

have established a scale of compensation, a schedule which is patterned along the lines of workers' compensation, but there are very weighty matters to be considered.

It is my thinking that a cloture vote this week would be counterproductive. I understand the thinking to the contrary, that a cloture vote may put some pressure on the parties to move forward. There are many on both sides of the aisle who want a bill. I see the distinguished junior Senator from Delaware having risen. He probably wants to make some comments but is waiting patiently, or impatiently, but at least waiting. Senator DASCHLE has been a participant. His people have been in these discussions. Senator LEAHY, of course, the ranking Democrat, has been an active participant, and Senator DODD has been. Senator CARPER keeps calling over the weekend, concerned about these matters. Senator HATCH has been a leader, having constructed the idea of the trust fund and having gotten \$104 billion in it initially. That figure may be up to \$114 billion. Senator HATCH commented about the legislation reported out, if I am incorrect—Senator HATCH is in the Chamber and can correct me—at \$139 billion. So there are a lot of people who want a bill.

Some of the thinking is if there is a cloture vote it will put people on record, people whose constituencies would like to see a bill, who may not want to vote against cloture, so there may be that pressure.

My own view is progress has been made. I can represent emphatically that these are very complex issues. Judge Becker was the judge who wrote the opinion on the class action case brought on asbestos several years ago. His opinion was upheld by the Supreme Court. He is very knowledgeable in the field. He happens to be the winner of the outstanding jurist award among Federal judges, about 1,000 judges. He really knows the field.

I have had substantial experience in litigation and legislation and have examined these complex issues and say emphatically that there has been no dawdling. Progress has been made on the complex issues, as much as could be made, at the meetings presided over by Judge Becker and myself and meetings in between time.

So my view is a cloture vote is premature. Earlier today the majority leader in the Senate talked to Senator DASCHLE and raised the possibility about a delay but not committed to a delay. His inclination, fairly stated, is to go ahead with a cloture vote unless there can be some good reason there will be a way to expedite negotiations.

Judge Becker has some commitments this week which he cannot break, but he is available part of the week and is available all of next week. I have a commitment next Tuesday that I have to work toward. It is called a primary election. I am only in town today, breaking my campaign schedule, which

is very important. I have a tough fight on my hands—it is well within my pay grade—a tough fight. But I met earlier today with the parties to the asbestos matter, attended a leadership meeting, and spoke with Senator HATCH earlier today.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous agreement, morning business is closed.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2004—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The pending business is the motion to proceed to the consideration of S. 2290.

The Senator from Utah.

Mr. HATCH. Did the distinguished Senator from Delaware have a desire to speak?

Mr. CARPER. Just for 5 minutes.

Mr. HATCH. I ask I be given the privilege of speaking thereafter.

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

Mr. REID. What was the unanimous consent request?

The PRESIDING OFFICER. The unanimous consent is that Senator CARPER be given 5 minutes, after which Senator HATCH will be given 5 minutes. The Senator from Delaware.

Mr. CARPER. Before Senator SPECTER leaves the Chamber, I express my thanks to him and certainly to Judge Becker for the willingness to enter into what many people describe as one of the most complex issues we will face this year or any year in the U.S. Congress to try to see if there is a way to ensure that people who are sick and dying from asbestos exposure get the help they need; folks who are not sick, who become sick, get the help they need, and that the companies which have a fair amount of exposure, whether they be manufacturers or insurance companies, get some certainty with respect to their financial obligations.

I am more encouraged at this moment than I have been for some time that we may have the beginning of a negotiating process. I realize these negotiations are going under the sponsorship of Senator SPECTER and the leadership of Judge Becker. If we are fortunate enough to get the buy-in from both leaders, Senator FRIST and Senator DASCHLE, these negotiations, led by Judge Becker, should be the vehicle.

We do not have to go out and invent a new negotiation process. This is one that works. Judge Becker is smart as a whip. He got the involvement of the leadership staff on both sides. Senator HATCH's staff, Senator LEAHY's staff, Senator DODD, myself, and others have been actively involved in these negotiations through Judge Becker.

This is a good process. We ought to build on this process. I have encour-

aged our leader to take ownership of the process—not to take away from Judge Becker but to ask him to continue to work. Judge Becker, for reasons that are beyond my pay grade, enjoys the confidence of labor. He enjoys the confidence of the insurers. He enjoys the confidence of the manufacturers, the defendants in these cases, and I think the respect of the trial bar. What we need to do is take him up on the offer, on his willingness to stay here and work with us.

My hope is we will end up with a negotiation that will lead not to further negotiation but a bill, another bill in the Senate, building on what has come to the Senate already.

I had a chance to talk with Senator HATCH a few minutes ago off the floor. He expressed a willingness to wait for as much as a month before we actually take up the bill. That gives this negotiating process another 4 weeks to bear fruit, further fruit—it has already borne a lot—and for us to take up at a date certain—I suggest maybe the week before the Memorial Day recess—to take up the bill, to negotiate, to debate, to amend it, and to pass it.

I am, again, more encouraged than I have been in some time. I express my thanks, again, to the Senator from Pennsylvania for his leadership.

I thank Senator HATCH. I know this is near and dear to his heart, and Senator LEAHY and both of our leaders. We can get this done, and we have to.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I thank my colleague. However, I am not as sure we are going to get this done as he is. I have to say, we have been working on this for 15 months. We have met innumerable times with our friends on the other side. We have met with every party involved here. I have tried to do everything I possibly can to bring everybody together. This is mired in politics. There is no question about it.

We are talking about a motion to proceed. How often in the Senate have we had a filibuster against a motion to proceed to a bill, when you can filibuster the bill, too? So you would have two filibusters on this bill, assuming we were to invoke cloture on a motion to proceed. It shows the lengths to which some will go in an election year to play partisan politics.

Look, we have done everything in our power to accommodate Democrats. We have made so many changes to accommodate the Democrats on this that I have gotten excoriated by the Wall Street Journal and others who I do not think have looked at these negotiations or understand what is going on.

Keep in mind, there are 8,400 companies that would like to resolve this problem, many of which are going to go into bankruptcy. Seventy have already gone into bankruptcy. Those jobs are lost. Those pensions are lost. The money we could have here to help settle this is lost. Those were the main

companies that handled asbestos. The remaining companies are those that have some peripheral experience with asbestos but really did not do the wrongs. But under this system, which is out of whack according to the Supreme Court of the United States of America, and any reasonable person who looks at it, we have unjust litigation going on all over this country for people who are not even sick. A high percentage of the cases brought are for people who have never had a sick day in their lives—certainly not from asbestos. It is another scam, in many respects. Not all of them; some of these cases are valid. That is why we want to come up with \$114 billion, that we have had to force the companies to come up with, to try to solve these problems.

This has not been easy, and it has not been fun for me or anybody else in this process. The fact of the matter is, there is a high percentage of these lawsuits that are unjustified that are costing us an arm and a leg. Let's be honest about it, 60 percent of all the money we are talking about here—assuming we cannot get this bill passed—will go for attorneys' fees and transaction costs, not to the people who need help. Mesothelioma victims are getting 5 cents on the dollar, if that, about \$17,000 for an absolute cancer that has destroyed their lives and has caused them death.

I do have some comments to make about the comments my good friend, the distinguished minority leader, made this morning. I would like to make some comments with regard to Senator DASCHLE's statements this morning. He stated a lung cancer victim with 15 years of exposure would receive only \$25,000 in compensation. That is painting a very incomplete picture, which I would like to finish. If we are going to paint the picture, let's paint the whole picture.

First, that picture is the bottom range of compensation. Under the claims values in the FAIR Act we have come up with, claimants who were exposed to asbestos and still smoking will receive between \$25,000 to \$75,000 in compensation. And for the record, Senators LEAHY and KENNEDY have stated they want \$50,000 for claimants falling into this category. But it is between \$25,000 and \$75,000.

Mr. President, I have come here to discuss the FAIR Act. We have a chance to help those who have suffered from asbestos-related injuries for far too long. Many people have spent months getting us to this point. I want to assure we have a complete picture of the bill for the record. We owe at least that much to the victims.

By the way, these are people who do not have any markers, do not have any evidence through X-rays or any other reason to show asbestos has caused their cancer. Yet we are willing to give \$25,000 to \$75,000 to them. If they get mesothelioma, they have a right to go and get the million dollars under the schedule we have agreed to in the Judiciary Committee. It does not stop them

from getting fair compensation. But it certainly is a misrepresentation to say they are only getting \$25,000. These are heavy-duty smokers. Almost everybody knows their cancers come from smoking, but we bent over backwards to give consideration that possibly there may be some connection to asbestos, even though there is no evidence.

Senator SARBANES, the distinguished Senator from Maryland, stated we, and I quote, "sprung" the bill on the Democratic Senators and their staff. Come on. Senator DASCHLE called attention to the total fund value. I want to state for the record Senator DASCHLE's staff was informed of the new numbers last October. That was 6 months ago. Since October, there have been repeated and continuing discussions of these numbers over the ensuing months, and we had many months of discussion prior to that. We have been on this for 15 solid months on a daily basis, and we have worked with Democrats on the other side. We have worked with everybody involved, including the personal injury lawyers who do not want to lose this bird in the cage.

Now we repeatedly asked the Democrats for a response to the numbers. Repeatedly we have asked. We have received none. We repeatedly asked the Democrats for a legislative proposal they would like to make, a concept of a structure, something, anything. We have received nothing. As Senator DASCHLE knows, this so-called new bill we allegedly "sprung" on him includes the very numbers we released months ago, the changes demanded by the Democrats and the changes demanded by the unions. We have all kinds of changes we have made for these parties in this matter. This is not some little sprung deal. The Democrats have had every right to participate in these processes, and some have. Some have been kept from these processes by their own party members.

I would like to respond to a few of the statements made by my colleague from South Dakota, Senator DASCHLE, earlier this morning regarding S. 2290, the Fairness in Asbestos Injury Resolution Act of 2004. If I recall it correctly—and I was watching as Senator DASCHLE stated there was no reversion to the tort system should the moneys not be there—and the moneys are there. Virtually everybody who has effectively studied this says this amount of money we have in this bill will take care of the problem. In fact, though, there is a reversion to the tort system should it not. Should the fund become insolvent, then claimants with asbestos injuries who have not received compensation under the fund may pursue their claims in the courts at that time. So that statement there is no reversion is simply wrong. Again, we have worked closely with our colleagues on the other side. That was their idea, and we accepted it.

Naturally one of the problems in this matter is some of these personal injury lawyers, who really know better, have

been forum shopping to special jurisdictions that are out of whack that literally do not care what the law says and literally do not care about justice or doing what is right. Some say—I hope this is not true—but some say they are bought and paid for by the personal injury lawyers in their respective jurisdictions.

There are at least four or five jurisdictions in this country where you can go in and get whopping verdicts for no injuries, like one verdict in one of these counties in one of these preferred jurisdictions by, I think, dishonest personal injury lawyers, or at least those who are exploiting the system, where there was \$150 million granted for five plaintiffs, not one of whom had been sick a day from asbestos. That money is not going to those who really are sick, which this bill does. Even the Supreme Court has said this system is broken.

I am not against further negotiations. We are happy to do it. That is one reason why this bill is on the floor right now, because we are going to have a vote on this. It might be a cloture vote on a motion to proceed, of all things, but at least we are going to have a vote so people know where some of these folks stand. Some people have used this bill to raise money for their campaigns, saying they are going to be for it, and yet when push comes to shove, they are never for it, it is never good enough, there is never enough money. Yet, as I have said, we have not had a proposal, we have not had a dollar figure, except outrageous figures nobody can meet, off the top of the head.

We can talk about 15 months of very heavy-duty slogging here. Now they want more time?

I would like to take a couple minutes to talk briefly about some of the improvements in the Fairness in Asbestos Injury Resolution Act. We worked our guts out to get a bill out of committee. It was a very tough thing. I remember staying into the, I think it was the wee hours of the morning or at least pretty close to midnight that night debating this bill. There were some amendments added that I have to admit I didn't like and that would have made it impossible for this bill to pass on the floor. But we have worked very hard. Since then, we have had countless meetings with unions, with personal injury lawyers, with victims, with companies, with insurance companies, trying to bring everybody together.

This bill was reported by the Senate Judiciary Committee after a lengthy committee markup spanning four separate meetings. S. 1125, the bill reported out of committee, included, among other unprecedented achievements, a major bipartisan solution with respect to medical criteria where all of the committee members—and this committee is ideologically divided, very tough—agreed on eligibility requirements for determining asbestos-related injuries compensable under the act and

over 50 other consensus-building provisions. It and other bipartisan agreements remain in S. 2290, the bill we are discussing today.

S. 2290, as many have noted, makes additional significant improvements over the committee bill from a lot of hard work. I praise Senator LEAHY, Senator SPECTER, the majority leader, and others who have worked so hard. Of course, their staffs have worked so hard on a day-in-day-out basis to try to solve these problems. These improvements reflect agreements reached in continuing negotiation among representatives of organized labor and industry that were mediated by our colleague from Pennsylvania, Senator SPECTER. I praise our mutual friend, chief judge emeritus of the Federal Third Circuit Court of Appeals, Judge Edward Becker, who has played a pivotal significant role here.

First, let me briefly highlight some of the key provisions of this important legislation. S. 2290 ends the broken asbestos litigation system and replaces it with a privately funded asbestos victims compensation program for the payment of asbestos claims.

The key elements of the asbestos victims compensation program include an office of asbestos disease compensation headed by an administrator for processing and paying claims; a no-fault system based on sound and fair eligibility requirements. That no-fault system will not require attorneys in most instances and will save the attorney's fees. Sixty percent of the moneys here go to the people who are really sick. That no-fault system is a very important step. It includes a nonadversarial, streamlined, and less burdensome claims process with only two levels of review. In most cases, the claimant probably will not need an attorney or if the claimant has an attorney, we provide for attorney's fees under the bill, but on a scaled down basis.

There is still \$2.5 billion in this bill for attorneys, even under this system. It provides for over \$100 billion in funding assured over a period of 27 years, actually \$114 billion with a \$10 billion contingent fund added on. So you could look at it as \$124 billion that we are forcing these companies, including the insurance companies, which have limited liability by the way, we are forcing them to pay into this fund upwards of \$124 billion, if it is needed. But \$114 billion will be made available, and it does have that \$10 billion in contingent funding for defendants.

S. 2290 bans future asbestos use to eliminate the dangers caused by asbestos exposure. It provides grants for mesothelioma research and treatment centers, hopefully to find a way to resolve some of the problems.

This represents a good-faith effort to improve this fine legislation. That is just some of the changes. No piece of legislation is perfect, but I am certain that with these changes a very good piece of legislation got better.

Let's go to the improvements over S. 1125. We had to get a bill out of com-

mittee. It was a hard-fought battle. It took us four markups and a major all-day session. Let me list some of the improvements.

This is less adversarial. It provides for a less adversarial, more streamlined administrative process, including less levels of review than the original bill. This bill has a more user-friendly application process and expanded claimant assistance program, where you might not even need lawyers to eat up the funds, although you could have a lawyer if you want one.

This provides interim authority, interim regulations, upfront funding, and increases borrowing to facilitate the prompt startup of paying these folks who have suffered—the real claimants, not these people who haven't suffered who are getting moneys from these false jurisdictions.

This bill increases claims values. Mesothelioma victims are now getting, in many cases, 5 cents on the dollar. This bill resolves that problem, just to mention one thing.

This has more secure funding because it guarantees mandatory funding from funding participants. It gives audit authority and civil penalties for false statements and fraud. It has stronger enforcement authority, and it has additional safeguards to ensure priority of payments to the fund.

It also increases liquidity and provides more flexibility to address short-term funding problems. It has a more orderly wind-up of the fund and transition back to the tort system in the event of a sunset, with payment in full for all resolved claims. It also provides grants for mesothelioma research and treatment centers that are also required to participate in a mesothelioma disease registry. All of these would be wonderful.

This new bill increases compensation going to victims over what they are getting today. The attorneys do real well, but the victims aren't doing quite as well. It revises the funding provisions to help guarantee funding and to protect the solvency of the fund, while ensuring that any risk or shortfall rests on defendants and insurers, not on claimants. It establishes a more streamlined, less adversarial and less burdensome administrative system than provided in our original bill, S. 1125, that will be up and running more quickly. It provides grants for mesothelioma research and treatment to help find a cure for this deadly disease.

I emphasize that S. 2290 puts even more money in the hands of victims than provided in S. 1125 as reported by the committee, which was already estimated to put over one and one and a half times more money into the pockets of victims than they would have received under the current tort system where more than half of the resources now go into the pockets of the plaintiffs' and defendants' lawyers.

I am pleased to say, with the leadership of our majority leader, Senator FRIST, S. 2290 raises award values in

certain categories, focusing those diseases that are most clearly caused by exposure to asbestos.

I might add that as a thoracic surgeon Senator FRIST brings a unique perspective on this legislation. I think it is fair to say that he is the only Member of this body who has performed surgery on mesothelioma patients. The values from the negotiations conducted by Senator FRIST led to an increase of \$100,000 for severe and disabling asbestosis, among other increases.

Values for smokers and ex-smokers with lung cancer under levels 8 and 9 were also notably increased, although most likely their cancers came from their heavy-duty smoking. That involves a lot of union members who probably would get nothing if it weren't for this bill. For the life of me, I don't understand why the union leaders have not been totally for this. I have heard them privately say this is a good bill. I commend Senator FRIST for his insight and efforts in this process.

Although some Democrats and some affected parties assert that values in S. 2290 are not enough, they generally only focus on the values for exposure-only lung cancers. Most experts believe these claimants have no clearly established link that the lung cancer was caused by asbestos exposure, such as underlying asbestosis, and may have been heavy smokers all their lives. There is no evidence in these cases that their cancer or lung problems have come from asbestos exposure, but we give them the benefit of the doubt in this bill. Some conservatives think that goes way too far. Even though these people have been heavy smokers all their lives and we know that leads to cancer, we have been willing to go this far in the bill. Some of these experts provided testimony to the Judiciary Committee that an exposure-only lung cancer disease category runs an extremely high risk that lung cancer falling within this category are, in fact, not conclusively attributable to asbestos exposure. That is putting it mildly. Providing increased compensation for these smoking-related claimants could frustrate the purpose of the fund and put the fund at risk. In fact, lung cancer claimants with no markers or impairment from asbestos currently receive nothing from today's bankruptcy trusts—zero. This bill gives them the benefit of the doubt. These claims with no markers and no impairment—meaning no indications at all that asbestos was involved—almost always result in defense verdicts in today's tort system.

Here we provide the benefit of the doubt to them in the bill. Some have criticized that, but that is how far we have gone to try to get the other side to do something and debate this bill. If they don't like provisions of it, file amendments and bring them up. We are willing to debate them. They may win on some of these amendments. I can live with that. But to just continue to

filibuster everything that can help this country immeasurably at this time seems to me to be hitting below the belt.

Upon close consultation with organized labor, S. 2290 contains additional changes to ensure that more money is put into the hands of victims more quickly. Specifically, this entailed locating the program at the Department of Labor. The Wall Street Journal doesn't like that idea and neither do some of my fellow Republicans. But that is how far we have gone to accommodate them and try to bring this to closure. This is a major change from the bill as reported by the committee—which assigned the claims processing function to the Court of Claims. I have to admit, I don't particularly like that provision. I thought the Court of Claims would do a better job. I think any court would probably do a better job. On the other hand, these people are expert in some of these things. The Government is not making these payments. Payments have to come from the companies. So it is not something like black lung that goes off the charts year after year. It is no secret that the administration has serious reservations about this change. In fact, I have questions about these provisions myself, but in the spirit of good faith and compromise, we decided to include this new administrative mechanism in order to attempt to put more funds into the hands of the families suffering from asbestos-related illness. We did this in an attempt to accommodate our friends on the other side—attempt after attempt after attempt—and here we are with a filibuster on the motion to proceed. We have acted in good faith. I think a filibuster is in bad faith.

Reimbursement of costs for physical examinations are now provided as part of the medical monitoring program, and structured payments are now required to be made in a 40/30/30 split over a 3-year period, unless a stretch out to 4 years is required to protect the solvency of the fund.

The Hatch-Frist-Miller FAIR Act also improves the committee bill by providing more secure funding and additional protections in the fund's solvency, while maintaining that the risk of insolvency falls onto the various industries involved. Most of them should not be here. Most of them are companies that hardly ever did anything with asbestos, but because they have either acquired a smaller company, or had some contact with asbestos, although not significant, they are hauled into all these cases, and they are going to have to come up with moneys they should never have had to come up with. The mandatory funding for defendants is guaranteed, and moneys from insurers are infused into the fund in the early years where the most claims are anticipated. The increased enforcement authority of the Attorney General to compel payment and other additional safeguards, such as requiring a priority

for payment obligations to the fund in State insurance receivership proceedings, further bolsters the fund's solvency. Also, increased borrowing authority provides more liquidity and will help with the short-term funding problems.

Let me talk about some of the safeguards: We have over \$100 billion in guaranteed mandatory funding; \$114 billion plus \$10 billion contingency; a strong enforcement measure for underpayment and nonpayment; borrowing authority of 7 years future revenue ensures liquidity; regular program reviews, including claims and funding analysis with recommendations for improvements; annual reports to Congress on the status of the fund, with recommendations for improvements—Congress can make changes if it has to; and \$10 billion in contingent funding; a risk of insolvency placed on companies with a sunset provision.

Those are all safeguards we put into the bill, much to the credit of our friends on the other side, who now appear to be filibustering this bill—even the motion to proceed. Of course, they are now asking for even more time for discussion.

Look, I have been told by people who know—or at least think they know—some who have speculated that we are never going to get a bill this year because it is an election year, and there is a lot of money involved from the personal injury lawyers. By the way, like the bankruptcy bill, a lot of money is involved by the companies who tend to pour it into people objecting to the bill, hoping they will somehow or other do what is right and support the bill. I hope that is not the case, but the more this drags out and the more we have filibusters on motions to proceed; and on this bill, after all the concessions we have made and the negotiations we have had, the more I come to the conclusion maybe these rumors are true. In fact, I know a lot of people who believe they are true.

Because of these new financial safeguards I have discussed, the Hatch-Frist-Miller bill was able to modify the amendment proposed by Senator BIDEN and adopted in committee, which allowed for a reversion to the tort system in the event the fund becomes insolvent. Many members of the committee—and I thought Senator BIDEN himself—recognized that the provisions in his amendment, voted on late with little discussion with the committee, needed further review. We are pleased our new language satisfies the problem the Biden amendment addressed in the first place, but do so in a more flexible and deliberative fashion.

Simply stated, the Hatch-Frist-Miller bill replaces these provisions with an alternative program review that will give the administrator more time and more flexibility to address any unanticipated short-term funding problems. Under the new bill, full payment of all resolved claims is required. To create a smoother transition and to

avoid recreating the current manifest shortcomings in a handful of State courts, the fund will revert to the Federal court system. We must not lose sight of the fact that it is the aberrational result in the courts of a few States—especially Mississippi, Illinois, and West Virginia—that has triggered this national crisis.

Let me emphasize that under the new language, any risk that the funding is insufficient would still fall on defendants with claimants able to get their day in court.

Members and other interested parties need not worry that any risk of insolvency will fall on the claimants.

I can give you cases that are 20 years long without any resolution to the people who have been injured. This solves those problems almost instantly.

Another significant change I would like to discuss further is the new administrative structure and claims handling procedures provided in the Hatch-Frist-Miller bill. While the committee bill created a more accessible and simpler claims processing system for claimants than found in the tort system, organized labor continued to express concerns that the administrative structure under S. 1125 was too adversarial and cumbersome.

The agreement mediated by Senator SPECTER and Judge Becker to move claims processing from the Court of Federal Claims to an executive office situated in the Department of Labor included numerous refinements made in consultation with labor union representatives. They were brought in in every way, and they are the ones who demanded this. Senator SPECTER and Judge Becker have negotiated it.

In addition to placing the office within the Department of Labor—against the preference of the Department of Labor, I might add—or an independent executive agency, as requested by industry who lost on this issue, the new language also includes simplifying the claims application process, expanding the claimant assistance program, and requiring the creation of exposure presumptions to reduce the burden of proof for claimants in high-risk employments.

We made further refinements addressing concerns raised by Senator FEINSTEIN and others that there may be an undue delay in starting up a new claims system, forcing mesothelioma victims and victims whose claims have been sitting in court for years to wait even longer to receive compensation. Senator FEINSTEIN's amendment could have unintentionally threatened the fund itself by diverting resources away from the fund and to unimpaired claimants.

Instead, the Hatch-Frist-Miller bill provides interim regulations for the processing of claims, including exigent claims, interim authority, upfront funding, and increased borrowing authority, which all go toward ensuring the system is up and running as soon as possible after the date of enactment.

Good public policy demands expedited termination of the broken tort system and preservation of funds so that payments can go to the most worthy claimants, as defined by the consensus medical criteria.

As a final note, proposals for research moneys for mesothelioma were circulated in committee. Mesothelioma victims generally live only a year or so after diagnosis of this horrible disease. More research is needed on mesothelioma to find better treatments and even a cure, and I am pleased this bill addresses this problem.

Our bill now provides up to \$50 million—and I am willing to consider increasing that amount—in grants to mesothelioma research and treatment centers. In addition, these centers must be associated with the Department of Veterans Affairs medical centers to provide research benefits and care to veterans who have suffered excessively from mesothelioma. These, along with the asbestos ban, are important and vital pieces of legislation that must not be overlooked.

Again, I tried to highlight here some of the major changes from S. 1125 as reported, many of which were made to address the concerns raised by various members in committee, especially on the Democratic side. These revisions are aimed at ensuring that the program established under the FAIR Act is fair to victims.

In short, the Hatch-Frist-Miller bill represents a reasonable and fair solution to the asbestos litigation crisis and may be the only solution to it. Members from both sides of the aisle recognize that an equitable compensation program is necessary.

I believe S. 2290, the Hatch-Frist-Miller bill, meets the test. I urge all of my colleagues to support this bill and at least support debate on this bill and bring up amendments so we can see what further changes the Senate, in working its will, will require. We should certainly see that this bill is fully considered by the Senate.

Having said all of that, I am very concerned that this bill is being treated only politically; that there are those who are afraid to vote on this matter; that there are those who do not want to be involved in this matter right now; that there are those who want to stop this matter because of political pressure by special interest groups.

We now have 8,400 companies that are being sued, and it may go as high as 15,000. I might add that we have about 16 major insurance companies that are being sued, some of which should not have the liabilities we are imposing upon them. Nevertheless, the more companies that go into bankruptcy, the more jobs are lost, the more pensions are lost, the more this economy will suffer, and the more all of us will be worse off.

I might also add that the courts have not proven to be effective here and that the tort system has failed. Even the Supreme Court of the United States

says this requires a legislative solution. This is the only legislative solution that is available, and if we want to get something done, we are going to have to work on this bill.

Personally, rather than have a filibuster on the motion to proceed, I think we should go to the bill. I personally would be willing to grant more time if we would have a definite date. I cannot speak for the majority leader, naturally, but I would personally be willing to grant more time, as Senator SPECTER was, to have further negotiations outside the context of debate on the bill where usually those negotiations help bring about a bill. But I would be willing to go another 2 weeks to a month in intensive 9 to 6 negotiations every day, which we have been doing now for 8 months, if we had a definite time to bring up amendments and a definite time for final passage of the bill or a final vote on the bill. Maybe we will vote it down in the end. I doubt it. In fact, I am sure we will not.

The fact is, in other words, if we do not have to face another filibuster and if everybody in good faith works to try to bring this about and we have a debate on the floor and people have amendments they want to bring up, they can do it. I cannot speak for the majority leader, but I certainly would be willing to recommend that, again bending over backwards to try to accommodate our colleagues on the other side.

If that is not acceptable, then I have to conclude that the statements made by some of the folks outside of the Senate who are knowledgeable about this that politics is more important than solving this problem, that money is more important than solving this problem, that the personal injury lawyers are more important than solving this problem happens to be true. I hope that is not true. I hope we can get our colleagues to work together. I would like to work with them, as we have. We have not rejected or failed to consider any idea that has come up, and we will continue to do so. But if not, then let's go to cloture on this bill and let's let everybody know who wants to stop even a reasonable debate, even a reasonable time to file amendments, even the reasonable position the Senate ought to always take, and that is the Senate should work its will and we should vote on the amendments one way or the other, vote on this bill one way or the other, and let the chips fall where they may.

Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, will the Senator withhold?

Mr. HATCH. I will be happy to.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, is the parliamentary situation that we are going to recess for the party caucuses at 12:30 p.m.?

The PRESIDING OFFICER. The Senator is correct, until the hour of 2:15 p.m.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be recognized at 2:15 p.m. to speak on the asbestos legislation.

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

Mr. LEAHY. I thank the Chair.

RECESS

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

Thereupon, the Senate, at 12:28 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Vermont.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2004—MOTION TO PROCEED—Continued

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is on a motion to proceed to S. 2290.

Mr. LEAHY. Before we recessed, was there a unanimous consent request made for the Senator from Vermont to be recognized?

The PRESIDING OFFICER. The order is the Senator from Vermont be recognized.

Mr. LEAHY. That was without any time limitations, as I recall?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. I thank the distinguished Presiding Officer, my good friend from Ohio.

DIVERSION OF FUNDS FOR MILITARY OPERATIONS IN IRAQ

Mr. LEAHY. Mr. President, I want to take a moment to respond to the very serious allegations contained in Bob Woodward's book about the use of counterterrorism funds to support preparations for the U.S. military invasion of Iraq.

As a Senator and a taxpayer, I am very troubled by this information. The Constitution gives Congress the sole power of the purse. The Founding Fathers did this for good reason. It is a responsibility that I take very seriously.

As a member of the Appropriations Committee for more than two decades, I know there is a long, bipartisan tradition of administrations—of both political parties—informing Congress when money is going to be used for purposes different than what it was intended for, especially if it is part of a major change of policy.

We do not yet know all of the facts, and we need to get the whole story as soon as possible. But I will say that in the wake of September 11, the Congress moved very quickly in a bipartisan way to appropriate billions of dollars to respond to the threat of international terrorism.