaffetz?

2921 [No response.]

2922 Ms. Deterding. Mr. Marino?

2923 Mr. Marino. No.

2924 Ms. Deterding. Mr. Marino votes no.

2925 Mr. Gowdy?

2926 Mr. Gowdy. No.

2927 Ms. Deterding. Mr. Gowdy votes no.

2928 Mr. Amodei?

2929 Mr. Amodei. No.

2930 Ms. Deterding. Mr. Amodei votes no.

2931 Mr. Labrador?

2932 Mr. Labrador. No.

2933 Ms. Deterding. Mr. Labrador votes no.

2934 Mr. Farenthold?

2935 Mr. Farenthold. No.

2936 Ms. Deterding. Mr. Farenthold votes no.

2937 Mr. Holding?

2938 Mr. Holding. No.

2939 Ms. Deterding. Mr. Holding votes no.

2940 Mr. Collins?

2941 Mr. Collins. No.

2942 Ms. Deterding. Mr. Collins votes no.

2943 Mr. DeSantis?

2944 Mr. DeSantis. No.

2945 Ms. Deterding. Mr. DeSantis votes no.

2946 Mr. Conyers?

2947 Mr. Conyers. Aye.

2948 Ms. Deterding. Mr. Conyers votes aye.

2949 Mr. Nadler?

2950 [No response.]

2951 Ms. Deterding. Mr. Scott?

2952 Mr. Scott. Aye.

2953 Ms. Deterding. Mr. Scott votes aye.

2954 Mr. Watt?

2955 Mr. Watt. Aye.

2956 Ms. Deterding. Mr. Watt votes aye.

2957 Ms. Lofgren?

2958 [No response.]

2959 Ms. Deterding. Ms. Jackson Lee?

2960 Ms. Jackson Lee. Aye.

2961 Ms. Deterding. Ms. Jackson Lee votes aye.

2962 Mr. Cohen?

2963 [No response.]

2964 Ms. Deterding. Mr. Johnson?

2965 Mr. Johnson. Aye.

2966 Ms. Deterding. Mr. Johnson votes aye.

2967 Mr. Pierluisi?

2968 Mr. Pierluisi. Aye.

2969 Ms. Deterding. Mr. Pierluisi votes aye.

2970 Ms. Chu?

2971 Ms. Chu. Aye.

2972 Ms. Deterding. Ms. Chu votes aye.

2973 Mr. Deutch?

2974 Mr. Deutch. Aye.

2975 Ms. Deterding. Mr. Deutch votes aye.

2976 Mr. Gutierrez?

2977 [No response.]

2978 Ms. Deterding. Ms. Bass?

2979 Ms. Bass. Aye.

2980 Ms. Deterding. Ms. Bass votes aye.

2981 Mr. Richmond?

2982 Mr. Richmond. Aye.

2983 Ms. Deterding. Mr. Richmond votes aye.

2984 Ms. DelBene?

2985 Ms. DelBene. Aye.

2986 Ms. Deterding. Ms. DelBene votes aye.

2987 Mr. Garcia?

2988 Mr. Garcia. Aye.

2989 Ms. Deterding. Mr. Garcia votes aye.

2990 Mr. Jeffries?

2991 Mr. Jeffries. Aye.

2992 Ms. Deterding. Mr. Jeffries votes aye.

2993 Chairman Goodlatte. The gentleman from Virginia.

2994 Mr. Forbes. No.

2995 Ms. Deterding. Mr. Forbes votes no.

2996 Chairman Goodlatte. The gentleman from Texas.

2997 Mr. Smith. No.

2998 Ms. Deterding. Mr. Smith votes no.

2999 Chairman Goodlatte. Has every member voted who wishes

3000 to vote?

3001 [No response.]

3002 Chairman Goodlatte. The Clerk will report.

3003 Ms. Deterding. Mr. Chairman, 13 members voted aye, 18

3004 members voted nay.

3005 Chairman Goodlatte. And the amendment is not agreed to.

3006 Ms. Jackson Lee. Mr. Chairman?

3007 Chairman Goodlatte. For what purpose does the
3008 gentlewoman from Texas seek recognition?

3009 Ms. Jackson Lee. I have an amendment at the desk, two
3010 amendments that I would like to take en bloc.

3011 Chairman Goodlatte. Without objection, the two
3012 amendments of the gentlewoman from Texas will be considered
3013 en bloc, and the Clerk will report the amendments.

3014 Ms. Deterding. Amendment to H.R. 982, offered by Ms.
3015 Jackson Lee of Texas, page 2 --

3016 Chairman Goodlatte. Without objection, the amendment
3017 will be considered as read, both amendments will be
3018 considered as read,

3019 [The amendments of Ms. Jackson Lee follow:]

3020

3021 Chairman Goodlatte. And the gentlewomen is recognized
3022 for 5 minutes to explain her amendments, with the option to
3023 ask for more time if need be, since we appreciate her
3024 considering them together.

3025 Ms. Jackson Lee. Mr. Chairman, thank you very much.

3026 I raise the question as I offer these two amendments.
3027 These amendments are asking for fairness, and I will read
3028 their intent. Amendment Number 009 imposes disclosure
3029 requirements on parties submitting information requests to
3030 asbestos trusts that require them to provide information
3031 regarding settlements. If you are asking for the privacy
3032 information of the individual claimant, then we would like
3033 to know who the entity is that is making the request.

3034 I also have an amendment that imposes disclosure
3035 requirement on parties submitting information requests to
3036 asbestos trusts to require them to provide information
3037 regarding asbestos-containing products, with the exception
3038 for trade secrets. It also limits parties who have standing
3039 to make such information requests.

3040 The premise of my amendment is that everyone can get
3041 information because this is a public settlement process.

3042 This is a process pursuant to litigation. Ultimately, as
3043 the claimant receives a successful settlement, that is
3044 public knowledge. The trust has to review the claim.
3045 Information is before the trust. The trust is not issuing
3046 any rendition decision in the dark. They know who they are
3047 giving it to. They are looking at the claimant's
3048 information.

3049 So I believe that this amendment says that everybody
3050 should be transparent, both these amendments, and the
3051 amendments would apply the transparency rules in the bill
3052 equally to the asbestos industry defendants by mandating
3053 that any asbestos defendant first disclose basic settlement
3054 information in the aggregate. This information would be
3055 subject to an appropriate protective order.

3056 We find that H.R. 982 demands of the claimants, but I
3057 don't see information so the claimants can note who is
3058 asking for the information. So both these amendments would
3059 apply transparency rules so that both sides will benefit
3060 from disclosing information that is relevant to their
3061 pending case, not just require information that is only
3062 helpful to asbestos companies.

3063 A typical asbestos defendant who settles the case in the
3064 tort system demands confidentiality as a condition of the
3065 settlement in order to ensure that other victims do not
3066 learn how much they pay. Trust payments represent
3067 settlements of former asbestos defendants. These same
3068 defendants now want the trust to disclose specific
3069 settlement amounts that they do not themselves provide, nor
3070 would they have provided before the trust were created.

3071 If transparency is to be burdened on the victims who are
3072 by themselves in a subordinate position, then I would offer
3073 that this amendment, 009, gives the opportunity for those
3074 victims to get information as well.

3075 The second amendment provides, again, transparency rules
3076 in the bill equally to the asbestos industry by requiring
3077 them to report information about the location of their
3078 asbestos-containing products.

3079 We are trying to resolve an issue that I think
3080 settlements and trusts, by their very nature, indicate that
3081 there will be compromise. Why we would be burdening victims
3082 with the additional responsibility of information I don't
3083 know, because the information is already given to the trust.

3084 They have to already review it. I am just baffled by this
3085 approach. The asbestos defendants would only be required to
3086 disclose information about which of their products contain
3087 asbestos, where they are in use, and how many people are
3088 being exposed. We would protect any trade secrets. The
3089 second amendment would not force asbestos defendants to
3090 reveal industry trade secrets or place them at a competitive
3091 disadvantage in the marketplace. Instead, this amendment
3092 ensures transparency from both the asbestos victims and
3093 asbestos defendants, since transparency is a stated goal of
3094 the bill.

3095 Might I say that this has been an ongoing, decades long
3096 process, and it seems to me to come at this point and set a
3097 precedent of who has to give up information in a process
3098 that has already gone through a listing of the names, of who
3099 knows who, who has been injured, doctor submissions and
3100 others that have been submitted. But now we are at a point
3101 of the trust. I still raise the question of whether or not
3102 this adds any light to the defendants that they could not
3103 get in a normal process.

3104 So to my colleagues, I ask that we give the appropriate

3105 information coming from victims to be appropriately coming
3106 from the requesters who are the defendant companies so that
3107 our victims can be on an even playing field and there is
3108 transparency on both sides. I am hoping my colleagues will
3109 see the fairness of these two amendments, and I ask for
3110 their support on these amendments.

3111 With that, I yield back.

3112 Chairman Goodlatte. The Chair thanks the gentlewoman,
3113 and I would note for all the members that we have three
3114 votes pending on the Floor. In addition to the two
3115 amendments of the gentlewoman from Texas considered en banc
3116 -- "en bloc" I guess is the correct term -- we have two more
3117 amendments that we think members may be offering, and
3118 therefore we will come back immediately after these votes.

3119 But before we do that, we will recognize the gentleman
3120 from South Carolina, Mr. Gowdy, for 5 minutes.

3121 Mr. Gowdy. Thank you, Mr. Chairman. I will be brief in
3122 light of the pending votes.

3123 I am opposed to both amendments. One of the issues the
3124 FACT Act addresses is a state court litigant's inability to
3125 obtain information from federally supervised asbestos

3126 trusts. The FACT Act eliminates this problem by requiring
3127 affirmative minimal disclosures from asbestos trusts and
3128 allowing for access to additional information at the cost of
3129 the requesting party.

3130 These amendments, by contrast, Mr. Chairman, place
3131 additional disclosure requirements on the defendant
3132 requesting information from the asbestos trust. Plaintiffs
3133 already have the ability to gain access to the defendant's
3134 information through the traditional discovery process.
3135 However, it is the defendant's inability to gain access to
3136 the information submitted to the asbestos trust that has
3137 created an environment conducive with fraud.

3138 The FACT Act levels the playing field so all parties,
3139 including other asbestos trusts and state court judges, have
3140 access to the same information. Amendments that require the
3141 defendant or any other party to provide additional
3142 information before they can access what should be public
3143 information are unnecessary, inconsistent with common
3144 fairness, and should be defeated. I therefore urge my
3145 colleagues to oppose these amendments.

3146 I yield back.

3147 Ms. Jackson Lee. Will the gentleman yield?

3148 Mr. Gowdy. I had just yielded back to the Chairman. I
3149 will leave it in his hands.

3150 Ms. Jackson Lee. I did not hear you yield back.

3151 Mr. Gowdy. My apologies for being so soft-spoken, but I
3152 will leave that to the Chairman.

3153 Ms. Jackson Lee. The ghost is talking in here. You
3154 didn't yield back, but I thank you for your courtesy.

3155 Mr. Gowdy. Look, if you want to talk, you are welcome
3156 to. I actually had just referenced the Chairman and was
3157 yielding back. But if you didn't hear it, that's fine. You
3158 are welcome to --

3159 Chairman Goodlatte. Given the fact that there is more
3160 discussion to be had on the amendment and the fact that we
3161 have a vote coming up in 6 or 7 minutes, the committee will
3162 stand in recess, and we will pick up where we left off
3163 immediately after this series of votes.

3164 The committee stands in recess.

3165 [Recess.]

3166 Chairman Goodlatte. The committee will reconvene. The
3167 committee is currently considering amendments to H.R. 982,

3168 and when we recessed, the gentlewoman from Texas, Ms.
3169 Jackson Lee, had two amendments being considered en bloc.
3170 And the gentlewoman had more to say, so hopefully someone
3171 will yield her some time.

3172 For what purpose does the gentleman from Virginia seek
3173 recognition?

3174 Mr. Scott. Move to strike the last word.

3175 Chairman Goodlatte. The gentleman is recognized for 5
3176 minutes.

3177 Mr. Scott. Thank you, Mr. Chairman. I rise to support
3178 the Jackson Lee amendments. The first one just asks if you
3179 are going to require disclosure, disclose information that
3180 would avoid re-litigating issues where the asbestos products
3181 were, what you had found in other cases. This is good
3182 information. If you are going to provide the information on
3183 one side, provide it on both.

3184 But really the incredible part of this amendment is this
3185 part that requires that access to this information to
3186 parties who have standing to make such requests. Mr.
3187 Chairman, why you would need an amendment to provide a
3188 limitation on who can get it to someone with standing is

3189 somewhat remarkable. But unfortunately because of the way
3190 Part B is written, that anybody who is involved in any
3191 litigation concerning liability for asbestos exposure,
3192 whether you are related to a particular case or not, you can
3193 go in and get information. At least you ought to limit to
3194 those with standing.

3195 We have heard time and time again that this is just like
3196 any other kind of law, but I am unaware of any State that
3197 allows people to get information to enforce the disclosure
3198 of information to people that do not even have standing in a
3199 case. So I would hope that we would adopt the amendment.

3200 And if the gentlelady needs time, I yield --

3201 Ms. Jackson Lee. I thank the gentleman, yes.

3202 Mr. Scott. I yield to the gentlelady the balance.

3203 Ms. Jackson Lee. Yes. This is sort of an example of a
3204 David and Goliath. And to suggest that this is helping to
3205 make fair to the defendants in a State court proceeding is
3206 not to acknowledge the basic underlying principle is that
3207 the Goliaths now want to whip David in more ways than with a
3208 little pebble. And all we are saying is that there has to
3209 be equal sharing among the Goliath, the defendants, the

3210 asbestos company, and as well the burden that is being put
3211 on the victims.

3212 And I add my agreement to the interpretation of Mr.
3213 Scott, which is that it is such a wide open arena of who can
3214 get information that you have to bring some order to it by
3215 suggesting that it is a limit on connectedness or some basis
3216 on you requesting this information because otherwise, the
3217 bill seems to open it up to the entire world. And that is
3218 an enormous burden on claimants, on victims. And I think it
3219 is an excessive burden, and I hope my colleagues will
3220 support the Jackson Lee amendments 009 and 010.

3221 With that, Mr. Scott, thank you. I yield back.

3222 Chairman Goodlatte. The question occurs on the
3223 amendment offered en bloc by the gentlewoman from Texas.

3224 All those in favor, respond by saying aye.

3225 Those opposed, no.

3226 Ms. Jackson Lee. Mr. Chairman?

3227 Chairman Goodlatte. In the opinion of the chair, the
3228 noes have it.

3229 Ms. Jackson Lee. Mr. Chairman.

3230 Chairman Goodlatte. The gentlewoman from Texas.

3231 Ms. Jackson Lee. I would like a roll call vote.

3232 Chairman Goodlatte. Recorded vote is requested on the
3233 en bloc amendments of the gentlewoman from Texas, and those
3234 are amendments number 09 and 10.

3235 And the clerk will call the roll.

3236 Ms. Deterding. Mr. Goodlatte?

3237 Chairman Goodlatte. No.

3238 Ms. Deterding. Mr. Goodlatte votes no.

3239 Mr. Sensenbrenner?

3240 [No response.]

3241 Ms. Deterding. Mr. Coble?

3242 Mr. Coble. No.

3243 Ms. Deterding. Mr. Coble votes no.

3244 Mr. Smith?

3245 [No response.]

3246 Ms. Deterding. Mr. Chabot?

3247 [No response.]

3248 Ms. Deterding. Mr. Bachus?

3249 Mr. Bachus. No.

3250 Ms. Deterding. Mr. Bachus votes no.

3251 Mr. Issa?

3252 [No response.]

3253 Ms. Deterding. Mr. Forbes?

3254 [No response.]

3255 Ms. Deterding. Mr. King?

3256 Mr. King. No.

3257 Ms. Deterding. Mr. King votes no.

3258 Mr. Franks?

3259 [No response.]

3260 Ms. Deterding. Mr. Gohmert?

3261 [No response.]

3262 Ms. Deterding. Mr. Jordan?

3263 [No response.]

3264 Ms. Deterding. Mr. Poe?

3265 [No response.]

3266 Ms. Deterding. Mr. Chaffetz?

3267 [No response.]

3268 Ms. Deterding. Mr. Marino?

3269 Mr. Marino. No.

3270 Ms. Deterding. Mr. Marino votes no.

3271 Mr. Gowdy?

3272 Mr. Gowdy. No.

3273 Ms. Deterding. Mr. Gowdy votes no.
3274 Mr. Amodei?
3275 Mr. Amodei. No.
3276 Ms. Deterding. Mr. Amodei votes no.
3277 Mr. Labrador?
3278 [No response.]
3279 Ms. Deterding. Mr. Farenthold?
3280 Mr. Farenthold. No.
3281 Ms. Deterding. Mr. Farenthold votes no.
3282 Mr. Holding?
3283 Mr. Holding. No.
3284 Ms. Deterding. Mr. Holding votes no.
3285 Mr. Collins?
3286 Mr. Collins. No.
3287 Ms. Deterding. Mr. Collins votes no.
3288 Mr. DeSantis?
3289 Mr. DeSantis. No.
3290 Ms. Deterding. Mr. DeSantis votes no.
3291 Mr. Conyers?
3292 Mr. Conyers. Aye.
3293 Ms. Deterding. Mr. Conyers votes aye.

3294 Mr. Nadler?

3295 [No response.]

3296 Ms. Deterding. Mr. Scott?

3297 Mr. Scott. Aye.

3298 Ms. Deterding. Mr. Scott votes aye.

3299 Mr. Watt?

3300 Mr. Watt. Aye.

3301 Ms. Deterding. Mr. Watt votes aye.

3302 Ms. Lofgren?

3303 [No response.]

3304 Ms. Deterding. Ms. Jackson Lee?

3305 Ms. Jackson Lee. Aye.

3306 Ms. Deterding. Ms. Jackson Lee votes aye.

3307 Mr. Cohen?

3308 [No response.]

3309 Ms. Deterding. Mr. Johnson?

3310 [No response.]

3311 Ms. Deterding. Mr. Pierluisi?

3312 [No response.]

3313 Ms. Deterding. Ms. Chu?

3314 [No response.]

3315 Ms. Deterding. Mr. Deutch?

3316 Mr. Deutch. Aye.

3317 Ms. Deterding. Mr. Deutch votes aye.

3318 Mr. Gutierrez?

3319 [No response.]

3320 Ms. Deterding. Ms. Bass?

3321 [No response.]

3322 Ms. Deterding. Mr. Richmond?

3323 [No response.]

3324 Ms. Deterding. Ms. DelBene?

3325 Ms. DelBene. Aye.

3326 Ms. Deterding. Ms. DelBene votes aye.

3327 Mr. Garcia?

3328 Mr. Garcia. Aye.

3329 Ms. Deterding. Mr. Garcia votes aye.

3330 Mr. Jeffries?

3331 Mr. Jeffries. Aye.

3332 Ms. Deterding. Mr. Jeffries votes aye.

3333 Chairman Goodlatte. The gentleman from Virginia, Mr.

3334 Forbes.

3335 Mr. Forbes. No.

3336 Ms. Deterding. Mr. Forbes votes no.

3337 Chairman Goodlatte. The gentleman from Texas, Mr. Poe.

3338 Mr. Poe. No.

3339 Ms. Deterding. Mr. Poe votes no.

3340 Chairman Goodlatte. The gentleman from Texas, Mr.

3341 Gohmert.

3342 Mr. Gohmert. No.

3343 Ms. Deterding. Mr. Gohmert votes no.

3344 Chairman Goodlatte. Has every member voted who wishes

3345 to vote?

3346 The clerk will report.

3347 Ms. Jackson Lee. Mr. Chairman, how am I recorded?

3348 Chairman Goodlatte. How is the gentlewoman from Texas,

3349 Ms. Jackson Lee, recorded?

3350 Ms. Deterding. Ms. Jackson Lee votes aye.

3351 Ms. Jackson Lee. Thank you.

3352 Chairman Goodlatte. The gentlewoman from California,

3353 Ms. Bass?

3354 Ms. Bass. Aye.

3355 Ms. Deterding. Ms. Bass votes aye.

3356 Chairman Goodlatte. The clerk will report.

3357 Ms. Deterding. Mr. Chairman, 9 members voted aye, 14

3358 members voted nay.

3359 Chairman Goodlatte. The vote tally was just announced.

3360 Mr. Scott. Parliamentary inquiry, Mr. Chairman.

3361 Chairman Goodlatte. The gentleman from Virginia.

3362 Mr. Scott. Mr. Chairman, the clerk reported it, but the

3363 chair had not announced it.

3364 Chairman Goodlatte. If there is no objection, we will

3365 allow the gentleman from Ohio to record his vote.

3366 Mr. Chabot. No.

3367 Ms. Deterding. Mr. Chabot votes no.

3368 Chairman Goodlatte. The gentleman from Florida, have

3369 you voted?

3370 Mr. Chabot. I would like to thank the gentleman from

3371 Virginia.

3372 Chairman Goodlatte. And the clerk will report.

3373 Ms. Deterding. Mr. Chairman, 9 members voted aye, 15

3374 members voted nay.

3375 Chairman Goodlatte. And the amendment is not agreed to.

3376 Are there further amendments?

3377 The gentleman from Florida, Mr. Garcia, is recognized.

3378 Mr. Garcia. Mr. Chairman, I have an amendment. It is
3379 at the desk.

3380 Chairman Goodlatte. The clerk will report the
3381 amendment.

3382 Ms. Deterding. Amendment to H.R. 982, offered by Mr.
3383 Garcia of Florida, page 2, line --

3384 Chairman Goodlatte. Without objection, the amendment
3385 will be considered as read.

3386 [The amendment of Mr. Garcia follows:]

3387

3388 Chairman Goodlatte. And the gentleman from Florida is
3389 recognized for 5 minutes to explain his amendment.

3390 Mr. Garcia. Thank you, Mr. Chairman. Mr. Chairman, the
3391 bill as it is currently written, asbestos defendants and
3392 their insurance companies can make unlimited burdensome
3393 demands on trusts for no reason other than to bring the
3394 trust process to a halt and avoid compensating victims for
3395 the harm they have caused.

3396 My amendment would prevent asbestos defendants and their
3397 insurers from requesting or obtaining information about an
3398 asbestos claimant if the defendant was previously found
3399 liable for causing or contributing to asbestos-related
3400 injuries to that individual. There is no reason a defendant
3401 that has already been found at fault of contributing to a
3402 victim's illness should be able to turn around and delay the
3403 trust process further by making unlimited requests for
3404 information on that victim. These individuals have suffered
3405 long enough, and we should not allow companies that have
3406 already been found liable for doing harm to further slow
3407 down the victim's recovery.

3408 I urge my colleagues to support my amendment, and I

3409 yield back the balance of my time.

3410 Chairman Goodlatte. The chair thanks the gentleman.

3411 And for what purpose does the gentleman from Texas seek
3412 recognition?

3413 Mr. Farenthold. I am opposed to the amendment.

3414 Chairman Goodlatte. The gentleman is recognized for 5
3415 minutes.

3416 Mr. Farenthold. Actually I am pretty vehemently opposed
3417 to it. This amendment would prohibit defendants who have
3418 been liable for asbestos exposure from seeking information
3419 under the FACT Act. Under this amendment, one negative
3420 judgment against a party would result in the party
3421 forfeiting all of its rights under Federal law. This runs
3422 counter to nearly every principle of American law and
3423 American jurisprudence.

3424 A party cannot lose its rights to defend itself in all
3425 jurisdictions simply because it lost a single case in a
3426 single jurisdiction. Furthermore, this amendment appears to
3427 condone committing fraudulent acts against defendants
3428 because they have had a negative judgment against them.
3429 That simply cannot be tolerated.

3430 I strongly urge my colleagues to oppose this amendment.

3431 Chairman Goodlatte. For what purpose does the gentleman
3432 from Virginia seek recognition?

3433 Mr. Scott. Move to strike the last word.

3434 Chairman Goodlatte. The gentleman is recognized for 5
3435 minutes.

3436 Mr. Scott. Mr. Chairman, I would ask the sponsor of the
3437 amendment to comment on whether or not the sponsor of the
3438 bill has misrepresented the amendment. It appears to me
3439 that the amendment speaks only to the individual claimant,
3440 that the finding has already been made that the defendant is
3441 liable to that claimant. And for that claim you cannot
3442 delay it, but for other claims presumably you can. Could
3443 you clarify that for me, please?

3444 Mr. Garcia. If the gentleman would yield. Yes, that is
3445 exactly what it does. What we are trying to do here is
3446 avoid what has become a process by which those who have
3447 already found liable evade that liability by simply mucking
3448 up the process and slowing it down.

3449 Mr. Farenthold. Will the gentleman yield?

3450 Mr. Scott. I yield.

3451 Mr. Farenthold. To me, and in my reading of this, if I
3452 were to, say, be found guilty in Massachusetts, I could not
3453 defend myself in Texas for that. And that seems counter to
3454 traditional concept of fair play in American jurisprudence.

3455 Mr. Garcia. They would still be available in the
3456 discovery process. What they would not be able to do is do
3457 what they do when they have already found at fault to simply
3458 use this process to slow down the plaintiff's recovery. I
3459 am sorry.

3460 Mr. Scott. Well, and I would also, before I yield back,
3461 a res judicata ought to have something to do with this, that
3462 if you have already been found liable in that case against
3463 that claimant, that you cannot subsequently slow up the
3464 works and hope he dies before he can get to court if the
3465 issue of liability has already been established in that case
3466 for that claimant.

3467 I would yield to the gentleman.

3468 Mr. Garcia. That is precisely correct.

3469 Mr. Scott. I yield back.

3470 Ms. Jackson Lee. Whose turn is it?

3471 Chairman Goodlatte. It is my turn.

3472 Ms. Jackson Lee. Is it your time? I am sorry.

3473 Chairman Goodlatte. No, I was about to recognize myself
3474 in opposition to the amendment.

3475 Ms. Jackson Lee. All right.

3476 Chairman Goodlatte. And I will get to the gentlewoman
3477 from Texas in a moment. But let me say I agree with the
3478 concerns raised by the gentleman from Texas.

3479 First of all, if we are talking about a fraudulent claim
3480 or a different claim based upon the same set of facts, the
3481 fact of the matter is that the defendant should be able to
3482 raise their defenses in the new case. If there is a
3483 question of res judicata, which is certainly a valid point,
3484 the bankruptcy court has the ability to apply that rule in
3485 that case. I do not think we should intercede in the normal
3486 process here because you could have a matter of fraud in the
3487 original case, or you could have a matter of fraud in the
3488 new case that is brought about that the defendant should be
3489 able to raise his defenses in. And, therefore, I would urge
3490 my colleagues to oppose the amendment.

3491 Does the gentlewoman from Texas still seek time?

3492 Ms. Jackson Lee. I would.

3493 Chairman Goodlatte. The gentlewoman is recognized for 5
3494 minutes.

3495 Ms. Jackson Lee. I would like to answer, Mr. Chairman,
3496 I think, the proposition that you have laid out. I am
3497 disappointed that we would presuppose fraud, and I also
3498 think, again, if we could only get a sense of what this case
3499 does. It creates an imbalance between the little guy and
3500 the big guy. And I feel for corporate America. I have a
3501 great respect for what they do, the energy of creating jobs.
3502 But no one can deny that there is a sizable distinction
3503 between the asbestos companies and those who have been
3504 victimized.

3505 I also would ask the question, if we had 10 asbestos
3506 victims sitting on those empty front seats, and we could see
3507 the various ailments -- machines, oxygen machines -- and
3508 then put alongside, which I think would be well attired
3509 representatives of the asbestos companies, we would
3510 understand what I am trying to say.

3511 I think Mr. Garcia's amendment is thoughtful, and I
3512 think it, again, brings us back to the balance between the
3513 small guy and the one that has all of the resources. And it

3514 certainly would be shameful to ask these individuals to drag
3515 up their medical records when there has been already a
3516 decision having already been made and rendered on this
3517 particular claimant.

3518 And I would hope that our defendants would find other
3519 resources in which to determine how they proceed with their
3520 case and handling of the claimant as opposed to dragging
3521 them back into providing personal information that has
3522 already been done.

3523 I ask colleagues to support Mr. Garcia's amendment.

3524 I yield back.

3525 Chairman Goodlatte. The question occurs on the
3526 amendment offered by the gentleman from Florida.

3527 All those in favor, respond by saying aye.

3528 Those opposed, no.

3529 In the opinion of the chair, the noes have it.

3530 Mr. Garcia. I would like to call the roll.

3531 Chairman Goodlatte. The roll call is requested, and the
3532 clerk will call the roll.

3533 Ms. Deterding. Mr. Goodlatte?

3534 Chairman Goodlatte. No.

3535 Ms. Deterding. Mr. Goodlatte votes no.
3536 Mr. Sensenbrenner?
3537 [No response.]
3538 Ms. Deterding. Mr. Coble?
3539 Mr. Coble. No.
3540 Ms. Deterding. Mr. Coble votes no.
3541 Mr. Smith?
3542 [No response.]
3543 Ms. Deterding. Mr. Chabot?
3544 Mr. Chabot. No.
3545 Ms. Deterding. Mr. Chabot votes no.
3546 Mr. Bachus?
3547 Mr. Bachus. No.
3548 Ms. Deterding. Mr. Bachus votes no.
3549 Mr. Issa?
3550 [No response.]
3551 Ms. Deterding. Mr. Forbes?
3552 [No response.]
3553 Ms. Deterding. Mr. King?
3554 Mr. King. No.
3555 Ms. Deterding. Mr. King votes no.

3556 Mr. Franks?

3557 [No response.]

3558 Ms. Deterding. Mr. Gohmert?

3559 Mr. Gohmert. No.

3560 Ms. Deterding. Mr. Gohmert votes no.

3561 Mr. Jordan?

3562 Mr. Jordan. No.

3563 Ms. Deterding. Mr. Jordan votes no.

3564 Mr. Poe?

3565 Mr. Poe. No.

3566 Ms. Deterding. Mr. Poe votes no.

3567 Mr. Chaffetz?

3568 [No response.]

3569 Ms. Deterding. Mr. Marino?

3570 Mr. Marino. No.

3571 Ms. Deterding. Mr. Marino votes no.

3572 Mr. Gowdy?

3573 Mr. Gowdy. No.

3574 Ms. Deterding. Mr. Gowdy votes no.

3575 Mr. Amodei?

3576 Mr. Amodei. No.

3577 Ms. Deterding. Mr. Amodei votes no.
3578 Mr. Labrador?
3579 Mr. Labrador. No.
3580 Ms. Deterding. Mr. Labrador votes no.
3581 Mr. Farenthold?
3582 Mr. Farenthold. No.
3583 Ms. Deterding. Mr. Farenthold votes no.
3584 Mr. Holding?
3585 Mr. Holding. No.
3586 Ms. Deterding. Mr. Holding votes no.
3587 Mr. Collins?
3588 Mr. Collins. No.
3589 Ms. Deterding. Mr. Collins votes no.
3590 Mr. DeSantis?
3591 Mr. DeSantis. No.
3592 Ms. Deterding. Mr. DeSantis votes no.
3593 Mr. Conyers?
3594 Mr. Conyers. Aye.
3595 Ms. Deterding. Mr. Conyers votes aye.
3596 Mr. Nadler?
3597 Mr. Nadler. Aye.

3598 Ms. Deterding. Mr. Nadler votes aye.

3599 Mr. Scott?

3600 Mr. Scott. Aye.

3601 Ms. Deterding. Mr. Scott votes aye.

3602 Mr. Watt?

3603 Mr. Watt. Aye.

3604 Ms. Deterding. Mr. Watt votes aye.

3605 Ms. Lofgren?

3606 [No response.]

3607 Ms. Deterding. Ms. Jackson Lee?

3608 [No response.]

3609 Ms. Deterding. Mr. Cohen?

3610 [No response.]

3611 Ms. Deterding. Mr. Johnson?

3612 [No response.]

3613 Ms. Deterding. Mr. Pierluisi?

3614 Mr. Pierluisi. Aye.

3615 Ms. Deterding. Mr. Pierluisi votes aye.

3616 Ms. Chu?

3617 [No response.]

3618 Ms. Deterding. Mr. Deutch?

3619 Mr. Deutch. Aye.

3620 Ms. Deterding. Mr. Deutch votes aye.

3621 Mr. Gutierrez?

3622 [No response.]

3623 Ms. Deterding. Ms. Bass?

3624 [No response.]

3625 Ms. Deterding. Mr. Richmond?

3626 [No response.]

3627 Ms. Deterding. Ms. DelBene?

3628 Ms. DelBene. Aye.

3629 Ms. Deterding. Ms. DelBene votes aye.

3630 Mr. Garcia?

3631 Mr. Garcia. Aye.

3632 Ms. Deterding. Mr. Garcia votes aye.

3633 Mr. Jeffries?

3634 Mr. Jeffries. Aye.

3635 Ms. Deterding. Mr. Jeffries votes aye.

3636 Chairman Goodlatte. The gentleman from Virginia.

3637 Mr. Forbes. No.

3638 Chairman Goodlatte. The gentleman from Arizona.

3639 Mr. Franks. No.

3640 Ms. Deterding. Mr. Franks votes no.

3641 Chairman Goodlatte. Has every member voted who wishes
3642 to vote?

3643 Mr. Nadler. Mr. Chairman?

3644 Chairman Goodlatte. For what purpose does the gentleman
3645 from New York seek recognition?

3646 Mr. Nadler. I yield back.

3647 Chairman Goodlatte. The gentlewoman from California,
3648 Ms. Bass.

3649 Ms. Bass. Aye.

3650 Ms. Deterding. Ms. Bass votes aye.

3651 Chairman Goodlatte. The gentlewoman from Texas.

3652 Ms. Jackson Lee. Aye.

3653 Ms. Deterding. Ms. Jackson Lee votes aye.

3654 Chairman Goodlatte. The clerk will report.

3655 Ms. Deterding. Mr. Chairman, 11 members voted aye, 18
3656 members voted nay.

3657 Chairman Goodlatte. And the amendment is not agreed to.

3658 Are there additional amendments to H.R. 982?

3659 The gentleman from New York, for what purpose do you
3660 seek recognition?

3661 Mr. Jeffries. Mr. Chairman, I have an amendment at the
3662 desk.

3663 Chairman Goodlatte. The clerk will report the
3664 amendment.

3665 Ms. Deterding. Amendment to H.R. 982, offered by Mr.
3666 Jeffries of New York, page 2, strike lines 4 through 26, and
3667 insert the following --

3668 Chairman Goodlatte. Without objection, the amendment
3669 will be considered as read.

3670 [The amendment of Mr. Jeffries follows:]

3671

3672 Chairman Goodlatte. And the gentleman from New York is
3673 recognized for 5 minutes on his amendment.

3674 Mr. Jeffries. Mr. Chairman, this provides for the
3675 disclosure of payment information to parties to a pending
3676 court action where, one, a written request is made, two,
3677 that request seeks relevant information, and three, the
3678 information cannot otherwise be obtained under application
3679 non-bankruptcy law.

3680 Today we are considering legislation for passage that is
3681 designed to combat fraud where no evidence of fraud exists.
3682 In fact, not a scintilla of evidence has been presented of
3683 waste, fraud, and abuse in connection with the asbestos
3684 context at all before this committee, before the
3685 subcommittee, or in any other context related to this
3686 legislation. It is a bill in search of a problem instead of
3687 a problem that requires a bill.

3688 This amendment also opposed the careful balance of
3689 federalism, so important to our constitutional construct.
3690 It preserves civil procedure laws and discovery rules that
3691 have been carefully crafted by individual State courts and
3692 legislatures all throughout the land. In all 50 States,

3693 there are specific rules that govern disclosure. Those
3694 disclosure rules should be respected as they have been
3695 crafted with the public policy sensitivities particular to
3696 these individual jurisdictions.

3697 If the information sought is relevant to a State law
3698 claim, the defendant can request and obtain that information
3699 pursuant to those State discovery rules. In the absence of
3700 fraud or any compelling governmental interest, the intrusion
3701 of outside agitation from Washington as represented through
3702 the vehicle of the FACT Act is not warranted.

3703 The current bill in addition will cause delay and
3704 obstruct claims made by asbestos victims for compensation,
3705 and undermine ultimate resolution of these claims in a
3706 manner that hurts all parties. Instead, this amendment
3707 would place disclosure responsibility with the judicial
3708 branch as is customary in other areas of law, and in order
3709 to make sure that there is an objective arbiter of
3710 relevance.

3711 I urge adoption.

3712 Chairman Goodlatte. For what purpose does the gentleman
3713 from Texas seek recognition?

3714 Mr. Farenthold. I oppose the amendment.

3715 Chairman Goodlatte. The gentleman is recognized for 5
3716 minutes.

3717 Mr. Farenthold. This amendment essentially replaces the
3718 quarterly reporting requirements with a requirement that the
3719 trust provide limited discovery to parties pending State
3720 court actions relating to asbestos exposure, provided that
3721 discovery cannot otherwise be obtained through applicable
3722 non-bankruptcy law.

3723 The problem the bill addresses, however, is that non-
3724 bankruptcy law discovery presents significant obstacles that
3725 are unnecessary considering the trusts are established under
3726 the Federal Bankruptcy Code. Many of the asbestos trusts
3727 prohibit disclosure of any information except by subpoena
3728 issued by the presiding bankruptcy court, notwithstanding a
3729 potentially valid State court issued subpoena against the
3730 trust. Moreover, plaintiffs in asbestos litigation
3731 frequently resist discover requests made to the trusts.

3732 The committee has heard repeated testimony that reveals
3733 the extreme difficulties defendants face when they attempt
3734 to access plaintiff's information. The bottom line is this:

3735 a Federal statute is necessary to ensure that State court
3736 litigants have access to the records of the asbestos trusts,
3737 which exist under the authority of Federal law. Applicable
3738 non-bankruptcy law is demonstrably inadequate, and I urge my
3739 colleagues to oppose this amendment.

3740 Chairman Goodlatte. Who seeks recognition?

3741 For what purpose does the gentleman from Florida seek
3742 recognition?

3743 Mr. Deutch. Move to strike the last word.

3744 Chairman Goodlatte. The gentleman is recognized for 5
3745 minutes.

3746 Mr. Deutch. Thank you, Mr. Chairman. Just a couple of
3747 observations, Mr. Chairman. First, I also wanted to join my
3748 colleagues who sponsored this amendment in supporting the
3749 amendment. And in following his comment about fraud, we
3750 have heard a lot today about all of the fraud that takes
3751 place in the context of these asbestos trusts. And the fact
3752 is I would point again that despite all of these ongoing
3753 claims, the GAO was unable to find any -- any -- evidence of
3754 fraud with respect to the asbestos claims process.

3755 Ninety-eight percent of the 52 trusts that it reviewed

3756 claims claimants. An audit to be conducted found that none
3757 indicated that audits had identified cases of fraud, and
3758 that each trust is committed to ensuring that no fraudulent
3759 claims are paid by the trust. I think it is an important
3760 point to make.

3761 And finally, Mr. Chairman, I am surprised in this
3762 committee to hear my colleagues speak so dismissively of
3763 State law. It seems to me that one of the reasons we need
3764 to support this amendment is because the bill itself
3765 overrides State law regarding discovery and disclosure
3766 information, and infringes on States' rights to determine
3767 their own discovery rules and rules of civil procedure.

3768 Asbestos litigation is brought under State law. The
3769 vast majority of claims are filed in State court, are
3770 properly litigated according to State court rules. And this
3771 Congress and this committee in particular purports to
3772 respect the Constitution of the United States, including the
3773 Bill of Rights, and under the 10th Amendment, powers not
3774 specifically granted to the Federal government nor
3775 prohibited to the States are reserved to the States. My
3776 friends on the other side of the aisle make that point to us

3777 on a regular basis.

3778 In this case, this is a bill that would upset the
3779 careful balance of federalism that is preserved in the 10th
3780 Amendment. It would override State discovery and civil
3781 procedure rules. This amendment ensures that States' rights
3782 are respected by ensuring that defendants abide by current
3783 State rules, and then the right of States to have their own
3784 rules, and this body's obligation to respect them.

3785 I urge my colleagues to support this amendment.

3786 Chairman Goodlatte. The chair thanks the gentleman, and
3787 recognizes himself in opposition to the amendment.

3788 First of all, this bill does not infringe on the right
3789 of the States. The United States Constitution provides for
3790 the conduct of bankruptcy law by the Federal government, and
3791 this bill simply amplifies how the bankruptcy court will
3792 proceed in terms of making full disclosure of the nature of
3793 the case so that we can make sure there is not fraud and
3794 duplication between the bankruptcy court and state court
3795 actions.

3796 The asbestos trusts that are the subject of the FACT Act
3797 are overseen and subject to the rule of bankruptcy courts,

3798 which are Federal courts and are authorized under Section
3799 524(g) of the Bankruptcy Code, a Federal statute. The
3800 Constitution specifically authorizes Congress under Article
3801 1, Section 8, clause 4, to establish uniform laws on the
3802 subject of bankruptcies throughout the United States.

3803 To be clear, the FACT Act does not preempt State
3804 discovery laws or rules of procedure. The bill simply
3805 amends the Federal Bankruptcy Code to require asbestos
3806 trusts to perform basic reporting on claims and reply to
3807 third party information requests. It does not alter the
3808 State laws that might govern the substance of the discovery
3809 requests, or how information can be utilized once
3810 discovered. That will continue to be the province of State
3811 law.

3812 The impetus for including a provision that requires an
3813 asbestos trust to respond to an information request is
3814 defendant's historical inability to properly exercise their
3815 State court discovery rights against the asbestos trust.
3816 Due to a provision of the Bankruptcy Code, plaintiffs' firms
3817 are essentially given a statutory blocking right to any
3818 Chapter 11 plan that includes the formation of an asbestos

3819 trust. As a result, debtors acquiesce to firms' demands
3820 regarding the asbestos trust, and the plaintiffs' firms are
3821 the principle architects and managers of these trusts. This
3822 has led to the erection of extremely high barriers to
3823 asbestos trusts information, which often include a
3824 requirement that a subpoena be issued by the presiding
3825 bankruptcy court rather than solely from a State court in
3826 order for an asbestos trust to respond to a discovery
3827 request.

3828 Subpoenas from a State court are difficult to enforce
3829 against an out of State trust, and expensive when the trust
3830 opposes the subpoena. The FACT Act will remove these high
3831 barriers to asbestos claims information and actually
3832 strengthen States' rights by allowing parties to properly
3833 exercise their rights against an asbestos trust. Allowing
3834 transparency in the asbestos trust system will facilitate a
3835 reduction in fraudulent claims and contradictory
3836 allegations.

3837 This Federal problem requires a Federal solution, which
3838 is embodied in the FACT Act. And as I said at the outset,
3839 this will help to promote the rights of those individuals

3840 with very serious asbestos claims as victims be assured that
3841 resources will be available to them that now may be used in
3842 circumstances for individuals who do not have valid claims
3843 or who have duplicative claims, or claims based upon two
3844 different causes of action.

3845 And, therefore, I would urge my colleagues to oppose the
3846 amendment.

3847 The question occurs on the amendment offered by the
3848 gentleman from New York, Mr. Jeffries.

3849 And all those in favor, respond by saying aye.

3850 Those opposed, no.

3851 In the opinion of the chair, the noes have it, and the
3852 amendment is not agreed to.

3853 Mr. Jeffries. I ask for a recorded vote.

3854 Chairman Goodlatte. The gentleman from New York
3855 requests a recorded vote, and the clerk will call the roll.

3856 Ms. Deterding. Mr. Goodlatte?

3857 Chairman Goodlatte. Aye.

3858 Ms. Deterding. Mr. Goodlatte votes aye.

3859 Mr. Sensenbrenner?

3860 [No response.]

3861 Ms. Deterding. Mr. Coble?
3862 Mr. Coble. Aye.
3863 Ms. Deterding. Mr. Coble votes aye.
3864 Mr. Smith?
3865 [No response.]
3866 Ms. Deterding. Mr. Chabot?
3867 Mr. Chabot. Aye.
3868 Ms. Deterding. Mr. Chabot votes aye.
3869 Mr. Bachus?
3870 Mr. Bachus. Aye.
3871 Ms. Deterding. Mr. Bachus votes aye.
3872 Mr. Issa?
3873 [No response.]
3874 Ms. Deterding. Mr. Forbes?
3875 Mr. Forbes. Aye.
3876 Ms. Deterding. Mr. Forbes votes aye.
3877 Mr. King?
3878 Mr. King. Aye.
3879 Ms. Deterding. Mr. King votes aye.
3880 Mr. Franks?
3881 Mr. Franks. Aye.

3882 Ms. Deterding. Mr. Franks votes aye.

3883 Mr. Gohmert?

3884 Mr. Gohmert. Aye.

3885 Ms. Deterding. Mr. Gohmert votes aye.

3886 Mr. Jordan?

3887 Mr. Jordan. Yes.

3888 Ms. Deterding. Mr. Jordan votes aye.

3889 Mr. Poe?

3890 [No response.]

3891 Ms. Deterding. Mr. Chaffetz?

3892 [No response.]

3893 Ms. Deterding. Mr. Marino?

3894 Mr. Marino. Yes.

3895 Ms. Deterding. Mr. Marino votes aye.

3896 Mr. Gowdy?

3897 Mr. Gowdy. Yes.

3898 Ms. Deterding. Mr. Gowdy votes aye.

3899 Mr. Amodei?

3900 Mr. Amodei. Yes.

3901 Ms. Deterding. Mr. Amodei votes aye.

3902 Mr. Labrador?

3903 Mr. Labrador. Yes.

3904 Ms. Deterding. Mr. Labrador votes aye.

3905 Mr. Farenthold?

3906 Mr. Farenthold. Aye.

3907 Ms. Deterding. Mr. Farenthold votes aye.

3908 Mr. Holding?

3909 Mr. Holding. Aye.

3910 Ms. Deterding. Mr. Holding votes aye.

3911 Mr. Collins?

3912 Mr. Collins. Aye.

3913 Ms. Deterding. Mr. Collins votes aye.

3914 Mr. DeSantis?

3915 Mr. DeSantis. Aye.

3916 Ms. Deterding. Mr. DeSantis votes aye.

3917 Mr. Conyers?

3918 Mr. Conyers. No.

3919 Ms. Deterding. Mr. Conyers votes no.

3920 Mr. Nadler?

3921 Mr. Nadler. No.

3922 Ms. Deterding. Mr. Nadler votes no.

3923 Mr. Scott?

3924 Mr. Scott. No.

3925 Ms. Deterding. Mr. Scott votes no.

3926 Mr. Watt?

3927 Mr. Watt. No.

3928 Ms. Deterding. Mr. Watt votes no.

3929 Ms. Lofgren?

3930 [No response.]

3931 Ms. Deterding. Ms. Jackson Lee?

3932 [No response.]

3933 Ms. Deterding. Mr. Cohen?

3934 Mr. Cohen. No.

3935 Ms. Deterding. Mr. Cohen votes no.

3936 Mr. Johnson?

3937 [No response.]

3938 Ms. Deterding. Mr. Pierluisi?

3939 Mr. Pierluisi. No.

3940 Ms. Deterding. Mr. Pierluisi votes no.

3941 Ms. Chu?

3942 Ms. Chu. No.

3943 Ms. Deterding. Ms. Chu votes no.

3944 Mr. Deutch?

3945 Mr. Deutch. No.

3946 Ms. Deterding. Mr. Deutch votes no.

3947 Mr. Gutierrez?

3948 [No response.]

3949 Ms. Deterding. Ms. Bass?

3950 Ms. Bass. No.

3951 Ms. Deterding. Ms. Bass votes no.

3952 Mr. Richmond?

3953 [No response.]

3954 Ms. Deterding. Ms. DelBene?

3955 Ms. DelBene. No.

3956 Ms. Deterding. Ms. DelBene votes no.

3957 Mr. Garcia?

3958 Mr. Garcia. No.

3959 Ms. Deterding. Mr. Garcia votes no.

3960 Mr. Jeffries?

3961 Mr. Jeffries. No.

3962 Ms. Deterding. Mr. Jeffries votes no.

3963 Mr. Coble. Mr. Chairman?

3964 Chairman Goodlatte. The gentleman from North Carolina,

3965 Mr. Coble.

3966 Mr. Coble. No.

3967 Ms. Deterding. Mr. Coble votes no.

3968 Chairman Goodlatte. The gentleman from Virginia, Mr.

3969 Forbes.

3970 Mr. Forbes. No.

3971 Ms. Deterding. Mr. Forbes votes no.

3972 Chairman Goodlatte. The gentleman from Texas, Mr. Poe.

3973 Mr. Poe. No.

3974 Ms. Deterding. Mr. Poe votes no.

3975 Chairman Goodlatte. The gentleman from Texas, Mr.

3976 Gohmert.

3977 Mr. Gohmert. No.

3978 Ms. Deterding. Mr. Gohmert votes no.

3979 Chairman Goodlatte. The gentleman from Nevada, Mr.

3980 Amodei.

3981 Mr. Amodei. No.

3982 Ms. Deterding. Mr. Amodei votes no.

3983 Chairman Goodlatte. Has every member voted who wishes

3984 to vote?

3985 The clerk will report.

3986 Ms. Deterding. Mr. Chairman, 13 members votes aye, 18

3987 members voted nay.

3988 Chairman Goodlatte. And the amendment is not agreed to.

3989 Are there further amendments?

3990 If not, a reporting quorum being present, the question
3991 is on reporting the bill favorably to the House.

3992 Those in favor will say aye?

3993 Those opposed, no?

3994 The ayes have it, and the bill is ordered reported
3995 favorably.

3996 Mr. Conyers. A record vote.

3997 Chairman Goodlatte. The gentleman from Michigan
3998 requests a recorded vote, and the clerk will call the roll.

3999 Ms. Deterding. Mr. Goodlatte?

4000 Chairman Goodlatte. Aye.

4001 Ms. Deterding. Mr. Goodlatte votes aye.

4002 Mr. Sensenbrenner?

4003 [No response.]

4004 Ms. Deterding. Mr. Coble?

4005 Mr. Coble. Aye.

4006 Ms. Deterding. Mr. Coble votes aye.

4007 Mr. Smith?

4008 [No response.]

4009 Ms. Deterding. Mr. Chabot?

4010 Mr. Chabot. Aye.

4011 Ms. Deterding. Mr. Chabot votes aye.

4012 Mr. Bachus?

4013 Mr. Bachus. Aye.

4014 Ms. Deterding. Mr. Bachus votes aye.

4015 Mr. Issa?

4016 [No response.]

4017 Ms. Deterding. Mr. Forbes?

4018 Mr. Forbes. Aye.

4019 Ms. Deterding. Mr. Forbes votes aye.

4020 Mr. King?

4021 Mr. King. Aye.

4022 Ms. Deterding. Mr. King votes aye.

4023 Mr. Franks?

4024 Mr. Franks. Aye.

4025 Ms. Deterding. Mr. Franks votes aye.

4026 Mr. Gohmert?

4027 Mr. Gohmert. Aye.

4028 Ms. Deterding. Mr. Gohmert votes aye.

4029 Mr. Jordan?

4030 Mr. Jordan. Yes.

4031 Ms. Deterding. Mr. Jordan votes aye.

4032 Mr. Poe?

4033 [No response.]

4034 Ms. Deterding. Mr. Chaffetz?

4035 [No response.]

4036 Ms. Deterding. Mr. Marino?

4037 Mr. Marino. Yes.

4038 Ms. Deterding. Mr. Marino votes aye.

4039 Mr. Gowdy?

4040 Mr. Gowdy. Yes.

4041 Ms. Deterding. Mr. Gowdy votes aye.

4042 Mr. Amodei?

4043 Mr. Amodei. Yes.

4044 Ms. Deterding. Mr. Amodei votes aye.

4045 Mr. Labrador?

4046 Mr. Labrador. Yes.

4047 Ms. Deterding. Mr. Labrador votes aye.

4048 Mr. Farenthold?

4049 Mr. Farenthold. Aye.

4050 Ms. Deterding. Mr. Farenthold votes aye.

4051 Mr. Holding?

4052 Mr. Holding. Aye.

4053 Ms. Deterding. Mr. Holding votes aye.

4054 Mr. Collins?

4055 Mr. Collins. Aye.

4056 Ms. Deterding. Mr. Collins votes aye.

4057 Mr. DeSantis?

4058 Mr. DeSantis. Aye.

4059 Ms. Deterding. Mr. DeSantis votes aye.

4060 Mr. Conyers?

4061 Mr. Conyers. No.

4062 Ms. Deterding. Mr. Conyers votes no.

4063 Mr. Nadler?

4064 Mr. Nadler. No.

4065 Ms. Deterding. Mr. Nadler votes no.

4066 Mr. Scott?

4067 Mr. Scott. No.

4068 Ms. Deterding. Mr. Scott votes no.

4069 Mr. Watt?

4070 Mr. Watt. No.

4071 Ms. Deterding. Mr. Watt votes no.

4072 Ms. Lofgren?

4073 [No response.]

4074 Ms. Deterding. Ms. Jackson Lee?

4075 [No response.]

4076 Ms. Deterding. Mr. Cohen?

4077 Mr. Cohen. No.

4078 Ms. Deterding. Mr. Cohen votes no.

4079 Mr. Johnson?

4080 [No response.]

4081 Ms. Deterding. Mr. Pierluisi?

4082 Mr. Pierluisi. No.

4083 Ms. Deterding. Mr. Pierluisi votes no.

4084 Ms. Chu?

4085 Ms. Chu. No.

4086 Ms. Deterding. Ms. Chu votes no.

4087 Mr. Deutch?

4088 Mr. Deutch. No.

4089 Ms. Deterding. Mr. Deutch votes no.

4090 Mr. Gutierrez?

4091 [No response.]

4092 Ms. Deterding. Ms. Bass?

4093 Ms. Bass. No.

4094 Ms. Deterding. Ms. Bass votes no.

4095 Mr. Richmond?

4096 [No response.]

4097 Ms. Deterding. Ms. DelBene?

4098 Ms. DelBene. No.

4099 Ms. Deterding. Ms. DelBene votes no.

4100 Mr. Garcia?

4101 Mr. Garcia. No.

4102 Ms. Deterding. Mr. Garcia votes no.

4103 Mr. Jeffries?

4104 Mr. Jeffries. No.

4105 Ms. Deterding. Mr. Jeffries votes no.

4106 Ms. Jackson Lee. Mr. Chairman?

4107 Chairman Goodlatte. The gentlewoman from Texas.

4108 Ms. Jackson Lee. How am I recorded?

4109 Ms. Deterding. Not recorded.

4110 Ms. Jackson Lee. No.

4111 Ms. Deterding. Ms. Jackson Lee votes no.

4112 Chairman Goodlatte. The gentleman from Texas.

4113 Mr. Poe. No.

4114 Ms. Deterding. Mr. Poe votes no.

4115 Chairman Goodlatte. Has every member voted who wishes
4116 to vote?

4117 The clerk will report.

4118 Ms. Deterding. Mr. Chairman, 17 members voted aye, 14
4119 members voted nay.

4120 Chairman Goodlatte. The ayes have it, and the bill is
4121 ordered reported favorably.

4122 Members will have 2 days to submit views.

4123 [The information follows:]

4124

4125 Chairman Goodlatte. That concludes our business for
4126 today. I thank all the members for their participation and
4127 attendance.

4128 And this meeting is adjourned.

4129 [Whereupon, at 4:04 p.m., the committee was adjourned.]