

the full Senate debating a bill with so many loose ends and so many unanswered questions and, I am frank to admit, a lot of answered questions. The budgetary concerns are reason enough to defeat the motion to proceed.

I have been contacted by five courageous members of the majority who are going to vote against the motion to proceed because they know this is a budget buster. And maybe others will come along. I have only been contacted by five. First, let me say this: Even if the trust funds were adequately funded, the system set up here is flawed for a number of reasons in compensating the poor, unfortunate individuals who get these diseases. Let me talk about a few of them.

The startup provisions provide that as soon as the bill is enacted, the ability of asbestos victims to obtain compensation in the court system is cut off. It also requires that bankruptcy trusts established to pay victims' claims be shut down, even before the fund is operational. The bill attempts to provide a mechanism through which terminally ill claimants will obtain payments in this interim period, but all other claimants, no matter how serious their illness or disability, would be left without a remedy for an indefinite period of time.

Second, the bill is unfair to victims with pending or settled court cases. I talked a little bit about that. Rather than permit asbestos claims to continue in court while the fund is being established, the bill imposes an immediate 2-year stay on nearly all asbestos cases. This is unfair. Exigent cases are no exception to a stay. They will be automatically stayed for 9 months from the date of enactment. The bill's language is so broad that a trial about to begin would be stopped, and an appellate ruling about to be handed down would be barred.

Third, the sunset process under the legislation leaves too much uncertainty for victims. If the fund fails to operate as promised, instead of allowing victims to return to court, S. 852 allows the administrator of the fund to recommend any number of measures to salvage the program. This means that victims may receive even less compensation or become subject to more stringent medical criteria to have their claims successfully approved.

Fourth, the bill requires some victims to prove that asbestos was a substantial contributing factor to their disease—a higher burden than victims must meet in court, where it is sufficient to show that asbestos exposure was a contributing factor, no matter how substantial a factor. The whole concept of a no-fault trust fund is that it is nonadversarial, but this higher burden of proof creates the potential for endless litigation and a high number of rejected claims.

Finally, I have serious concerns about the manner in which the FAIR Act treats lung cancer and silica diseases victims. Under this bill, an entire

category of lung cancer victims who were exposed to asbestos for 15 years or more cannot bring a claim. This bill would deny these victims their right to recover damages in court for their exposure and deny them benefits under the fund as well. This is an unacceptable affront to the rights of an entire class of asbestos victims.

As for the suffering from silica disease, this act limits recovery by individuals who have both asbestos disease and silica-related diseases. I know something about silicosis. My dad had it. He worked in the mines. I thought all kids' dads coughed the way my dad did, but they didn't. My dad was exposed to what we called at the time quartz silica. It is well known in Nevada, at the Tonopah mining camp, they would only hire, as they referred to it at the time, "foreigners" because they knew if they hired people who were nonforeigners in Tonopah, they would die. It was the worst of any place in the country. It was bad all over Nevada, so I know something about silica.

This legislation prevents someone who has both silica and asbestos exposure from going forward with their claim. The only recourse for victims of both diseases will be to seek compensation for their asbestos disease from the asbestos fund, but victims of silica-related disease, including those who have asbestos disease, should also have a right to seek redress in the courts. They should be able to do it because of their silica disease, silicosis. This is a particular problem in Nevada where many miners have contracted both silicosis and asbestosis.

In this and so many other ways, this bill does not meet the needs of my constituents or of the American people in general. I predict the bill's sponsors will attempt to answer my concerns and those of other Senators, as I have heard, by telling us there is going to be a managers' amendment to cure all of the problems of the bill. There will be so many problems with this bill that this managers' amendment will effectively be a substitute bill. I am reminded of the old English proverb—I don't know if it is an old English proverb—don't buy a pig in a poke. The sponsors of the bill should make the text of that managers' amendment available before we vote on the motion to proceed. The Senate should not vote to proceed on this asbestos bill and find itself debating a different asbestos bill.

Let's move the process along, some have said. We will fix the problems in conference with the House. Boy, we have heard that a lot of times. Some of us have been around here long enough to know that doesn't work. That gambit should be rejected. If the Senate decides to debate this bill, it should be one where we confront the tough questions now and get them right before the bill leaves the Senate.

I am convinced, unfortunately, that we are not ready to face these tough questions at this time. The committee-reported bill is too deeply flawed. We

don't have sufficient information to address these flaws through the amendment process. We owe asbestos victims and their families a better bill and a better process. The only proper course at this time is to defeat the motion to proceed.

I would say this: Again, the winners today are the 13 companies that paid \$144.5 million to take the much needed time of the Senate to debate these issues. But we are going to be wasting time on this very flawed piece of legislation.

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#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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#### FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. Under the previous order, the motion to proceed to S. 852 is now pending.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I take strong offense to the statements made by the Senator from Nevada. His accusation that lobbyists are buying their way into the Senate is an outrageous violation of rule XIX, which provides that no Senator in debate shall directly or indirectly, by any form of words, impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

To say that this bill, which Senator LEAHY and I have led for the better part of the last 3 years, is the result of lobbyists "buying their way into the Senate" is slanderous. That is a violation of rule XIX. It may be that the Senator from Nevada is used to slander, is used to libel, because that is what he did recently to 33 Senators. Regrettably, nobody has challenged him under rule XIX.

Rule XIX relates to what is done on the floor of the Senate, but in this day and age of debates outside the Senate, of debates on television and radio and in the newspaper, 33 Senators were victimized by the Senator from Nevada, who then scribbled out a form apology letter which was meaningless in the context of what was done. And to talk about lobbyists buying their way onto the Senate floor is an outrageous distortion of what has happened on this bill.

The fact is, over the course of the last 2½ years, there have been 36 meetings held in my office, attended by people who have an interest in this legislation or their representatives. The AFL-CIO was there. Trial lawyers were there. Representatives of the manufacturers and representatives of the insurers and anybody else who wanted to come in were welcome. I didn't see the Senator from Nevada there once.

He has talked about the bill in a rambling, disconnected way, which proves

only one thing, and that is that he doesn't know anything, really, about the bill. He talks about how the Congressional Budget Office has issued a report saying that it would cost between \$120 and \$135 billion. Under certain contingencies, it might go to \$150 billion—unlikely. The figure really established was \$132 billion.

He talked about the Bates White report which includes people without any exposure. He wasn't in attendance at the hearing we had during which the CBO came in and filed a supplemental report on the adequacy of the \$140 billion. That figure is not a concoction of ARLEN SPECTER; that figure was negotiated by Senator DASCHLE and by Senator FRIST because they concluded that figure was the accurate figure to take care of these claims.

When the Senator from Nevada talks about all of the other subjects which could be taken up, he suddenly became interested in LIHEAP, importuning Senators from cold States that LIHEAP should be taken up instead of the asbestos bill. And when he talks about wind power and the debt and every subject virtually under the sun—no real interest in LIHEAP until it is a diversion from the asbestos bill. I have been around here a while, a little longer than the Senator from Nevada, and I never saw so many red herrings at one time. It could fill an entire aquarium.

What he is seeking to do is to obstruct. He has had a lot of practice at that. If he is successful in obstructing this bill from going forward, it will be a great travesty for the American people, for asbestos victims who are now not able to collect because their companies are bankrupt.

Not a word on what the Senator from Nevada had to say about 77 companies which have gone into bankruptcy. He talks about people with mesothelioma, fakes showing some concern while they and their dependents are going penniless because there is nobody to pay their claims. He says one size fits all. The great problem is, the Senator from Nevada doesn't know anything about the bill.

There has been a very carefully structured schedule of payments. When he says the veterans are against it, he is wrong. When he says labor is against it, we have a long list of labor unions. Senator LEAHY and I sat down with the leaders of the AFL-CIO and are working out the few remaining objections they have to the bill. When he talks about the managers' package, that is acceptance of amendments. We went through exhaustive and extensive hearings.

In regards to the 36 meetings which have been held in my office, we brought in a distinguished senior Federal judge, Edward R. Becker, who had been the chief judge of the Third Circuit, who accepted my request to mediate. Our meetings started in his chambers in August of 2003, right after the bill was reported out of the Judiciary Com-

mittee during the 108th Congress. And we have had, as I said, 36 meetings. I don't think Judge Becker can tell you how many meetings he has held individually because he can't count that high. I certainly can't tell you how many meetings I have had. But I have talked to individual Senators repeatedly, probably some 60 or 70 in this body, and when they hear what the bill is about, they are interested.

The one Senator whom I talked to who had absolutely no interest in the bill was the Senator from Nevada. All he wants to do is to block the bill. When he says this bill is not ready, this bill has been subjected to more analysis and more investigation and more consideration than any legislation I have seen in my 25 years here, and I think it is fair to say more analysis and more consideration than any piece of legislation that has been considered in the history of the U.S. Senate. Let me put it a different way: I challenge the Senator from Nevada or anybody else to cite a piece of legislation which has had more analysis and more consideration.

This bill is more than ready to come to the floor. The difficulty was that when we reported it out last May 26, the business of the Senate was stacked sky high.

And try as he might, the distinguished majority leader, Senator FRIST, could not find time to bring it up. He put it on the agenda as the first legislative consideration of the 109th Congress in the second session. That is why we are here.

The arguments—the rambling statements made by the Senator from Nevada—I should not call them arguments. They don't rise to the level of being arguments. He talks about transparency. We know the individual companies in these various groups. We had to subpoena them to get them, but we have subpoenaed them. We do have the records.

When he talks about the lobbyists writing the bill, what an outrageous statement to make in the context of what Judge Becker and I and Senator LEAHY and others have done on this bill. To accuse us of being the pawns of the lobbyists is beyond slander, beyond insult. It is beyond outrage that those words should come from the mouth of the leader of the Democrats in this body.

When he talks about silicosis, the rights to sue for silicosis are maintained. It is a very rare situation where someone has both silicosis and an asbestos-related problem. But when you go to court and you make a claim under our tort system, you have to prove, in any case, whether you claim it is silica, or whatever the cause is, that there is not some other cause that is the causative factor of the ailment in question. We had a hearing on silicosis. I am sorry to hear about the family of the Senator from Nevada who suffered from silicosis. We had a very involved hearing on the matter. Do you

know who wasn't there? The Senator from Nevada—just as he was AWOL every other time when serious issues were under consideration.

Mr. President, I would like to stay here longer this afternoon. I will put the full text of a statement in the RECORD, which is an extensive analysis of this bill. Our phenomenal staff has been at work on this matter for months, led by two very fine lawyers, Seema Singh and Harold Kim, and by many on the Judiciary Committee. This statement I recommend to my colleagues to read if they want to understand the bill.

I would not spend too much time reading the CONGRESSIONAL RECORD on what the Senator from Nevada has had to say because there is no substance to anything he has had to say. When the charges are made here about the lobbyists buying their way into the Senate, Senator LEAHY is on the floor and he is the cosponsor of the bill. Senator KOHL and Senator FEINSTEIN voted the bill out of committee. I had heard this ridiculous talk about this being a product of K Street. Well, this Senator is not a product of K Street; neither is Senator LEAHY, neither is Senator FEINSTEIN. As far as Senator KOHL is concerned, he could buy and sell K Street himself without any sweat. So to talk about us being in the pocket of the lobbyists, I have not been treated like that since I came to the Senate. In fact, I have never been treated like that. I resent it. I call it a violation of rule XIX.

I hope the Senator from Nevada will abandon these tactics. There is enough objection and controversy and dissent in this body that we don't need personal attacks. I have to excuse myself, Mr. President, because—

Mr. REID. Mr. President—

Mr. SPECTER. Mr. President, I have the floor.

Mr. REID. I thought you were finished.

Mr. SPECTER. Again you thought wrong. You are in the habit of thinking wrong. I am in mid-sentence, but I am not surprised to be interrupted.

We have other business we are taking care of. I have to soon excuse myself to go to the Judiciary Committee hearing, where we are taking up the question of electronic surveillance, where we have been in session listening to the Attorney General since 9:30 this morning.

When the Judiciary Committee had taken up this bill, we took it up under very difficult circumstances. We started last year with the immediate job of confirming the Attorney General. The Senate went into session on the 109th Congress on a Tuesday, and we had the Attorney General in on Thursday and confirmed him in short order. Then we moved through the bankruptcy bill and the class action bill. Then we tackled the very tough problem of the filibusters, which had delayed the confirmation of circuit judges. We worked through that problem.

Then in the midst of all that, we had a series of hearings on a wide variety of issues: Miller, the New York Times reporter who was kept, and the business about identity theft. We worked through hearings on the tough immigration problem. Then we took up the issue of the confirmation of Chief Justice Roberts, where the staff of the committee worked through the month of August; then we took up the question of the confirmation of Justice Alito. We worked through the months of December and January. While people were globe trotting around the world, we were at work on those matters. And through it all, we have produced a bill that is solid. It is a bill which is designed to compensate thousands of victims of asbestos.

One thing the Senator from Nevada was right about: Mesothelioma is a killer. But the thing he is wrong about is that his position will allow these people to be killed without compensation, because their companies have gone bankrupt, some 77 of them. We have moved to this trust fund after decades and decades of work. I first saw this issue when Senator Gary Hart brought Johns Manville into my office in the early 1980s, 1982 or 1983, and this asbestos problem has defied solution, just defied solution—until Senator HATCH came up with the concept of this trust fund. Then the trust fund was increased in size from about \$90 billion to \$140 billion.

I didn't hear the Senator from Nevada object when the former Democratic leader, Senator Daschle, agreed with Senator FRIST that \$140 billion was the accurate figure. I didn't hear him object at all. The only time I hear him object is when there is some chance—and it is an uphill fight; I am prepared to concede that, but I am used to them. I am used to uphill fights. I might even say I enjoy them. But this is the first time this issue has come to the floor of the Senate. It has been languishing for decades, and I talked to no one who denies the basic fact that there is a problem that ought to be addressed. I think even the Senator from Nevada, with his vitriol and slander, implicitly concedes it is a major problem that ought to be addressed.

Now, a motion to proceed takes up the issue as to whether you ought to consider the bill. If the Senator from Nevada has valid amendments, I would like to see them. If he has a better bill, I would like to see that. I would vote for anybody's bill that is better than this one because we have to address the issue. When he talks about the Budget Committee, there are some technical problems here because the money goes through the Department of Labor, so it is a Federal expenditure, but it is not Government money; it is money contributed by the insurers and the manufacturers. There is no impact on the budget.

This bill is ironclad to eliminate any possibility of Federal funding. But if you want to use obstructionist tactics

and filibuster—the Senator from Nevada is good at that—if you want to use 60 votes to try to kill it on a motion to proceed, so be it. I know what the rules are here. But there is no reason not to proceed, and there is every reason to proceed. If you want to use the 60-vote technicality to sustain a budget point of order, you can do that, too. But there is no adverse impact on the Federal budget.

I regret I cannot stay and engage in this colloquy. I do have to get back to the Judiciary Committee.

I ask unanimous consent that the text of my full statement be printed in the RECORD.

Mr. President, again, this is S. 852, the Fairness in Asbestos Injury Resolution Act of 2005, FAIR Act, the successor to S. 1125 and S. 2290, the FAIR Acts of 2003 and 2004. My colleagues, Senator FRIST, Senator HATCH and Senator LEAHY, deserve enormous credit for the drafting of these acts and for the development of this legislation. There is a will in the Senate to enact legislation to end the ongoing rash of bankruptcies; to prevent the diversion of resources from those who are truly sick; to preserve jobs and pensions; and to solve the worst litigation crisis in the history of the American judicial system. The Senate plainly wants a more rational asbestos claims system, and I believe that this legislation offers a realistic prospect of accomplishing that result.

This legislation provides substantial assurances of acceptable compensation to asbestos victims and substantial assurances to manufacturers and insurers to resolve, with finality, asbestos claims. Over the past three decades, a solution to the asbestos crisis has eluded Congress and the courts. Some 77 companies have gone bankrupt, thousands of individuals who have been exposed to asbestos have deadly diseases—mesothelioma and other such ailments—and are not being compensated or because of the unfairness of the current system, see little of the awards they do win. A May 10, 2005, report released by the RAND Institute for Civil Justice estimates that nonmalignants make up about 90 percent of the litigation and most are unimpaired. According to RAND, the number of claims continues to rise, with over 730,000 claims filed already and some 200,000 pending. The number of asbestos defendants also has risen sharply, from about 300 in the 1980s, to more than 8,400 today and most are users of the product, not its manufacturers. These companies represent 85 percent of the U.S. economy and nearly every U.S. industry; including automakers, ship builders, textile mills, retailers, insurers, electric utilities and virtually any company involved in manufacturing or construction in the last 30 years.

Asbestos leaves many victims in its wake. First and foremost, the sick and their families have suffered and do not receive fair compensation in the tort

system. Asbestos victims filing claims receive an average of 42 cents for every \$1 spent on asbestos litigation. Today, 31 cents of every \$1 have gone to defense costs, and 27 cents have gone to plaintiffs' attorneys and other related costs.

The flawed asbestos litigation system not only hurts the sick and their chances of receiving fair compensation but also claims other victims. These include employees, retirees and shareholders of affected companies whose jobs, savings and retirement plans are jeopardized by the tide of asbestos cases. With asbestos litigation affecting so many companies, this also impacts the overall economy, including jobs, pensions, stock prices, tax revenues and insurance costs. According to a 2002 study by Nobel laureate Joseph Stiglitz, asbestos bankruptcies have cost nearly 60,000 workers their jobs and \$200 million in lost wages. Employees' retirement funds have shrunken by 25 percent.

In July 2003, the Judiciary Committee voted out S. 1125, a bill with numerous problems, largely along party lines, 10 yeas, 8 nays, 1 pass, in an effort to move the legislation. S. 1125 created the basic structure of the legislation, and made huge strides in working out the medical criteria. However, the bill foundered on other issues. In August, at my request, Judge Edward R. Becker, a Federal judge for 34 years, convened in his chambers in Philadelphia the so-called stakeholders; namely, manufacturers, labor, AFL-CIO, insurers and trial lawyers—to determine if some common ground could be found. Until the preceding May, Judge Becker had been the Chief Judge of the Third Circuit Court of Appeals and wrote the opinion in the asbestos class action suit that was affirmed by the U.S. Supreme Court.

From September 2003 through January 2005, there were some 36 stakeholder meetings held in my conference room, with Judge Becker as a pro-bono mediator, usually attended by 25 to 40 representatives with sometimes over 75 people present. I have also met 61 times since January 2005 with various officials from the administration, members of the Senate Judiciary Committee and their staffs, the Senate leadership and other Senators all in an effort to move this bill forward. Judge Becker and I have sought an equitable bill which took into account, to the maximum extent possible, the concerns of the stakeholders and to get their input on drafting of the bill. After analysis and deliberation, we found we could accommodate many of the competing interests.

This process commenced with the blessing of then-Chairman HATCH and Ranking Member LEAHY of the Judiciary Committee. This extended process allowed the stakeholders an extraordinary "hearing" process and really amounted to the longest "mark-up" in Senate history although not in the customary framework. We have had the

cooperation of many Senators. Senators HATCH and LEAHY have had representatives at all the meetings. The majority leader, Senator HATCH, and Senator LEAHY have addressed this "working group" at our meetings. Senator HATCH's and Senator LEAHY's representatives have been active participants at every meeting, as well as the members of the staffs of Senators BAUCUS, BIDEN, BROWNBACK, BURNS, CARPER, CHAFEE, CHAMBLISS, COBURN, CORNYN, CRAIG, DEWINE, DODD, DURBIN, FEINGOLD, FEINSTEIN, GRAHAM, GRASSLEY, HAGEL, KENNEDY, KOHL, KYL, LANDRIEU, LEVIN, LINCOLN, MURRAY, BEN NELSON, PRYOR, SCHUMER, SESSIONS, SNOWE, STABENOW, and VOINOVICH.

In 1997, the Supreme Court commented for the first time on the growing asbestos problem by stating, in the context of holding that asbestos litigation was not susceptible to class action treatment:

The most objectionable aspects of this asbestos litigation can be briefly summarized: dockets in both federal and state courts continue to grow; long delays are routine; trials are too long; the same issues are litigated over and over; transaction costs exceed the victims' recovery by nearly two to one; exhaustion of assets threatens and distorts the process; and future claimants may lose altogether. . . .

In the ensuing years with asbestos litigation increasingly choking the courts, the Supreme Court has repeatedly called upon Congress to act through national legislation:

In one case, the Court observed "the elephantine mass of asbestos cases . . . defies customary judicial administration and calls for national legislation."

A concurrence in the same decision found that the asbestos crisis "cries out for a legislative solution."

As recently as 2003, the Supreme Court reminded us that it had "recognized the danger that no compensation will be available for those with severe injuries caused by asbestos. . . . It is only a matter of time before inability to pay for real illness comes to pass."

Even though he dissented from the majority holding in that 2003 case, Justice Breyer observed: "Members of this Court have indicated that Congress should enact legislation to help resolve the asbestos problem. Congress has not responded."

The FAIR Act of 2005 is a response to the Supreme Court's many calls for national legislation to fix a broken asbestos litigation system. It is the product of these extensive negotiations among the key stakeholders. Throughout this process, the stakeholders reached important compromises that are now embodied in S. 852. The Judiciary Committee also spent a month marking up the bill last May during which time the committee accepted 75 amendments from both Republican and Democratic members. After extensive deliberation, the committee reported the bill favorably on May 26, 2005 on a strong bipartisan vote of 13-5.

The concept of a trust fund is an outstanding idea. Senator HATCH deserves

great credit for moving the legislation in the direction of a trust fund with a schedule of payments analogous to workers' compensation so the cases would not have to go through the litigation process. Under this proposal, the Federal Government would establish a national trust fund privately financed by asbestos defendant companies and insurers. No taxpayer money would be involved. Asbestos victims would simply submit their claims to the fund. Claimants would be fairly compensated if they meet medical criteria for asbestos induced illnesses and show past asbestos exposure. The trust fund would guarantee compensation for impaired victims.

Through a series of meetings with Judge Becker, we have wrestled with and have been able to solve a number of very complex issues. The size of the trust fund was always a principal issue of dispute, starting at \$108 billion. The manufacturers/insurers raised their offer to \$140 billion. In October 2004, Majority Leader FRIST and then-Democratic Leader Daschle agreed to \$140 billion. When Senator FRIST and Senator Daschle, in an adversarial context, agreed to the adequacy of the \$140 billion figure, it is difficult to exceed it even though the AFL-CIO did not contemporaneously agree.

It is not possible to say definitely what figure would be adequate because it depends on the uncertainty of how many claims will be filed. There is support for the adequacy of the \$140 billion figure from reputable projections, including the Congressional Budget Office cost estimate.

Since this bill was discharged from this committee in May, new reports analyzing the bill have been published—such as the CBO report and the Bates White report. In late August 2005, the non-partisan Congressional Budget Office issued its analysis of the bill. In its report, the CBO predicted that asbestos claims and award values could fall anywhere between \$120 to \$150 billion, and as a middle of the road assessment, concluded that the fund would likely payout \$132 billion over the life of the fund. It was reassuring to see CBO project \$132 billion as adequate to pay the claims in a contest where there are so many variables that do not lend themselves to precise projections or predictions. Even in the range of that uncertainty, the CBO has estimated that claims could be as low as \$120 billion and no higher than \$150 billion so that our legislation with \$140 billion is reasonable and realistically calculated to cover the claims, especially in the context with the provisions for review of medical criteria and award values to reduce expenditures or increase contributions in the trust fund.

In September 2005, the analysis by the Bates White firm concluded the proposed fund would face claims of between \$301 billion and \$561 billion, projecting that claimants with lung and other cancers, would inundate the fund. A hearing on this issue was held

by the Judiciary Committee on November 17, 2005. During the hearing we heard testimony on both sides of the issue. The Bates White study proved to be fatally flawed for reasons detailed at that hearing. Thus, in December 2005, CBO confirmed its original cost estimate, reaffirming that \$140 billion would be sufficient to cover claims filed for compensation under the trust fund.

The real safety valve, if the fund is unable to pay claims, is for the injured to have the ability to go back to court if the system is not operational and able to pay exigent health claims within 9 months after enactment, and all other valid claims within 24 months of enactment. Upon reversion to the tort system, the bill provides that claimants may file suits either in Federal Court or State Court in the State in which the plaintiff resides or State courts where the asbestos exposure took place. Forum shopping has been eliminated.

The claimants object to any hiatus between access to the courts and an operating system; but the reality is that court delays are customarily longer than the delay structured in this system. The defendants and insurers object saying it is too short a time frame, but they have the power to expedite the process by promptly paying their assessments. Leaders of the Manville Trust and the RAND Institute study provide a solid factual basis that the volume of claims can be efficiently administered by the fund administrator using a technique developed by the Manville Trust and other similar claims facilities that have processed asbestos claims for many years. The Manville Trust has processed as many as 150,000 claims per year. The number of exigent claims anticipated in the first 9 months of the fund is vastly smaller and even the total number of claims anticipated in the first 24 months is significantly less than which the Manville Trust has handled in a comparable period. Additionally, the bill provides the administrator with the option to contract out the exigent claims to a claims facility for expedited processing under the standards of the fund on a voluntary basis. The short time frame will prod the system to become operative at an early date. The bill sends the claims back to the fund as soon as it is certified operational with a credit for any payment of the scheduled amount.

Similarly, the defendants seek a commitment that the legislation will bar return to the courts for at least 7½ years. It is hard to see how the substantial fund would be expended in a lesser period. Here again, the legislation gives the defendant substantial assurances that the system will last at least 7½ years. If it collapses, the claimants should not bear the burden, but should reclaim their constitutional right to a jury trial. However, sunset

cannot take place before there is an extensive and rigorous “program review.” This would give the administrator an opportunity to refashion the program to compensate for any major shortcomings.

The claimants sought \$60 billion in startup contributions within 5 years and the defendants countered with a maximum of \$40 billion. The fund’s borrowing power should enable it to borrow at least the balance of \$20 billion because of the defendants continuing substantial financial commitments. Here again, the bill meets the standard of substantial assurances that \$60 billion will be in hand within the first 5 years.

A key issue for the claimant has been that of workers’ compensation subrogation. This issue is important because the value of an award to the claimant depends on whether the claimant may have to pay a substantial amount of it to others. While the precise picture is different from State to State, in general, workers’ compensation laws give employers, and their insurance carriers, subrogation rights against third-party tortfeasors and a lien on the injured employee’s recovery from a third-party tortfeasor. This is a big issue because workers’ compensation covers the employees’ medical costs.

We closely examined and considered including a proposal that would have called for a so-called workers’ compensation “holiday.” Such a proposal would have provided for a “holiday” from worker’s compensation payments during the period of receipt of payments from trust fund except to the extent that the compensation would exceed them, with a waiver of past and future subrogation. However, as each State has different workers’ compensation laws, we concluded that such a proposal could go beyond the practice in a number of States, leaving some claimants with a significantly reduced award.

Furthermore, claimants assert, with a substantial basis that the award values in the bill were designed with the understanding that there would be no liens or rights of subrogation against the claimants based on workers’ compensation awards and health insurance payments.

Therefore, after substantial analysis, we have determined that to be fair to victims, claimants should be allowed to retain both their fund awards and workers’ compensation payments. It is important that the bill must extinguish any liens or rights of subrogation that other parties might assert against the claimants based on workers’ compensation awards and health insurance payments.

Another key issue for the claimants has been the legislation’s treatment of asbestos disease claims under the Federal Employers’ Liability Act, FELA, the workers’ compensation system for rail workers. Earlier versions of the bill would have preempted FELA

claims for asbestos-related diseases, limiting victim’s recovery to compensation under a national asbestos trust fund. Rail labor asserts that such an approach is unfair to rail workers, since for all other workers, the bill maintains workers’ compensation rights. Alternative approaches to dealing with the FELA issue have been proposed, including providing for a supplemental payment, in addition to awards under the bill, to provide compensation to rail workers for work-related asbestos diseases. The AFL-CIO’s affiliates which represent workers in the rail industry have been engaged in discussions with industry on this issue, and a fair resolution has been reached. The bill provides for a principled compromise that would allow for a special adjustment for railroad workers so that the compensation award would be structured in a manner that would allow for corollary benefits—similar benefits for workers under FELA and workers compensation. It also clarifies that this legislation intends to deal solely with asbestos claims and does not in any manner impact FELA.

In these marathon discussions, plus four committee hearings on the issue in 2005, we understand the deep concerns expressed by the stakeholder representatives on more concessions for their clients. On the state of the 20-year record, this choice is not between this bill and one which would give their clients more concessions. The choice is between this bill and the continuation of the present chaotic system which leaves uncompensated thousands of victims suffering from deadly diseases and litigation driving more companies into bankruptcy.

We considered at length the manufacturers/insurers objections to medical screening, but concluded such a provision was necessary as an offset to the reduced role of claimant’s attorney. With the previous potential of a substantial contingent fee, claimants’ attorneys identified those damaged by exposure to asbestos. Absent that motivation, with the attorneys’ fees capped at 5 percent, it is reasonable to have routine examinations for people who would not be expected to go for such checkups on their own; so as a matter of basic fairness, such screening is provided. By establishing a program with rigorous standards, as we have done in this bill, unmeritorious claims can be avoided with the fair determination of those entitled to compensation under the statutory standard.

The legislation has closely examined the issues of so-called “leakage” in the fund and has provided that all asbestos claims pending on the date of enactment, except for non-consolidated cases actually on trial, and except cases subject to a verdict or final order or final judgment, will be brought into the asbestos trust fund. Furthermore, only written settlement agreements, executed prior to date of enactment, between a defendant and a specifically identifiable plaintiff will be preserved

outside of the fund; the settlement agreement must contain an express obligation by the settling defendant to make a future monetary payment to the individual plaintiff, but gives the plaintiff 30 days to fulfill all conditions of the settlement agreement.

We have also included in the legislation language designed to ensure prompt judicial review of a variety of regulatory actions and to ensure that any constitutional uncertainties with regard to the legislation are resolved as quickly as possible. Specifically, it 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 bill also authorizes direct appeal to the Supreme Court on an expedited basis. An action under this section is to 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.

Claimants also expressed the need for assurances on the manufacturers payment into the fund. Therefore, S. 852 requires enhanced “transparency” of the payments by the defendants and insurers into the fund. The proposal provides that 20 days after the end of such 60-day period, the administrator shall publish in the Federal Register a list of such submissions, including the name of such persons or ultimate parents and the likely tier to which such persons or affiliated groups may be assigned. After publication of such list, any person may submit to the administrator information on the identity of any other person that may have obligations under the fund. In addition, there are enhanced notice and disclosure requirements included in the legislation. It also provides that within 60 days after the date of enactment, any person who, acting in good faith, has knowledge that such person or such person’s affiliated group would result in placement in the top tiers, shall submit to the administrator either the name of such person or such person’s ultimate parent; and the likely tier to which such person or affiliated group may be assigned under this act.

As I have mentioned previously, this legislation deals with a number of very complex issues, one of them being that of “mixed-dust.” We held a hearing in the Judiciary Committee on this issue on February 2, 2005. The manufacturers fear that many asbestos claims will be “repackaged” as silica claims in the tort system. Evidence adduced at the hearing reflects that this has been happening in a number of jurisdictions. If a claim is due to asbestos exposure at all, the program should be the exclusive means of compensation. The stakeholders agree that this is an asbestos bill, designed to dispose of all asbestos claims but that workers with

genuine silica exposure disease ought to be able to pursue their claims in the tort system. The problem is that with those claims where the point of demarcation is unclear. Silica/asbestos defendants are worried that they will find themselves in court with the burden of proving that the plaintiffs injury is due to asbestos rather than silica. S. 852 makes clear that pure silica claims are not preempted, but claims involving asbestos disease are preempted. A claimant must provide rigorous medical evidence establishing by a preponderance of evidence that their functional impairment was caused by exposure to silica, and asbestos exposure was not a significant contributing factor. Although this does impose the burden on the claimant, this is no different than the burden the plaintiff or any party advancing a position has in producing medical evidence in any case that the physician will state that a disease was caused by some condition or exposure or that it was not caused by some condition or exposure. In addition, the testimony given at the February hearing on the issue established that asbestos and silica are easily distinguishable on x ray and that asbestos and silica rarely are found in the same patient.

Another very complicated issue I have addressed in my legislation, at the request of the claimants, is that of providing for award adjustments for exceptional mesothelioma cases based on age and the number of dependents of the claimant. For example, a mesothelioma victim who is 40 years old with two children will be able to get an upwards adjustment in his award amount as compared to a 80 years mesothelioma victim with no dependents. The impact of such adjustments to the fund will remain revenue-neutral.

There has been a strong concern that this bill should not become a "smokers" bill rather than an asbestos bill—that thousands of smokers will claim to be in the level VII compensation tier in order to get money even if asbestos had nothing to do with their disease. After long discussions with the various sides, it has been decided to remove level VII cases from the fund, cases which had the potential to bring down the entire fund.

There has also been a concern with the legitimacy of the level VI compensation tier. We requested that the Institute of Medicine, IOM, commence a study to assess the medical evidence so as to determine whether colorectal, laryngeal, esophageal, pharyngeal or stomach cancer can be caused by asbestos exposure. The IOM will conclude its study of level VI causation by April 2006. With a 270-day stay on exigent cases and 2-year stay of all other cases, this has the practical impact of the IOM study results being conclusive on inclusion or exclusion of level VI prior to any claim being filed.

Therefore, the bill retains the level VI tier pending the IOM study conclusions but continues to provide exten-

sive safeguards to the fund against those individuals with these diseases making claims against the Asbestos Trust Fund. Any level VI claim must be based on findings by a board-certified pathologist accompanied by evidence of a bilateral asbestos-related nonmalignant disease; evidence of 15 or more weighted years of substantial occupations exposure to asbestos; and supporting medical documentation establishing asbestos exposure as a contributing factor in causing the cancer in question. The claim must also be referred to a physicians panel for a determination that it is more probable than not that asbestos exposure was a substantial contributing factor in causing the other cancer in question. Further, the bill mandates that the physicians panel review the claimants smoking history as opposed to "claimant may request."

The FAIR Act is a complicated bill, but one that is both integrated and comprehensive and reflective of a remarkable will to enact legislation. If this bill is rejected, I do not see the agenda of this Senate Judiciary Committee revisiting the issue. I cannot conceive of a more strenuous effort being directed to this subject that has been done over the past 2½ years. This is the last best chance.

I remain confident that during debate on the Senate floor, we can forge and enact a bill that is fair to the claimants and to business and that will put an end once and for all to this nightmare chapter in American legal, economic and social history. If we can summon the legislative will in a bipartisan spirit, it can be done. Anything less would preserve the injustices of a system that even the highest Court of this country has called upon the Congress to fix.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, I want to make sure the record reflects that I have the highest regard for PAT LEAHY and ARLEN SPECTER. If I in any way embarrassed them or hurt their feelings, I am sorry I did that. Certainly, it was nothing I said that indicated they did anything that was unbecoming regarding this legislation. That is how I feel. But that doesn't take away from the fact that I think it is outrageous that these 13 companies spent \$144.5 million lobbying this legislation. I will not get away from that.

We need lobby reform in this country. We need to start on that right now. I want to make sure the record reflects this also. The week before last, my communications center put out a piece of mail I didn't see. It went out—and that is not much of an excuse, but it is true. The minute I learned about it, I wrote a letter. It was as close as anything I could do from my heart. What I did in not reading that letter before it went out from my office is wrong. I take full blame for that. But anything in that letter—I mean, to show you, Mr. President, there was a

derogatory statement about my friend from Nevada, Senator ENSIGN. As everyone knows here, I would never say anything negative about him. We may disagree on legislation, but I would never say anything in a negative way about him. He was one of the 33 mentioned in that letter. So I apologized to him and to all 32 others. I meant that. It was wrong what I did, but I have said that.

I am sorry my friend from Pennsylvania raised that. I did the best I could in resolving that as an issue, putting that to each of those Senators, saying I am sorry. I received phone calls from a number of Senators and I have had personal meetings with them. They accepted my apology.

Also, we should not do things on a personal basis here, and I didn't do that. I complained bitterly about this legislation. I cannot stand this legislation, and contrary to what my friend from Pennsylvania says, I pretty well understand it. Maybe I don't understand it as well as he does, but I understand it. Everything I said about this legislation in my remarks is meant by me. I meant every word I said.

For the Senator to disparage me because I didn't attend the Judiciary Committee hearing, I am not a member of the committee. If I spent my time, or the Presiding Officer did, going to committees we don't belong on, it would make for a very difficult scene around here.

I disagree with my friend, the Senator from Vermont, Senator LEAHY, on this legislation. I think it is misguided legislation. But he did it and I have talked to him personally about how I think it is bad. He told me where he thinks it is good. We disagree. I asked the assistant Democratic leader, Senator DURBIN, to be the floor manager on this because he and I and the vast majority of the Democrats oppose this legislation.

I am sorry the Senator from Pennsylvania thought my remarks were rambling and disconnected. I guess it is up to the people who watch this—not my friend from Pennsylvania—to determine whether it is rambling and disconnected. If the Senator thinks I was in some way disparaging him, I certainly didn't mean it. I am disparaging this legislation. I think it is bad legislation, and I think the people it hurts more than anybody else are the victims.

The distinguished Senator from Pennsylvania said I have no interest in this legislation. Why would I be here if I have no interest in the legislation? I have an interest. It is different than his. He says I fake concern about this. I am sorry he feels that way. I am concerned about this legislation.

For the reasons I have enumerated in my opening statement, I think this is a bad piece of legislation that is not good for the American people.

The bankrupt companies—of course, I am concerned these companies went bankrupt. For example, U.S. Gypsum is

out of bankruptcy. It has made a settlement. It has settled with all the claimants for under \$1 billion. But it is interesting. They have said, coming out of bankruptcy and their settlement, if this legislation passes, they will have to contribute \$3 billion to this fund. I would rather U.S. Gypsum contributed money to any trust fund than all these many companies I talked about, three of whom have been in business for many years and have said they are going to go into bankruptcy.

I believe, as far as saying some unions favor this legislation, there are a few—very few, such as the United Auto Workers. I have a letter, which I ask unanimous consent be printed in the RECORD, from the AFL-CIO. They oppose this legislation.

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

AMERICAN FEDERATION OF LABOR  
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

*Washington, DC, February 2, 2006.*

DEAR SENATOR: I am writing to outline the AFL-CIO's concerns about the Fairness in Asbestos Injury Resolution Act of 2005 (S. 852), legislation that will have a direct impact on millions of workers exposed to asbestos.

On May 24, 2005 we wrote to Senators to express our view that S. 852 contained important deficiencies that would deny fair and timely compensation to tens of thousands of asbestos victims. With the bill headed to the floor, perhaps as early as next week, I am writing to restate these objections with the hope that they will be addressed before the Senate completes action on the bill. Though several AFL-CIO affiliates have recently expressed support for the bill, a majority continue to feel that unless these issues are satisfactorily resolved, the asbestos trust fund will fall short of its promise to fairly compensate the victims of this devastating disease.

First, we remain deeply dismayed about the bill's start-up provisions, where the interests of defendants who are responsible for the disease crisis have become paramount and the needs of victims have become a secondary consideration. Addressing the so-called "leakage" to the tort system has become more important than ensuring just compensation for those who are sick.

As currently amended, S. 852 places the burdens and risks of the fund's start-up squarely on the shoulders of those who are sick. If S. 852 becomes law, by any realistic estimate it will take more than a year—and very possibly several years—to put in place the procedures, and retain and train the personnel necessary to properly administer not only the new claims procedure, but also the complex mechanism established under the bill for assessing and collecting contributions from defendants and insurers. As recent experience has amply demonstrated, the infrastructure necessary to properly operate a major new program of this magnitude simply cannot be created overnight. Under S. 852, however, the ability of asbestos victims to obtain compensation through the current system is cut off immediately upon enactment. Not only are provisions eliminating access to the courts for asbestos victims effective as soon as the bill becomes law, the bill also provides for immediate shutdown of the so-called "524(g)" bankruptcy trusts established by companies like Halliburton and Johns Manville to pay asbestos claims—trusts that are currently providing com-

penensation to tens of thousands of asbestos victims per year, using funds specifically set aside in bankruptcy proceedings expressly for the purpose of paying asbestos claims.

The bill attempts to provide a mechanism through which terminally ill claimants will be able to obtain payments during the period before the new fund is fully operational, but all other claimants, no matter how serious their illness or disability, can be left without a remedy for an indefinite period of time. If the fund is still not operational after 24 months, the bill ostensibly gives those claimants the right to pursue their claims in court. But that right is in fact illusory, since if and when the fund does become operational the right to proceed in court will again be extinguished, making it impractical for claimants to pursue that option. And because the bankruptcy trusts are eliminated as of enactment, that remedy will remain unavailable. Thus, the practical effect of the bill will be to leave non-exigent claimants with nowhere to go to obtain compensation for their illness until such time as the fund is able to process their claims, no matter how long that takes. Using CBO estimates, by 2008 the number of sick claimants in this situation could number more than 110,000.

In our view, it is unfair to leave victims with serious illnesses without any remedy in this manner. The uncertainty associated with the start-up of the fund should be borne by those responsible for the asbestos disease crisis—the defendant companies—not asbestos disease victims. At a minimum, the bill should permit the asbestos bankruptcy trusts to remain in place to pay all impaired claimants who qualify under those trusts, until the national trust fund is fully operational.

Second, S. 852 unfairly restricts the legal rights of victims with silica disease. It establishes medical criteria for lawsuits by individuals who have both asbestos-related disease and silica-related disease, which will bar many of them from seeking compensation for their silica-related injury. The only recourse for victims of both diseases will be to seek compensation for their asbestos disease from the asbestos fund—which in most cases will be limited to \$25,000 for Level II "mixed disease." This legislation should not be a tort reform bill for silica disease. All victims with silica-related disease, including those who also have asbestos disease, should have the right to seek redress in the courts for their silica injury, with any damages limited to the injury attributable to their silica exposure.

Third, the sunset provisions of the bill are also problematic and unclear. While the bill provides for a return to the tort system in the event the trust fund has insufficient funds, as drafted the bill does not provide for an orderly process for anticipating and working to correct identified problems before reaching the point where the fund would be forced to shut down. In addition, in the event of reversion, some claimants would be barred from returning to court due to problems with provisions on post-sunset statute of limitations and language limiting the legal venue where claims may be brought. A provision added at mark-up that relieves insurers of their guaranteed funding obligation creates another major problem. This provision undermines the funding formula, borrowing authority, and sunset determination and may leave the fund with a shortfall it cannot make up.

Fourth, the bill completely cancels legal and otherwise binding settlements unless (a) they are signed by the individual plaintiff and the "settling defendant" before the enactment date and

(b) within 30 days after enactment, all parties complete all required performance, ex-

cept making payments. Because nothing requires the "settling defendant" to sign the agreement or to complete performance, this permits defendants to void their commitments. These settlements are legal commitments by defendants to provide compensation, in exchange for which plaintiffs have given up their legal rights. There is no justification for enabling defendants to abrogate those agreements, cancel payments to victims, many of whom have been waiting for years, and require the claimants to go back to square one and start a whole new process in the fund.

Fifth, we remain deeply concerned about the bill's overly broad definition of an asbestos claim. S. 852 is intended to provide an alternative remedy for personal injury claims related to asbestos, and preempts these claims from being pursued in the tort system. But rather than limit the bill's application to such claims, the bill defines asbestos claim very broadly, to include virtually any civil action that is directly or indirectly related to the health effects of exposure to asbestos, and then includes a list of the specific types of claims that are excluded. This overly broad definition of asbestos claim will have the unintended effect of preempting many civil actions related to asbestos that have nothing to do with personal injury claims. The definition of asbestos claim should be clear and limited to personal injury claims, which is the only type of claim for which the Fund will be providing compensation.

Sixth, while we support limits on attorneys fees, we believe that the hard 5 percent cap for all claims may not be sufficient for claimants with complex cases to obtain adequate legal representation, and that a different type of cap/fee limitation is needed for the Level I claims that do not have a monetary award. The AFL-CIO believes that the fee limitation should be applied to claims involving monetary awards and that the Administrator should be given the discretion to increase the attorneys' fee limit if experience shows that it is impeding the ability of claimants to secure compensation under the Act.

In addition to these long-standing issues, in the past several months new important information about potential claims and costs has become available from the Manville Trust and others that suggests that future mesothelioma cases, as well as the number of pending claims, maybe significantly higher than previously estimated. The Congressional Budget Office should conduct a full review of this new information so the Senate can have the most up-to-date cost analysis as it considers this legislation.

Throughout the legislative process, our goal has been to arrive at a bill that provides fair and timely compensation to victims through an efficient and workable process. We acknowledge that important improvements to S. 852 have been made, but more needs to be done before the bill can fulfill its promise to provide fair and timely compensation to the victims of asbestos disease.

Sincerely,

JOHN J. SWEENEY,  
*President.*

Mr. REID. Mr. President, the final point I would like to say, through the Chair to the senior Senator from Pennsylvania, is I didn't mention LIHEAP in my statement. I didn't mention it at all, although it is something we need to take up, but for reasons I was discussing with Senator FRIST, I decided not to do that.

The other issues I meant to bring up but I didn't mention LIHEAP. That

didn't come from my mouth. LIHEAP is something we are obligated to do and do it as soon as we can. There has been a commitment made by the majority leader and me to a Senator from the majority that we would do something about that. But I didn't mention LIHEAP.

I know the Senator spent a lot of time on this. One of his friends, a classmate—I don't know what the relationship is, but it goes back many decades—Judge Becker, they spent a lot of time on this. I know this legislation means a lot to the Senator from Pennsylvania.

But just because this legislation means a lot to him doesn't mean I have to support it.

As much as I think of the Senator from Pennsylvania, which is a lot—I have had admiration for him and told him on many occasions. I am one of the few people who read his book, and I enjoyed reading his book. If I hurt the Senator's feelings—maybe that is the wrong word—I apologize.

Certainly, the Senator from Vermont and I know each other very well. I would never, ever intentionally do anything to embarrass or hurt his feelings. I say, through the Chair to my friend from Vermont, I don't like this legislation. It is bad, and I am going to do everything I can to stop this bill from going through. If I can't do it, then I am a big guy, and I understand a lot of times you don't win around here. But that doesn't take away my obligation of doing the very best I can to talk about this legislation. I am going to continue doing that. I don't like this legislation for the reasons set forth.

A final thing I would like to say is that I have given these estimates as to what is wrong with the bill from a dollar perspective. There are parts that I have read. I think I am right, and I think time will prove, without question, that \$140 billion is wrong, no matter if Senator FRIST or Senator Daschle, or whoever, agreed to this amount. Where the number came from, I don't know, but it certainly is not enough. Looking back a couple years ago when Senator Daschle was involved in this issue, maybe he at that time thought it was the right amount. I have disagreed, and I disagree now.

Again, so the record is clear, I don't mean to violate rule XIX, but I am going to continue pushing for reform. When legislation such as this requires 13 companies to spend \$144.5 million on lobbying activities, that is too much.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, very briefly, my feelings are not hurt. My feelings are an irrelevancy. If they were relevant, they still have not been hurt. My concern is for the feelings of the people who have been victimized by asbestos and have no one from which to collect.

I don't make any point about having done a lot of work on this bill. I don't do piecemeal around here. I do work on

a lot of bills. I do not personalize it at all. My thrust is strictly on the merits, on a way to fairly compensate victims, on a way to stop more companies from going into bankruptcy, on a way to stop the hemorrhaging of job losses, and a way to stimulate the economy. I make the submission of this bill strictly on the merits.

I compliment Senator LEAHY on what he has done on this bill, as well as his staff, in coming together and structuring the bill, again, in meeting after meeting and in discussion after discussion. What we asked our colleagues to do is to take a look at the merits. Don't be concerned about the work that we put into it, don't be concerned about our feelings; be concerned about the problem and about our suggested solution and about our openness to make changes. If anybody has amendments, we will consider them. If somebody has a better bill, we will consider that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, both the distinguished senior Senator from Pennsylvania and I have been tied up much of today in a matter involving wiretapping of Americans and other issues. We will be going back to that. I know the Senator from Pennsylvania is returning to the committee.

I am going to ask unanimous consent that the Senator from Illinois be able to have the floor for up to 30 minutes following me.

Before I make that request, if I may have the attention of the Senator from Pennsylvania or the Senator from Tennessee, I am going to make the request that the Senator from Illinois, Mr. DURBIN—we are all at the same hearing—that the Senator from Illinois, Mr. DURBIN, who has a position different to that of mine and the Senator from Pennsylvania, that he be recognized for up to 30 minutes once I complete my comments, unless, of course, either of the leaders object.

The PRESIDING OFFICER (Mr. BURR). Is there objection?

Mr. FRIST. Reserving the right to object.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I have a statement to make following the remarks of Senator LEAHY.

Mr. LEAHY. Mr. President, I ask unanimous consent then that after the distinguished Republican leader, the distinguished Senator from Illinois be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, there has been some question about—and I think I am fortunate—comments suggesting motivation of veterans who support this legislation. A lot of veterans support this legislation. A lot of veterans have been badly damaged by exposure to asbestos, and they have no way of seeking compensation except in this legislation.

A lot of labor unions feel the same way. These are not the so-called K Street lobbyists, these are not special interests; these are people who care about those they represent, the veterans they represent, the workers they represent.

I ask unanimous consent that these letters of recommendations be printed in the RECORD, and I will name them:

A letter from the Military Order of the Purple Heart, another signed by the Air Force Sergeant Association, American Ex-Prisoners of War, Blinded American Veterans Foundation, Blinded Veterans Association, Fleet Reserve Association, Jewish War Veterans of the USA, Marine Corps League—my son is a former marine—Military Officers Association of America, National Association of Black Veterans, Non-commissioned Officers Association, National Association of Uniformed Services, National Association of State Directors of Veterans Affairs, Paralyzed Veterans of America, Pearl Harbor Survivors Association, Retired Enlisted Association, Veterans of the Vietnam War, Inc., Veterans of Foreign Wars of the United States, Women in Military Service for America, Memorial Foundation, Inc., the U.S. Submarine Veterans, Inc., Lockwood Internet Base, U.S. Submarine Veterans of World War II, U.S. Submarine Veterans Base Rhode Island, U.S. Submarine Veterans World War II Thames River Chapter, U.S. Submarine Veterans World War II Central Connecticut Chapter, the UAW, the Heat & Frost Insulators & Asbestos Workers International, the International Union of Painters and Allied Trades, the Governors of Alaska, Arkansas, Michigan, Mississippi, Missouri, Montana, Ohio, Utah, and Vermont, and the National Federation of Independent Business, NFIB. Those are among some of those.

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

INTERNATIONAL UNION OF  
PAINTERS AND ALLIED TRADES,  
Washington, DC, August 17, 2005.

Re: S. 852, the "Fairness in Asbestos Injury Resolution Act of 2005 (FAIR Act)"

Hon. ARLEN SPECTER,  
U.S. Senate,  
Washington, DC

Hon. PATRICK LEAHY,  
U.S. Senate,  
Washington, DC

DEAR SENATORS SPECTER AND LEAHY: I write you today in regard to S. 852, the "Fairness in Asbestos Injury Resolution Act of 2005 (FAIR Act)". On behalf of 140,000 families represented by the International Union of Painters and Allied Trades, IUPAT, I would like to express our strong support for S. 852 in its current form and your continued efforts toward a bipartisan bill that will ensure true, just and fair compensation to current and future victims of asbestos exposure.

We appreciate all efforts to incorporate a number of key provisions and safeguards that have been advocated on behalf of workers who have been harmed by exposure to asbestos and who have been adversely affected by a current asbestos compensation system that is slow, costly, unfair and arbitrary. However, the IUPAT remains concerned

about potentially hostile amendments that may be offered on the Senate or House floor that would effectively undermine key provisions of the bill dealing with funding, medical criteria, awards, and other issues. We will continue to urge you, along with other Senate and House members, to reject any such amendments. Should any amendments be adopted that would undercut the progress made on this complex issue the IUPAT will have no other choice but to withdraw our support for the bill.

We feel the trust fund model is the best solution for addressing the asbestos compensation crisis workers and business currently face. After years of numerous stakeholder meetings, we are confident that our members' and all affected workers' interests are best protected by key provisions in your legislation as presently drafted. Of particular interest to us are provisions contained within your legislation that ensures fair compensation to asbestos victims with mesothelioma, lung cancer, or those victims who have impairment from asbestosis or asbestos exposure that includes objective medical evidence or markers of asbestos exposure that includes CT scan review; no delay for victims' access to the tort system in state or federal court if the trust fund becomes insolvent; protection for victims from insurance subrogation; a ban of asbestos in the United States; a medical screening program for high risk workers; and enforcement provisions to prevent needless exposure to asbestos by uninformed and unsuspecting workers.

It is our hope that the International Union of Painters and Allied Trades' support for S. 852, along with other labor organizations, businesses, employer associations, and victims' groups, will allow this bipartisan bill to receive strong backing in the Senate on final passage and will therefore assure that the Senate passed bill with the aforementioned key provisions is accepted and passed by the House of Representatives.

Thank you for your continued efforts in dealing with this important issue.

Sincerely and fraternally,

JAMES A. WILLIAMS,  
General President.

OCTOBER 7, 2005.

Hon. BILL FRIST,  
Majority Leader, U.S. Senate, Washington, DC.  
Hon. HARRY REID,  
Minority Leader, U.S. Senate, Washington, DC.

DEAR MAJORITY LEADER FRIST AND MINORITY LEADER REID: On July 18, the National Governors' Association approved a revised policy on Asbestos Litigation Reform. This policy calls for legislative action to address this continuing problem affecting states in a variety of ways.

America faces a crisis from asbestos litigation that continues to take its toll on the sick, their families, and our economy. Today there are hundreds of thousands of asbestos claims in the courts with tens of thousands of new claims filed each year. This is a unique legal situation that requires congressional action to alleviate this logjam of cases.

In addition to those who have become sick from asbestos exposure, the impact of the claims also hurts employees, retirees, shareholders, and customers of defendant companies, whose jobs and savings are jeopardized or lost. Our national economy also is hurt in the areas of jobs, pensions, stock prices, tax revenues, and insurance costs. We believe that this is truly a national crisis. Without a solution, more companies will be forced into bankruptcy, delaying and reducing resources available to pay those who are now sick or may become sick in the future.

We believe that it is time for Congress to respond to the Supreme Court's repeated

calls for a legislation solution to this crisis. Congressional enactment of legislation is imperative to ensure that those ill from exposure to asbestos-containing products and their families are fairly compensated and that defendant companies are financially secure so that they can pay present and future claims.

We understand S. 852, the "Fairness in Asbestos Injury Resolution Act of 2005," was voted out of the Judiciary Committee with a bipartisan 13-5 majority and is ready for action on the Senate floor. We urge you to schedule debate on this critical legislation as soon as possible.

Sincerely,

Governor Frank H. Murkowski, Alaska;  
Governor Mike Huckabee, Arkansas;  
Governor Jennifer M. Granholm,  
Michigan; Governor Haley Barbour,  
Mississippi; Governor Matt Blunt, Missouri;  
Governor Brian Schweitzer,  
Montana; Governor Bob Taft, Ohio;  
Governor Jon Huntsman Jr., Utah;  
Governor Jim Douglas, Vermont.

NATIONAL FEDERATION  
OF INDEPENDENT BUSINESS,  
Washington, DC, February 6, 2006

Hon. ARLEN SPECTER,  
U.S. Senate, Hart Senate Office Building,  
Washington, DC.

DEAR SENATOR SPECTER: On behalf of the 600,000 members of the National Federation of Independent Business, I am writing to express our support for S. 852, "The Fairness in Asbestos Injury Resolution (FAIR) Act of 2005." The FAIR Act will help protect innocent small-business owners from the asbestos litigation crisis that now threatens their business.

Asbestos lawsuits against small businesses are on the rise. After years of suing large corporations for multi-million dollar damage awards, "traditional" asbestos manufacturers and defendants are mostly bankrupt. As a result, asbestos litigation now targets companies far removed from any potential wrongdoing, including small businesses. This relatively untapped pool of defendants is an attractive target for trial lawyers since small-business owners and their insurers can be forced to pay millions of dollars in damages. Horrifying for a small-business owner is the prospect that they can be hauled into court without having any relationship to asbestos or the plaintiff. Many small businesses are forced to settle because they don't have the money or time to be away from their businesses. Not only do they face the stigma of having to settle, and the loss of time and money, but they will likely also experience higher insurance rates.

By creating an alternative compensation system to resolve asbestos claims, S. 852 will fix a badly broken system that is not working and, in the process, compensate victims faster. In addition to lawsuit relief, the legislation relieves small businesses with either low or no asbestos liability from having to pay into the compensation fund. No business that meets the Small Business Administration description of a small business can be required to pay a penny into the fund. Nor will any small business that has carried less than \$1 million in asbestos expenditures before December 31, 2002 have to pay into the fund.

This legislation will help prevent small businesses from having to spend the time and money to defend themselves in asbestos lawsuits. It takes a significant step towards fixing part of our litigation crisis that hurts business, big and small, and ultimately keeps the victim from receiving compensation.

Thank you for your support of small business.

Sincerely,

DAN DANNER,  
Executive Vice President,  
Public Policy and Political.

MILITARY ORDER OF THE  
PURPLE HEART,  
Springfield, VA, December 13, 2005.

Hon. PATRICK LEAHY,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR LEAHY: On behalf of The Military Order of the Purple Heart (MOPH), I ask you to join our organization and roughly a dozen other national veteran service organizations and support passage of S. 852, the Fairness in Asbestos Injury Resolution (FAIR) Act.

Years after serving in the military, many veterans are now discovering they suffer from terrible diseases related to the asbestos they were exposed to during their time in the U.S. military. The government used asbestos materials in a number of facilities and crafts, affecting the health of the men and women serving before and after the Second World War.

The FAIR Act offers sick veterans a way to receive the compensation they deserve. Right now, it is difficult for veterans to turn to the courts for help with their asbestos-related medical costs. Veterans are barred by law from suing their employer (the federal government) for compensation. But by taking asbestos claims out of the court system, the FAIR Act will ensure veterans will have a speedy and just avenue for receiving compensation.

Senator Bill Frist, with bipartisan support; recently asserted that he will make the FAIR Act a top priority for the Senate in January. He clearly understands that the FAIR Act is the only viable solution for sick veterans. Passage of this bill would provide immediate and ample aid to veterans as well as other victims of asbestos exposure.

Please vote yes on the FAIR Act and help relieve the suffering and financial burden of our veterans.

Respectfully,

JAMES D. RANGLES,  
National Commander.

JANUARY 31, 2006.

Hon. HARRY REID,  
Democratic Leader, U.S. Senate,  
Washington, DC.

DEAR SENATOR REID: Veterans across the country who are afflicted with asbestos-related diseases would at last get compensation and relief under the Fairness in Asbestos Injury Resolution (FAIR) Act. But according to a number recent media reports, you have labelled the FAIR Act as a bill that caters to special interests and have informed Majority Leader Frist in writing that you will oppose this critical legislation. In all frankness, your words and actions are extremely disappointing to veterans across this nation—surely you do not consider sick veterans to be a "special interest"?

The FAIR Act will provide proper compensation to sick men and women who volunteered to fight for our country—compensation they simply can't get under the current system. The military used asbestos throughout its facilities, bases, and ships during and after World War II, and countless veterans were exposed to this deadly material. But because the U.S. government has asserted sovereign immunity, these sick veterans are unable to seek compensation from the government through the courts.

The FAIR Act's victims' trust fund would open a door for veterans that has been closed for years.

We are disappointed that you are trying to keep that door closed and stop veterans from receiving the compensation they deserve. Sick veterans—and indeed, all victims—deserve better than political gamesmanship on this critical issue. We urge you not to stand in the way of full Senate consideration of this vital legislation.

The FAIR Act is more than overdue. The Senate has been debating these reforms for years. Sick victims, including sick veterans, shouldn't be forced to wait for help any longer.

Sincerely,

Air Force Sergeant Association.  
American Ex-Prisoners of War  
Blinded American Veterans Foundation.  
Blinded Veterans Association.  
Fleet Reserve Association.  
Jewish War Veterans of the USA.  
Marine Corps League.  
Military Officers Association of America.  
Military Order of the Purple Heart.  
National Association of Black Veterans.  
Non Commissioned Officers Association.  
National Association of Uniformed Services.  
National Association of State Directors of Veterans Affairs  
Paralyzed Veterans of America.  
Pearl Harbor Survivors Association.  
The Retired Enlisted Association.  
Veterans of the Vietnam War, Inc.  
Veterans of Foreign Wars of the US.  
Women in Military Service for America.  
Memorial Foundation, Inc.  
U.S. Submarine Veterans, Inc.  
U.S. Submarine Veteran, Inc Lockwood Internet Base.  
U.S. Submarine Veterans of World War II.  
U.S. Submarine Veterans Base Rhode Island.  
U.S. Submarine Veterans World War II Thames River Chapter.  
U.S. Submarine Veterans World War II Central Connecticut Chapter.

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA—UAW.

Washington, DC, February 3, 2006.

DEAR SENATOR: Next week the Senate is scheduled to take up the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852), sponsored by Senators Specter and Leahy. The UAW strongly supports this legislation. We urge you to support this critically important legislation, and to support cloture both on the motion to proceed and on the bill itself.

The UAW supports S. 852 because we are firmly convinced it would be far superior to the current tort system in compensating the victims of asbestos-related diseases. Under the existing tort system, many victims receive little or no compensation because those responsible for the asbestos exposure are bankrupt, immune from liability or can't be identified. Even when victims do receive some award, the litigation takes far too long, and the amounts are highly unpredictable. Far too much money is wasted on attorney fees and other litigation costs, or dispersed to individuals who are not impaired.

The Specter-Leahy bill would solve these problems by establishing a \$140 billion federal trust fund to compensate the victims of asbestos-related diseases through a streamlined, no-fault administrative system. This system will provide much speedier compensation to victims according to a predictable schedule of payments for specified disease levels that focuses compensation on those who have the most serious impairments. It will also guarantee that victims can receive adequate compensation, regardless of whether those responsible for the as-

bestos exposure are bankrupt or otherwise immune from liability.

The UAW strongly supports the provision in the Specter-Leahy bill that does not permit any subrogation against worker compensation or health care payments received by asbestos victims. We believe this provision is essential to ensure that victims receive adequate compensation, and do not have their awards largely offset by other payments. We strongly urge you to oppose any amendment that would undermine victims' compensation by allowing subrogation.

The UAW also urges you to reject any other amendments that would reduce or restrict eligibility for compensation for the victims of asbestos-related diseases. This includes any amendments that would strike medical monitoring or eliminate Level VI awards.

The UAW supports the provisions in S. 852 that require broad sections of the business and insurance industries to make contributions to finance the \$140 billion federal trust fund. We believe this broad-based, predictable financing mechanism is vastly preferable to the current tort system, which has already driven many companies into bankruptcy, and is threatening the economic health of other companies that used products containing asbestos, including the major auto manufacturers. Continuation of the existing tort system will inevitably lead to more bankruptcies, resulting in more lost jobs and wage and benefit cut backs for workers and retirees. However, to ensure that the financing mechanism in S. 852 remains equitable and workable, the UAW believes it is essential that the Senate reject any amendments that would severely narrow or cap the financing base and jeopardize the guarantee that \$140 billion will be made available to compensate asbestos victims.

The UAW recognizes that a number of specific concerns have been raised by other labor organizations about various provisions in S. 852. We are continuing to work for improvements in the legislation, and are hopeful that Senators Specter and Leahy will largely address these concerns in a manager's amendment.

However, the UAW does not agree with those who have taken exception to the 5 percent cap on attorney fees for monetary claimants. This cap ensures that asbestos victims will be adequately compensated, and not see their awards severely reduced by exorbitant attorney fees. This cap will not impede the ability of claimants to get adequate legal representation. Because S. 852 establishes a non-adversarial, no-fault administrative system, the difficulties and costs involved in bringing asbestos claims will be greatly reduced. Indeed, much of the work can be done by paralegals. We also believe that labor unions and other groups can help provide free or lower cost representation for asbestos victims by hiring staff attorneys and other professionals to process the claims under the no-fault administrative system. Through such mechanisms, asbestos victims can receive competent representation with little or no attorney fees being deducted from their awards.

Finally, the UAW recognizes that questions have been raised about the projections for asbestos claims and the solvency of the trust fund. We would note that most stakeholders agreed to \$140 billion in financing early last year. Although all of the projections are subject to some element of uncertainty, the UAW believes that the \$140 billion in financing is sufficient to enable the trust fund to compensate asbestos victims for a lengthy period of time. It is also important to remember that S. 852 provides for reversion of asbestos claims to the tort system in the event the federal trust fund should

ever have insufficient funds to pay all claims. While we hope these reversion provisions will never be triggered, they do provide assurance that victims will always have some recourse for seeking compensation.

It is easy for critics to point out shortcomings in S. 852. The UAW submits, however, that it is abundantly clear the asbestos compensation system established by the Specter-Leahy bill would be far preferable to the existing tort system. It would do a much better job of providing prompt, equitable compensation to asbestos victims. And it would finance this compensation through a rationale system that does not lead to bankruptcies that threaten the jobs, wages and benefits of thousands of workers.

For all of these reasons, the UAW strongly supports the FAIR Act, S. 852. We urge you to vote for this legislation, and to support efforts to invoke cloture on the motion to proceed and on the bill itself.

Thank you for considering our views on this vital issue.

Sincerely,

ALAN REUTHER,  
Legislative Director.

INTERNATIONAL ASSOCIATION OF  
HEAT & FROST INSULATORS & ASBESTOS WORKERS.

Lanham, MD, February 6, 2006.

DEAR SENATOR, We strongly support the courageous and bi-partisan work of Senator Arlen Specter (R.) and Senator Patrick Leahy (D.), co-sponsors of the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852) which comes to the Senate Floor this week.

We support the Bill as presently drafted. We ask that you support the Bill as well.

Our U.S. Supreme Court has held that federal legislation is necessary to solve the asbestos compensation crisis—and we agree. Currently, only 42 cents of every dollar spent in this broken system goes to victims, their widows and kids.

I recently wrote our membership across the country to advise them of our support for this Bill, and to urge them to contact you in support of S. 852. I advised our membership that this Bill is not perfect. But nothing ever is when problems of this magnitude are addressed.

We believe S. 852 offers the best hope of providing fair and equitable compensation on a national basis for those who have suffered, or will suffer from the devastating effects of asbestos exposure in decades to come.

We urge you to reject amendments of special interest groups on either side of the issue that would change the core provisions of the Bill.

Such amendments can only be hostile to the interests of fundamental fairness and equity. We have promised our membership that we would fight vigorously to oppose any change that would make this Bill unfair or inequitable.

Very truly yours,

JAMES A. GROGAN,  
General President.

INTERNATIONAL ASSOCIATION OF  
HEAT & FROST INSULATORS & ASBESTOS WORKERS.

Lanham, MD, January 31, 2006.

DEAR BROTHERS AND SISTERS: The Fairness in Asbestos Injury Resolution Act of 2005 (Asbestos Bill S. 852) is scheduled to be brought to the floor of the United States Senate in early February of this year.

Bi-Partisan Co-Sponsors of S. 852: Senator Arlen Specter (R.) and Senator Patrick Leahy (D.); Nobody has worked harder than Senate Judiciary Chairman Arlen Specter (R.) of Pennsylvania and Ranking Minority

Member Senator Patrick Leahy (D.) of Vermont in trying to get a fair and equitable and bi-partisan Bill that helps those who have suffered the devastating effects of exposure to asbestos. These two courageous Senators have worked tirelessly during the last three years—to craft changes to the Bill after listening to reasonable suggestions from Labor, Business and Insurance negotiators.

Special interest groups on both sides of the issue have tried to derail their good work. But Senators Specter and Leahy have stood tall in search of an equitable legislative solution.

This office has actively participated in the negotiating process of this Bill over the last three years: Your International has been actively involved in extended and complicated negotiations to bring about this legislative solution. Our U.S. Supreme Court has held that legislation is necessary to solve the asbestos compensation crisis—and we agree.

Let us begin by stating that this Bill is not perfect. Nothing ever is. For the last 10-20 years the current asbestos compensation system has produced inequitable and unfair results. Tens of billions of dollars have gone to people who are not sick. This is wrong. The current system is broken, notwithstanding what special interest groups may claim. We believe this Bill offers the best hope of providing equitable compensation while expediting the compensation and review process on a national basis, regardless of where you live, or who your attorney might be.

Over 300,000 pending or current asbestos claims cry out for a fair legislative solution from Congress: Currently it is estimated that there are more than 300,000 pending asbestos-related claims. In a recent study by RAND, it was determined that only \$0.42 (42 cents) of every dollar spent on litigation is awarded to the actual victims, their widows and kids. A majority of the funds is paid to transaction costs, including lawyers' fees for corporations and claimants.

\$140,000,000,000 (\$140 Billion) trust fund for victims of asbestos induced mesothelioma, lung cancer and asbestosis under a no-fault system with set awards based on severity of disease: This Bill would establish a \$140 billion Trust Fund to compensate victims who are truly sick from asbestos exposure under a no-fault compensation system administered by the Department of Labor. Objective medical criteria that will rule in asbestos induced disease, and will rule out disease not caused by asbestos exposure has been negotiated and approved by us and medical experts we have retained. This legislation will offer the following expedited settlements:

Mesothelioma: \$1,100,000 per case; Lung Cancer with Asbestosis, \$600,000-975,000 per case, Lung Cancer with Asbestos Pleural Markers, \$300,000-725,000 per case, Disabling Asbestosis (not cancerous), \$850,000 per case, Asbestosis with Some Impairment, \$100,000-400,000 per case.

Attorneys' fees have been limited to 5 percent under the legislation. It is to be expected that lawyers who have received tens of millions of dollars in asbestos fees might voice some objection to the Bill. Insurance companies who will have to pay hundreds of millions of dollars into the Trust are likewise objecting to this courageous attempt by Senators Specter and Leahy to solve the asbestos compensation crisis.

The Pipefitters, Painters and United Auto Workers have joined with us: The leadership of the Plumbers and Pipefitters (the UA), the Painters (IUPAT) and the United Auto Workers (UAW), have joined with us in supporting this Asbestos Bill, S. 852. We believe the leadership of other trade unions will come to join us in the weeks ahead in support of this Bill.

Funding: We are aware of those who, in good faith, question whether \$140,000,000,000 (\$140 Billion) will be sufficient to fund the Trust to compensate all American victims of asbestos induced cancer and asbestosis. We share their good faith concern.

But there have been too many bankruptcies as a result of the current asbestos litigation crisis. If funding mandated under the Bill proves insufficient, the Bill provides that individuals may return to the court system and pursue a lawsuit in their State or Federal Court before a jury of their peers. This was a hard fought and fair compromise.

Let me close by saying that this International Union remains deeply committed to supporting a meaningful, comprehensive solution to our national asbestos litigation crisis. Be assured if we become aware of changes or amendments to this Bill that will be to the detriment of workers and their families, we will fight them, and will not hesitate to change our position if needed.

We urge you to contact your Senators to gain their full support for this legislation. Attached is a complete listing of Senators and their contact information for your convenience.

Fraternally yours,

JAMES A. GROGAN,  
*General President.*

TERRY LYNCH,  
*Political Director.*

JAMES P. MCCOURT,  
*General Secretary-Treasurer.*

Mr. LEAHY. Mr. President, I am pleased to join Senator SPECTER, who is chairman of the Judiciary Committee, Senator FEINSTEIN, and others in urging my colleagues to move to this bipartisan bill.

Speaking of asbestos-related diseases, it is time for us to solve this dire situation. Victims have been waiting long enough for a comprehensive national solution. We have looked at this. The Senator from Nevada spoke of those who have suffered from silicosis. If we are going to talk about families, my grandfather, Patrick J. Leahy, a stonecutter in Barre, VT, died of silicosis of the lungs long before I was born. I never got to know my grandfather. My other grandfather, Pietro Zambon, immigrated to this country from Italy. He died of the same disease. We are not neglectful in that. We are well aware of it. We have designed this bill in such a way that those victims are not shut out.

This legislation is a product of years of difficult, conscientious negotiation. Built on what was done last Congress under former Chairman ORRIN HATCH, we have crafted a fair and efficient plan that is going to ensure adequate compensation of thousands of victims of exposure, but it also gives due consideration to the businesses that should and will provide that compensation.

Asbestos has wreaked havoc on the lives of many, but it has also overwhelmed our Nation's court systems as it tries to compensate them.

We can talk about who gives and who doesn't. The fact of the matter is, the victims are the ones we should be most concerned about, and many of the victims—thousands of the victims in this country will get nothing unless this bill passes.

Senator SPECTER rightly calls this one of the most complex issues we have ever tackled. Look around the Chamber of the Senate. Of those who are here, I have been here the longest. Actually, only six Members of the current Senate have been here longer than I. I have not seen in that 31 years anything more complex.

Does that mean this is the bill I would have written? No. And it is not the bill Senator SPECTER would have written. It is a bill, though, that had to bring enough people together to pass. It should not surprise anyone to hear the interested groups, including labor, some of the businesses contributing to the trust fund, and their insurers, and the trial bar are each less than pleased with one part or the other. But that is the essence of legislative compromise, something I have learned in three decades.

We have kept the ultimate goal of fair compensation to the victims as the lodestar of our efforts. We have all had to make compromises on a variety of subsidiary issues to get this far, but we have achieved a significant and needed step toward a more efficient and more equitable method to compensate these victims. Right now, the fact is that only 42 cents out of every dollar spent on the burgeoning dockets of litigation in this area actually goes to the victims. That is a national disgrace. We can and must do better for all involved in this crisis. America can do better.

These victims need our help, and they need it now. This is, after all, one of the most lethal substances ever to be widely used in the workplace. Between 1940, when I was born, and 1980, more than 27.5 million workers were exposed to asbestos, and nearly 19 million of them had high levels of exposure over long periods of time. We know of some people who suffer from this illness because they washed the clothes of their loved ones who worked in these areas. They have been ravaged.

The economic harm caused by this, and the resulting bankruptcies, are a different kind of tragedy for everybody—for the workers and retirees, for shareholders, but also for the families who built these companies. In my home State of Vermont, the Rutland Fire and Clay Company is among the more than 70 companies that have declared bankruptcy due to asbestos liabilities. Do you think those victims are going to recover anything without this legislation?

The late Chief Justice Rehnquist declared the elephantine mass of cases cries out for a legislative solution. In additional opinions written by Justice Ginsburg, the Supreme Court has repeatedly called on Congress to act because "a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims."

I agree. Our committee chairman agrees. The Judiciary Committee members on both sides of the aisle agree, and we hope others in the Senate will agree.

I am worried when I hear veterans being criticized for supporting this. They are brave. They are concerned that they have been badly injured, and they know this legislation will help them. Why shouldn't they support it? These brave veterans know they are not going to get any help otherwise.

Does business support it? The 600,000 members of the National Federation of Independent Businesses do, as well as hundreds of larger companies which are going to have to contribute.

Senator SPECTER has spoken of this, but think what we do in our bill. It is a distinct improvement over previous bills. We provide higher compensation awards for victims, with \$1.1 million awards for victims of mesothelioma, \$300,000 to \$1.1 million for lung cancer victims, \$200,000 for victims of other cancers caused by asbestos, \$100,000 to \$85,000 for asbestosis, and \$25,000 for what we call mixed-disease cases, as well as medical monitoring and all the things he spoke of.

I am going to speak further on this as we go on. I suspect there will be more talk on it. But I hope Senators will allow this bill to go forward, will allow us to have a vote on it. As the Senator from Pennsylvania noted, we have other major things going on. I have been involved in that all day. I must admit, though, to the distinguished majority leader, if the Chair will permit me to note, I may have other things going on. We have other things going on in our family at this moment. I hope we are about to enlarge our family at this moment.

With that, I hope neither of our leaders will mind, but the senior Senator from Vermont is going to go home and hopefully sometime in the next few hours be together with the latest member of the Jackson and Leahy family.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, to my distinguished colleague, I know things will go well as a new member of the family is about to enter. It is a very special time in all of our lives when that happens.

I did want to come to the floor to give some perspective to what we have really seen play out over the last hour and a half with regard to addressing an issue that is important to the American people in ways they probably do not fully realize. It is the importance of taking up and addressing with full debate and amendment on the floor of this body the issue of reforming an asbestos system which is out of control. We have victims of cancer, victims of mesothelioma, victims of asbestosis, who are not being fairly compensated, who are struggling for that last breath before justice and fairness is carried out. That is because of a system which is broken, a system which has called out for fixing, not just in this Congress or the last Congress or the Congress before that but really over the last 15 years.

There has been some question on the floor today of why leadership has elected to bring this bill to the floor as the first major piece of legislation that really was not unfinished business before our last recess, and the reason is for these victims.

Yes, this bill is a jobs issue. It was stated earlier that over 150,000 people have lost their jobs because of this broken system; that over 77 companies have gone bankrupt, which means, yes, loss of those jobs but also loss of pensions for all the other employees of those companies. But I have to say that in part because I have had that opportunity to take care of mesothelioma patients as a physician and to operate on mesothelioma patients. It is a tough operation because you know you cannot cure mesothelioma, you can only treat it and make someone's life better. The sad thing is, although those victims deserve to be compensated and compensated in a timely way—nobody argues that—justice is not being realized today.

It is worth stepping back. We had a wonderful exchange, I believe, through the Democratic leader—who is opposed to allowing that bill to come to the floor to be fully debated and amended to address this significant, critical problem facing people today and one which will face them in the future—and the chairman of the Judiciary Committee, joined by the ranking member, the Democratic ranking member, who believe strongly there is time to address this bill and address it now. If we do not address it now—and it is important for our colleagues to understand—it will not be addressed in this Congress. This is a fairly short period running up to the elections, and we have a lot of work to do. It is either now or never.

I say there is a long history to this. It was 15 years ago that Chief Justice Rehnquist at the time first called attention to the asbestos litigation crisis. It is a crisis, as I will spell out in a few moments. Today, 15 years later, we are on the cusp. After working a bill through committee, passing it out of committee in a bipartisan way—strongly supported by the Republican chairman of that committee and the Democratic ranking member—it is now time to consider it on the floor of the U.S. Senate. We are on the cusp of a fair and a just and a bipartisan solution.

Because of partisan election year politics, it may be, from what we heard from the Democratic leader, that an effort under the Democratic leadership is underway—we are hearing that this bill may be blocked. Remember, what we are debating now is just bringing that bill to the floor, this motion to proceed. What that does is put off relief. It puts off to sometime in the future, if we do not even allow that bill to come to the floor, it puts off relief for thousands and thousands of those victims who deserve just treatment and fair treatment and treatment for

their cancer and treatment for their mesothelioma and treatment for their asbestosis. And we are not going to do it.

We are going to bring it to the floor, we are going to debate it, open it to amendment, and fix what people do not like in the bill. But to think we have Democrats today who want to object to even bringing it to the floor—to me, that is wrong. It is something we cannot let happen.

The asbestos crisis is real. Nearly \$74 billion has been lost on the inefficient and disastrous asbestos litigation system, with the trial lawyers, of that \$74 billion, pocketing almost \$30 billion. That is \$74 billion that should be going to the victims in a timely way, but about 42 cents out of every dollar doesn't get to the victim, it gets to the trial lawyers. It gets to the system itself. And that is what is fixed in this bill.

The costs have already bankrupted 77 companies, destroyed 150,000 American jobs, and caused workers to lose over \$200 million in wages. Victims with real injuries are left with no recourse, spending years awaiting a trial without getting the justice they deserve.

As I said, it was 15 years ago that Chief Justice Rehnquist first drew attention to the problem. In 1991, he warned that courts are "ill-equipped" to effectively address the asbestos situation which has reached—and again I quote, using his words—"critical dimensions and is getting worse."

The Chief Justice at the time—again, this is 1991—went on to say, and I use his words:

We have . . . a crisis for many Americans. However, the worst is yet to come. . . . it [is] inevitable that, unless Congress acts to formulate a national solution, with the present rate of dissipation of the funds of defendant producers . . . all resources for payment of these claims will be exhausted in a few years. That will leave many thousands of severely damaged Americans with no recourse at all.

Those are the former Chief Justice's words.

After that initial report, in three separate opinions the Supreme Court called on Congress to address the asbestos litigation crisis. Justice Ginsburg specifically called on Congress to create a national trust fund. Her words:

The argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure.

In 1998, Congressman HYDE was the first Member in Congress to introduce a bill with that recommendation.

Many trust fund bills were subsequently introduced in both Chambers, but it was not until Senator ORRIN HATCH decided to work on the issue that the Senate really began to debate in earnest the merits of a trust fund bill. In 2003, then-Chairman HATCH held six hearings on the proposal in the Judiciary Committee, and in July of that year, 2003, Chairman HATCH passed his trust fund bill out of Judiciary.

The next year, in 2004, I brought that bill to the floor, fought for a vote. Unfortunately, because of partisan and I guess it was election year politics at the time, the bill was filibustered by the Democrats. It was blocked by the Democrats.

After that failed cloture vote, 11 sitting Democrats wrote me and expressed their desire to keep working on the bill, to keep working on an asbestos trust fund to provide necessary relief to victims and businesses. As has been mentioned earlier, I worked closely with Senator Daschle's office to try to construct a compromise at the leadership level. But, again because of partisan, election year politics, negotiations stalled.

Over the course of the following year, Chairman SPECTER took it upon himself to keep that momentum going. We heard a lot of that outlined a few moments ago on the floor of the Senate. He held 36 separate meetings with stakeholders on the topic—the business community, the unions, the trial lawyers, the insurance companies; meeting after meeting. He held a total of six hearings on the matter.

In May of 2005, the Judiciary Committee voted out, in a bipartisan way—the vote was 13 to 5—the bipartisan FAIR Act, the bill we are considering today.

They were finally able to hammer out—it was bipartisan, drawing upon both sides of the aisle—a fair solution to the crisis.

In that July letter of 2004 which was written to me by the 11 Democrats, they summed it up best:

With each passing day, more and more victims face serious illness and even death, and more and more workers and companies face the threat of bankruptcy.

While creating a national asbestos trust fund is unquestionably an extraordinarily complex undertaking, too much progress has been made to let this issue go unaddressed in this Congress.

That was July of 2004. They were right then, and they are right now. That is why several months ago I told both sides of the aisle that the leadership was going to bring this bill to the floor at this point in time. It is time for us to act. If we don't seize this opportunity, it is simply not going to happen. The asbestos litigation crisis is crippling our economy and it is endangering our fellow citizens who suffer from asbestosis, mesothelioma, and cancer.

It comes back to the victims themselves, with real injuries today, who are offered almost no recourse, spending years awaiting a trial without getting the justice they deserve. It has been 15 years since Chief Justice Rehnquist sounded the alarms. Congress has invested 7 years working through the trust fund solution. Resolution of the asbestos crisis is simply overdue. A vote against cloture to proceed to address asbestos reform is a vote against solving this problem.

As mentioned earlier today, there will be the opportunity to vote at 6

o'clock tomorrow night on this issue. The timing of that is determined by schedules of people. We should have everyone back for that vote. That vote is not going to be on passage of the bill; it is not going to be on amendments to the bill; it is simply going to be a clear-cut vote among our colleagues as to whether we consider it important to look at fairness and justice for the victims who today are suffering. It is a motion to proceed.

Months ago, we said we were going to address it. The time has come, and if we don't act now, this issue will have to be put on the back burner. Thousands of victims will continue to be left without the medical treatment they need and the justice they deserve.

#### CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 131, S. 852: A bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Bill Frist, Arlen Specter, Jeff Sessions, Pat Roberts, Lamar Alexander, Lisa Murkowski, Johnny Isakson, Richard M. Burr, Wayne Allard, Mitch McConnell, Mike DeWine, George V. Voinovich, Jim Talent, David Vitter, Bob Bennett, Mel Martinez, Ted Stevens.

Mr. FRIST. Mr. President, under the order entered on Thursday, this vote will occur at 6 p.m. on Tuesday. We will continue with debate on the motion to proceed today and through tomorrow. I hope cloture will be invoked and we will then be able to begin debate on this important underlying legislation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, pending before the Senate is a bill, S. 852, the Fairness in Asbestos Injury Resolution Act of 2005. This bill has been a long time in coming. I was first elected to the U.S. House of Representatives over 20 years ago. In the first year that I served, I was approached, in 1983, 23 years ago, by a representative of Johns Manville, one of the largest asbestos manufacturers in America. This person said he wanted to talk to me about the

asbestos issue 23 years ago. He knew then that his company was in trouble, maybe headed for bankruptcy, and he wanted to know if there was another way to approach it.

He could not have imagined the reach of asbestos poisoning and contamination in America. I don't know the number of potential victims of asbestos poisoning and contamination. I am sure it reaches into the hundreds of thousands, maybe into the millions. But there is one thing I do know for sure: not a single victim of asbestos that I have ever heard of or met voluntarily exposed themselves to this dangerous and toxic mineral.

We know some people who were almost innocent in their lifestyle, with very little, if any, exposure to asbestos, turned out to be some of its most painful victims. People with mesothelioma contracted because a wife did her husband's work clothes with the laundry each week, shaking out his dirty work clothes, and asbestos fiber flew into the air, invisible to her eyes. She breathed it in, and a timebomb started ticking. That kind of situation was repeated over and over again—for the millions of men and women who were workers in the shipbuilding industry during World War II and since; for others who worked in occupations that you never thought would lead to asbestos exposure; people who bought plants and plant fertilizers, not realizing that the vermiculite included in the plants bought at the grocery store was tainted with asbestos and endangered them; people who worked on putting brake linings into cars; putting insulation in homes; putting shingles on houses; people putting flooring tiles on the floor, never realizing that as they were cutting these products and working with them, they were exposing themselves to something very deadly.

It turns out the people who made these products knew a long time ago that asbestos was dangerous. Maybe as far back as 85 years ago, they had the first evidence that people working around asbestos were getting sick and dying. What did they do? They covered it up because it was bad news. It hurt the bottom line. That coverup went on for decades.

Now we know a lot more about asbestos. Some of the companies that made the most money with asbestos products have gone out of business because they have been sued by their customers and their workers. The argument has been made that the ordinary court system of America can't handle this; there will be too many claimants. So the proposal in this bill is to set up a trust fund, a \$140 billion trust fund. Where did that figure come from? Senator SPECTER of Pennsylvania said earlier that it was a figure that was brought up by former Senator Daschle of South Dakota several years ago, and Senator FRIST. I don't know where it came from. I don't know the circumstances under which it was suggested. But today it has become absolutely a doctrine of faith that \$140