

the Administrator. Any claimant adversely affected or aggrieved by a final decision of the Administrator awarding or denying compensation may petition for judicial review within [90] days of the issuance of a final decision of the Administrator. Such petition may only be filed in the United States Court of Appeals for the circuit in which the claimant resides at the time of the issuance of the final order. At the request of labor representatives, the standard of review of such eligibility determinations was changed from the usual arbitrary and capricious standard to a substantial evidence standard.

Sec. 303. Judicial Review of Participants' Assessments. Section 303 now applies to judicial challenges of participants' assessments made by the Administrator or the Asbestos Insurers Commission. The United States Court of Appeals for the District of Columbia Circuit, rather than the United States District Court for the District of Columbia as was provided in S. 1125 as reported, has exclusive jurisdiction over such actions. A petition for review must be filed within 60 days of the final determination giving rise to such action. Defendant participants must file a petition for review within 30 days of the Administrator's final determination (after rehearing), and insurer participants must file a petition for review within 30 days of receiving notice of a final determination.

Sec. 304. Other Judicial Challenges. Section 304 provides that any action challenging the constitutionality of any provision of the Act must be brought in the United States District Court for the District of Columbia. The provision also authorizes direct appeal to the Supreme Court on an expedited basis. An action under this section shall be filed within 60 days after the date of enactment or 60 days after the final action of the Administrator or the Commission giving rise to the action, whichever is later. The District Court and Supreme Court are required to expedite to the greatest possible extent the disposition of the action and appeal.

Sec. 305. In General. As provided in S. 1125 as reported, section 305 also states that no stays of payments into the Fund pending appeal are allowed. In addition, no judicial review other than as set forth in sections 301, 302 and 303 is allowed. Any decision of the federal court finding any part of the FAIR Act to be unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court within 30 days of such ruling.

#### TITLE IV—MISCELLANEOUS PROVISIONS

The following provisions in Title IV have been amended from S. 1125 as reported.

Sec. 402. Effect on Bankruptcy Laws. Various changes were made to section 402 for clarifications and to address possible constitutional arguments that may affect the ability of the Fund to receive assets from current bankruptcy trusts.

Sec. 403. Effect on Other Laws and Existing Claims.

Asbestos Claims Barred. Section 403(d)(2) is changed to address a variety of unconventional asbestos claims that plaintiffs have asserted directly against both defendant participants and insurer participants in the tort system.

Subsection (d)(6) is added to permit parties to obtain a credit in the event that a court ignores or misapplies the exclusive remedy provisions of the Act, and erroneously awards a judgment in favor of asbestos claimants outside of the federal compensation program.

Initiation of the Fund. Because the new administrative structure and the new funding provisions were amended to ensure that the program is up and running in a matter of months, section 403(d)(5) (p. 211) was deleted from the bill.

Sec. 404. Effect on Insurance and Reinsurance Contracts. Section 404 (Section 406 in the Committee Bill) deals with the effect of the Act on insurance and reinsurance contracts. Section 406 as it came out of Committee accounted for "erosion" of insurance policies that cover not only asbestos liabilities, but also potentially other liabilities. The section established how contributions to the fund by insurers and reinsurers would reduce the limits of existing insurance policies held by the defendant participants.

Erosion. Changes have been made in section 404(a), dealing with erosion of insurance coverage limits, in order to account for the possibility of an early sunset of the Fund. Based upon the assumption that insurers and reinsurers will be required to make payments into the Fund for 27 years after enactment, erosion of the policy limits is deemed to occur at enactment. If the Act sunsets early, however, the insurers may not be required to pay the full amount for which they have been given erosion credit. In order to treat this situation, section 404 has been amended to provide for the restoration of unearned erosion that exists at the time of an early sunset.

Additionally, section 404(a)(2)(B) has been amended to conform the Act to the revised funding structure. The Bill that passed out of Committee deemed certain erosion to occur upon a contingent call because the contingent funding was shared equally by the insurer participants and the defendant participants. Any required contingent funding is now to be required solely of defendants, and therefore no erosion will be deemed to occur upon contingent payments.

Finite Risk Policies Preserved. The Frist/Hatch bill includes a new section 404(d), dealing with finite risk policies. Finite risk policies are non-traditional insurance and reinsurance vehicles that have in recent years been obtained by a relatively small number of defendants in asbestos litigation and some of their insurers in an effort to responsibly manage their asbestos liabilities. These contractual arrangements were specifically designed because traditional asbestos coverage was no longer available after the mid-1980s. Generally, finite risk policies provide coverage with respect to events that occurred in the past and are already known to both parties to the contract. Commercial General Liability insurance provides coverage usually for injuries that may occur in the future.

Because of the unique nature of these kinds of contractual arrangements, it is appropriate that finite risk insurance be excluded from the legislation. This will avoid the danger that participants that have entered into these arrangements could be required to pay twice. Without the exclusion, participants that have entered into finite risk arrangements would be required to pay substantial amounts to the trust fund and also be subject to a potential forfeiture of their rights to funds comprised, in effect, mostly of their own money used to prepay their asbestos liabilities. The participants that have obtained finite risk insurance should not be penalized by the legislation. If the finite risk arrangements are not excluded from the legislation, the insurance carriers issuing the finite risk insurance policies would reap a substantial windfall at the expense of such participants.

Treatment of Other Insurance and Reinsurance Rights or Obligations. A new section 404(e) has been added to specify the effect of the Act on certain reinsurance and insurance claims. Generally, no participant may pursue coverage claims against another participant or captive insurer for required payments to the Fund. Certain insurance assignments are voided. Otherwise, the Act does not affect insurance or reinsurance rights or

obligations unless a person voluntarily pays a claim superseded by the Act or otherwise available limits are deemed eroded.

Sec. 405. Annual Report of the Administrator. The sunset provisions in S. 1125 as reported (section 404(3), p. 214) created an inflexible trigger that could cause the Fund to terminate unnecessarily because of a short-term bulge in claims to the detriment of claimants. Section 405 amends old section 404 to provide a workable alternative to the sunset provisions, giving the Administrator more time and more flexibility, such as through the increased borrowing authority, to deal with a short term aberration in claims and available funding. S. 1125 only gave the Administrator a mere 90 days to correct for short-term liquidity problems. S. 1125 as reported also would have only ensured that 95% of the award amounts owed for the prior year and 95% of eligible claimants be paid prior to sunset. The alternative now in the bill would require that sufficient funds be available to pay all resolved claims in full. Moreover, the bill now makes clear that any debt incurred by the Fund is paid by monies in the Fund and not the United States treasury. These provisions also ensure that the risk that the Fund runs out of money is borne by the participants, providing that, in the event of sunset, a federal cause of action is created and the claimants may file their claims in federal court.

Sec. 406. Rules of Construction Relating to Liability of the United States. This section was previously section 405 in S. 1125 as reported [with one change to conform to the new administrative structure].

Sec. 407. Rules of Construction. Provisions found in section 101(d) of S. 1125 as reported (p. 23) can now be found under new section 407.

Sec. 408. Violations of Environmental and Occupational Health and Safety Requirements. Provisions found in section 222(c) of S. 1125 as reported (p. 171) are now placed in new section 408.

[Sec. 409. Tax Treatment. Currently, insurers have tax-deductible status for reserves originally set aside for payment of asbestos claims. Under S. 1125, these reserves would now be used to pay assessments required by the Act. New section 409 would maintain the tax deductibility of these reserves until such time as the insurer makes payment to the Fund.]

Sec. 410. Nondiscrimination of Health Insurance. New section 410 incorporates a proposed amendment by labor representatives and Democrats that explicitly extends the protections of HIPAA to ensure that claimants cannot be discriminated against for provision of health insurance solely as a result of filing a claim for medical monitoring reimbursement with the Fund.

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#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

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#### RECOGNITION OF MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

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#### DEBATING ASBESTOS LITIGATIONS REFORM

Mr. DASCHLE. Mr. President, I will address a couple of issues. I am disappointed we have come to debate the asbestos issue under these circumstances. I agree with much of what

the majority leader has said about the need for the Senate and our country to constructively address this problem. I agree there has been a negative economic impact on many of our most prestigious businesses throughout the country. I agree in many ways the current system has been deficient. So there is much of what the majority leader said in his description of the situation with which I agree.

He did not mention, but I think it ought to be noted, that as we speak the estimate is 1.3 million Americans are still exposed to asbestos in their places of work; that asbestos is still legal in this country; and that we import 29 million pounds of asbestos each year, a 300 percent increase in the last decade.

He did not mention, but I think it also is noteworthy, the peak death toll for asbestos is not likely to occur for approximately 15 years. The primary asbestos-related illnesses could cause at least 100,000 deaths: mesothelioma, asbestosis. An average 10,000 victims per year die from asbestos exposure. More Americans die of asbestos-related illness than drownings and fires combined already. Estimates range that current and future victims could be—and this is a stunning number—1.2 million to 2.6 million people.

So we are called upon to write legislation that will become law that projects our best guess on how to address those numbers, not this year but for the next 20 to 30 years. If we are going to do this, I would hope in the deepest sense of what it means to be a Senator we do it right. I must say we are far from that point as we begin this debate this morning. We are not doing this right.

I want to talk a little bit about why I do not believe we are, but it is not just the view expressed by some of us on this side—I will go into procedures and lost opportunities over the next couple of minutes—but there was an article in the paper this morning quoting a prestigious and engaged Member of the Senate, Senator SPECTER, who says the current plan is counterproductive and argues about why this legislation is not ready for the consideration the majority leader insists we give it today. I ask unanimous consent this article be printed in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From The Hill, Apr. 20, 2004]

SPECTER SAYS FRIST'S ASBESTOS PLAN IS  
'COUNTERPRODUCTIVE'

(By Klaus Marre)

A centrist Republican is speaking out against a Senate leadership plan to force a vote this week on a controversial asbestos reform bill.

In his first interview on asbestos litigation legislation, Specter said that it would be "counterproductive to force a cloture vote" on a bill recently introduced by Senate Majority Leader Bill Frist (R-Tenn.) and Senate Judiciary Committee Chairman Orrin Hatch (R-Utah). The measure, which would set up a trust fund to pay victims of asbestos expo-

sure, is expected to be debated on the Senate floor this week.

Frist spokeswoman Amy Call said Republicans would seek a cloture vote if Democrats object to a unanimous consent agreement on the legislation. "Senator Frist feels that providing compensation for asbestos victims is an urgent and important piece of legislation that the Senate needs to act on, which is why he is bringing it to the floor this week," Call said.

Asbestos reform has failed to move in the Senate for a number of reasons, but the major dispute centers on the amount of the planned trust fund. The new bill would be able to pay \$114 billion in claims and has a \$10 billion contingency fund, which organized labor says kicks in too late.

The previous legislation had a total value of \$153 billion, including a larger contingency fund that the unions had approved.

Specter credited Frist for pressing for action on asbestos reform but said a vote on the new bill would be premature. He added that continuing the long-running negotiations between industry groups, unions and other affected parties is more likely to succeed than a cloture vote.

The Pennsylvania senator, who faces an April 27 primary against Rep. Patrick Toomey (R-Pa.), stressed that he was not criticizing Frist. But he said that his weekly meetings with stakeholders on asbestos reform have yielded "a tremendous amount of progress," adding that he is "afraid that cloture will hurt efforts to continue the negotiation process."

Sen. Tom Carper (D-Del.) agrees. Before the April congressional recess, Carper said Frist was moving too quickly on asbestos and urged him to continue negotiating and bring a compromise to a vote later in May.

Various stakeholders have come out against the Frist-Hatch bill. In an April 15 letter to Frist, several insurance companies, such as The Chubb Group and the American International Group said the legislation contains some improvements, but is "inequitable, unaffordable, and provides no finality or certainty to victims, defendants, insurers and reinsurers."

The groups add the proposed trust fund approach is "fatally flawed and can't be made to work."

Three insurance- and reinsurance-industry groups—the National Association of Mutual Insurance Companies, the Property Casualty Insurers Association of America and the Reinsurance Association of America—said in a joint statement that the bill "is absolutely essential to insurers that the Senate resist attempts to bid up the insurance share" as the legislation makes its way through the Senate.

The AFL-CIO strongly objected to the bill, saying it would shrink the trust fund and the "result is a bailout for big business that fails to provide fair and certain compensation for asbestos disease victims."

The Asbestos Alliance, a coalition of influential business groups that include the National Association of Manufacturers, has endorsed the legislation and is lobbying for its passage.

Hatch said last week that he believes his new bill, which he introduced prior to the recess, will likely not attract enough Democratic support to pass. An earlier asbestos reform bill he introduced passed the Judiciary Committee by a 10-8 vote.

In an April 8 speech to the U.S. Chamber of Commerce, Frist said the new bill has significant improvements over the one that passed out of committee. He said it has additional compensation for victims and has more protections for the proposed trust fund.

Frist stressed that Congress needs to act on this issue, pointing out that the lack of a

solution has caused victims to go uncompensated and led 70 companies to go bankrupt and to the loss of 60,000 jobs.

Specter said he is committed to reaching a compromise this year. He believes that if the amount of the asbestos trust fund is agreed upon, the other pieces will fall into place because "there would be a sense that it will really happen."

He added that passing a bill this year is crucial because it would provide "a boost to the economy to take companies out of reorganizations and bankruptcy." Specter praised the work of Hatch and Senate Judiciary Committee ranking member Patrick Leahy (D-Vt.) for their work on the bill.

Mr. DASCHLE. It is counterproductive. We are concerned that in many respects the legislation before the Senate actually is a step backward from what was passed out of committee, and that was viewed by people in our country and in the Senate on both sides of the aisle as insufficient. One thing we do know is attempts to address this problem in other cases affecting other diseases has been an absolute fiasco. Ask the black lung victims today whether we did any good when we passed the black lung victims fund. If they are still alive, they will shake their heads in disbelief. Ask those victims of uranium whether we solved the problem, and again they will shake their heads and say how deeply disturbed they are with the outcome.

I can recall how many Senators acclaimed these responses as finally having addressed the issue. Well, now people get sick, they die, and they have no recourse. While we know perhaps 2.6 million people could be affected by this over the next several decades, the bill before us actually reduces the compensation fund from \$153 billion—and I might add parenthetically that the potential range of how much this could cost reaches \$300 billion, so we are locking in a bill already that may be deficient—but we go from \$153 billion down to \$109 billion in the bill currently pending, which maybe one-third of what will be required to adequately deal with the compensation we already know will be needed.

Then there is the issue of claims. For somebody working brake linings in an auto mechanics shop, filled with asbestos, 15 years of asbestos exposure, what this bill says is if they have lung cancer after having been exposed to asbestos for 15 years we are going to give them as little as \$25,000, and that is it. Who conscientiously could look that victim in the eye and say, I am sorry, \$25,000 is the best we could do? I cannot say that.

We also have the problem of pending cases in this bill. I actually know victims who have attempted to do their best under the current system, have gone through approximately 10 years of extraordinarily complicated legal process to get to a verdict, they finally reach a verdict, there is finally some light at the end of the tunnel, they are going to get their award, and this bill says forget it, they have to start over. We are going to use a new system. All those years of waiting, all that pain

and that agony, all of that potential for loss of life, it is over. We are going to make them reapply. Sorry about that.

At least the committee bill acknowledged we do not know how much this is going to cost. This could be \$300 billion. I know we only have \$153 billion in the bill and now \$109 billion if we look at this bill. Because of the work of Senator BIDEN we said, all right, if we run out of money, at least people ought to be able to go back to the courts. This bill says, you can go back to the courts, but only if you meet the strict new limits that we've added, and only Federal court. Your recourse is limited. Oh, yes, we put a \$10 billion contingency in there, but it's not available until year 24. How cynical is that.

Democrats want a bill. I want very much to resolve this matter, as Senator FRIST has noted. I wanted to do it so badly that I asked my staff to meet with Senator FRIST last fall, right after the August recess. They did meet five times at the staff level. Then Senators DODD and LEAHY and I met with a number of Republicans in November.

My staff has participated in virtually all, if not all, of the meetings hosted by Senator SPECTER since the new year—and I must say what admiration I have for Senator SPECTER and the work he has done on this bill. He has been diligent, he has been studious, he has been thoughtful, and he has been inclusive. It is too bad it took a Senator from Pennsylvania to create that kind of environment for real work and progress, but he deserves a lot of credit, and I hope I am not getting him in more trouble for praising him this morning on the floor. But he deserves credit.

Senator DODD and Senator LEAHY and I met with the manufacturers and insurers on several occasions through September, October, November, December, January, February, and March. We have met with advocates of the victims. I went to Senator FRIST last year and I said: Could we meet? Could we resolve these issues, you and I? Let's see if we can put a draft together.

That was impossible in December. I was told we just couldn't do it in January or in February or in March. I was hoping, at least at the staff level, that might afford us an opportunity to begin work together, but even at the staff level our efforts were repelled until mid-February.

Finally, I was told I had a meeting on the 31st of March. I was very pleased, at long last, having waited 4 or 5 months to get one, we had one. I got there, to Senator FRIST's office, and was told I had 10 minutes—10 minutes—to discuss this issue that we know will last decades.

We stand ready to work out this legislation in a bipartisan way. There are many on both sides of the aisle who truly and deeply want a resolution. I am puzzled, mystified that without any warning, without any consultation this bill was laid down, put on the calendar,

and is now called before us. It makes a mockery of the system and of any real serious and sincere effort to resolve this matter in a truly bipartisan way.

I think those of us who are truly interested in a resolution ought to continue to meet with Senator SPECTER as should those who believe a solution can be negotiated. But this is not the way to do it. This is nothing more than a—well, it is nothing more than a lost opportunity. I could say more but I don't think incendiary language helps this process and I will forgo that.

But I must say I am troubled that yet again, on an issue of this importance, there are those who will put politics and political posturing ahead of finding a real solution.

Mr. SARBANES. Will the distinguished leader yield?

Mr. DASCHLE. I am happy to yield to the Senator from Maryland.

Mr. SARBANES. Do I understand after repeated efforts to hold, I take it, a thorough and comprehensive meeting with Senator FRIST, which was to discuss this matter, when the time for the meeting had arrived—which had been delayed, I gather, repeatedly—it was scheduled then for only 10 minutes?

Mr. DASCHLE. It was actually scheduled for a longer period of time, but once the meeting began, I was told the majority leader had about 10 minutes, correct.

Mr. SARBANES. Hardly enough time to say hello and goodbye, I might observe.

Mr. DASCHLE. That is just about all that happened at that particular meeting. The Senator is correct.

Mr. SARBANES. The other question I wanted to put, do I understand the proposal that has now been brought—sprung to the floor, so to speak, because I don't know that it represents the culmination of any consultative process—for people who have been working their way through the existing system toward getting some recovery for the illness and the harm they suffered, they would be required to go back and start all over again under this? Is that correct? I find that very difficult to accept. I just wanted to be clear on that particular point.

Mr. DASCHLE. The Senator is correct. Under this new proposal, those who have already been given a judgment, have done everything within their power to resolve this matter using the current system, will be told that effort is now nullified and they will have to restart under this new system for whatever compensation they might be awarded.

I would say again—I don't know if the Senator was in the Chamber when I illustrated or described one particular case, a case involving someone who had been exposed to asbestos for 15 years—under this bill, that person, who has lung cancer, who smoked, who was exposed to asbestos for 15 years, is entitled to as little as \$25,000.

Mr. SARBANES. It is pretty brutal treatment, it seems to me, to people

who have suffered real harm. But for people to have worked their way through the system with all of the stress and strain involved in doing that, and to have either come up to the point of judgment or, as I understand it, perhaps even achieved judgment, then to be required to go back and begin all over it seems to me is just a completely unacceptable procedure. I am very concerned to hear that.

I thank the leader.

Mr. DASCHLE. I thank the Senator from Maryland.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I am delighted to have this discussion now because I think what the distinguished Democratic leader and Senator SARBANES pointed out is that we have a problem. Whether the problem is one outlined—it may be in the bill. I don't know the specifics of that particular case and didn't hear the particular case. But the problem, and it goes on both sides of the aisle, is that we have an inequitable system today. It is not working. It is broken. We are falling down on process.

The accusations of 10 minutes in my office, which I resent—I called the Democratic leader this morning. I knew he was at a meeting and I didn't get a call back from him. If the Democratic leader is going to make accusations that I haven't discussed this enough, let's discuss this today. I set aside this whole week and I set it aside starting in—the bill came out in July. I said shortly after that, specifically in November, we were going to do this in March.

People, mainly from the other side of the aisle, came forward and said we needed more time. I said, OK, we will have more time. Then we went to the end of March and we said, OK, another month, or April. Here it is April.

We can go back and look. I pointed out in my statement that I knew the Democratic leader and others were either present or present in part of it. We had over 20 meetings with staff on both sides of the aisle since the bill came out, going through this bill again and again and again.

We can argue process throughout. My only objective is to make sure the patients with mesothelioma—and I have had the privilege to treat patients with mesothelioma. I have treated a lot of patients with mesothelioma, both as a surgeon in England and in this country, and it is a devastating disease, secondary in large part to asbestos. I treated thousands—if not thousands, over a thousand—of people with lung cancer, so I know lung cancer. I know it is devastating. I know what it does to the families. I know the tragedy. I know the causal factors. There are correlations. Some are causal factors. It is difficult in terms of what causes cancer, what doesn't. There are limitations to the science itself. That is something we need to debate and discuss and to build upon. That is one of

the things that makes it hard, because you are projecting out and the science is not just perfect itself.

But I will make almost a plea to the other side of the aisle: We have a week. The stakeholders, the people who are affected, the various constituents—they know because I said months ago that we were going to do this—are around this week. If it is an argument over whether I personally haven't spent enough time with either the Democratic leader or others, we will spend the time. The stakeholders are here. Senator SPECTER spent so much time and he has done a tremendous job. Senator HATCH has. And Democrats and Republicans.

Why don't we take this week, which I set aside weeks ago and said we were going to have a week—let's put everybody in a room. There are rooms here in the Capitol right now—right now. Take some Democrats, take some Republicans, take mediators, take Judge Becker, take our staff—us. There are rooms right now.

Again, I said starting yesterday we have 5 days to resolve the problem. In truth, each one of these issues—this particular bill people worked on 360 days. It was marked up in the committee before. It has been improved again with Democratic and Republican input. It can be improved more.

I have told everyone from day one the modifications Senator HATCH, I, and others have made with input of labor and others are still not perfect, but until we bring it to the floor of the Senate or until right now, today, over the next 8 hours today, 12 hours tomorrow, 12 the next day, and 12 the next day, I am convinced we can resolve the differences. All this talk about being excluded from meetings or not, we have rooms in the Capitol; the "person" power is here. People are prepared to debate. As I said in my opening statement, nobody is stuck on particular clauses or amounts.

I suggest—and that is a reason I called this morning, about 10 minutes before we started; I knew he was in the leadership meeting—over the course of today we figure out a process by which we can come to resolution of the problem we all know exists, that we have bipartisan support on fixing, have some process outlined. I would say we start today because I said 2 weeks ago it would be this week, that we would take a week, so this is no surprise. I went through my statement. I was on the floor of the Senate November 22, March, April, the day before we left. I told everybody it would be this week. People are here—if they are not here, they can get here by tomorrow—to sit down and go through the issues.

I respond to the Democratic leader's comments that we have a shot. We have a responsibility of addressing this issue. We only have 79 legislative days left. To put this off further is not going to be the way to do it. We need to start to put our heads together and put together a process to do that and fix the system we know has run amok.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. I am pleased the majority leader came back to the floor to reiterate his desire to find a solution. It will take more than just reasserting over and over that we want to find that answer, that compromise, that legislative approach that will generate the kind of support in the Senate that is possible.

It takes what he just said. It will take a willingness to meet, a willingness to work through these issues. That is my frustration. I truly believe the majority leader is sincere when he says he wants to find a way to solve the problem.

What I don't feel has been done, except in the offices of the good Senator from Pennsylvania, is that concerted effort to try to address these issues in an inclusive way. That has been done, but it has been done in large measure by Senator SPECTER, not by the leadership.

We are prepared today, tomorrow, tonight. We will be happy to meet, as I have offered to do on many occasions. The sooner we do it, the sooner that opportunity for resolution can be achieved.

I yield the floor.

Mr. FRIST. If the Democratic leader will yield for a question, if we start right now and we work through today, Wednesday, Thursday, and Friday on issues we debated and talked about—a lot of people are a lot more expert than me—why can't we do that? Why can't we resolve this huge problem? If we send it off to never-never land for an unlimited period of time, this will not come back. I know that. This is the fourth date I have set as a final date that we will come in just for consideration, so we can get on the bill. Even if we were on the bill, talking about the merits of the bill, debating it, we can be having discussions with Democrats and Republicans. I ask that Senator LEAHY and Senator HATCH also be in the room as well.

Now is the time. Now is the time for action. Would that be possible?

Mr. DASCHLE. If the Senator is asking me a question, I respond by saying, absolutely. But let me give him one illustration of my skepticism about his question.

There must have been now, as he said, 20—maybe more—staff meetings over the course of the last 6 or 8 months. As he and I discussed this matter and as our staffs discussed this matter, attention has turned to the compensation trust fund. We were absolutely startled, surprised, deeply troubled by this remarkable movement away from the trust fund number the committee had included: \$153 billion. The pending bill has \$109 billion.

My staff and I have both asked staff of the majority leader on several occasions, Is there a way to find a reasonable number? We have been stonewalled every single time when that issue has been discussed. It has

not been discussed. It is not even discussable on the other side.

It does not do any good to sit and look across each other at the table if we cannot have a meaningful discussion about some of the differences we have. If all we do over the course of the next week is to say this is our number, with some expectation that maybe by saying it 100 times we will concede that then has to be the number, this will be one of the most fruitless experiences he and I will have had in our time in the Senate.

So yes, there has to be a willingness to meet; but if those meetings have meaning, there also has to be willingness to negotiate. Frankly, we have not seen much of that except in the Specter meetings. Again, I am hopeful we can finally move off these hard positions and find some common ground. If that can be achieved, then, yes, I think this week could be a productive week.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I think we need to get on to our morning business as we go forward. Hopefully, our colleagues have seen this play out. Both the Democratic leader and I are committed to this. We will have to have a process to get through it. I am absolutely convinced we can do it this week if we get the appropriate process. He and I will talk, the leadership will talk, and talk to the relative parties over the course of the day. I hope by the end of the day we will figure out what the process will be that would be fair and appropriate negotiation, to come to a resolution for the American people.

#### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the period of the transaction of morning business for up to 60 minutes, with the first 30 minutes of time under the control of the Democratic leader or his designee, and the final 30 minutes of time under the control of the majority leader or his designee.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I understand I am recognized for up to 10 minutes.

The PRESIDING OFFICER. Fifteen minutes.

Mr. HARKIN. Mr. President, I say to my friend from New Jersey I will not take that long.

#### CONGRATULATIONS TO CHERI BLAUWET FOR WINNING WOMEN'S WHEELCHAIR DIVISION OF BOSTON MARATHON

Mr. HARKIN. Mr. President, I want to talk about the news this morning about the issuance of the proposed final rules on overtime. Before I do that, on a more happy note, I note that an Iowan, of whom we are all very proud, Cheri Blauwet, from Larchwood, IA, crossed the finish line of the Boston Marathon yesterday in 1 hour 39 minutes 53 seconds to win first place on the