The PRESIDING OFFICER. The time for the recess has arrived.

Mr. DURBIN. Madam President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will stand in recess until 2:15 p.m.

Thereupon, the Senate, at 12:30 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. THUNE).

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Mr. President, I ask unanimous consent to speak for up to 10 minutes as in morning business.

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

TRIBUTE TO PROFESSOR THOMAS CROMBIE SCHELLING

Mr. REED. Mr. President, I rise today to recognize Professor Thomas Crombie Schelling, distinguished university professor emeritus in the Department of Economics and the School of Public Policy at the University of Maryland at College Park, recipient of the 2005 Nobel Memorial Prize in Economics for his work in game theory analysis. Professor Schelling shares this prestigious award with Robert J. Aumann of Hebrew University in Jerusalem to whom I also offer my most heartfelt congratulations.

I had the privilege and the pleasure of being one of Professor Schelling's students at the Kennedy School of Government at Harvard University in the early 1970s. Having just graduated from West Point, I was pursuing a masters degree in public policy at the Kennedy School. The public policy program, then, was a new initiative to train recent college graduates for careers in public service. The Kennedy School had assembled a stellar collection of scholars in the fields of political science, economics, quantitative methods, and statistics. Tom Schelling was already recognized as one of the preeminent economists of his generation and was a leader in the economics instruction of the public policy program.

Professor Schelling's classes were fascinating discussions about topics ranging from social costs and externalities to the incentive structures necessary to diminish conflict. Rather than being couched in jargon and equations, he was able to talk in familiar terms and used familiar examples, such as cows grazing on common areas or an informal economy based on the trading of cigarettes in a POW camp. I must confess, I was not altogether prepared for his folksy but penetrating intellect. But on reflection over many years, I have come to see it as one of the most useful and powerful courses that I have ever been fortunate to take. I realize that his point was to make us think, not just to give us some techniques. His insightful framework of analysis has been extremely useful to me in all my endeavors.

Professor Schelling's professional standing was matched by the personal regard that his colleagues and students displayed for him. I was fortunate to associate with a gentleman whose integrity and decency and kindness left a lasting impression.

Professor Schelling received the Nobel Prize ''for having enhanced our understanding of conflict and cooperation through game-theory analysis.'' His first book: ''The Strategy of Conflict,'' published in 1960, ''set forth his vision of game theory as a unifying framework for the social sciences. Professor Schelling showed that a party can strengthen its position by overtly worsening its own options, that the capability to retaliate can be more useful than the ability to resist an attack, and that uncertain retaliation is more credible and more efficient than certain retaliation.''

Professor Schelling's groundbreaking work laid the foundation for ''new developments in game theory and accelerated its use and application throughout the social sciences. Notably, his analysis of strategic commitments has explained a wide range of phenomena, from the competitive strategies of firms to the delegation of political decision power.''

As a result of Professor Schelling's work, the theoretical realm of game theory can now be applied to the real world. This real-world application is known as interactive decisionmaking theory and is used to explain why some individuals, organizations, and countries succeed in promoting cooperation while others suffer from conflict. His insights have proven extremely relevant in conflict resolution and efforts to avoid war.

Born on April 14, 1921, in Oakland, CA, Professor Schelling's distinguished career spans five decades. After earning a degree in economics at the University of California at Berkeley in 1944, Professor Schelling worked at the U.S. Bureau of the Budget and served in Copenhagen and Paris under the Marshall Plan. He received a Ph.D. in economics from Harvard University in 1951 and worked for the Truman administration. He later became a professor of economics at Yale University, held a position at the RAND Corporation, and, in 1958, joined the faculty of Harvard University as a professor of economics. In 1969, Professor Schelling also began to teach at Harvard's Kennedy School of Government, where he held the chair as the Lucius N. Littauer Professor of Political Economy. He left Harvard in 1990 to teach at the University of Maryland.

Professor Schelling has been elected to the National Academy of Sciences, the Institute of Medicine, the American Academy of Arts and Sciences, and was president of the American Economic Association, at which he is a distinguished fellow. He was the recipient of the Frank E. Seidman Distinguished Award in Political Economy and the National Academy of Sciences Award for Behavioral Research Relevant to the Prevention of Nuclear War. Professor Schelling has written 10 books and published extensively on military strategy and arms control, energy and environmental policy, climate change, nuclear proliferation, terrorism, organized crime, foreign aid, international trade, conflict and bargaining theory, racial segregation and integration, the military draft, health policy, tobacco and drug policy, and ethical issues in public policy and in business. His range of inquiry and his searching mind have covered a vast panorama of the issues of most concern to America over the last 50 years.

Professor Schelling is a member of a generation that has borne witness to many extraordinary events; however, in his own words ''the most spectacular event of the past half century is one that did not occur. We have enjoyed fifty-eight years without any use of nuclear weapons.'' His work, and the work of Professor Aumann, has been guided by the desire to enhance the understanding of conflict and cooperation and deepen the world's understanding of human behavior, relationships, and motivation in an effort to prevent the catastrophe of nuclear war.

Professor Schelling, thank you for all of your contributions to the preservation of peace and, again, congratulations on your outstanding achievement.

I yield the floor.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2005—Continued

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I want to spend the next 20 minutes or so talking about the asbestos reform legislation that is pending before the Senate.

During the 3 years I have been in the Senate, I have had the great honor and privilege of serving under two great chairmen of the Senate Judiciary Committee, Chairman ORRIN HATCH and Chairman ARLEN SPECTER. This bill that has come to the floor is the product of a Herculean effort, starting with Senator HATCH as chairman of the committee, and now in the able hands of Senator SPECTER. Along with our ranking member, Senator LEAHY, they are cosponsors of this bill.

I am one of 18 members of the Judiciary Committee who voted to get the product out of the committee and to the floor of the Senate because I believe it is imperative we find a solution to the scandal-ridden asbestos litigation crisis facing this Nation. But I was one of seven Senators who expressed some strong reservations about the bill in its current form, and I think I owe it to my colleagues to explain what we were thinking, what at least I was thinking, and what some of those reservations are.

First, to address the problem confronting this country when it comes to the asbestos litigation crisis, the RAND Institute has documented that out of every dollar that goes into this asbestos litigation compensation system, only 42 cents actually goes to the claimant. A person who may have mesothelioma—a terrible and fatal cancer that is caused by inhalation of asbestos fibers—gets only 42 cents on the dollar. The rest of it is consumed in what might sort of innocuously be called transaction costs; that is, the costs of a lawyer to pursue that claim in court, as well as the lawyer hired by the defendant or defendants, as the case may be, together with court costs and other associated expenses of litigation.

Well, obviously, with an override of 58 cents on every dollar paid, the transaction costs are steep indeed and cry out for some redress.

The other problem in the current system is that over the years there have been so many claims brought on behalf of individuals who may have been exposed to asbestos but who have no current impairment—in fact, may never get sick as a result of that exposure—that dozens, indeed, I think the number is somewhere in excess of 80 different companies in this country, have been bankrupted. What happens when companies get bankrupted is people lose their jobs, and retirees lose their pension benefits or may perhaps receive only pennies on the dollar for what they believe they were entitled to and which they may have expected to depend upon during their later years in life.

Because of the huge volume of claims of people who are not sick and who are not impaired but who may have been exposed, that means people who have bona fide claims that are clearly traceable to asbestos-related disease may end up undercompensated as well or even left without an adequate remedy.

In fairness, the people who have made claims and who are not presently impaired are kind of in a catch-22 scenario because under our laws, and under the laws of most States, you usually have—for example, in my State of Texas, you have 2 years—if you have been damaged, but you do not yet know the extent of your damage but you have a claim, you are required under our laws, under the statute of limitations, to bring that claim within 2 years or else you will be forever barred.

So in all fairness to those people who have brought claims, while they have been exposed but may not yet have manifestations of the disease, they are in a box with no way out unless we reform the law. And, obviously, people who are very sick and may die of asbestos-related disease, from mesothelioma or some other type of cancer related to asbestos, being left with virtually pennies on the dollar, perhaps recovered from a bankruptcy trust, is not justice either.

So this has been an issue that cries out for reform. Some have said—and I think they are correct—this is not tort reform; this is scandal reform. It is an outrage and an injustice that cries out for a solution. Indeed, the U.S. Supreme Court, on three different occasions, has said this is an issue that is beyond the power of the judiciary to solve and asked Congress to come up with a solution to this problem.

We have worked to try to come up with a solution, but until this week no proposal has come so far as to get to the Senate floor to help address this problem. So I want to give credit where credit is due to Senator SPECTER, the chairman, and the ranking member, Senator LEAHY, and all the members of the Judiciary Committee who tried to keep this process moving so we could have a bill ultimately that we could send to the President, that we could be proud of, and that would address this terrible injustice.

My observation has been that everyone involved in this process has been, in good faith, trying to find a solution to fix this situation. But it is important to note that while Congress has debated this issue and tried to come up with a solution, a number of States, including my home State of Texas—notably, Ohio and a handful of other States—have stepped in and passed what are commonly called medical criteria bills, which, simply stated, allow people who are sick to bring their claims, and people who have been exposed but are not currently sick—have no impairment—to toll the statute of limitations so that if and when they become sick they can bring their claims to court. That seemed to have worked pretty well.

That is not what this bill does. This bill makes a different choice. I want to explain in the few minutes that follow the concerns I have about this particular bill.

Here again, Senator SPECTER has led the way, along with Senator HATCH and Senator LEAHY and others, to bring us to where we are today. This is not easy.

The bill before the Senate today is vastly better and more improved as a result of the work done in the committee and the negotiations and the services of people such as Judge Edward Becker, senior judge on the Third Circuit Court of Appeals, who has acted as a mediator among the stakeholders to come up with a solution.

My fear is that we would replace the current broken litigation system for asbestos injury claims with a complicated, expensive, and ultimately unsustainable entitlement program. Let me explain what those concerns are in particular.

Asbestos liability reform, whether it is a trust fund or medical criteria legislation such as some States have, whatever the type, requires sound medical criteria to filter out fraudulent claims. My conviction is that the criteria employed in S. 852, the current legislation before us, are faulty and would unnecessarily include payments to individuals whose illnesses are not connected to asbestos exposure. There are two examples I can think of. One has to do with cancer claims. This trust fund would purportedly compensate those with cancer claims yet without evidence of asbestos-related disease. Obviously, we know this is not designed to be a cancer trust fund; it is designed to be an asbestos trust fund. We have to have sound medical criteria which would distinguish between cancer and asbestos because if we open up the criteria too broadly, chances are the claims are going to overwhelm the fund and it will be unsustainable and unsuccessful.

My second concern, beyond the medical criteria that are not tight enough to filter out fraudulent or unrelated claims, is that the $140 billion, which is the current amount of the trust fund, will not be adequate to meet the claims. This admittedly is an area in which there is no scientific precision because we are looking out years from now and trying to estimate how many people are going to have claims, what the mix of those claims is going to be. For example, if you have more mesothelioma cases than you think, then it will drain the fund precipitously and make it unsustainable.

Chairman SPECTER and the Judiciary Committee have heard from a number of experts, including the Congressional Budget Office, as well as independent estimates, that conclude—I am sorry to say—that the $140 billion fund will likely be too small to cover the cost and, ultimately, will render the fund insolvent. The CBO estimates that the trust fund would be presented with claims totaling between $100 and $150 billion, but it also projects that total costs would be higher because the fund must also cover administrative expenses and any financing costs.

I heard the Democratic whip, Senator DURBIN, talk about the financing costs associated with the cash-flow requirements of this fund. I share some, but not all, of his concerns in that regard. The CBO makes clear that ''there is a significant likelihood that the fund's revenues would fall short of the amount needed to pay valid claims, debt service, and administrative costs.''

It gets worse, not better. An economic consulting firm by the name of Bates White has estimated that the trust fund will generate far more claims than the tort system and the existing trust and will result in claims perhaps ranging from $300 billion to $695 billion. In other words, the trust fund proposed by this legislation would be $140 billion, but Bates White, in a different analysis, has said they think the claims could reach $695 billion, ultimately forcing the fund into insolvency and sunsetting the fund within 1 to 3 years of its inception.

Even if you agree with the CBO estimate, it is clear that $140 billion will at least, under their estimate, not satisfy

the claims made on the fund in administrative costs and the like because the CBO cost estimate does not include potential dormant claims, possible take-home exposure claims by family members, exceptional medical claims, claims from people living near Libby-like sites—and I will explain what I mean by that in a moment—as well as the impact of allowing CT scans to serve as documentation of pleural abnormalities. In other words, the diagnostic test used to determine impairment from asbestos-related disease is important to screen out people who are impaired from people who are not impaired. All of these additional factors that CBO's cost estimate does not take into account could add billions of dollars of cost to the trust fund.

Even more troubling, the CBO's own analysis provides that 1.2 million claimants will be deemed to have qualified for medical monitoring. In other words, they have been exposed. They are not impaired. Yet under the trust fund, they would be monitored to see if they do become impaired and thus qualify for a claim under the fund.

Unfortunately, the CBO misses the fact that if we apply standard epidemiological statistics, as many as 200,000 of the 1.2 million claimants who qualify for medical monitoring will one day develop cancer of some form, and thus the total cost of the fund could be as much as $90 billion more than the CBO has estimated.

Just a footnote here, another problem. I don't mean to have a laundry list of criticisms of the bill because, as I said, miraculously we have reached this point, but there remains some of the hardest issues we need to find solutions to if we are going to solve this scandal that otherwise goes by the name of the asbestos litigation crisis.

This trust fund—here again, I don't know whether all of our colleagues have had a chance to look at the bill in the kind of detail I am discussing, so that is the reason I wanted to identify these concerns, to see if we can find some solution—also provides $600 million, not to pay claims, not for administrative costs, but for additional screening to find new claimants. In other words, it is basically a marketing program to go out and try to find individuals who might also make a claim to the fund rather than those who have self-identified or have been referred to the fund.

I don't have to tell my colleagues; all they have to do is read the newspaper or current court cases that are pending. For example, in the Southern District of Texas, in front of Judge Janis Jack of Corpus Christi, fraudulent medical screenings have produced an enormous number of bogus cases that have created a huge burden on the current civil justice system. It is beyond me why we would want to go out and shop, in essence, or market to try to find more claimants to the fund over and above the ones CBO or Bates White or other educated guesses estimate will be made against the fund. That is a problem, too.

My point is that with regard to the number of claims and the demands made upon the fund, one of the concerns I have is that if the trust fund sunsets in 1 to 3 years the way Bates White says it might do, or 5 years or 10 years, it forces reversion; that is, claims go back to the same broken tort system that brings us here today. So what might happen is that companies would have to pay into the fund, but the fund would be overwhelmed and thus leave people without a remedy under the fund. Then it would revert to the same broken tort system, with all of the scandal associated with it, with all of the injustice associated with the status quo.

It is also worth noting—and this ought to caution us—that previous attempts to establish national trust funds largely have failed because total costs have exceeded those originally predicted. I am thinking particularly about the General Accounting Office report on black lung and similar funds.

We know there have been many bankruptcies associated with the current asbestos litigation system. Indeed, there is currently about $7.5 billion of bankruptcy trust funds that would be swept into this bill by the Federal Government to help make the $140 billion total proceeds available under the fund. These are existing bankruptcy trust funds which are currently paying claimants, people who were exposed to asbestos fibers and who are sick. But what this fund does—this is part of the problem—in an effort to get up to the $140 billion, it basically is a Federal confiscation of existing bankruptcy trust funds to the order of $7.5 billion. Noted constitutional lawyers, whose names are very familiar to the Members of the Senate, have come to me, as I know they have others on the committee, and said: How can it be that the Federal Government can take $7.5 billion in existing funds that are currently paying claims to sick asbestos victims and scoop it into this $140 billion fund? So at minimum, we would have to concede there will be litigation, and likely successful litigation, challenging the constitutionality of this taking by the Federal Government.

I mentioned earlier that Libby-like issue. Let me explain the challenge we have. In Libby, MT, a number of residents were apparently exposed to asbestos fibers generated from a W. R. Grace plant located in that city. What the Senators from Montana have done in this bill—and I congratulate them for their advocacy on behalf of their constituents—is establish an automatic qualification and a floor of $400,000 for any individual who qualifies living within 20 miles of that town. Why is that exceptional? Most of the claimants under this fund have to be those exposed in the course and scope of their employment. The Libby exception is not an occupational exposure but one because you happen to be a resident of that town and establishes an automatic qualification of a $400,000 floor to anyone who lives within 20 miles.

Whatever the merits of that special treatment for Libby, the problem we have is that there are as many as 28 other sites in the country, including my State of Texas, that may well deserve to be eligible for the same or similar special treatment. In other words, if we say people who are exposed not occupationally but environmentally because of the release of asbestos fibers due to an asbestos company operating in their State, if we are going to say Libby, MT, residents are entitled to that, I don't know how we cannot, in fairness, say that other similarly situated persons are not entitled to the same benefit.

The challenge, though, the problem that presents is it threatens to render the fund insolvent because of the volume of claims that will be made under this provision if expanded to include other individuals in these 28 other sites. I don't know how this fund can remain solvent unless the Libby, MT, provision is removed.

The challenge the chairman has had is, every time he has someone ask for a change in the bill, he risks losing someone else who is on the bill and vice versa. So I know he has tried his best to try to balance this wobbly entity known as the asbestos trust fund. That creates an anomaly and potentially an unfairness, one which would render the trust fund asunder.

The next issue that I have concerns about is this. There is no question that some very large companies in this country that have been exposed to almost endless asbestos litigation are desperate to bring that to a conclusion, to be able to cap off their liability and be able to put that behind them and get back to work providing jobs and contributing to the engine of the American economy. So there are some companies that are desperate to bring this to a conclusion. They are so desperate, they are willing to accept this trust fund on the faith, hope, and wish that it will be made better through this process—the amendment process and in conference.

But there are others who have come forward and demonstrated to me and other Senators that if they are forced to contribute to the trust fund under the current allocation system, it exceeds the profit of their ongoing business. In other words, if forced by the Federal Government to contribute to the trust fund at the current amount created in this allocation scheme, we will, in effect, render a number of companies—no one knows how many—bankrupt, and they will go out of business; and the people they employ, the hard-working Americans they employ, will be out of work. Potentially, the pensions of the retirees will be put in jeopardy.

Now, that is not the intention of the trust fund designers. Believe me, the

work is ongoing to try to find an equitable allocation scheme. But I point out that in trying to effect a cure, we need to make sure the cure isn't worse than the underlying disease for many of the companies and individuals affected.

Let me end my remarks on a couple of other final matters that I think call out for resolution or improvement in this bill. I have told Senator SPECTER that I want to be part of the solution to this problem; I don't want to be an impediment to trying to reach some equitable and fair resolution because this scandal should not continue a minute longer than it has before we come up with some good solution to this terrible problem.

One of the things I am concerned about in this bill, as well, is that the Department of Labor would have to administer this $140 billion fund, however it works. Obviously, there are going to have to be a lot of new people hired to perform those duties, and I believe it will, in fairness, create a new Government bureaucracy, designed to administer this program in the Department of Labor.

I am wary about creating new Government bureaucracies and programs in Washington, DC. I am reminded of the quote of former President Ronald Reagan. He said: The closest thing to eternal life here on Earth is a temporary Government program. This is supposed to be a temporary Government program, but I fear that we will create a new and mammoth bureaucracy within the Department of Labor that will never go away, even after the trust fund has come and gone.

So I look forward, during the course of the debate, to have the opportunity to offer amendments in the form of alternatives, which I think may provide a better solution to the problem that we all agree exists; and failing that, to offer amendments that will, I hope, narrowly address some of the problems presented in the list of issues I have spoken about. We need to make sure our good intentions don't exacerbate the problem. In a way, I sort of look at this as a legislative or congressional Hippocratic oath. Doctors take a Hippocratic oath which says: First, do no harm. You want to make sure the cure doesn't kill the patient. Indeed, I think we need to take a congressional Hippocratic oath that also says: First, do no harm. That ought to be our initial focus, to try to find a solution to this very difficult, complicated problem.

I look forward to working with all of my colleagues in good faith, in an effort to try to find that solution, even in the form of an alternative, if necessary, or, failing that, to come up with some targeted amendments which will address some of the concerns, which will make sure that sick people get paid and people who are not sick don't get paid—to make sure we don't explode the fund by underestimating the demands made upon it—and that we have some fairness when it comes to the allocation of who pays into the fund and that we proceed to a full and final solution to the problem, not a temporary patch that, ultimately, leads then back into the ditch in which we currently find ourselves, known as the asbestos liability crisis.

I see my colleague from Alabama, with whom I proudly serve on the Judiciary Committee, who is steeped in the details and has been part of a Herculean effort to come up with a solution. At this time, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I urge everybody who has questions about this legislation and who did not hear Senator CORNYN's remarks, to get a copy and review it. I think he made some terrific points and has gone to the heart of the issue and explained a lot of what we are doing.

Mr. President, the asbestos system, as it is operating today, is fraught with misconduct and inefficiencies and unfairness. That is an absolute fact. I had been involved, as a private lawyer, many years ago—I guess in the late 1970s—with some of these cases. I wish to say that I was representing plaintiffs who were injured badly as a result of severe asbestos exposure—people inside ships and submarines, cutting asbestos with electric saws where the air was so filled with asbestos dust that they could hardly breathe. They had to leave the submarine to get fresh air, and then go back in to work. They were severely damaged and disabled as a result of that. People like the plaintiffs I represented deserve compensation, there is no doubt about it.

Since sometime in the 1970s, it has become clear that asbestos is a dangerous product and there have been complete changes in how it is handled. Asbestos today is almost treated similar to nuclear waste. We have had laws to prohibit it altogether. If you see somebody removing asbestos from a building, they have masks on, and they do all these things with the greatest of care so they are not exposed. But some exposure for most people does not result in serious illness, or any illness at all. But certain exposure can. So it is a dangerous substance, and it creates a lot of stress and concern that a person might get sick. For those who are currently sick, they deserve compensation. So I say it is rational that some people have filed lawsuits to seek recovery.

But the way these lawsuits are now proceeding through the system makes very little sense. We have 300,000 cases pending today. Plaintiff lawyers get a chunk of those fees or recoveries on a contingent basis. We have criticized them for taking their third or 40 percent, or whatever they get out of a recovery—money that on the docket sheet might look like the plaintiff got $100,000, but the truth is, right off the top comes $30,000 to $40,000 that goes to the attorneys, not to mention the cost of buying depositions and the cost of medical witnesses who testify at trial. That all comes out before the plaintiff gets any money. That is the fact, the way it works. I was never been proud of how this system worked in the asbestos cases I saw when I was involved with it. It has gotten worse today.

Groups of lawyers have made hundreds and hundreds of millions of dollars out of these cases, and they file thousands of suits. They may have 10,000 cases pending. Plaintiffs are grouped, and then are not given individual attention. The lead lawyers probably don't even know the plaintiffs' names, and probably have paralegals interview them. So the system is even worse than when it initially started.

What else has occurred with the system? We are having people who are not sick, as Senator CORNYN noted, recovering money and putting companies into bankruptcy; they may never get sick and probably will not get sick. Those cases are crowding out the cases of people who are sick. As I noted last night, there are widows of mesothelioma victims, a deadly cancer that is clearly tied to asbestos. We have those widows—some are for the bill and some are against the legislation—lobbying us. I say to those widows that the sad thing is that your husband—or it could be a wife—did not get paid before they died. Why can we not create a system in which widows are not out here trying to claim the money, but instead we have a system where money goes straight to the victims, in their days of illness, before they pass away. Isn't that a better system?

Under the national fund, if a person has mesothelioma and can show an exposure to asbestos, they can walk into the Administrator's office—the office that will receive the claims, with a doctor and a medical report that demonstrates that this person has a disease—and if it is not contested—and I don't think many mesothelioma cases would be—they get a check right there for 50 percent of the $1.1 million. And then the other 50 percent has to be paid, as I recall, within 6 months. So they get a million dollars while they are alive to take care of their last days and their families, instead of having these lawsuits out here pending literally for years while people are dying without receiving compensation. That is happening today.

These cases are not going to trial with big verdicts returned. They are clogging up the system. They are suing hundreds of defendants per plaintiff. Some defendants agreed to pay 250, others 150. The lawyer is taking out their fee, and little checks are going off to people who are sick. They never know how much they are going to end up with before it is over. They started out with 300 defendant companies, I believe, that shipped asbestos, that knew asbestos was dangerous and did not put warnings out, allowed people to breathe it and injure themselves, destroy their health. Those 300 companies

were the only ones originally sued. There was a long battle over that.

Then there was the decision that said, Well, if you were one of the companies that shipped asbestos into Engel's Shipyard, and you cannot prove when you shipped it, but if you shipped it in at any time, you are jointly and severally liable with everybody else. So plaintiffs would not have to prove that they breathed this asbestos—whether it was Owens Corning or Johns Manville or anybody else; as long as the company shipped it in there, they were liable, too. So that opened things up and more cases were filed. And then good lawyers figured out a way to add more defendants and find more deep pockets with insurance. And from 300 defendants, we now have 8,400 companies that have been sued.

One of them I remember several years ago came to me and told me this story. He said: We bought a company, a subsidiary, that for 2 years had sold asbestos. They had not sold asbestos for many years before we bought them. We bought them, and now we are as liable as any company in the country. It is like they put an IV system running through the subsidiary right into the heart of another company that never was involved in shipping asbestos without warning the recipients. Yet they are responsible for funding all this.

So this is the way this issue has mushroomed. This is the way it has really happened. That is why we have thousands of companies willing to pay into this fund to get relief.

I mention the cost of the plaintiff lawyers, but think about these companies. They have lawyers, too. They have to pay them, and these are some high-paid lawyers. If you are, indeed, being sued for $100 million a person, and you have a number of claimants out there, you have to hire good lawyers to defend you.

The RAND Corporation study has concluded that 58 percent of the money actually paid out by companies that are defendants did not get to the victims but was eaten up in these kinds of costs, like fees for plaintiff and defense attorneys. It is really tremendous.

It started out with some tough litigation. Dickie Scruggs of Mississippi, a brilliant lawyer, believes these cases were justified. He thought up the cause of action. He battled these cases for years. He overcame all the legal defenses and then found the evidence that was critical to these cases. Then they found evidence that the company that shipped asbestos had known all along this was dangerous and did not tell anybody. They had a smoking-gun memorandum. That is how it started and went forward.

Dickie Scruggs, just a few days ago, appeared with Chairman ARLEN SPECTER and said: We are beyond that now. These cases ought to be settled based on the health of the person. It is not necessary to have them all in courtrooms all over America. It should not cost so much. It is a whole different ball game now.

Now the companies are willing to pay money. They are not defending on the basis of whether they should pay. They only want to pay a fair amount, and they want some certainty in how much they pay. Dickie Scruggs thought that was reasonable. He said people who are not sick are being paid and the costs are too great.

It is interesting that the real architect of these cases who represented the first plaintiffs and who battled those cases forward through all the objections and battles that occurred now says this bill is good for the plaintiffs.

Some say some businesses might pay too much. I don't know that they know how much they are going to pay and how much they should pay. We are not here as Senators to decide whether companies ought to pay more to plaintiffs, or which defendants should pay more, and how much a plaintiff really should get, except to say we need to create a system that fairly allocates the money to the people who deserve to be compensated, and that the money is fairly distributed.

There is a limited amount of money for asbestos cases. Quite a number of companies have gone into bankruptcy, and many more will follow. If they go into bankruptcy, they do not have to pay anymore. You can't get blood from a turnip. You are not going to be able to recover from bankrupt companies. Creating a system that allows the companies a chance to survive, to make money and to create wealth that they can then pay to people who are sick makes sense. That is what this bill tries to do.

Those are achievable goals. The simple matter is, when you have almost 60 percent of the money paid out by these defendant companies going to costs, why in the world can't Congress come up with a plan to take that 60 percent, not let it be eaten up in costs, and send it straight to the victims? We can do that. That is what Senator SPECTER, Senator HATCH, and others have worked for years to accomplish.

Lester Brickman, a professor of law at Yeshiva University in New York, who published an extensive article in the Pepperdine Law Review, had this to say about the asbestos litigation:

> The rules of ethics don't apply to asbestos litigation. Everything you see with asbestos is slimy. It's all under the radar screen and it's infected with self-interest and illegal behavior.

That is a pretty strong statement. I have to tell you, Mr. President, there is too much truth in it. It shouldn't be that way. We can clean it up. It is time for reform, and that is what we are about today: cleaning up what has become a haven for abuse. We need to establish a system where real victims, those truly and currently sick from asbestos exposure, can receive immediate compensation.

I know there are some who have concerns about S. 852. You can count me among those who believe this is not perfect legislation, that there are still some things that have to be done to fix it. However, it does represent a good start, and I think with certain amendments on the Senate floor and in conference it can be made better. If we work together, we can pass a bill that will help solve this current asbestos crisis.

The asbestos litigation affects our economy adversely in a significant way. It has had an undeniable impact on jobs and economic growth. Instead of spending money on increasing production, expanding jobs, research and development, companies have had to spend millions of dollars paying claimants and fending off lawsuits.

The runaway asbestos litigation system has forced many companies into bankruptcy. Seventy-seven companies are in bankruptcy or on the verge of bankruptcy because they have been the target of asbestos-related lawsuits, causing them to lay off 60,000 American workers who have in turn lost $200 million in wages. That is not a small matter.

Companies are not saying we don't have to pay anymore. In fact, they are prepared to pay $140 billion. They are saying: Give us certainty so we can go to our shareholders and plan our future over the next 30 years, and then we can provide more money to actually go to the people who are sick and less to overhead costs, lawsuits, and lawyers. We will be happy; we will take that. That is the opportunity we have today.

We must be sure that the trust fund we created preserves limited resources for the truly sick and does not pay claimants who have no real injury or whose sicknesses were not caused by asbestos. We are talking hundreds of thousands of people who have had some exposure to asbestos. Only those truly sick should be compensated.

For example, thousands of people have developed colorectal cancer. Are the asbestos companies liable for everybody who at one time worked for them or was exposed in even a slight way to an asbestos product? Are they liable for diseases unlikely to be caused by asbestos? If you get skin cancer, are they liable for that, or heart disease or throat cancer? Maybe, maybe not; it depends on what the science says.

Efforts have been made to place into this system liability requirements on defendants to pay damages for diseases that may have had no connection whatsoever to asbestos. That is the way you kill this system. We can't do that. We cannot have this fund, which has a limited amount of money—huge as it is—with these thousands of claimants—to pay people who are not sick because of asbestos—we have to be generous with victims, but we cannot be paying people whose sickness is not related to asbestos.

Again, there is very little evidence, if any, that colorectal cancer would be connected to asbestos.

As I noted, we now have 8,400 companies that are being sued as a part of

this process. Many of these have a limited link, if any at all, to asbestos but are named in the lawsuit because most of the original manufacturers that were sued have gone bankrupt.

In a statement to the New York City Bar Association, U.S. District Judge Jack Weinstein—one of the most famous judges in the country, I would add—had this to say about the impact asbestos litigation was having on certain companies' ability to stay in business:

> If the acceleration of asbestos lawsuits continues unaddressed, it is not impossible that every company with even a remote connection to asbestos may be driven into bankruptcy.

These bankruptcies are not only a threat to jobs and the incomes of American workers, they threaten retirement savings. The average worker at a bankrupt asbestos-related firm with a 401(k) plan suffered $8,300 in pension losses. Of course, in a number of instances, when a person loses his job, he loses his health insurance as well. So this litigation is having an impact on real people.

Judge Weinstein said even a company with a remote connection to asbestos could go bankrupt. One could ask, How is this possible? It is like I said before; this litigation is like an IV system that goes through one person, sucking all the blood out of them, and if they can find another person that has blood in them, they will begin to suck it out of them, too. It is just that simple. Whoever has the money is who they will go to next. Whoever is left standing is the next one this litigation turns on and in an attempt to show they are liable.

We need to bring predictability to this system by creating a national trust fund. If we succeed, I believe the companies with asbestos liability will then be able to start creating jobs rather than eliminating them.

We have a lot of important issues we are going to confront as we hammer out the final language in this legislation. It would be a shame on this Congress if somehow, some way, we cannot pass solid legislation that takes 60 percent of the money that is now going to overhead and lawyer's fees and use that to create better benefits for the plaintiffs and provide certainty to the defendants so they can plan their future without going bankrupt.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Montana.

Mr. BURNS. Mr. President, I don't think we have ever seen anything as complicated as the issue before us. We have a vested interest in this issue in Libby, MT.

I ask unanimous consent to proceed as in morning business for 10 minutes, not thinking I will use all the 10 minutes.

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

(The remarks of Mr. BURNS pertaining to the introduction of S. 2256 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I appreciate the comments of the Senator and his leadership on this important issue. It is certainly one important for our State and all States.

I see the Senator from New Mexico. I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, parliamentary inquiry: Is it appropriate for the Senator from New Mexico to speak as in morning business?

The PRESIDING OFFICER. It is.

Mr. DOMENICI. I yield myself 5 minutes and ask I be permitted to speak as in morning business.

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

LEASEHOLD 181

Mr. DOMENICI. Mr. President, I rise to speak about a matter that is obviously dear to the occupant of the chair because it has to do with leasehold 181, off the coast of Florida, Alabama, Louisiana. The bill, which was introduced yesterday by Senator BINGAMAN, myself, Senator TALENT, and Senator DORGAN, seeks to permit drilling on a portion of section 181 within 1 year. The bill protects a 100-mile buffer from the coastline of the State of Florida. This bill protects a portion of 181 that the U.S. Armed Forces indicated they might someday need to perform on and use for some military purposes.

These two exceptions and protections are explicit. That is, how far from the coast of Florida and the military protection area. But more than this, this bill seeks to protect the American people from the rising cost of heating their homes and filling up their cars, and, yes, soon, cooling their homes.

Today, the price of oil is about $65 a barrel, and the price of natural gas, while lower than a few months ago, is $8.24 for a million Btu's. To put that in perspective, if you go back only 6 years, the United States in its totality was spending $50 billion on natural gas. Today, we are spending $200 billion, and rising. That means many American businesses have already gone broke because they cannot pay for the price of natural gas. It means the petrochemical industry in America is hanging on, can't grow, and certainly, where they were going to build here, they are building elsewhere. The fertilizer industry is almost bankrupt, and the manufacturing industry is suffering from many things, but they will tell you the highest priority is to get natural gas prices under control.

While we are protecting Florida, we are charged with the responsibility of doing what we can to help the American consumer.

This year, we were very lucky, although Katrina was unlucky. The price of natural gas did not stay high, as high as it was going, because we had a warm winter. It still is at an enormously high price, and I just told you about that. Many Americans had their budgets and had disposable income. They woke up when they got their natural gas bill and half of their disposable income was gone. Where? To their gas bill, because many of them went up from $100 to $200, $200 to $400.

I must say to Senators, we have been told—the Energy Committee, Senator BINGAMAN and I have been told—that the highest priority for natural gas production in the United States—not second, not third, not fourth; the highest—is Leasehold 181. It is ready. It is known. They have drilled all around it with no damage. We had Katrina and no spills. It is 100 miles from Florida, and it will produce a minimum approximating 6 trillion cubic feet. What is that? It is one-fourth of the entire natural gas use of the United States per year; 10 million houses cooled and heated for 6 years. This piece of coast, offshore land.

It seems to me that every year we come into session, we hope we can prove to the American people that we can do something. We say: Can't we prove that we can move? We are going to move this bill out of committee within 3 weeks. If the leader permits, we will bring it to the floor. We are going to tell the Senate: You can let us help the American people or you can play games; you can take 3 weeks on this bill. It doesn't require but 2 or 3 days of debate. If somebody wants to filibuster, that is learned quickly. Let us decide whether we want to kill the bill or not. At least everybody is going to know they are not all so tough, that we have to tell the American people we just can't do it, too complicated, too many committees, too much argument. Not so.

The highest supply production issue for the United States and our people today is this little bill. If we do it, we take one high-priority item off the table and we say: Well, we can do something for a change.

It is bipartisan. My good friend from my State and I have the luxury of being the only committee for many years which has two Senators from the same State being the lead Republican and the lead Democrat. We are going to bring this down here together. It was introduced together. We just had a press conference. We say the same things. We both speak differently, obviously, but we are going to do it because it brings immediate relief to millions.

That is probably 6 minutes instead of the 5 I reserved. If so, I ask consent that it be all right with the Senate.

I yield the floor.

Mr. SESSIONS. Mr. President, the Senator from New Mexico should be congratulated for his leadership on this issue. He has understood it from the beginning. He warned us about the dangers of surging natural gas prices for years and years. As a matter of fact, I can remember a host of committee hearings in which Alan Greenspan

warned us that we need to do something about natural gas.

Isn't it true that we have now not only homes being heated and businesses being heated and we are using natural gas for fertilizer and other things, but electricity is using more natural gas than ever, to create our electricity? Is that the Senator's understanding?

Mr. DOMENICI. That is correct. Not only is that correct, every single new powerplant—98 percent of powerplants built in the United States in the last 15 years—is natural gas.

Mr. SESSIONS. Natural gas wells. I live in Mobile, AL, on the gulf coast. We have a lot of production right around where we live. We have never had any serious spills, to my knowledge, that amounted to real damage to the environment since the beginning. They are more safe and careful today than they have ever been, and the technology is better than it has ever been.

We are having a debate now about liquefied natural gas and building terminals where we send our money off to some foreign country that may be hostile to us, and they freeze, liquefy this natural gas at great expense, transfer it all the way over the ocean, and then they have to heat it up, which causes environmental problems, and then put it in our pipelines, and instead of the money staying in our country, it goes around the world.

When we have these huge reserves right off our own shore, doesn't it make sense to the Senator that we ought to go forward and produce? I see the smile on the Senator's lips. We have been through this before. But it is really pretty basic.

I hope the American people are beginning to understand that we can't deny ourselves. Do you know where they get the oil and gas from the Persian Gulf? They get it out in the water. If it is an environmental issue, it is as bad to get it out of the Persian Gulf, I suppose, as out of the Gulf of Mexico, and certainly economically it makes more sense, I believe.

Mr. DOMENICI. Mr. President, I guess this shouldn't get me started because I should not be here, I have something else to do, but I guess when you are in the Senate, you ought to stay in the Senate.

But on liquefied natural gas—I might as well make sure the Senate hears this—we can't get along without liquefied natural gas for the next 25 years, and when you add up demands, unless something really breaks—maybe if we had all of the Alaskan plants for natural gas down here, but it takes long enough to—I think the statement is we must have energy. But we were counting on a lot of it. It is happening, however. It is being bought in place by foreign countries.

Let me tell you that what means. Qatar, a country with huge supplies of natural gas, may very well decide that they could sell the whole natural gas field to China. There won't be any ships on the sea on which to bid. That could happen.

Right now, natural gas in the form of liquefied natural gas is not coming to America in large quantities. We need a lot more ports to get ready. But they are paying more for it to go to Spain than what we pay to bring it here because there is such a demand.

While we sit on the natural gas expecting LNG, the LNG is being bid up and going elsewhere, and we sit here wondering whether we should pass this bill to use our own, which is 100 miles offshore.

It isn't all so clear where we are going to get this natural gas, this beautiful product. It is so good that we burn it right in our kitchens. That ought to show you it is pretty safe. It is so good that we said no nuclear, no coal; let's just use it to make electricity. We decided to do that. That is when we got into this problem. I am not so sure we should have done it differently, but that is what happened.

Mr. BURNS. Mr. President, I ask the Senator from New Mexico to add me as a cosponsor of the bill.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Senator BURNS be made a cosponsor.

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

Mr. DOMENICI. Mr. President, that bill was introduced yesterday. I don't have the number, but the clerk has it. Senator SESSIONS is not on that bill.

Mr. SESSIONS. Mr. President, I would be pleased to be part of it and sign onto it. I thank the Senator from New Mexico for his leadership in constantly pressing to make sure this Nation does not make a mistake. We have made a lot of them in our energy policy. We have been blessed to have the Senator there.

We are now talking in Mobile about a new LNG terminal. Some people are concerned about it. We need to be very careful about it. But it costs so much more to import liquefied natural gas and then to regasify it and ship it around our Nation than to produce it off our own shore. And when we produce it off our own shore, the money stays in the United States; it doesn't go to these foreign countries.

I believe, from an economic point of view, we have huge reserves out there. I will share, maybe, my thoughts a little later. Maybe Florida was legitimately nervous in the early days about these wells and whether they would damage their beaches. But this far offshore, production has proven now year after year after year to be safe. It is not their waters. These deep waters are not Florida waters; they are U.S. waters.

We need to begin in a careful way to examine how we deal with this and see if we can't increase our production in the gulf. Alabama has found it to be safe. It is somewhat beneficial to our Treasury.

Mr. DOMENICI. Mr. President, I wish to make two more observations while my friend from Alabama is still here, and one in a general way.

I say to Senator SESSIONS that we spoke a little bit about the Energy Policy Act which we passed last August. It is a phenomenal bill. People stopped paying attention to it. But in the proposals the President put forth, all but one of those were in the Energy bill. They are waiting to be funded. He proposed them, so we are going to fund them. But from that day that it was passed until today—on the day it was passed, there were zero applications, permit applications for nuclear powerplants. Zero. Today, there are 18. It is not in China that they want to build 20, or something like that; it is in the U.S.A. because of that bill. I am not saying all of them are going to be built, I am not saying they have turned a shovel, but clearly the strong indication from consortia and individual companies is that because of what we did in that bill, it is time to add to the diversity.

What does that mean? That means had we had those, we wouldn't have a natural gas shortage today because little of the gas would have gone into powerplants and would have been available for what we are arguing about today. We would have been able to tell Florida, although we don't think it is the case, You will never have to drill there, but that didn't happen. There are many other things that are going to happen because of that bill, but we didn't do this one, the offshore, because we were told there would be a filibuster on the bill, the big bill, and we had to make a decision. It was open and made right here. Everybody heard it. So now we have to take our one shot at a time. This is one.

My last observation would be just in advance—I know the floor is a valuable tool for every Senator. They can offer amendments, and they can delay things. We are going to work very hard to make this one, single, big consumer present all by itself. Please, if you have big ideas, we will bring another energy bill, and put it on that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. As I listened to the statement of my good friend from Texas, I thought I would clear up a few things as the debate on this asbestos bill moves forward. I know that Members have some very real concerns with the size of this trust fund and who may make claim to it. I think the Libby language that we have in the bill now is fair, and I will make the case for that because we think it is perceived to be inequitable in its treatment.

The only inequity for Libby residents will occur if their recovery in this bill is removed. The medical criteria as it currently stands are actually insufficient for Libby victims. So members of this body, in particular, my good friend from Texas, is mistaken to conclude that they confer such enormous benefits on Libby's residents. That is not

really the case as I illustrated yesterday.

The bill as it is currently drafted will exclude 40 percent of the folks that live in Libby, MT. Now, to remedy that problem, I filed an amendment to strengthen the Libby provisions rather than remove them entirely. I felt I had to do that.

While I understand that my colleagues will take issue with specific medical criterion in Libby, I fail to see how the exposure in Libby is equal to the suffering in any other cities. The exposure to asbestos was limited in some of those cities into confined areas. If any community exposures existed, they were the result of a factory worker exposing his family through his clothing.

As I explained yesterday the circumstances in Libby are much worse. The main thing in Libby, MT, is that the community was exposed. The entire community was exposed by the wind from an open pit mine as opposed to communities that had enclosed facilities that processed the ore from the Libby mines. So we are talking about an entire valley, an entire city that was exposed by the wind from an open-pit mine. Not only did family members of the mine workers fall ill, but the entire town was contaminated.

Yesterday I showed a picture of a baseball field of little-guy baseball, and it was contaminated. In fact, the amounts of asbestos meant the asbestos in the playing field were as high as 15 percent in some areas. So it has been reported that concentrations as low as .001 percent in asbestos contamination generates dangerous exposures. So the children that were playing on that baseball field in 1978 are now experiencing health problems, and we believe they were caused by that exposure.

This is a unique incident. It is a unique area. And we are not talking about a structure. And we are not talking about a factory. We are talking about an entire community that was exposed to asbestos.

I think I read yesterday where this Memorial Day they will put up over 200 crosses for people who died from asbestos. They have added 20. Twenty crosses due to asbestos diseases in the last year. So I think we have a unique situation.

And also, the disease is a little bit different, we are finding now from talking to medical people who understand, and pulmonary doctors who under stand this asbestos and the related diseases around it.

So I would ask my colleagues to study this very closely.

I thank my friend from Alabama, and I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I see the other Senator from Montana in the Chamber. I thank both of them for their strong advocacy on this question. Senator BURNS is, again, offering an amendment, I believe.

To carry this further, I will say this to our colleagues. Now is a good time for debate. If you have amendments, let's bring them on and discuss them. Senator SPECTER and Senator LEAHY, the chairman and ranking member of the Judiciary Committee, with bipartisanship, are committed to this legislation and trying to make it work. We are delighted to hear the debate. We cannot accept everything. But your ideas are being listened to. Some will be voted on. We will have a better bill when we complete the process.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, first of all, I thank my colleague, Senator BURNS, for helping out in our effort to help the people of Libby, MT. In all the years I have been in public service, I am hard pressed to think of any situation that has bothered me more, that has urged me more to solve, or to help people out, than the people of Libby, MT. They have been put out by so much. It is a community that has faced hardship in so many ways up in northwestern Montana. The sawmills fold up and they go under. The economy there has been extremely difficult to sustain. And on top of that, we have this problem of asbestos, a particularly vicious form of asbestos in Libby, MT, called tremolite.

I would like to help remind my colleagues what goes on in Libby and introduce Libby to those who have not paid much attention to Libby.

Libby is a very special, very small community up in a remote part of Montana, up in northwest Montana. In a valley deep in the Rocky Mountains, Libby resides on the Kootenai River.

And this is not an exaggeration: The people of Libby are struggling. They are struggling mightily day in and day out. They have been uniquely impacted by asbestos exposure. I do not know of any community in the United States that comes close to the level of suffering that the people of Libby have suffered on account of asbestos. Once you visit Libby, you realize very quickly this is a situation which is very different from other asbestos problems in other parts of our country. There is no comparison.

First, just a bit about Libby. It is surrounded by staggering natural beauty. It is up near the Cabinet Mountains, next to a divide, the Kootenai River. It is a very special part of the world. The wonder of the mountains and the beauty of the river, however, contrast dramatically to Libby's other major distinction; that is, a community suffering from the worst concentration of asbestos poisoning in America.

Many of the people of Libby do not have the luxury now, as a consequence of asbestos, of enjoying all of this natural beauty and luxury I mentioned. They cannot hike the Cabinets. They cannot go up in the mountains to hunt elk. They can no longer scale down the river bank of the Kootenai to enjoy their favorite fishing holes.

Why, might you ask, can't people do that anymore? I will tell you a very basic reason. They cannot breathe. They have such difficulty and struggle so much with the very basic human activity of breathing—breathing in, breathing out. They are just out of breath. They just cannot breathe.

So you are asking, why can't the people of Libby breathe? Why are they struggling so much to breathe? The simple answer is W.R. Grace. Until 1990, a company called W.R. Grace used to mine vermiculite from a mountain called Zonolite Mountain, just on the outskirts of there. Until the mid-1970s, W.R. Grace processed that vermiculite mined in Libby in a nearby mill.

I remember years ago when I was meeting people up in Libby, going up to that mill, I was just stunned with how dusty it was, the conditions up there. I assumed it was just a dusty mill, not poisoning the air. If it were, people would know about it. But I was wrong. The people of Libby made that same assumption. The workers made the same assumption, and they were wrong. In fact, the mill was so dusty that workers often could not see their hands when they were sweeping with their brooms.

It is hard for me to find the words to describe the situation. I can remember guys coming off the hill, coming out of the mine, getting off the bus, and it was just a dust bag, just caked with dust. I never had seen anything like it. Mill workers swept dust outside and tried to do the best they could. They dumped it. Once they swept the mill, the dust and stuff outside, what did they do with it? They just dumped it down the mountain. And the mill's ventilation stack spewed dust up into the air. The ventilation stack released 5,000 pounds of asbestos every day—5,000 pounds of asbestos every day. When the wind blew from the east, a deadly white dust would cover the town. It would just cover it with dust.

For decades, 24 hours a day, the dust fell all over Libby. It fell on Libby's gardens, fell on the homes. Dust fell on Libby's high school track, Libby's playgrounds. Everywhere there was this dust from the mine, this asbestos dust.

Now, some of the vermiculite went downtown to a plant, right next to the baseball diamond. I know right where that baseball diamond is: right next to the Kootenai River. Vermiculite is a shiny material. You heat it and it pops like popcorn. People used to pop vermiculite to make building insulation. They called that popped vermiculite Zonolite.

The plant popped the vermiculite into Zonolite, and batches of Zonolite spilled all over the plant, all around the plant.

What happened? Well, kids played in this stuff. Kids played in the Zonolite. Workers at the mine brought back bags of Zonolite to pour in their attics as insulation. They put Zonolite in their

walls for insulation. They put Zonolite in their gardens. I guess it helped make things grow—they thought. They put vermiculite in road beds. Families used vermiculite and ore to build their driveways. They used to use this stuff.

But the layers of rock where people found the vermiculite contained harmful asbestos. Nobody knew it at the time. The people did not. The people did not. The company did. And the vermiculite outside Libby is laced with a particularly dangerous type of asbestos. It is called tremolite. This is not ordinary asbestos, which is bad enough. This is a very pernicious, special, terrible kind of asbestos called tremolite. The usual, more common asbestos is chrysotile asbestos. This is not chrysotile asbestos. This is tremolite.

Why is tremolite so terrible? Why is it even worse? Well, tremolite has long fibers that are barbed like fishhooks. These fibers work their way into soft lung tissue. These fibers do not come out; like fishhooks, they are stuck.

Now, the Zonolite Mountain now sits peacefully with the damage that has already been done. People in Libby are sick—very sick. They suffer from asbestos-related disease at a rate 40 to 60 times the national average—40 to 60 times the national average. People from Libby suffer from asbestos cancer. They suffer from mesothelioma, which is a form of asbestos-related cancer. And they suffer that mesothelioma at a rate 100 times the national average.

This sickness does not just affect the people who worked in the mill. W.R. Grace infected the whole town.

An article in the journal Environmental Health Perspectives concludes that based on the unique nature of vermiculite contamination in Libby, along with elevated asbestos concentrations in the air, it would be difficult to find Libby residents unexposed. They are all exposed.

Every day men from the valley went to the mountain to work in the mine and the mill. Every day, these men came home covered with the fine, deadly white powder. The powder got in their clothes. It got in their curtains. It covered their floors.

I talked to one miner. His name was Les Skramstad. And this is when I really got radicalized about this.

In talking to Les several years ago in his living room, to hear Les, a young fellow who is very ill now, he has a hard time breathing. He would come off the mine. He would go home to see his wife. His wife would embrace him. His children would jump up into his lap. They all have asbestos-related disease now, not just Les but Les's wife, his children. And the prognosis is not good.

The fine fibers of tremolite asbestos are very easy to inhale. Miners inhaled fibers in the mine. Workers inhaled the fibers in the mill. Wives inhaled the fibers when they washed their husband's clothes, and children inhaled the fibers when they played on the carpet or hugged their fathers.

The fibers are deadly. They cause respiratory disease. Those fibers caused a serious lung disease called asbestosis. Those fibers caused a serious form of cancer, mesothelioma, which infects the chest and abdominal cavities. Asbestos in Libby is tremolite asbestos. Tremolite asbestos is far different from the other chrysotile asbestos, which is the predominant cause of asbestos-related diseases. Let me explain the difference. Tremolite diseases are highly progressive and also highly deceptive. People with initial markers of chrysotile asbestos, the usual asbestos disease, have a 25-percent chance of progressive illness. Patients with initial markers of tremolite asbestos are more than 75 percent likely to develop more destructive diseases.

Because of the W.R. Grace mine and mill, hundreds of people in Libby died from asbestos-related diseases already. Hundreds of current and former area residents are now ill. Hundreds of people live in discomfort, and hundreds of people live in pain. Seventy percent of those affected with tremolite asbestos disease never worked in the mine.

Let me introduce you to some people from Libby. Arthur Bundrock worked in the mine for 19 years. He suffered from asbestosis for 21 years and his suffering was made worse from the knowledge that he carried the asbestos dust back home to his family. Arthur's son applied for work at W.R. Grace, had to get an x ray before they would hire him. The x ray showed he already had asbestosis. Grace never told him the results of the screening. The company never told him. Arthur's work in the mine affected his whole family. When Arthur died in 1998, six out of seven members of his family had asbestosis.

Then there is Toni Riley. Toni Riley never worked in the mine. But similar to many kids in Libby, she played in piles of vermiculite ore as a child. These piles were all over the town. Similar to playing in a sandbox, kids played in piles of asbestos. Toni Riley was a member of the local research and rescue team and an emergency medical technician with the Libby volunteer ambulance. She was also a reserve deputy at the sheriff's office for 5 years. In 1996, she was diagnosed with mesothelioma. Toni died on December 4, 1998. Toni is 1 of the more than 200 known cases where people from Libby have died as a result of asbestos-related disease.

W.R. Grace may have closed its doors, but the people of Libby will be plagued with asbestos for years to come. The company has closed its doors, but the people will be plagued probably forever.

These diseases can take 40 years to appear. Hundreds more will fall victim to these diseases in the future. The people of Libby must watch their neighbors struggle to tend their gardens, to walk into the cafe. They must watch their neighbors struggle to provide a future for their children, and they must wonder if they, too, will fall ill. Remember, these diseases can take up to 40 years to appear.

In 1999, the Environmental Protection Agency started to investigate. The EPA found tremolite contamination in the air around the nursery. They found it near the ballfields. They found it inside homes. Last year, we learned that trees near the Grace mine contained asbestos. Recently, a University of Montana study revealed another example of the horrific level of contamination in Libby. In the new study, asbestos fibers were found in the bark of trees growing near Libby Middle School.

Libby is not a rich city. In 2000, the median family income of Libby was just under $30,000. That compares with just over $40,000 in the whole State of Montana and just over $50,000 in all of America. The median family income is much below the national average. Libby is working to overcome years of asbestos exposure from W.R. Grace. They have been through enough. They did not ask for this lot. That is why I have fought to make sure that asbestos bills working through the Senate address the needs of the people of Libby, MT. The good people of Libby need our help. They are dying up there. The town has risen mightily to the challenge it has faced, but they need our help. They deserve our help.

I made a commitment to the people of Libby, and I intend to work together with my colleagues to see that commitment honored. Asbestos disease has devastated many communities across the country, but tremolite asbestos hit Libby hardest of all. Libby is unique. The type of asbestos at Libby is unique. The duration of exposure at Libby is unique. The manner in which asbestos disease manifests itself in Libby is unique, and the community-wide exposure in Libby was unique. That is why the tailored solution that the committee has proposed makes sense.

I urge my colleagues to support the Libby provisions in the asbestos bill and help us right this terrible wrong. Help these hundreds of suffering people to get health care and help save the life of this town.

There are not many things that I have experienced in the last, roughly, 30 years I have been in public service that equal the tragedy which is Libby, a tragedy caused by W.R. Grace and asbestos, a particularly pernicious form of asbestos in Libby, tremolite asbestos, which is so harmful to the community. Libby is struggling mightily. Libby wants to put this chapter behind them. The people of Libby are doing all they can. They don't complain. It is a wonderful feature of westerners, generally, and especially of the people of Libby, MT. They are not crybabies. They don't whine. But they want justice. They deserve justice.

We must take advantage of this unique opportunity we have in the legislation before us to make sure that the people of Libby get their fair due.

The provisions in this bill help assure that compensation is given to the people of Libby who are affected by asbestos so they can pay the medical bills, so they can somehow, some way, get back to normal lives, knowing all along that for many of them, for the indefinite future, they are still going to have a terrible infliction and difficulty breathing in and breathing out.

I implore my colleagues, please listen to the people of Libby. Please, in your heart, help the people of Libby, MT. That is the very least they deserve.

I yield the floor.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Florida.

Mr. MARTINEZ. Mr. President, I ask unanimous consent to speak for 5 minutes as in morning business.

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

(The remarks of Mr. MARTINEZ are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, under arrangements worked out between the leaders of the two parties, we will be open for amendments tomorrow. Senator LEAHY and I wrote to all Senators back on January 24, urging Senators to let us know what amendments they intended to offer so that we could schedule the business of the Senate. I renew that request at this time. We have a bill where, as previously announced, we are open for modification. During the some 36 negotiating sessions which Judge Becker and I have presided over during the course of the past 2½ years, we have made many modifications. We accepted many amendments in committee. Some were voted upon and defeated. But we are interested in making this the best bill we can.

We have carried the offer beyond amendments. If any companies are having special problems, we are interested to hear of the problems to see if we can find a way to accommodate them. We are dealing here with an enormously complex subject and we have limited time. In order to manage the bills, in order to conserve the time of the Senate, it is our request that Members bring forward to us amendments they want to have offered, which they intend to offer, with suggestions for time limits so we can proceed to manage the bill.

There has been extensive debate on the bill. The Washington Post reported today about the success of moving forward with the motion to proceed and, as I say, tomorrow we will be proceeding with the amendment process. The Post noted, as they put it, referring to me, that I had ''a bit of an obsession with the passage of this bill.'' I think that is an erroneous statement. I don't have a bit of an obsession; I have a total obsession with the passage of this bill. I say that because I have been working on this bill for the entire time I have been in the Senate.

Shortly after I was elected in 1980, Senator Gary Hart came to me and was with a constituent, Johns Manville, and said there is a terrible asbestos problem. I have been a party to efforts over the course of the past two and one-half decades-plus to try to find an answer. It has been extremely elusive. Finally, Senator HATCH came up with the idea of a trust fund. When we passed the bill out of committee during the 108th Congress in July 2003, I then enlisted the aid of a senior Federal judge, Edward Becker, who had been chief judge of the Third Circuit, and who is very knowledgeable on asbestos matters. Judge Becker had written the opinion which was upheld by the Supreme Court of the United States, which said you could not use class actions on asbestos. That might have been an answer on consolidation class action status to handle the issue in the courts. The Supreme Court of the United States said that mode of procedure was not suitable for asbestos. Then the Supreme Court of the United States issued a challenge to the Congress to provide a legislative solution. That challenge has been issued by the Supreme Court on some four occasions, telling us that it was our business to come up with a solution. Judge Becker agreed to mediate and, as I say, we have had some 36 meetings in my conference room, attended by anywhere from 20 to 60 people. Stakeholders were principally involved, and that is defined as labor, AFL–CIO, which was represented ably at those meetings; we invited the trial lawyers and they attended the meetings, even though we knew there would be opposition from them because, realistically, it impacted their livelihoods; we had the manufacturers and we had the insurers.

Last week, we saw come forward a very prominent plaintiffs' lawyer in the asbestos field, Dickie Scruggs, Esq., of Mississippi. He is also Senator LOTT's brother-in-law. Senator LOTT put the two of us in touch and we talked about the matter. He was one of the originators, if not the originator, of the litigation involving asbestos. From what he has seen over the years, he came to the conclusion that it was not a good idea to keep these asbestos cases in the courts; that a better idea was to have the trust fund, and he came in and made public statements. I believe he may even be on a commercial. I don't have a chance to watch too much television, except for C–SPAN. But he pointed out that the victims are simply not being compensated. When we have had a lot of talk on the Senate floor about special interests, this is one interest group which is not a special interest; it is a general interest, and that general interest is the large group of victims who are suffering from deadly diseases—mesothelioma and lung cancer and other ailments from exposure to asbestos—who are not being compensated. It is their interest we are seeking to take care of.

When their companies go bankrupt, they don't have anybody to sue and that is why the trust fund has been created—a trust fund where the figure was established jointly by Senator FRIST on behalf of the Republicans and then-Senator Daschle on behalf of the Democrats at $140 billion. !1The interested parties, the manufacturers and insurers, agreed to put up that money. The fund had started out with substantially less, but it was calculated that that would be an amount realistically calculated to take care of the problem. It is very hard when making projections to know with certainty what is going to happen. The Congressional Budget Office has made an exhaustive study and concluded it would cost in the range of $120 billion to $135 billion. They outlined one contingency which might be a little higher than $150 billion, but they said it was impossible to make the calculation, as they put it, ''with great certainty.'' !1Well, you cannot function in all cases with great certainty, but these projections are realistically calculated to do the job. If we are wrong, and when you talk about thousands of cases projected over decades, if our projections are not accurate, the claimants have the right to go back to court so that they are no worse off than they would be at the present time. They are limited to either Federal or State courts—but they cannot judge shop for special counties anywhere in the country, which is the practice today. Madison County, IL, was singled out and some counties in some other States. They have to go to the State courts where they live or where they worked. So we have a realistic plan to take care of this issue. !1But if we can have a better bill, we are very anxious to have that better bill. That is why we have invited our colleagues to come forward with any amendments they may have. The three Senators from the other side of the aisle who have spoken in opposition to the bill have conceded the very grave, difficult problem. They say this bill is not right, but they don't deny the transparency of how we have worked, and they don't deny the evidence that has gone into it or the comprehensive analysis. I have said I believe this is the most complicated piece of legislation that has ever confronted a legislative body. That is a very grandiose, sweeping statement, but I believe it to be true. I repeat that I challenge anybody who knows of some legislative activity that is more complicated than the one at hand. There have been extensive hearings, extensive negotiations, extensive analyses, extensive amendments, and we are still open for the amendment process. !1It is my hope we will do what the Democratic leader said yesterday, and that is go to the amendments and take them up, and that we will not face additional procedural challenges. If we do, we are prepared. There has been some talk in the cloakrooms and hallways about challenging them on a budget point of order, and we are prepared for that. The underlying merits

are that there is no realistic budget problem, because there is no Federal money involved here. We have made the bill airtight that the Federal Government cannot be involved. It is all private contributions. If the plan does not succeed, we have alternative ways of dealing with the issue, but not to come back to the Federal Government. There are three possibilities of points of order. One is you cannot have legislation before there is a budget resolution. But on that situation, consulting with the experts on procedure, we can have the date of October 1 in the next fiscal year to solve that. !1There is an issue about an allocation that was made at the discretion of the chairman of the Budget Committee, and we believe that will be accomplished with that allocation being released by the chairman. All of this is a bit presumptive, but I think that is how it will work out.

There is a third concern, which is that there not be more than $5 billion spent in any 10-year period between 1960 and about 40 years beyond that. So we will see what eventuates. We are working to cap expenditures so that we stay within that $5 billion limit.

Mr. President, I ask unanimous consent that three additional letters from the International Association of Heat and Frost Insulators and Asbestos Workers, the United Automobile Workers, and the International Union of Painters and Allied Trades in support of S. 852, the Fairness in Asbestos Injury Resolution Act of 2005, be printed in the RECORD.

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

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 AND FROST INSULATORS & ASBESTOS WORKERS,
Lanham, MD, January 31, 2006.

To: Members of the International Association Heat and Frost Insulators and Asbestos Workers.

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 de-rail 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 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% 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.

With kind regards, we remain,

Fraternally yours,

JAMES A. GROGAN,
General President.
TERRY LYNCH,
Political director.
JAMES P. MCCOURT,
General Secretary-Treasurer.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
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 asbestos 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 daimants. 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 UNION OF PAINTERS AND ALLIED TRADES, AFL–CIO, CLC,

Washington, DC, February 7, 2006.

DEAR SENATOR: The Senate is now considering the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005 (S. 852), sponsored by Senators SPECTER and LEAHY. The International Union of Painters and Allied Trades (IUPAT) strongly supports this legislation and, as it moves forward, we urge you to support cloture on S. 852 on both the motion to proceed and the bill itself.

The IUPAT believes that 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 believe that S. 852 and the establishment of a $140 billion federal trust fund to compensate the victims of asbestos-related diseases through a streamlined, no-fault administrative system is a vast improvement over the current tort system that all too often is unfair to victims of asbestos exposure. Under the current tort system, many victims receive little or no compensation because those responsible for the asbestos exposure are bankrupt, immune from liability or cannot be identified. If a victim is fortunate enough to secure an award, the litigation can drag on for years, the award amounts are highly unpredictable, and far too much money is wasted on attorney fees, other litigation costs, and individuals who are not impaired.

Furthermore, while this important legislation is considered on the Senate floor, we urge you to reject any amendments that would weaken core provisions of the bill. Namely, agreements reached on the issues of insurance subrogation, medical monitoring, CT scans, statute of limitations, medical criteria, awards values, $140 billion in guaranteed private funding, enforcement provisions for contributors, transparency of fund contributors and a reversion to the current tort system should the fund become insolvent. Should any amendments be adopted on the Senate floor that would weaken any of these core provisions, we will be forced to withdraw our support for S. 852. We also look forward to ongoing efforts included in a manager's amendment and during Senate floor debate that would, in our view, positively address outstanding concerns with regard to start-up and sunset provisions as well as individuals suffering from both asbestos and silica related diseases.

In dealing with a highly complex and emotional issue, S. 852 reflects years of negotiations and compromises that will undoubtedly allow critics to point out various ''shortcomings'' in this bill. The IUPAT recognizes that this bill is not perfect but perhaps it represents the last best chance to provide prompt, equitable compensation to asbestos victims and is undoubtedly a vast improvement over the existing tort system. The U.S. Supreme Court has held that federal legislation is necessary to solve the current asbestos compensation crisis, and we agree. We believe that S. 852 deserves your consideration and ultimate support, and for that reason, the IUPAT urges you to support cloture on both the motion to proceed and the bill itself.

Thank you for your time and attention to this critical issue.

Sincerely,

JAMES A. WILLIAMS,
General President.

Mr. SPECTER. Mr. President, I see the distinguished Senator from West Virginia, the senior Member of this body, the former President pro tempore, former chairman of the Appropriations Committee. He has held every title there is around here. We consider Senator BYRD's longevity and stature as phenomenal. He was in Congress when Harry Truman was President, so he has served with a lot of Presidents. Senator BYRD makes a key distinction between serving with and serving under. He says serving with, and I think he is right. And if you are dealing with Senator BYRD, of course, he is right.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I shall quote Alexander Pope in saying to my distinguished friend, Senator SPECTER:

> Thou art my guide, philosopher, and friend.

I thank the distinguished Senator.

Mr. President, I ask unanimous consent to proceed for not to exceed 3 minutes as in morning business for the purpose of submitting a resolution.

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

The Senator from West Virginia is recognized.

Mr. BYRD. I thank the Chair.

(The remarks of Mr. BYRD pertaining to the submission of S. Res. 370 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, it is about a quarter of 5, so we still have a fair amount of time left on today's calendar. There is no Senator in the Chamber, except you and me, Mr. President. So if there are any of our colleagues who want to speak on the asbestos bill, now would be a good time to come over and speak.

There is a certain tempo about this Chamber. When there are a lot of Senators who want time, there is very limited time, fighting for the last extension of time, unanimous consent for 2 more minutes here and a little more there. Now is the time for anybody who wants to speak to come to the Senate Chamber.

I might comment that we all have a lot of other things to do, beyond any question. I have been spending a lot of my time meeting with Senators in their offices talking about the bill and also working on the issue of electronic surveillance, which is very heavy on the Judiciary Committee calendar. I am now about to go to a meeting on immigration, but I will be available if the action on the floor heats up.

Again, I urge any of my colleagues who want to speak, now is a good time. Again, I urge my colleagues to follow up on the request Senator LEAHY and I made back on January 25: If you have amendments, let us know so we can manage this bill in an efficient way.

In the absence of any Senator on the floor seeking recognition, 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 S. 852, which is a bill that has been written to address what has become a scourge in America: asbestos-related illness and death.

We understand that as early as 1934, some of the companies that were making products out of asbestos came to realize there was a danger, that some of the employees working around this asbestos ended up developing lung problems and some of them were fatal.

Rather than protect the employees or disclose the danger, some of these companies did nothing, said nothing. In fact, there is ample evidence that they covered it up. They didn't want their employees to know the dangerous situation they were in. They didn't want to end up with liability for their employees' illness and death, and they didn't want to lose their profitability. So this secret was kept for a long time, from the 1930s onward.

Through World War II, when men and women serving this country were busy building the ships and other vehicles necessary for our troops, they were exposed to asbestos in many different forms.

Asbestos became a very common element that was used in construction and a lot of different products, from brake linings to home insulation. It was considered to be a valuable resource that was fireproof and light in weight. It was somewhat revolutionary. But during this entire period of time, the development of asbestos product, the asbestos itself, and the fibers that were floating in the air, breathed in by workers and bystanders and innocent people, were creating mini-timebombs in the lungs of the people who were exposed. They didn't know it. They didn't sign up for it. They were not warned. They only learned much later in life that they had some exposure and it ended up killing them.

I wish the story of asbestos had started and ended long ago, but it continues to this day. People still turn up with this disease, mesothelioma, the most fatal form of asbestos exposure, similar to lung cancer, but much more virulent in terms of its devastation on the human body.

The persons diagnosed with mesothelioma have limited time to live. Some of them go through harrowing, extraordinary surgical procedures to buy the possibility of a few more months of life. It can strike anybody at any time, young and old alike, men and women alike. It can strike someone in your family, Mr. President. It can strike a friend. Asbestosis, which is a form of it, is a disease which limits your activities and limits your lifespan. Mesothelioma is a killer.

So hundreds of thousands of Americans have come to learn, because of exposure to this product, that they are sick and facing huge medical bills and the prospect of illnesses of great duration or death, and they ask who is responsible.

Occasionally, they will find an employer that used asbestos. In some cases, they will find a product they purchased that ended up creating asbestos exposure, and they try to seek compensation in court.

What they are doing is very common in America. People who are guilty of wrongdoing are held accountable in court. Drunken drivers are held accountable in court. People who sell defective products are held accountable in court. People who strike other people and cause injury are held accountable in court.

So over the years these hundreds of thousands, maybe millions, of people have asked for their day in court, asked for a judge or jury to decide whether they are entitled to compensation for medical bills, for lost wages, for the family they will leave behind if they are going to die.

It is not unusual. These are the types of lawsuits filed every day in America, and we trust our system. The system says that ultimately a judge and a jury will decide what is fair and what is right. A judge and a jury of the peers of the person who is in the courtroom will decide if compensation is something that should be given. In many cases, it is clear, and large verdicts are given; in some cases, the answers are no.

So over the years, as this asbestos exposure has become better known, many of the companies that were deeply involved in making profits with asbestos have faced huge lawsuits from numerous people who have been injured. Some of these companies, because of the lawsuits and other circumstances, have gone out of business.

Johns Manville was a big name 30 years ago in America. Now it is a trust fund created to pay asbestos victims. Johns Manville made its fortune, in some part, by using asbestos. But by using asbestos and creating asbestos products, they endangered and harmed a lot of people. Courts across America said: Johns Manville, you are responsible; you have to pay. That has happened over and over.

There are many corporations that wonder if they, too, will face many lawsuits. Some already have; others have not. The victims keep coming because so many people were affected by this product. And because of the concern of some businesses as to their exposure and liability, they started coming to Congress over 20 years ago, saying we have to close the courthouse door, we can't let these people come into the courtrooms anymore because they keep winning. They are winning because no one willingly exposed themselves to asbestos. They were innocent victims and their lives were changed dramatically.

So these businesses came to Congress and said: You have to take these cases out of the courtroom; you have to create some other way to deal with it.

We have been talking about it for a long time here on Capitol Hill. Finally, this week, S. 852 has come to the Senate floor in an attempt to create a system that will replace the courtroom in America. This bill creates a trust fund that is supposed to pay the victims.

Think about these victims for a moment. There are some, when you think about them, you might be surprised to know why they died. One of them we talked about earlier today was a great colleague of mine from the State of Minnesota, Bruce Vento. What a terrific guy. I believe he was formerly mayor of St. Paul, MN. He represented St. Paul in the House of Representatives. Bruce was a terrific fellow, an outdoorsman, physically fit. I would see him in the House gym every morning. His locker was down from mine.

Then came the day when they diagnosed him with mesothelioma, and that was, sadly, a death sentence. At some point in his life, something he had done had exposed him to asbestos. It was a tough situation. His family tried to face it, get the best of medical care, but it was hopeless. As a consequence, Bruce passed away.

Here is someone certainly the older people in the audience will recognize, actor Steve McQueen. He died in 1980

from mesothelioma. Some exposure at some point in his life led to this deadly disease. This man who was so handsome, daring, and courageous in all the movies could not fight back when he was struck with mesothelioma.

Recently, singer Warren Zevon—I recall when he did his last CD. It was a big hit. He made that CD realizing it was the last one he would ever record. At some point in his life, he was exposed to asbestos. He has died.

Admiral Elmo Zumwalt, most people remember him, his service to America in the U.S. Navy during Vietnam. He is a well-known figure, spokesman. He, too, was exposed to asbestos at some point in his life and died of mesothelioma.

These are some of the big names who died of mesothelioma, but there are others.

Patricia Corona is a mesothelioma victim. I wish to tell you a little bit about her story.

Patricia, 72 years old, was diagnosed with malignant mesothelioma in the spring of 2001. Her exposure began when she was a young woman in the course of her employment as a sales manager at various automotive dealerships. They used asbestos brake linings, pads, and clutches. She was a sales manager. She frequently walked around the service area. Unknowingly, she was exposing herself to deadly asbestos fibers.

Mrs. Corona and her husband Carl, shown in this picture, have two children. After leaving the automotive dealership, Mrs. Corona decided to stay at home with her kids. While at home, she led an active life. She remodeled her entire house by adding on, painting, putting up drywall, putting in new floors, among other things, just the kind of ambitious, energetic, and talented woman you want to have in your own home. Unbeknownst to her, many of the products she used in home construction contained asbestos. Again she was exposed, unknowingly, to these deadly asbestos fibers.

When Carl and Patricia's kids were grown up, Mrs. Corona went back to work as a sales manager, and eventually bought her own custard stand. After quitting her sales manager job and selling the custard stand, she stayed home to take care of her handicapped brother.

While taking care of her brother, she did some small remodeling. In the spring of 2001, Mrs. Corona's active life came to a screeching halt. She was stricken with shortness of breath and extreme chest pains. She was diagnosed with mesothelioma in May 2001. Mrs. Corona's life, along with her husband's, changed dramatically due to the effects of the disease.

Mrs. Corona is obviously restricted in her activities and realizes that in a short period of time, she will succumb to this disease. Patricia Corona of Glen Ellyn, IL, another asbestos victim.

This is businessman John Rackow. John is from Lake Zurich, IL, grew up in Chicago and moved to the suburbs. His father Ron owned a plastics factory, and Jack helped him run it. He married and raised three kids. Along the way, he worked for a lot of different businesses. He worked in the property development business. He was athletic and active, but he recently noticed when he went out running, he would become short of breath. He was an avid golfer. Jack also noticed his golf game wasn't what it used to be. He went to see a doctor. Some routine tests revealed a mass in his body. When the biopsy was done, the doctor diagnosed him with mesothelioma.

Jack didn't believe it. He went to all kinds of specialists. He took medication to manage the pain. He continued to play golf and even entered a golf tournament. However, after a few days, he was flat on his back in the hospital. He became weaker by the day, and in less than 2 weeks from the time he entered the hospital, he passed away at the age of 64. Jack Rackow is survived by his children and grandchildren. He is another asbestos victim.

The last one I will talk about from Illinois is policeman Donald Brozych from Tinley Park. He studied for the priesthood. He eventually decided to become a police officer. While he was in school, he worked in construction. He was handy at home and worked on his own car.

After he retired, Don and his wife enjoyed traveling and spending time with their friends, but he found himself worn out all the time. During a physical exam, the doctors found some abnormalities, did some tests, and diagnosed him with malignant mesothelioma.

After diagnosis, Don has gone through numerous treatments—chemotherapy, extensive surgery. He even went into an experimental program. He lost his hair. As of the time of this writing, he has been in treatment for over 2 years. He says each day is a blessing and he doesn't know what to expect in the future. He and his wife Donna pray for a future.

When was he exposed? He doesn't know. He looks back at his life and tries to figure out was it while he was working on construction, trying to earn his way through school? Was it while he was working on his car, doing home repairs? There were so many common experiences he was involved in, never knowing he was exposed to asbestos.

I tell you these stories because people such as those I just described have cases pending in courts across America today. They are people whose lives have been shortened and whose lives have been changed dramatically because of exposure to asbestos. They want to know if they can find the party responsible for their illness, whether that party will pay to their family the cost of medical bills and do something to keep their family together when they are gone. It is not an unreasonable request, and it is a request which many times leads to a jury verdict or a judge finding, yes, they are entitled to recover.

This bill that we have before us, S. 852, is a bill which will close the courthouse doors to every one of those people. If they don't have a case being argued before a judge in trial, when this bill is signed their case will be closed. No matter how long they have worked on it, no matter how much effort they put into bringing together medical bills, bringing together all the evidence of where they worked and how they could have been exposed—despite all that effort, it is over.

Where do they turn? They will turn to this trust fund, a trust fund that has been created in this bill. How much money are we going to have in this trust fund to take care of all these asbestos victims for the next 50 years? The amount, according to the chairman and the sponsor of the bill, is $140 billion.

Repeatedly today and on previous occasions, Chairman SPECTER has been asked: Where did you come up with the number $140 billion? By what method did you calculate the number of potential victims, the amount of compensation, to come up with this number of $140 billion? Without exception, the chairman of the committee and lead sponsor of the bill, Senator SPECTER, has said he cannot explain that calculation. He cannot tell us where $140 billion came from. At best, he says, it was a figure that he heard from Senator FRIST and Senator Daschle a year or two ago. That doesn't sound like a very valid starting point to establish the amount of money you need in a trust fund to take care of some of the victims that we have talked about.

To close the courthouse door to Donald Borzych and his family, and to say to them you cannot pursue your lawsuit, you must turn to this trust fund, the starting point should be that the trust fund has enough money to take care of the victims. But, sadly, there is no way of establishing that.

In fact, today Senator KENT CONRAD, who is a colleague of mine from the State of North Dakota and is the Democratic spokesman on the Senate Budget Committee, made a presentation to our caucus lunch. By best estimate, $140 billion is grossly inadequate, totally unfair in terms of what it will cover in the future. They have turned to a variety of different groups and said: What would it really cost? The Congressional Budget Office, outside consulting groups—each and every one of them says $140 billion is not enough.

Senator SPECTER was asked yesterday: What happens if this trust fund runs out of money? What if claims of people like Donald Borzych, Patricia Corona, are still out there, or people just like them, when the fund runs out of money? Senator SPECTER was very candid. He said we will just have to cut back on the amount we have to pay the victims. Think of that for a moment. Facing deadly mesothelioma or asbestosis, losing your day in court for just

compensation for your injuries, you turn to a trust fund that fails you when you need it, and you receive a token amount for having given up your life, having given up the quality of your life, having given up all that time with your family.

Over the last year or two I frequently have met with the families of these mesothelioma asbestos disease cases. Some of them are still heartbroken because in many cases that father and that husband was taken from them in a short period of time. In other cases they fought valiantly, with great pain and sacrifice, to try to beat this disease—and they failed. Just last week, in a corridor upstairs, a family came to see me. A great young little fellow there who looked like he was about 8 years old—he had a white shirt on and a bow tie—he was coming to the U.S. Capitol. He talked about losing his grandfather. He said he was glad he lived long enough to at least know him, but he lost him to asbestos.

I thought to myself at that moment: If you are going to take that family out of court, if you are going to close the courthouse door to their effort to recover at least for the medical expenses and the injuries that have been suffered, shouldn't you put them in a system that will work, a system that you can say with some confidence will compensate them?

We cannot say this about this bill—$140 billion—and no one can come to this floor and explain how that $140 billion is going to be adequate. It turns out that as soon as you close the courthouse door, if this bill passes, and you open up this trust fund, there will be a flood of people rushing to it. We know that. Some of them are on their last leg, literally, trying to get some compensation. So will there be enough money in the trust fund to get started? The answer is no, not nearly enough.

What is the trust fund going to do? It is going to turn around and borrow enough money to start to pay them over an extended period of time. And as the trust fund borrows money, it has to pay interest for the money it borrows. The best estimates are that out of $140 billion, more than a third of it is going to be paid in interest because of borrowing to start the trust fund in its earliest years. So there will not even be $100 billion to deal with all of these cases.

Where will the money come from, $140 billion? That is another good story. I yielded today several times to Senator SPECTER. We talked about this. It is still not clear what happened, but some outside group—whether a consulting group or private corporation, I don't know—was called on to figure out how you create $140 billion in a trust fund. How do you turn to businesses and insurance companies and have them pay that much money? What standards do you use? How many companies are affected? Which companies will be responsible? Which will not be?

All the time we were considering this bill in committee, many of us were asking: How did you come up with $140 billion, and who is going to pay it? We never could get an answer. In May of last year I wrote a letter to the chairman and I asked: Can you tell us the answers to those questions? This was 8 months ago. I never received a reply.

Over time, the chairman said he would provide the information, then announced that he had to issue a subpoena to get the information to explain his own bill—subpoena. Today he acknowledged it. They subpoenaed the information—not from a Government agency but from some private business, private corporation that was writing this bill, or at least writing the means by which they would fund the bill. They subpoenaed the information. So, obviously, we believed that in the interest of a real public debate that information should be public. But it is not. Somehow or another it has been characterized and classified as confidential information so that any person—the family of Donald Borzych, for example—who wants to know how this trust fund will ever be funded can't even see this. It is a secret list, a secret list of the companies that are going to fund the trust fund to $140 billion.

Is this how we write laws in America? Do we go to private companies to write the laws? And then, when you ask them to give you the information as the basis for the law, you have to subpoena it? Demand it from them? Is that what the American people expect? I don't think so.

I think they expect people, public officials and our staff, to put their best efforts into writing a bill that is not written by special interest groups, is not written by private companies. In this case, this bill clearly was, in many respects.

There are big winners in this bill. I wish I could go through the bill with some certainty and tell you what is in it, but I cannot. Standing here today, facing the prospects of voting on the bill tomorrow, I cannot tell you what we will be voting on. A lot of people think Senators do not even try. The fact is, we were given a bill, this bill here, S. 852. That is the one that was passed around here. It is on everybody's desk. But it turns out this is not the bill at all. Listen to what was printed today in Congress Daily, which is a publication on Capitol Hill:

> Senate Judiciary Chairman Specter is drafting a managers' amendment to the asbestos litigation bill with more than 40 new provisions in hopes of garnering enough votes to pass the legislation. Senator Specter said in a news conference, ''There is so much of this bill that is a work in progress.''

I can tell you, that means that neither this Senator nor, frankly, any Senator other than perhaps the chairman, has a clue what we will be voting on tomorrow. While the fate and lives of millions of Americans who have been exposed to asbestos hang in the balance, we are being asked to vote for a bill that will be changed so dramatically in just a few hours that no one knows what is in it. No one knows what is in it. This is what gives Congress a bad name—for us to be moving on a bill of this importance and this magnitude without knowledge as to what is included.

What is interesting is that the White House usually comments on these bills. They kind of send us a statement of administration policy, as to whether they support a bill or oppose it. What I find interesting is we received an interesting statement from the White House on the administration's approach to it. I might say, before I read it, that they could not possibly know what is in this bill because no one else knows. It is going to change overnight. A managers' amendment will bring 40 new provisions in the bill. But nevertheless, the administration, the Executive Office of the President, February 8, 2006, Statement of Administration Policy on S. 852:

> The administration supports Senate passage of S. 852.

He goes on to say asbestos related litigation has clogged up courts, deprived those with injuries of meaningful remedies, costing tens of thousands of jobs, and so forth.

Then they come down to the second paragraph in this very brief statement of policy in which they say:

> Although the administration has serious concerns about certain provisions of the bill, the administration looks forward to working with Congress in order to strengthen and improve this important legislation before it is presented to the President for his signature.

Serious concerns—well, they should have serious concerns because they have not seen the bill. Forty new provisions are going to be added tonight that no one in the White House could possibly have read before they gave this reservation of an endorsement.

Here we are in a situation with a trust fund in an amount that cannot be explained, coming from companies that are on a secret list that cannot be disclosed, as part of a bill that does not exist.

If you were out there with a member of your family exposed to asbestos, I think you would have justifiable concerns that what the Senate is about to do is nothing short of a disaster—a disaster for so many victims across the United States.

Several things ought to be said about the problems that we face with this bill. I could talk to you about the difficulties in the bill. One of them relates to Libby, MT. Libby, MT, could have been ground zero for asbestos contamination. W.R. Grace & Company was mining asbestos and their workers were being exposed to dangers on a daily basis. This company is now gone, but the lawsuits and the injuries and the deaths continue from Libby, MT.

I can recall when Peter Grace, the head of W.R. Grace, was brought to Washington during the Reagan administration to tell us how to run the Government. Peter Grace was the head of a

commission to end waste and fraud and abuse in Government.

It turns out that Peter Grace's company, W.R. Grace, had been guilty of fraud on its workers for decades, concealing the dangers of asbestos. Part of this bill says we ought to give these Libby, MT, workers good treatment. I support it. I think it is a good thing to do.

But only Libby, MT. It turns out across the United States of America there are smaller examples of exactly the same thing in State after State. There are over 25 different sites around America—some in my own home State of Illinois, some in Texas, some in Louisiana, some in New York—that are just like Libby, MT. But when the chairman wrote the bill, special consideration was only given to one place in America—one place. Why? Why would you single out one place in America to give special treatment under the bill? Sadly, that is exactly what happened. And because it happened, we are going to be facing an amendment, which I believe Senator GRAHAM will offer, to make sure that there is fair treatment for many others who are going to be involved.

I hope the Senate will support it. As I said, I am not against Libby, MT, receiving their fair share. But who were the winners and losers when it gets right down to it? The list is pretty interesting.

I talked earlier about U.S. Gypsum, a company based in Illinois. They have been sued by lots of people exposed to asbestos from their products. U.S. Gypsum made an announcement last week as follows:

> We believe that we have about $4 billion in damages that we have to pay to victims of asbestos exposure from our products.

Then they went on to say that they were going to pay it, unless this bill passes. If this bill passes, U.S. Gypsum will be required to pay into the trust fund $900 million.

Think about that for a moment. One company benefits to the tune of $3.1 billion—U.S. Gypsum—because of this bill.

When it comes to the question about who wants this bill, you can bet that company wants this bill.

Honeywell is another company—estimated future asbestos payments, $2.75 billion.

How much will they pay into this trust fund? Somewhere in the range of $300 million or $400 million, about 14 percent or 15 percent of what they would otherwise pay in court. So now Honeywell wants this bill.

Dow Chemical, estimated future asbestos payments up to $2.2 billion. What is the amount of money they will pay into the asbestos trust fund? Somewhere in the range of $300 million. So they are going to do quite well.

But there are other companies that will be forced to pay into this trust fund with exactly the opposite results.

A.W. Chester, a company that has an estimated future asbestos payment in the court system, zero; never been sued, never paid. They will have to pay annually $16.5 million into this trust fund; never been sued, never paid a penny.

They have said, quite frankly—this company has been around for a long time—they are going out of business.

The same thing is true with Hopeman Brothers, no exposure; $16.5 million a year into the trust fund.

National Service Industries, estimated future asbestos payments, $11 million. They have to pay $16.5 million a year into this trust fund.

Is it any wonder that many of us have asked to come up with a list of companies that are going to be winning and losing with this asbestos bill? There are going to be some big, huge winners, and they have been working night and day to get this passed.

There was a study released by Public Citizens Congress Watch in May 2005, entitled, ''Federal Asbestos Legislation: The Winners Are.''

It looked at lobbying efforts behind this bill. They have been going for a long time.

I mentioned, in an earlier statement, that over 20 years ago people were talking about legislation. There has been a real intensity in that lobbying effort over the last several years.

This public citizen organization concludes the big winners will be an unknown number of Fortune 500 companies and at least 10 asbestos makers who have filed for bankruptcy.

It concludes: Some of the Nation's largest and savviest investment firms have positioned themselves to score big if the bill passes.

Everybody following this debate—especially Americans fed up with the way Washington works against the interests of the mainstream and for the interests of Wall Street—I hope they will go to the Public Citizen Web site, www.Citizen.org, and read it for yourselves. You can read their report and analysis of the lobbying effort. And you will find the money which has been spent—estimates by some are as high as $140 million—in lobbying to get this bill passed.

It sounds like a huge sum of money, until you look at one company that could win $3.1 billion if this bill passes. It means a lot to them. You can understand why that company hired 40 lobbyists to come and beg us to vote for this bill.

But I don't worry so much about the companies. I want them to stay in business, if they can. I worry most about the victims. I worry about a system that would not pay those victims.

Is this the best we can do in America? Is this what fairness has come to? This bill is called the FAIR Act. Sadly, I think it is unfair. It is unfair to the hundreds of thousands of people who, through no fault of their own, have been exposed.

Luckily, we have a lot of supporters who have come and talked to us about their support for this legislation opposition. They include many businesses that will be shortchanged, as I mentioned earlier, which include some insurance companies that feel this is fundamentally unfair. They include asbestos victims groups united to oppose this legislation and a score of major labor unions across America representing workers who may have been exposed and may need their day in court.

I am afraid that when you add up this lobbying effort that I have in my hand against the $140 million to pass this legislation, this poor group just didn't have the firepower.

That is why this legislation is on the floor today and why it will be considered very soon.

Once again, we are going to say to America, We don't trust the courts in America, we don't trust the judge, we don't trust the juries. We trust the special interest groups pushing legislation that takes the power away from the individual to have their day in court, to have their neighbors decide what they are entitled to.

Some who want to put their trust in that operation should pause and reflect.

This is the same gang who came up with the Medicare prescription drug benefit program that has become an unsalvageable fiasco across America; again, that program driven by the pharmaceutical companies, this legislation driven by a handful of corporations that will do extremely well.

I am going to close by saying that I can't think of a more important bill to be considered since I have been in Congress. I can't think of a bill that is going to have more impact on ordinary people.

It is unfortunate that special interest groups will dominate this debate. Some people say: Aren't there special interest groups on both sides? I will concede that point; business groups on both sides, trial lawyers on one side, major corporations on the other side, unions on one side. This is a clash of the special interest titans.

That is what this bill is.

The obvious question is: Why are we doing this? If you ask the American people to pick any city in America, whether it is in Nevada or Illinois, you pick it, go on the street and ask: What is the first bill the Senate should take up this year? My guess is that many of them would say: I hope it is ethics, with that culture of corruption in Washington. You had better clean that mess up before you do anything else. Someone else may say: After I sat down with my mother and tried to do that prescription drug form, I hope you will change that. Someone else might say: I hope you will do something about the cost of health insurance. That is a real issue facing businesses, families, and individuals.

In my part of the world, they would say: Have you seen your heating bill at your home lately? It is double, Senator, if you didn't notice. What are you doing about energy in this country?

Some workers who come by my office ask: What are you going to do to protect pensions which we have worked a lifetime for?

There is a long list of things we could do not driven by special interest groups. No. The first item on the agenda for the Senate is the asbestos bill, the clash of the special interest titans.

That is where we are going to spend our time.

When it is all over, I am afraid those who couldn't afford lobbyists, couldn't afford the people who stand outside the corridors with signals, hand signals, with a wink and a nod on how we are supposed to vote, those are the ones who are going to be the losers.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. ENSIGN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. DEMINT). Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

ELECTRONIC SURVEILLANCE

Mr. SPECTER. Mr. President, on Monday, the Judiciary Committee held a hearing on the administration's electronic surveillance program and we dealt solely with the issues of law as to whether the resolution to authorize the use of force on September 14 provided authority in contradistinction to the Foreign Intelligence Surveillance Act, which flatly prohibits any kind of electronic surveillance without a court order. Then we got into the issue of the President's inherent powers under article II. It is difficult to define those powers without knowing more about the program and we do not know about the program. It was beyond the scope of our hearing, but it is something that may be taken up by the Intelligence Committee.

But I made a suggestion to the administration in a letter, in which I wrote to Attorney General Gonzales and put in the RECORD at our Judiciary Committee hearing, that the administration ought to submit this program to the Foreign Intelligence Surveillance Court. They have the expertise and they are trustworthy. It is a regrettable fact of life in Washington that there are leaks from the Congress and there are leaks from the administration, but the Foreign Intelligence Surveillance Court has been able to maintain its secrecy. The Attorney General said the administration was disinclined to do that.

In response to the letter, he wrote, a written response, he said that they would exercise all of their options. I am now in the process of drafting legislation which would call upon the Congress to exercise our article I powers under the Constitution to make it more of a matter for congressional oversight, but respecting the constitutional powers of the President under article I. The Congress has very substantial authority. The President has powers under article II; the Congress has very substantial powers under article I. In section 8, there are a series of provisions which deal with congressional authority on military operations. One which hits it right on the head is to make rules for the Government and regulations of the land and naval forces. That would comprehend what is being done now on the electronic surveillance program.

The thrust of the legislative proposal I am drafting and have talked to a number of my colleagues about, with some affirmative responses, is to require the administration to take the program to the Foreign Intelligence Surveillance Court.

I think that they ought to do it on their own because I think that there are many questions which have been raised by both the Republicans and Democrats. We want to be secure and we want the military, the administration and the President to have all the tools that they need to fight terrorism, but we also want to maintain our civil liberties. If that unease would be solved by having the Foreign Intelligence Surveillance Court tell the administration that it is constitutional, if they say that it is unconstitutional, then there ought to be a modification of it so what the administration is doing is constitutional.

This comes squarely within the often-cited concurring opinion of Justice Jackson in the Steel Seizure case about the President's authority being at its utmost when Congress backs him, on middle ground when Congress has not spoken, and weakest when Congress has acted oppositely in the field, which I think Congress has done under the Foreign Intelligence Surveillance Act because the President's congressional authority then is whatever he has minus whatever Congress has that is taken away from him.

As Justice Jackson said, what is involved is the equilibrium of the constitutional system. That is a very weighty concept—the equilibrium of the constitutional system.

The legislation I am preparing will set criteria for what ought to be done to establish what the Foreign Intelligence Surveillance Court should apply in determining whether the administration's program is constitutional. The standard of probable cause ought to be the one which the Foreign Intelligence Surveillance Court should apply now—not the criminal standard, but the one for gathering intelligence. Then they ought to weigh and balance the nature of the threat, the scope of the program, how many people are being intercepted, what is being done with the information, what is being done on minimization—which is the phrase that the information is not useful in terms of deleting it or getting rid of it—how successful the program has been, if any projected terrorist threats have been thwarted, and all factors relating to the specifics on the program—its reasons, its rationale for existence and precisely what is being undertaken, its success—and that the Foreign Intelligence Surveillance Court ought to look to this, essentially, prospectively.

The court does not have punitive powers, and I do not believe that it is of matter, except to work from this day forward as to what is being done. No one doubts—or at least I do not doubt—the good faith of the President, the Attorney General, and the administration on what they have done here. But as I said in the hearing, I said to Attorney General Gonzales, the administration may be right but, on the other hand, they may be wrong.

The Foreign Intelligence Surveillance Court ought to take a look at the program, make a determination from this day forward whether it is constitutional, and if it is constitutional, then they ought to, under the statute, report back to Congress with their determination as to whether it is constitutional.

The court ought to further make a determination as to whether it ought to be modified in some way which would be consistent with what the administration wants to accomplish but still be constitutional and not an unreasonable invasion of privacy.

The President has represented that his program is reevaluated every 45 days. That is in terms of the evaluation of the continuing threat and what ought to be done. I think a 45-day evaluation period would be in order here as well.

This question is one which is not going to go away. We had, yesterday, the comment by a Republican Member of the House of Representatives in the Intelligence Committee who chairs the subcommittee that oversees the National Security Agency. There are quite a number of people on both sides of the aisle who have expressed concerns regarding this program. It is my judgment that having it reviewed by the Foreign Intelligence Surveillance Court would accomplish all of the objectives, would maintain the secrecy of the program, would allow the President to continue it when there has been the determination by a court—that is how we determine probable cause on search warrants, on arrest warrants, on the activities, the traditional way of putting the magistrate, the judicial official between the Government and the individual whose privacy rights are being involved.