town has been run by people from both parties, and, of course, we know the water in this town has all kinds of problems. Yet this is the greatest city in the world. So I think it is basically a stretch and an exaggeration and, of course, a seizure of political opportunity to criticize this administration environmentally in the way some of my colleagues have chosen to do.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 2290, which the clerk will report.

The assistant legislative clerk read as follows:

A motion to proceed to the bill (S. 2290) to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will be 60 minutes for debate equally divided between the chairman and ranking member of the Judiciary Committee or their designees.

The Senator from Utah.

Mr. HATCH. Mr. President, my colleagues and I have been talking all week about the long overdue reforms that the Hatch-Frist-Miller bill will deliver.

I think it is clear to anybody that asbestos litigation has been spinning out of control with no end in sight for far too long. The shortcomings of the current system are crippling businesses, and, at the same time, depriving asbestos victims of prompt and adequate compensation for their injuries.

One of the most outrageous aspects of the current asbestos litigation system is that it allows—indeed, encourages—some lawyers of questionable ethics to find and bring claims that may be of questionable merit. In some egregious and hopefully rare instances, an entire plan of action has apparently evolved to track down potential claimants based more upon whether they can be properly coached to present a colorable claim than whether their claim has actual merit.

For example, I am told that several years ago, a first-year associate attorney at the law firm of Baron & Budd apparently inadvertently disclosed to defense counsel a memorandum that provides a sad but startling insight into how asbestos claims are created and spun into recoveries.

The memorandum, titled ''Preparing for Your Deposition,'' offers clients detailed instructions. They are shown how to sound credible when giving testimony that they worked with particular asbestos products. The memorandum seems to make every effort to instruct clients to assert particular points that will act to increase the value of their claim, without regard to whether those assertions are actually true. The memorandum even goes so far as to inform clients that a defense attorney will have no way of knowing whether they are lying about their exposure to particular asbestos products.

One excerpt from the memorandum appears to help claimants identify defendant companies and prepares them for a cross-examination that could reveal how flimsy their claim might be. It reads as follows. This is from the Baron & Budd memo ''Preparing for Your Deposition'':

You may be asked how you are able to recall so many product names. The best answer is to say that you recall seeing the names on the containers or on the product itself. The more you thought about it, the more you remembered! If the defense attorney asks you if you were shown pictures of products, wait for your attorney to advise you to answer, then say a girl from Baron & Budd showed you pictures of MANY products, and you picked out the ones you remembered.

Well, as you can see, that is pretty serious. Another excerpt from the memorandum steers claimants away from admissions that would undermine their claims. On this point, the memorandum equips witnesses with the following admonition. Again, from the Baron & Budd memo—one of the leading firms in these asbestos plaintiffs cases, to which more than $20 billion in fees—that is with a ''B''—have been given. Here is this counseling or coaching. Here is what this law firm memorandum said:

You will be asked if you ever saw any WARNING labels on containers of asbestos. It is important to maintain that you NEVER saw any labels on asbestos products that said WARNING or DANGER.

Finally, apparently to drive home the point that cross-examination may be of little value in certain circumstances, the memorandum advises claimants as follows—again, the same law firm:

Keep in mind that these [defense] attorneys are very young and WERE NOT PRESENT at the jobsites you worked at. They have NO RECORDS to tell them what products were used on a particular job, even if they act like they do.

Law Professor Lester Brickman has studied the asbestos litigation process extensively and has written detailed analyses of that process. Professor Brickman reviewed the law firm's memorandum and said:

In my opinion . . . this is subornation of perjury. Now, after the memorandum was discovered, the Dallas Observer conducted an investigation of the Baron law firm's asbestos practices. That investigation appeared to uncover an extensive process geared toward manipulating the asbestos litigation system.

As the Dallas Observer wrote:

Two former paralegals . . . both say that a client-coaching system was in place at the firm. Workers were routinely encouraged to remember seeing asbestos products on their jobs that they didn't truly recall.

Still another aspect of the Dallas Observer investigation into the Baron firm's handling of asbestos cases revealed a process that put a premium on schooling claimants by planting the right bits of information in their heads.

As the Dallas Observer reported:

A paralegal says that in many cases, the client had no specific recollection of some products before she interviewed them. ''My original caseload was a thousand, but I didn't interview that many people. It was in the hundreds. I'd say that probably in 75 percent of those cases I had people identify at least one product they couldn't recall originally.''

Now, manipulation of claimant memories and stories appear to have gone beyond implanting valuable facts to improve their claims. The Dallas Observer found that the Baron law firm also conveniently helped claimants eliminate facts from their stories where that would suit their purpose. The Observer reported the following:

According to the paralegals, their job didn't stop with implanting memories; there were also the asbestos products they had to encourage clients not to recall. Two lawyers told her to discourage identification of Johns-Manville products because the Manville Trust was not paying claims rendered against it at the time. ... Thus, when a client would say he saw, for instance, a Johns-Manville pipe covering, the paralegal says, she would hand them a line. ''You'd say, 'You know, we've talked to some other people, other witnesses, and they recall working with Owens-Corning Kaylo. Don't you think you saw that?' And they'd say, 'Yeah, maybe you're right.'''

Finally, another document obtained by the Observer consisted of handwritten notes apparently taken by a Baron & Budd attorney during an internal training session. I will just say these are the things that are wrong with asbestos litigation. Is this counseling or coaching? The memorandum states: ''Warn plaintiffs not to say you were around it—even if you were—after you knew it was dangerous.''

These practices, if they indeed took place—and I hope they did not take place in the way the Dallas Observer described them in its investigative report—distort a system that is already struggling to provide fairness. If lawyers for purported asbestos victims coach clients to lie in this manner, they may win some big fees for themselves along with some unjustified awards for clients who aren't actually sick, such practices have a sinister effect: They deprive seriously injured asbestos victims of the swift and fair recoveries that they deserve for their injuries and they cheat the payer firm out of money, they cheat employees of these firms out of their jobs, and they cheat investors and individual retirees of these firms out of their investments.

The time to act is now. I urge my colleagues to vote to invoke cloture against the minority's obstructive tactics. We owe it to these victims to put a halt to these abusive practices that

enrich the few at the expense of many and enrich those who are not sick at the expense of those who are. We owe it to hardworking Americans who stand to lose their jobs and pensions because of this asbestos mess. And we owe it to everyday Americans to provide them a civil justice systems that works.

Ray Klappert lives in Ft. Lauderdale, FL, and is actively supporting passage of legislation establishing an asbestos trust fund. His support is not surprising given the serious asbestos health problems he may be facing in the future. Here is Ray's story:

Ray's father, Fred Klappert, was a Korean War veteran and self-employed in the construction business. In 1973, Fred contracted to work on the renovation of the interior of a commercial building in Miami Beach. During the renovation, which lasted several months and involved a partial demolition of the old building, Fred was exposed to asbestos.

Twenty-five years later, Fred Klappert developed a severe cough and doctors eventually diagnosed him with asbestosis. Fred has since passed away. Unfortunately, the Klapperts had nowhere to turn for help and no source from which to be compensated for their loss.

Ray has since learned about the dangers of asbestos and has grown quite concerned for his own health. Ray worked with his father on that same building in 1973. Ray fears he may also acquire an asbestos-related disease and, like his father, have nowhere to turn for help.

An asbestos trust fund ensures a potential asbestos victim like Ray Klappert that there will still be adequate compensation in the future—that will not be the case if asbestos litigation remains our method in the tort system. If a trust is established, Ray will not have to worry whether the defendant companies come insolvent, and thus the prospect of collecting pennies on the dollar from some bankruptcy trust. He also knows that the legislation will ensure that if he needs it, he will have access to medical monitoring as soon as the bill is enacted. This kind of security is essential for the peace of mind of all future asbestos victims.

What is wrong with asbestos litigation? It is running out of control and ruining our legal system. Compensation for victims such as Fred and Ray Klappert, under the current system, nothing. Under the FAIR Act, they get compensated.

Passage of S. 2290 will give Ray confidence that help is available should he need it in the future. If the legislation fails, Ray Klappert, like his father, will become just another victim of a tort system that has failed and will continue to fail thousands of Americans who have been exposed to asbestos.

As the asbestos litigation crisis continues unabated, nearly all of the major asbestos manufacturers are bankrupt. Consequently, more and more small businesses are forced to defend these costly lawsuits—some of which are without merit. A compelling illustration of this epidemic is the case of Monroe Rubber and Gasket, a small Monroe, Louisiana business with only 15 remaining employees—a number down 33 percent since asbestos litigation began against the company just 4 years ago.

Prior to 1986, Monroe Rubber and Gasket used a compressed asbestos sheet in manufacturing its gaskets. Mike Carter, one of its owners, called for a thorough examination of the company's gasket manufacturing process in order to determine whether any asbestos was actually released into the air when this sheet was cut. The results were negative. Additionally, not a single Monroe Rubber and Gasket employee, including Mr. Carter, who has worked around his company's products for decades, has acquired an asbestos-related disease.

In 2000, despite its decision to end the practice of using any products containing asbestos in its gasket manufacturing process nearly fourteen years earlier, Monroe Rubber and Gasket began to be named in lawsuits on behalf of individuals who worked at chemical plants and paper mills that used the company's gaskets in their own machinery. There are approximately 75 lawsuits currently pending against the company. In some cases, Monroe Rubber and Gasket is the only defendant. In others, Monroe Rubber and Gasket is simply one of dozens. I must point out that not one such lawsuit against Monroe Rubber and Gasket involves a current or former employee of the company. Needless to say, that reeks of irony.

Fighting these kinds of lawsuits is cost-prohibitive, especially for a small business that is at best a peripheral defendant. According to Mr. Carter, asbestos litigation costs his company more than $250,000 a year, and, if you can believe it, not one such claim against Monroe Rubber and Gasket has actually gone to trial. In addition to not including a case that has reached final disposition, this cost also fails to include the loss of productivity resulting from the thousands of hours spent on the litigation by Mr. Carter himself.

What is wrong with asbestos litigation? Take the case of Monroe Rubber and Gasket: The cost of litigation so far, $250,000 a year; the lawsuits filed against the company, 75; the workforce loss, 33 percent; the number of company employees who are sick throughout eternity has been zero; the number of company employees who have sued, zero. Yet this company is being torn apart by litigation that it should not have to face.

The impact of these considerable losses is felt not only by Mr. Carter and his fellow small business owners, but also by the employees. Moreover, Monroe Rubber and Gasket has been forced to cancel plans to open a new facility in Arkansas. The money that was going to be used to underwrite the expansion has gone instead to the lawyers. Some of them were not so voracious. They are defense lawyers who had to be retained under these circumstances.

For Mike Carter and the employees at Monroe Rubber and Gasket, the issue is simple—unless we choose to act, they will be out of work. At the moment, most of the costs of the litigation are covered by insurance, but it is uncertain how long that will last. In fact, the employees don't know who will go bankrupt first—the company or its insurance carrier. What they do know, however, is that if we fail to act, they will soon join thousands and thousands of other American workers who are out of work or who lost their pensions or their health plans because of the nightmare of asbestos litigation. This is not a fair and just result, and Congress should act to rectify the situation.

Mr. President, how much time do we have remaining on our side?

The PRESIDING OFFICER. Fourteen minutes.

Mr. HATCH. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Vermont.

Mr. LEAHY. Mr. President, I am disappointed my friends across the aisle are insisting on proceeding to this partisan asbestos bill. I say that because the legislation is not ready for prime time. It is not ready for floor consideration. I am one who believes the Senate should pass legislation to establish a national trust fund to compensate asbestos victims. Actually, I chaired the first Judiciary Committee hearing on this subject back in September of 2002.

This bill would create a trust fund with unfair compensation, inadequate funding, no startup protections, delayed sunset provisions, and major solvency problems. Despite its title, this partisan bill is far from fair.

It is a mistake for the Republican leadership to insist on proceeding to a bill with so many major problems still unresolved. Again, this bill is not ready for floor consideration.

We did have a bipartisan dialog over the past year, and I hoped that would yield a fair and efficient compensation system we could in good conscience offer to those suffering today from asbestos-related diseases and also to those victims who we know are going to come in the future.

Unfortunately, the Senate majority leadership decided to walk away from those negotiations and resort to unilateralism by introducing a partisan bill, and that is a shame. I believe so many of my friends on the Republican side would like to have a good bill, but to have a good bill of this complexity requires real work and we have to work as legislators and we have to have substance, not symbolism. We have to have reality, not rhetoric.

The introduction of this bill raises many questions—most notably what

the sponsors are trying to achieve because it is certainly not a fair compensation model for asbestos victims. By breaking off the bipartisan negotiations and hastily pushing a bill to the floor, the Republicans have turned their back on all of us who have worked so hard for so long to find a fair solution.

Creating a fair national trust fund to compensate asbestos victims is one of the most complex legislative undertakings I have been involved with in nearly 29 years in the Senate. The interrelated aspects necessary for a fair national trust fund are like a Rubik's Cube, and that is all the more reason why we should have a fair national trust fund bill and have it be a consensus piece of legislation. Otherwise it does not work, it does not become law.

That is why I have been involved in months of bipartisan negotiations. I worked so hard to encourage the interested stakeholders to reach agreement on all these critical details.

I thank Senators DASCHLE, DODD, FEINSTEIN, SPECTER, and other Senators, the representatives from organized labor, the trial bar, and industry who worked so hard to try to reach consensus on a national trust fund that would fairly compensate asbestos victims and also to provide the financial certainty for their defendants and their insurers.

We did reach bipartisan agreement on two of the four cornerstones of a successful trust fund. Senator HATCH and I brought together the Leahy-Hatch amendment that gave appropriate medical criteria to determine who should receive compensation and an efficient, expedited system for processing claims. But we have yet to reach consensus on the other two cornerstones of a successful trust fund—fair award values for asbestos victims and adequate funding to pay for the compensation. Even if we have the medical criteria and if we lowball the amounts, if we do not adequately handle it, it makes no difference.

Bipartisan medical criteria have already eliminated what businesses contend were the most troublesome claims, but that kind of fair compensation is not free.

The Judiciary Committee's unanimous agreement on the Leahy-Hatch medical criteria is meaningless if the majority, in effect, rewrites the categories by failing to compensate those who fall within them. Even with consensus on medical criteria, if the award value is unfair, then the bill is unfair and it is unworthy of our support. That is the case with this partisan bill.

Since my first hearing on this issue nearly 2 years ago, I have emphasized one bedrock principle: It has to be a balanced solution. I cannot support a bill that gives inadequate compensation to victims. I will not adjust fair award values into some discounted amount to make the final tally come within a predetermined and artificial limit. That is not fair.

It is critical that there is adequate funding at the inception of a national trust fund since there are more than 300,000 current pending cases in our legal system. Upfront contributions from defendants and insurers will be necessary to accommodate the inevitable, and that is thousands of these pending claims coming in on the very first day of the trust fund.

The new Hatch-Frist bill actually provides less upfront funding and less overall funding than we voted out of the Judiciary Committee. That is not fair. The partisan emphasis in this bill on behalf of the industrial and insurance companies involved, to the detriment of victims, has produced an unbalanced bill. This bill is a reflection of the priorities that went into it.

Many of us have worked hard for more than a year toward the goal of a consensus asbestos bill. So this new partisan bill is especially saddening and confounding. We could have a bill that protects defendants; it would protect the insurance companies; it would protect the corporations; and it would protect the people who have been sickened by asbestos. We could have done that. We could have brought finality to this issue. We could have ended endless litigation. We could have let corporations go on with their business. We could have made sure the victims knew they were going to get adequate compensation. We have missed a golden opportunity.

After the cloture vote on this partisan asbestos bill, the Senate will take up and pass the Kyl-Feinstein-Hatch-Leahy crime victims' rights legislation. This bipartisan legislation is a good example of what the Senate can do when we work together to reach consensus. Unfortunately, the bipartisan process of the crime victims' rights legislation is being abandoned by the majority on this partisan asbestos bill.

We should be asking ourselves this question: Does this partisan turn the sponsors of this bill have taken help or hurt our efforts to produce and enact a consensus asbestos bill? I say it does not help.

We have enough of a debate going on behind me, so I will yield to someone in a different part of the Chamber, Senator KENNEDY, so he can make himself heard for 10 minutes.

Mr. KENNEDY. I thank the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. BAUCUS. Mr. President, will the Senator yield? I am curious as to how long the Senator will be speaking.

Mr. KENNEDY. Ten minutes.

Mr. BAUCUS. I thank the Senator.

Mr. KENNEDY. Mr. President, the real crisis which confronts us is not an asbestos litigation crisis, it is an asbestos-induced disease crisis. Asbestos is the most lethal substance ever widely used in the workplace. Between 1940 and 1980, there were 27½ million workers in this country who were exposed to asbestos on the job and nearly 19 million of them had high levels of exposure over long periods of time, and that exposure changed many of their lives.

Each year more than 10,000 of them die from lung cancer and other diseases caused by asbestos. Each year, hundreds of thousands of them suffer from lung conditions which make breathing so difficult they cannot engage in the routine activities of daily life. Even more have become unemployable due to their medical condition.

Because of the long latency period of these diseases, all of them live with a fear of a premature death due to asbestos-induced disease. These are the real victims. They deserve to be the first and foremost focus of our concern. The victims are average, hard-working Americans. They are the construction workers who build our houses, machinists who keep our factories running, assembly workers who make products for our home, shipbuilders who help make our country strong and secure. They did their jobs faithfully and now it is time for us to do right by them.

All too often, the resulting tragedy these seriously ill workers and their families are enduring becomes lost in a complex debate about the economic impact of asbestos litigation. We cannot allow that to happen. The litigation did not create these costs. Exposure to asbestos created them. They are the costs of medical care, the lost wages of incapacitated workers, the cost of providing for the families of workers who died years before their time. Those costs are real. No legislative proposal can make them disappear. All legislation can do is shift those costs from one party to another.

Any proposal which would have the effect of shifting more of the financial burden on to the backs of injured workers is unacceptable to me, and I would hope that it would be unacceptable to every one of us. Unfortunately, that is precisely what the Frist bill would do.

The bill before us does not reflect what is necessary to compensate the enormous numbers of workers who suffer from asbestos-induced disease. It reflects only what the companies who made them sick are willing to pay.

The compensation levels in the Frist bill are unreasonably low, especially for the most seriously ill worker. They would receive much less compensation under the bill than they are currently getting on average in the tort system. For example, workers with 15 years of exposure to asbestos, who are dying of lung cancer, would get as little as $25,000 under the Frist bill. That is absurd.

While most of these workers smoke, a person who smoked and was exposed to asbestos is over four times more likely to get lung cancer than a person who smoked but was not exposed to asbestos. Asbestos was clearly a major contributing factor to their lung cancers. Yet this bill would give them next to nothing. Not only does this bill not provide adequate levels of compensation, there is no guarantee that sufficient funds will be available to fully

pay all injured workers who are eligible, even what the bill promises them.

According to a CBO analysis, the Frist bill is underfunded by nearly $30 billion. If the asbestos trust fund does become insolvent, workers will have to wait years before they can return to the tort system, and many of them will be dead by then.

Any proposal which would merely create one new, large, unfunded trust in place of the many smaller underfunded bankruptcy trusts which exist today is unacceptable. Injured workers need certainty even more than businesses and insurers. The Frist bill merely shifts more of the financial burden of asbestos-induced disease to the injured workers by unfairly and arbitrarily limiting the liability of defendants.

Sick workers would receive lower levels of compensation than they receive on average in the current system, and payment of even those lower levels of compensation would not be guaranteed. That is no solution at all.

I hope we would not consider this bill before us but go back to the drawing board and get a bill that will meet the needs of all the parties.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. I rise today to say I most regretfully oppose the motion to invoke cloture on the motion to proceed to the bill. I do not think we are quite ready. I do not think we are ready to tackle this important and complex legislation at this time.

This is a bill that would end for decades the rights of individual citizens to seek justice and compensation for their injuries in a court of law. That is not something we should act on too quickly; that is, before we have a complete understanding of what it is that we are doing and how it will impact asbestos victims, businesses, insurers over the long run.

Senators HATCH, LEAHY, and SPECTER, though, and many others, have worked very hard on this bill. Because of their efforts, we have come closer to a final compromise than I think anyone would have believed possible early last year. That is why I am puzzled, frankly, that we feel the need to rush to the floor to finish this bill before we have exhausted all opportunities to come to a compromise on the outstanding and very tough issues. Negotiations have yielded significant progress in certain areas. I believe there is no reason to believe that continued negotiations will not yield even more progress.

Being in the Senate, I have learned if one sticks to it and with it, one can find ways to work out solutions to very difficult problems.

My primary concern, though, has always been protecting the people of Libby, MT, in any asbestos legislation that Congress considers. I know I do not need to go into the details of the Libby tragedy because my colleagues have heard them many times, but I will emphasize that their situation for me, and for them especially, is unique. An entire town was poisoned with asbestos for decades by W.R. Grace, a company that lied to its workers, lied to the community about the deadly dust which it was exposing its workers to, lied to the families, and lied to the whole community. Hundreds of people have already died or become very sick, and hundreds more will likely follow.

I have pledged to the people of Libby that I will do everything in my power to help them make their community whole again, to make sure their long-term health care needs are met. The health care costs associated with treating asbestos-related diseases are crippling to families who do not have health care and are uninsurable and to a community that is struggling to get its economy back on track. Simple, routine procedures to help a person breathe more easily can cost at least $30,000.

The Libby dust, or fiber, is also unique. The Libby fiber is especially vicious. It is made up of what is called tremolite, a special kind of asbestos, and other similar fibers, fibers that doctors and scientists are now only beginning to realize are more deadly than ordinary asbestos.

Not only is it more likely to cause asbestos-related diseases, it often causes disease to progress more rapidly than traditional asbestos-related disease. Libby asbestos disease also looks different. It is hard to identify and hard to detect on x rays and CAT scans, much harder than traditional asbestos-related disease. That is why I was so concerned about Libby at the beginning of this debate.

Because Libby is unique in terms of the type and duration of asbestos exposure, the manner in which asbestos disease manifests itself in Libby, and the fact that an entire community was affected, it was clear that the medical and exposure criteria in the bill would unfairly exclude most of the population of Libby. That would pile injustice on top of injustice on these people, and I could not accept that.

Senators HATCH and LEAHY worked very closely with me and my staff, and I want to thank them for the very important provisions in the bill that would exempt people in Libby from both the exposure and the medical criteria in S. 2290. This was a huge step forward.

However, as we moved past these larger issues for the Libby victims, new concerns arose about the level of compensation that would be awarded to a Libby claimant. I was concerned that the administrator of the trust had absolute discretion to determine that a panel of medical experts was wrong, and that a Libby claimant was not that sick and was not entitled to the level of compensation they truly deserved.

I was also concerned that the compensation levels were tied directly to the medical criteria in the bill, medical criteria that we had already determined just would not work for the Libby victims. This raised the possibility that the Libby victims would not be fairly compensated.

Senator HATCH and I have spoken about this concern and we have tried to work out an acceptable way to address it. Again, I thank Senator HATCH for the concern he has always shown for my constituents and I thank him for the effort he has undertaken.

However, this important concern has yet to be addressed in S. 2290. I have heard from people in Libby that they would rather we not proceed to this bill until we find a way to solve this outstanding uncertainty in the bill. I know they also share some of the concerns of my colleagues about other factors of the bill and whether it will indeed be workable and solvent over the long term. This is obviously important to me and to the people of Libby.

I believe that asbestos legislation is very important. I believe that Congress should complete work on an asbestos bill this year. It is important to the victims, many of whom are not being fairly compensated because the system is overloaded and so many companies have filed for bankruptcy. That is one of the reasons I will continue to work hard to protect Libby in asbestos legislation.

The people of Libby face a very uncertain future right now, depending on what happens with the Grace bankruptcy proceedings. I believe that if we get the Libby provisions right in the asbestos bill, they stand a far better chance of receiving fair compensation under an asbestos trust than they would through the Grace bankruptcy.

A bill is also immensely important to the business community that is seeking some level of certainty about what their future asbestos liabilities will be. Providing them with that business certainty, while at the same time providing the victims with equal certainty that they will be fairly and promptly compensated for their asbestos exposure and disease, should be our goal.

We are very close to achieving that goal, thanks to the efforts of many different players in this debate. Let's go back to the negotiating table and see how far we can get before we take this very complex bill to the floor for amendment and debate, a process that will not allow us to be as considerate and thoughtful as we should be with this issue.

For the sake of the people of Libby, and ensuring that they receive the highest degree of justice and certainty that they deserve, I must oppose the motion to invoke cloture on the motion to proceed to S. 2290. I pledge to continue to work together with my colleagues to find an acceptable compromise as soon as possible. I also state, if we can work out this Libby language, then I will be for the bill. I very much hope that happens.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 6 minutes.

Mr. CARPER. Mr. President and my colleagues, in a few minutes we will vote on whether to proceed to debating and amending this legislation on asbestos. It is an important issue and an important vote.

Before I say anything else, I wish to express my thanks to Senator HATCH and Senator LEAHY and others on the Judiciary Committee who have worked on this issue for years. I express our thanks for trying to help us narrow our differences. I think they have been narrowed.

I spent a good part of the 2 years myself learning about this issue and coming up to speed on it so I might be able to participate in a constructive way. I have certainly learned a lot and hopefully made at least a modest contribution.

As we have tried to develop consensus on this issue, I think there are about four basic principles that we can agree on and ought to agree on.

One is that when people are sick and dying from exposure to asbestos, they ought to get the money they and their families need and they should get it now.

When people become sick later on from an earlier exposure, they should receive reasonable compensation and it should come promptly.

People who are not sick, who may have had an exposure to asbestos and may not become sick, they should have medical monitoring at no cost but they should not be siphoning off the moneys from folks who truly are sick and are in desperate straits.

Finally, the last principle is we ought to reduce the transaction costs, essentially the legal costs, that are involved in this whole process.

Those are four basic principles. My guess is if we could vote on those principles, we would all vote for them. We are not ready to vote yet on bringing this bill to the floor. I say that with some reluctance.

I have these four core values. The Presiding Officer and I talked about core values before. One of my core values is just never give up. I have another way of saying that. I say sometimes: ''No'' means ''find another way.'' The ''no'' vote I am going to cast—in the ''no'' votes that are going to be cast, I want to be clear what ''no'' means.

First, I will say what it doesn't mean. ''No'' doesn't mean let's give up. ''No'' doesn't mean this bill is dead in this session. So it doesn't mean that asbestos legislation is dead for all time.

This is what ''no'' means. ''No'' means let's build on the work that has been done, the good work that has been done within the Judiciary Committee. ''No'' means let's build on the good work that has been done in the so-called Specter-Becker process, involving retired Federal Judge Becker. Let's build on that.

There are a number of important issues that still have to be resolved. This is not a bill to write on the floor. I think among the issues we agree on is that this is complex stuff. I know it is for me and for a lot of our colleagues. This is not a bill to be written on the floor, and there is still too much that needs to be written for us to take the bill up today. There is a process taking place that yesterday, my leader, Senator DASCHLE, and the Republican leader, Senator FRIST, have bought into. I have urged them both for some time to build on the Specter-Becker process, which has focused mostly on administrative issues and with some real success, but to build on that process, given the kind of role Judge Becker has come to play as a mediator, one trusted by labor, by the trial bar, by the insurers, by the manufacturers, and by many of the defendants in these legal cases.

This is not something we ought to start doing next month or maybe in June or July. This is work that needs to continue today, tomorrow, next week, and in the weeks that follow.

There is an old saying that work fills up the time that we allocate to do a particular job. If we say we will take a year to do something, we will take a year to do it. In this instance, we need to keep our focus and our energy concentrated on resolving most of the outstanding issues. I don't think the Specter-Becker process will resolve all of the outstanding issues, but I think it will get us a lot closer to resolution to enable us, on the floor, to then finally debate, amend the bill, and send something good, something solid to the House of Representatives.

Let me close by saying there is too much at stake.

By the way, Judge Becker said he has cleared his schedule starting next week, next Monday. He was here several days this week. He addressed our caucus yesterday. He met with leaders on both sides and talked to any number of our colleagues. He met with manufacturers, insurers here, organized labor, the trial bar, just this week in this building. We need to not let one bit of our momentum on this issue go away with a ''no'' vote today. What we have to do is build on that momentum.

Let me close by saying there is too much at stake for us not to do just that. There are too many people who are sick. They are counting on us doing something about it and helping them now. Too many companies have gone bankrupt. Some 70 companies have gone bankrupt. I understand some 70,000 people have lost their jobs.

That doesn't even begin to say how much people who were working for those companies that have gone bankrupt have lost in their 402(k) plans. They have lost it all. How about the common stockholders? They have lost everything because the company went bankrupt. There is a great need there.

Finally, the other thing at stake is the loss of manufacturing jobs. We have seen an erosion of over 2 million jobs in this country over the last 3 years. That is a lot of manufacturing jobs. One of the reasons is because of the legal problems we have in this country. We have lost our sense of balance. We can do better, and we need to.

What does ''no'' mean? No means get to work and let us resolve these issues. Before we break for Memorial Day, I hope we can bring this bill to the floor and vote yes. Let us get it done.

Mrs. BOXER. Mr. President, I am voting against cloture on S. 2290 because I do not believe that it is fair to asbestos victims or meets their needs for compensation adequately.

Asbestos kills 10,000 Americans every year. For more than 50 years, manufacturing companies, asbestos producers, and insurance companies ignored evidence of the threat of asbestos to their employees and their families, as well as the public. They failed to warn their workers and must be held responsible for thousands of deaths and thousands made ill.

Asbestos victims are people not statistics. Bill and Geneva Hornsby from Fontana, CA are not a statistic. Geneva was diagnosed with lung cancer in 1998. It was caused by asbestos that her husband brought home from work on his clothes. Then, in March 2003, her husband Bill was diagnosed with malignant mesothelioma. Again, it was cause by exposure to asbestos at work. Three weeks after the diagnosis, Bill died.

Angela Ruhl from Long Beach, CA, is not a statistic. She was exposed to asbestos through the work clothes of her uncle who worked in the Navy. Now she has peritoneal mesothelioma. She has undergone three surgeries and two rounds of chemotherapy. She deserves justice.

Sam Silvestro from San Mateo, CA, is not a statistic. He was exposed to asbestos for decades, diagnosed with malignant pleural mesothelioma in June 2001, and died in November of that year. His wife Doris still lives in San Mateo.

The issue is not whether we do something or nothing. Most Democrats, if not all, could support an asbestos resolution fund that was fair to victims. But this proposal is not fair.

First, the funding proposed in this legislation is inadequate. The FAIR Act provides $29 billion less in funding than the bill that was approved by the Judiciary Committee.

Also, the FAIR Act would delay for years compensating victims with terminal cancer, mesothelioma, and other asbestos diseases. That is because while asbestos companies would be required to pay $2.5 billion annually into the fund, the fund will immediately be hit with 450,000 claims representing a cost to the fund of $54 billion in its initial years. That means victims with claims today will have to wait until the fund acquires enough contributions to compensate them.

This legislation also creates a windfall for large corporations. Many companies that failed their workers and owe asbestos victims under settlement agreements would have those agreements suspended and the settlements voided under this bill. Halliburton, for example, would pay only a small fraction of the billions of dollars it has already agreed to pay asbestos victims.

And, most important, the compensation for victims proposed in this legislation is inadequate. Even the sickest victims—those with mesothelioma and other fatal cancers—would receive less compensation under this bill than under the current system. And the tens of thousands of people with non-fatal diseases caused by asbestos, such as permanent repressive lung damage, would receive wholly inadequate assistance.

For these and other reasons, we need to go back to the table and negotiate a bill that would really be fair to victims.

Mr. CRAIG. Mr. President, I rise today to speak to S. 2290, the Fairness in Asbestos Injury Resolution Act of 2004, or the FAIR Act. Last July, I voted to pass S. 1125, the original asbestos litigation reform bill, out of the Senate Judiciary Committee in an effort to fix the Nation's broken asbestos litigation system. And indeed it is broken.

There have been too many losers under the current tort system. Claimants who are not sick receive disproportionate jury awards, severely sick claimants have been made to wait too long for compensation, companies are going bankrupt, jobs are being lost, and attorneys' fees are cutting away at nearly half of all money spent on asbestos-related litigation.

More than 60 defendant corporations have declared bankruptcy due to asbestos-related litigation, leading to the direct loss of as many as 60,000 jobs, with each displaced worker losing an average of $25,000 to $50,000 in wages.

Indeed, the system is broken.

The constituents from my home State of Idaho have written to me asking me to fix the asbestos problem. The United States Supreme Court has called upon Congress to resolve the asbestos litigation crisis. And today, Senators HATCH, FRIST, and others are calling upon the Senate to pass S. 2290 with the same purpose in mind.

I commend these Senators for their work on this issue, especially Senator HATCH, the chairman of the Judiciary Committee, who, through study, compromise, and countless hours of negotiations, produced a 250-page bill to resolve the asbestos litigation crisis. The actions of the Senator from Utah, from the beginning, truly have been those of a statesman.

However, these good-faith efforts have not been matched by those on the other side of the aisle.

In the original asbestos litigation reform bill, the trust fund was to be administered by the Court of Federal Claims, a special court relatively removed from the political realm. However, Democrats and labor unions wanted the fund to be administered by the Department of Labor, which has the potential to keep Congress and the American taxpayer on the political hook of paying for claims that cannot be paid by the asbestos trust fund. They wanted it, and we gave it to them.

In the original asbestos bill, those on the other side of the aisle wanted to increase the price tag of the bill by raising the levels of compensation for asbestos claims. They wanted it, and before passing the bill out of committee, we gave it to them. During negotiations over S. 2290, they wanted new levels of payouts even higher than those agreed to in committee. Accordingly, half of the award levels have been increased by an average of more than 20 percent in S. 2290. They wanted it, and we gave it to them.

In the ''Additional Views'' to the committee report on S. 1125, I and several fellow Republican colleagues voiced concern over the bill's unscientific medical criteria. In fact, in addition to several financial experts' testimony about the unpredictability of future claims into the fund, Dr. James Crapo, a hearing witness and medical expert who specializes in asbestos-related disease, wrote that:

> the other categories compensated by the bill . . . pay compensation for illnesses that, according to the clear weight of medical evidence, either are not caused by asbestos or do not result in a significant impairment. Simply put, when medical research concludes that a condition is not caused by asbestos, or is not an illness at all, medical research will not be able to predict the number of such claims.

Despite these deep reservations, and in response to Democrats' demands, we agreed to criteria that ''erred on the side of being over-inclusive'' with regards to asbestos-related diseases. Many financial and medical experts suggested that as a result of doing so, the fund is likely to run the risk of insolvency as a result of paying claims for illnesses not caused by asbestos. They wanted it, and we gave it to them.

They wanted it, and we gave it to them. Yet, they still withhold their support from S. 2290. As a result, not only has the integrity of the bipartisan negotiations been compromised, but the integrity of the asbestos litigation reform bill itself.

Though no asbestos bill will be perfect, any reform measure in passable form will provide the certainty needed by all involved parties: businesses will know the amount of their liability and will be able to adjust accordingly in order to prevent bankruptcy, and, most importantly, injured workers will be adequately compensated by the companies that caused them injury.

However, the certainty I held hope in only a few months back has largely been replaced by skepticism—skepticism in the solvency of the asbestos trust fund, skepticism in the handling of asbestos claims by the Department of Labor, and skepticism in the integrity of the medical criteria.

However, my hope resides in further consideration and debate of the bill. The time for fair and efficient resolution of the asbestos litigation crisis is now, and I will vote for the cloture motion before the Senate.

I look forward to any amendments that will strengthen the solvency of the bill by making defendant companies—not taxpayers—fiscally responsible for their actions, amendments that will restore integrity to the medical criteria section of the bill, and any others that restore S. 2290 to its principled purpose.

Whatever a Senator's position on the bill may be, the issue of asbestos litigation reform must be considered and debated. Let us not sit this one out. This one is too important to sit out.

Mr. KOHL. Mr. President, I rise to discuss S. 2290, the newest version of the asbestos bill. Like many of my colleagues, we want to support an asbestos bill that ensures that sick people get compensated quickly. The current system is broken, leaving terminally ill victims to spend years waiting for compensation. Congress must act to solve this problem, but it must do so in a bipartisan fashion. I fear that will not happen this week, even though we want to remain optimistic that there is still a chance for this legislation.

That said, over the past year we have made more progress than many of us would have thought. But now we are at an impasse. What is most frustrating is that the remaining issues are not irreconcilable. Let's discuss a few of the major outstanding issues that must be resolved in order to broker a compromise.

First, more than any other issue, the size of the fund is preventing progress on this bill. We appear unable to negotiate, or have yet to negotiate what this number should be. To be sure, this is a complicated issue and it is especially important to get it right if we want to adequately compensate asbestos victims for the next 50 years. There is just not enough money to cover all the claims that will be made against this fund. As a result, some of us have serious concerns that this bill fails to go far enough to compensate asbestos victims suffering serious disease.

Though the base funding in the new bill is roughly the same as S. 1125, $104 billion, the overall funding falls far short because the new version eliminates a contingency amendment I introduced with Senator FEINSTEIN last summer in the committee. Our amendment would have provided up to an additional $45 billion over the life of the fund. The new Frist-Hatch version replaces it with a $10 billion contingency a source of funding which could not even be tapped until year 24 of the fund.

Second, in order to reach a better understanding of how much this bill will

cost, we must better come to a final agreement on the individual awards that will be granted victims. Quite simply, this agreement will drive the overall cost of the fund, and not surprisingly, projections vary on this point. Proponents of the new bill predict that there will be $114 billion in total claims. The Congressional Budget Office, however, estimates that, based on the new award values present in S. 2290, the fund will need $134 billion to pay out all current and future claims. And labor believes that the number will be even greater if we were to raise award values to a more equitable level. Of course, any increase in award values will require a increase in the overall fund amount. But these are exactly the sort of tough choices and negotiations that need to take place if we are going to find a compromise.

Third, those of us opposed to this bill still feel that an unfair risk falls onto the victims if the fund goes bankrupt. Those in favor of the bill will argue that if they underestimate how much money the fund will need, victims can simply return to the court system. But it is not as simple at that. At the earliest, victims cannot return to the courts until year seven and there is a real risk that certain types of victims may be precluded from any further compensation for new injuries related to asbestos exposure.

Furthermore, the new version of the asbestos bill also results in unfair treatment of victims with pending claims. There are currently more than 300,000 asbestos victims with pending claims in the court system, many who have been waiting for years for a court date or settlement. The asbestos bill would eliminate most pending claims and even final settlements and throw them into the fund. So some victims who won a large verdict will be forced to start over from scratch in the fund. This hardly seems fair.

Finally, it is difficult to support a new bill that is the product of a flawed and one-sided negotiating process. Much of the new asbestos bill we are considering was negotiated by Senators FRIST and HATCH with business and insurance representatives. This process, lacking any participation from Democrats or labor, resulted in a bill that is not even as good as the version we opposed last July. To be fair, Senator SPECTER has been working hard in a bipartisan group mediated by retired Federal Judge Becker. The group has had some modest success in negotiating ''non-economic'' issues, but has yet to broker any deal on award values or overall fund financing. Perhaps a consensus solution is possible if we allow that bipartisan process to proceed.

Until then, I cannot support this bill in its current form. The new asbestos bill actually retreats from the progress made last summer in the Judiciary Committee. Until my major concerns regarding the overall dollar amount for the fund—an amount that will adequately satisfy the hundreds of thousands of asbestos victims for years to come—is resolved, I will vote against S. 2290. To be sure, there are several other issues to solve in this bill, but we must reach a consensus on an overall dollar amount, lest we regret supporting a fund that runs out of money, fails to compensate victims, and provides businesses no more certainty than they have today.

Mr. ALLEN. Mr. President, I rise today in support of the Fairness in Asbestos Injury Resolution Act or the FAIR Act.

Over the past decade, asbestos-related lawsuits have increased dramatically and have shown no sign of lessening. According to reports, at least 730,000 claimants have sued more than 8,400 defendant companies alleging some kind of injury by asbestos exposure. The number of defendant companies that have been sued has increased by 8,100 since 1983 according to the RAND Institute for Civil Justice.

There is no doubt that the current asbestos litigation system is a failure. The system is harmful on two fronts: it is harmful to the economy and harmful to the asbestos victims, who currently wait years for their cases to be resolved. Sadly, some of these victims die before even having their day in court.

I view this measure as a jobs bill. Some would ask: How is this legislation going to help create jobs? I would answer that while we are steadily recovering from an economic downturn exacerbated by the terrorist attacks of September 11, 2001, and our necessary response in the war on terrorism, we need to make sure that willing men and women can find jobs. Employment is improving. However, if the Senate does not act on this important reform legislation, the numbers of unemployed Americans will increase.

The fact is that asbestos-related bankruptcies inflict a staggering toll on the American workforce. Companies that have declared bankruptcy because of asbestos-related litigation employed more than 200,000 workers before their bankruptcies. So far, asbestos-related bankruptcies have led to the direct loss of as many as 60,000 jobs, while each displaced worker will lose an average of $25,000 to $50,000 in wages over his or her career, according to Joseph Stiglitz, cowinner of the 2001 Noble Prize in Economics.

One economic study by the Financial Institutions for Asbestos Reform found that, considering the multiplying effect of private investment, failure to enact asbestos legislation could reduce economic growth by $2.4 billion per year, costing more than 30,000 jobs annually. Extended over a 27-year time frame, this would translate into the loss of more 800,000 jobs and $64 billion in economic growth. And RAND concluded that 423,000 new jobs will not be created due to asbestos litigation, and $33 billion in capital investment will not be made.

My colleagues on the other side of the aisle preach the need for job growth and argue that Republicans are not doing enough to spur the economy and preserve and create jobs. This bill helps preserve jobs. But unfortunately, if we continue to allow this dysfunctional system to exist and let partisan politics run rampant, we will see a major dilemma in the American workplace—thousands of Virginians and Americans unemployed.

In addition, a failure to resolve this situation will have an adverse effect on employee pensions and retirements. Each worker who loses their job from an asbestos bankruptcy loses on average at least 25 percent of the value of their 401(k) retirement accounts. Thus, a failure to act will not only lead to job loss, but could hamper their long-term financial well-being. Furthermore, individuals use their pensions and 401(ks) for a number of things. An individual may use it to retire, to pay for their children's college education or for incurred health expenses as they grow older.

Unfortunately, the crisis does not stop there. Opponents seem to forget that many victims are unable to receive just compensation because the courts have been burdened by the sheer volume of cases—legitimate and less meritorious alike. They have been unable to ensure that even a majority of asbestos compensation goes to plaintiffs who are actually injured.

Shipyard workers and Navy veterans from my Commonwealth of Virginia should not have to suffer in the current system. The RAND study that I referenced earlier found that the vast majority of new claims—approximately 90 percent—are made by people who do not have any sort of cancer or mesothelioma. These individuals prevent the claims of those who are truly ill from being heard and given their day in court and zap the limited resources available to compensate true victims now and in the future.

This bill will provide some consistency in the settlements that are awarded to victims. Far too often, the awards are unfair, inconsistent, and erratic. Currently, victims can only expect to see 43 cents of every dollar in compensation awarded. The rest of the money goes to lawyers and administrative costs.

The FAIR Act seeks to remedy this injustice. This legislation will make sure that victims receive immediate compensation in full. By capping the litigation costs, we are making sure that awards are going into the bank accounts of the truly injured, rather than legal fees for companies and claimants.

As the Chicago Tribune said in September 2002, ''Today's dysfunctional system benefits primarily trial lawyers and healthy plaintiffs—and that drains resources from those who are sick and dying because of asbestos. That's a national shame.'' The Fairness in Asbestos Injury Resolution Act is a long overdue attempt to correct that terrible wrong.

So what does this bill do? In short, the FAIR Act would establish a privately funded trust fund composed of mandatory contributions from current corporate defendants and their insurers as well as moneys from existing bankruptcy trusts. Plaintiffs who believe they have been injured by asbestos exposure would submit claims to the administrator of the trust fund with evidence that they were exposed to asbestos for a period of time sufficient to cause their medical condition. Qualified claimants would be paid a clear compensation depending on eligibility and disease type on a no-fault basis. Properly administered, the trust fund will ensure that nearly all defendants' and insurers' asbestos expenditures end up in the hands of injured claimants. And by paying fixed generous award amounts depending on the severity of the disease, the FAIR Act would ensure that the truly impaired are compensated.

I urge my colleagues to move to consider this bill. Too many jobs are being lost in bankrupted companies while Virginians and Americans with asbestos-related diseases receive inadequate compensation. The principal point is that action and leadership has been needed for years. There is no reason to procrastinate and avoid responsibility to remedy this current dysfunctional, failed situation. The FAIR Act is a reasonable, responsible way to move forward jobs and equity; to filibuster and block this bill is an avoidance of responsibility.

Mr. FEINGOLD. Mr. President, I want to speak today on S. 2290, the revised, but still misnamed, Fairness in Asbestos Injury Resolution Act. Reluctantly, I will oppose the motion to proceed to this bill.

I say ''reluctantly'' because I support the concept of a national trust fund to compensate victims of asbestos-related diseases and address the severe strain that cases brought by those victims have placed on our legal system and our economy. Ten thousand Americans now die each year—a rate approaching 30 deaths per day—from diseases caused by asbestos. My home State of Wisconsin ranks 16th in the Nation in asbestos-related deaths.

I was encouraged when the defendant companies in some of the many lawsuits that have been filed, their insurers, and organized labor began serious negotiations back in 2002 to try to develop legislation for a national trust fund that the Congress could enact on a consensus basis to address this serious problem. This was an issue that called out for a bipartisan solution.

Unfortunately, those discussions were short-circuited before an agreement could be reached. What began then was a process that has turned the asbestos issue into a partisan issue when it really shouldn't be. A bill very much slanted toward the defendants and insurers was introduced last spring by the chairman of the Judiciary Committee. Although I disagreed with the chairman's decision to call a halt to negotiations, I do give him credit for at least allowing the Judiciary Committee to work on the bill, in contrast to the process that was followed on the series of ill-advised medical malpractice bills that have been brought directly to the floor during this Congress. The Judiciary Committee held a hearing and then an extraordinary four meetings to mark up the bill. Two dozen amendments were debated and voted on.

The bill that emerged in July 2003 after that intensive work by the committee still did not win my support. But all of the committee members who voted against it agreed that it was much improved over the original bill. The committee's work could have been the foundation for further bipartisan negotiation that might have led, if all parties were willing to come to the table and compromise, to a bill that could be overwhelmingly approved by the Senate.

So what happened over the last 10 months? Well, the first thing that happened is that the insurers went to the Republican leadership and said they couldn't live with even the limited improvements that the committee approved. So no sooner had an amended bill come out of committee then its supporters started backing away. Instead of trying to make the bill reported out of the Judiciary Committee more acceptable to victims of asbestos in a serious effort to solve what we all agree is a difficult and important problem, the proponents of this legislation went backward.

And so in many respects the bill that the Senate is being asked to take up is worse than the committee bill. Important amendments adopted in committee that provide some certainty that money will be available to future victims of the horrible diseases caused by asbestos, and we know with certainty that there will be thousands of such victims, were removed by the sponsors of S. 2290. By what definition does that represent ''fairness''?

Let me talk for a minute about some of the specific provisions that have led me to conclude that I cannot in good conscience vote to proceed to this bill.

The first issue is money. CBO estimates that between $124 billion and $136 billion will be needed to pay an expected 1.7 billion asbestos claims over the 27-year life of the fund. Some experts think that estimate might be too low. S. 2290 provides for a maximum of only $114 billion for the fund. The bill reported from the committee, as a result of amendments offered in committee by Senators FEINSTEIN and KOHL, included total funding of $154 billion. How can it be fair for a compensation fund to be doomed to failure from the start because it is underfunded?

Another issue is related to the issue of the adequacy of the fund. Senator BIDEN offered an amendment that was approved by an overwhelming bipartisan majority of the committee. It basically said to people who have claims that if the fund isn't adequately funded they will not be left empty-handed. It called for a return to the tort system for claimants who do not receive the payments that the bill calls for. S. 2290 substitutes a much weaker sunset amendment that would leave victims waiting for years and years without compensation before they are permitted to again pursue their claims in court. How is that fair?

I am concerned in addition that this bill treats certain companies such as Halliburton very favorably by capping their liability to the fund at a fraction of what they have already set aside to pay claims to asbestos victims. These companies have already agreed to settle claims against them and agreed to pay billions of dollars in compensation. Those settlements have been on hold as Congress considers this legislation and if it passes, the companies will save literally billions of dollars that they otherwise were prepared to pay to asbestos victims. How is that fair?

I am also very concerned that this bill would overturn longstanding settlements under which some victims have been receiving regular payments for years. How can it be fair to people who have settled their claims already, or who have even received jury verdicts in their favor that are now on appeal, to have to start over in an administrative process that could take years to get up and running and years to complete? An amendment offered by Senator FEINSTEIN in committee would have postponed the effective date of the bill until the fund was up and running. That would have allowed at least some far-advanced cases to proceed to final judgment. The deletion of the Feinstein amendment is another step backward taken by the sponsors of this bill.

We have an asbestos crisis not only because lawsuits are threatening the financial well being of American companies but because people are getting sick and dying. Some companies knew that exposure to asbestos caused asbestosis, a tragic lung disease, as early as 1918. In 1966, the Director of Purchasing for Bendix Corporation, now a part of Honeywell, stated in an internal memo '' . . . if you have enjoyed a good life while working with asbestos products, why not die from it.'' There are countless other industry documents that have been uncovered to show that the industry knew it was endangering its workers' health by continuing to use asbestos. A 1958 National Gypsum Memo, for example, stated: ''Because just as certain as death and taxes is the fact that if you inhale asbestos dust you get asbestosis.''

We need to make sure that any national solution to the asbestos litigation issue keeps faith with people who have been injured by this dangerous product. And we now know that the problem is not limited to people who worked with asbestos. It is also the families of the men and women who

worked with asbestos who have contracted asbestos-related diseases. Even consumers who used hair dryers, electric blankets, attic insulation, home siding and ceiling and floor tiles have suffered injury from asbestos exposure. These victims need compensation, and this hazardous substance needs to be banned once and for all.

We all want to see a resolution to this crisis, we want these victims to get the compensation they deserve. That is why I am so disappointed in the final version of this bill. Instead of working toward a negotiated solution that the whole Senate can support, the sponsors of this bill have assured its failure by going backward. Again I ask, how is that fair? Reluctantly, I will vote against the motion to proceed, and I hope the message that comes from the failure of this bill is not that no solution to the asbestos problem is possible, but rather that the only way to reach a solution is to involve all the interested parties, and Senators from both sides of the aisle, and try to arrive at a truly fair bill.

Ms. MIKULSKI. Mr. President, I rise today to oppose S. 2290, the so-called ''FAIR Act.'' I oppose this bill because it is anything but fair to victims of asbestos exposure. This bill puts the interests of insurance companies and industry before those who are sick and often dying because of asbestos exposure. How can we call a bill fair—when it makes those who suffer as a result of asbestos exposure worse off and further delays their compensation. We need a balanced and fair approach to asbestos reform that will have bipartisan support. Democrats want it, business wants it, labor wants it and many of our friends on the other side of the aisle want it. Unfortunately, the FAIR Act is not it.

Even the process by which this bill came to the floor is not fair. This is not the bill that came out of the Judiciary Committee, its not the product of the negotiations that Senators SPECTER, LEAHY, DASCHLE and others have been pursuing, it is not a bill that has had any input from Democrats. Senators FRIST and HATCH decided what should be in the bill and put it on the floor. They skirted the usual Senate process and introduced a partisan bill.

This bill is not fair.

Is it fair that those who are seriously ill as a result of asbestos related illnesses would receive far less on average under this bill than they would in our court system?

Is it fair that victims who are suffering from lung cancer may only receive $25,000 when they were exposed to asbestos for 15 years and will likely die within a few years of diagnosis?

Is it fair that businesses will only put $109 billion into the fund when conservative estimates expect the fund's claims to reach at least $134 billion?

Is it fair that victims will be left with no recourse if, as many expect, the fund runs out of money and those who are sick are forced to wait years more for compensation?

And I ask you, is it fair that those who have already spent years in the court system will have their settlements and judgments wiped out and have to wait years more for compensation under the new system? These defects are simply unacceptable in a bill that is supposed to solve the asbestos nightmare and get victims real relief now.

None of these provisions is fair to the workers, mechanics, miners, and family members who have been exposed to asbestos and are now suffering from disease. These are the people who are relying on the Congress for help so they can spend their last days enjoying their families and loved ones and not litigating their claims. The U.S. Senate can do better than getting caught up in a political game when people's lives are at stake.

This legislation has three major flaws—it gives victims far too little, forces victims into a fund that has too few resources, and closes the courthouse door for victims of asbestos exposure.

Too many victims receive far too little under this bill. This new Frist/Hatch bill may have increased the awards for some victims over previous version of the bill, but it still leaves many of the most seriously ill victims with awards far below what they would receive if they went to court. For example, overall awards in this bill are far lower than what victims would receive in court. And to top it all off victims could see their awards reduced even further because of workers' compensation or insurers' liens, which this bill allows. That's not fair.

This bill forces victims out of the courts and into a fund that may run out of money. The level of funding under this Frist/Hatch bill is well below what even conservative estimates put as the likely cost of the fund. How can we ask all these victims to give up their right to go to court and then put them in a fund that will run out of money? They will be left holding the bag and waiting years more to get relief. Certainly business can do more for the trust fund in exchange for a reprieve from their litigation liability.

I am not only worried about the fund running out of money in the long term—but also up front. Over 300,000 cases are currently pending and it is expected that 90,000 additional cases will be filed each year of the first few years of the trust. Under this bill there simply is not enough funding in the early years to cover those costs. So what happens? Victims again are left waiting, as they have been in the tort system, for years for some compensation and sadly many of them will die before they ever see a cent.

This legislation shuts the courthouse door for victims. Many victims of asbestos exposure have already spent years in court and have received a settlement or judgment. The Frist/Hatch bill wipes out all pending claims, including those where a settlement has been reached or where a judge or jury has reached a judgment. These victims have spent years and often most of their resources litigating these cases. Now Congress wants to come in and say ''Sorry, you have to file your claim again and wait for the fund to get your relief.'' That undermines the civil justice system, the faith we put in judges and juries and is simply not fair to victims who have been waiting years.

Senator FEINSTEIN had offered an amendment to the original bill in Committee that helped take care of part of this problem. It was based on a simple idea—victims have waited long enough and they ought to be allowed to pursue their claims while the fund was getting off the ground. But the Frist/Hatch bill gets rid of that provision and makes victims wait. Wait till the money is in the fund, wait till the administrative system is set up, wait till Administrators are appointed and then wait some more. It might take years to get the fund off the ground and until then victims have no where to go to pursue their claims.

I, like my colleagues, wanted a to be able to vote for legislation that would help victims, that would make sure they got the compensation they deserve and would also ensure that problems with the current legal system were addressed. But this bill is the wrong vehicle—it actually rolls back the progress that was made in the Senate Judiciary Committee and through months of negotiations between labor, business and insurance.

I know that Senators DASCHLE, LEAHY, DODD, FEINSTEIN and others have been working tirelessly with those on the other side of the aisle and with industry, insurance and labor to create a consensus bill. I have supported those efforts and am disappointed that Senator FRIST introduced this bill which sends us in exactly the opposite direction. It sends us away from common ground and negotiated positions to a strongly partisan bill that does not reflect any of those efforts. I think we should go back to the table, to finish the conversations, to reach a balanced agreement that the majority of us can support.

We need to protect those who have been exposed and are suffering from asbestos related diseases by putting sufficient amounts in the trust fund, by making sure that compensation levels are fair and awards are dispensed quickly, by ensuring that the fund is solvent and provides victims with the ability to go back to court if the system runs out of money. We also need to make sure that those who are in court can continue their cases until the fund is set up and that those who have reached a settlement or received a judgment can get the remedy their litigation has entitled them to.

I stand with my Democratic colleagues in saying ''we want a bill.'' I want a bill that helps victims get just

compensation, and that provides financial certainty for industry and insurers. But that cannot come at the cost of the rights and remedies for those who are and will become seriously ill as a result of asbestos exposure.

Mrs. LINCOLN. Mr. President, I voted against the cloture motion to S. 2290 because I did not believe this bill was ready to be debated on the Senate floor. Unfortunately, the process that created this bill did not give stakeholders an adequate opportunity to fully discuss and debate honest differences. As a result, significant issues remain that can and should be addressed before proceeding to consideration on the floor. I am confident, however, these issues can be resolved if the interested parties will come to the table and work in good faith until a compromise can be reached. In my conversations with asbestos victims, industry officials, and labor leaders a common thread has emerged; we are too close to walk away now.

I have consistently expressed support for a legislative solution to the asbestos crisis that would establish a trust fund to pay legitimate claims in a fair and efficient manner. However, if we ask American citizens to give up their right to a day in court, we must ensure they will be treated equitably by the alternative. Further, we must ensure that the trust fund remains solvent and efficient. We also must make certain that the fund will be up and running as quickly as possible.

All of the parties in this discussion have a vested interest in making the trust fund work. For the victims, many have waited far too long to receive the compensation they deserve in a timely and efficient manner. For the business community, they have agreed to commit a significant amount of money to this fund. It is in their best interest to make sure the fund works by paying victims a fair amount in a timely way to ensure they are not threatened by non-meritorious claims if this process returns to the courts

We can reach agreement on this vital legislation if all sides stay at the table. Legislation is rarely a work of art, it is a work in progress. We must continue to push forward until a solution is found.

Mr. HATCH. Mr. President, I have been listening to the arguments of my colleagues from the other side of the aisle.

I thank Senators CARPER, NELSON, MILLER, and BAUCUS, who indicated they will vote for this bill in the end if we can resolve some of the problems. These Senators in every sense have worked extraordinarily hard on this bill, especially Senator MILLER.

I believe we can accommodate Senator BAUCUS so he can literally vote for this bill. I do not want to see people from Montana be mistreated. Frankly, I believe we can make the appropriate change. We have talked about what it will be. It is what he has told me he would accept. I think we can make that change. But that is what you do on the floor of the Senate.

Having said that about these colleagues who have worked so hard with us, including Senator FEINSTEIN, who has worked with us on these matters, all of them are going to vote against cloture today, at least as far as I know.

Having said that, I was interested in the comments of the distinguished ranking member on the Judiciary Committee, that we have to get into reality here; reality the way the Senate is supposed to work, the way the legislative process works. After 15 months of meeting with everybody from one end of this country to the other, everybody in the Senate Judiciary Committee, and virtually everybody in the Senate, 15 months of intensive negotiations, where are we? In reality, they are filibustering even a motion to proceed which I think shows where this is all going. They are not filibustering the bill which would be next. They are filibustering the motion to even proceed to the bill. The reality is if we want to be legislators and we want to legislate, then we bring the bill up and we fight it out on the floor.

We have a filibuster here on the motion to proceed. We have had 15 months of negotiations. We have bent over backward to try to accommodate our colleagues on the other side of the aisle. There is virtually only one thing many of them want more of; that is, more money. That is after putting in the original $108 billion, which nobody thought we could get done; that almost everybody said if you get that we will go—virtually everybody involved, including the unions. We are now up to $114 billion, and it is still not enough. If that is not enough, then bring an amendment to the bill on the floor. Make it more, if you can.

The problem is I think they know the vast majority of Senators in this body know it is enough. They know it is probably too much and know what a burden it is going to be on these companies that are basically near bankruptcy to pay for this. But we have done that.

I heard the distinguished ranking member of the Judiciary Committee say we should be legislators. If the funds are enough, they would go. Bring amendments. Let us fight out. That is what we do. That is what this floor is for—not just filibustering a motion to proceed so we can't fight it out, so we can't have amendments. I think they should quit hiding behind outrageous figures everybody around here knows can't be done.

I believe my friend said one of the problems is solvency protection. How can you protect from insolvency, if these companies start going into bankruptcy? We have had 70 so far. We will have more loss of health benefits, loss of pensions, and loss of jobs.

By the way, on the award values, it is interesting to me that I am hearing it is not enough in award values to individual people and the individual categories, and yet the award values were approved by the Senate Judiciary Committee 14–3. Only two Democrats did not vote. All the other Democrats voted for the award values we have in this bill—every one of them. The only three members on our side who didn't vote for the award values said they felt they were too high. The Democrats all agreed they were decent award values.

If we are going to be legislators, let us be legislators. Let us not hide behind a filibuster of a motion to proceed.

There have been a lot of comments by my friend on the other side about the fairness and adequacy of the claim values. He said they are low. What he failed to mention today in his remarks is the Feinstein bipartisan claims values amendment was adopted by the committee 14–3. It was a bipartisan vote. The only three who voted against it were Republicans who thought the claims values we had were too high. All of the votes from the other side of the aisle were 100 percent for the claims values.

I am not sure why my friend from Vermont is now saying the claims values we have adopted in a bipartisan fashion—he was there last July—are now too low. It is amazing to me. It is typical of what we have gone through for 15 months trying to work this out. I think they may figure as long as they can keep this going, there will be more and more demands on these few companies that are now stuck after the main companies that caused the problem are all bankrupt. These companies, such as Monroe, which I mentioned earlier, are stuck having to try to win but the defense costs alone would eat them alive and put them into bankruptcy.

We can talk about this forever. We can negotiate forever. But if it means more and more money, bring amendments to the floor. Maybe they will win on it. I don't know. All I can do is show how exorbitant they are under the circumstances.

We still have a hedge factor in this matter. If for some reason there are not enough funds at the end of this process to pay off claims—and we believe not only there will be, but there will be more than enough funds—then this will revert back to the tort system again.

Nobody will want that to happen. Nobody will let that happen. But even if it does, then these voracious claims lawyers, these personal injury lawyers—about 10 percent or even less of the American Association of Trial Lawyers—will be able to do the same things we have just mentioned they have been doing in this matter.

I think everybody is protected. There is no question about it.

Why are we not going to invoke cloture here and kill this bill? Why aren't we going to have amendments to make this bill more pure, if we can? Why don't we have amendments to increase the funding, if that is what they think should occur? The fact is they don't

want to do it because they know darned well if they did, they probably couldn't win on these outrageous claims. But if they did, then the Senate will have worked its will. That is what legislators do. They don't hide behind filibustering every bill. They do not have obstruction tactics on every bill. Around here, we have to get 60 votes for virtually any bill that means anything. That is pretty pathetic. Sooner or later, we are going to have to address that. That includes judges for the first time in history.

But this bill is important. I acknowledge cloture will not be invoked today. I have known that for a long time. The fact of the matter is at least everybody is going to know where everybody stands on this matter. Does that mean we are going to quit negotiating and quit trying to bring people together? No. We will. But if we don't get that down in another week, it seems to me this bill is going to be dead. If it is dead, then I pity those 8,400 companies plus all the insurance companies—about 16 of those—because they are all headed toward bankruptcy and this country is going to suffer a tremendous problem while the truly sick are not going to get compensated. The truly sick are not going to get compensated. We have seen the sleazy approach of at least one of the personal injury law firms toward manipulating the process so those who aren't getting sick get a recovery which they should never have gotten. That takes money away from those who are sick. Guess who the beneficiaries of this whole process are. These personal injury lawyers, some of whom are honest, but probably some who are not.

This chart shows it all. The word ''filibuster'' comes from the Spanish word ''filibustero,'' meaning pirating and hijacking. I shudder to think we will consign all of these people who have asbestos-related illnesses to oblivion and not do the best we can to help them when we have a system that is broken.

I am prepared to yield back the remainder of my time and proceed to the vote.

The PRESIDING OFFICER. All time is yielded back. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 472, S. 2290, a bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Bill Frist, Orrin Hatch, Gordon Smith, Lamar Alexander, Saxby Chambliss, Ted Stevens, Michael B. Enzi, Trent Lott, Kay Bailey Hutchison, Susan M. Collins, Pete Domenici, Rick Santorum, Jon Kyl, George Allen, George V. Voinovich, John Ensign, Wayne Allard.

The PRESIDING OFFICER. By unanimous consent, the call of the quorum is waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to the consideration of S. 2290, the FAIR Act of 2004, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL) and the Senator from Pennsylvania (Mr. SPECTER) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY) is necessarily absent.

The PRESIDING OFFICER (Mr. CHAFEE). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 50, nays 47, as follows:

[Rollcall Vote No. 69 Leg.]

YEAS—50

Alexander	Dole	McConnell
Allard	Domenici	Miller
Allen	Ensign	Murkowski
Bennett	Enzi	Nickles
Bond	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Chafee	Gregg	Smith
Chambliss	Hagel	Snowe
Cochran	Hatch	Stevens
Coleman	Hutchison	Sununu
Collins	Inhofe	Talent
Cornyn	Kyl	Thomas
Craig	Lott	Voinovich
Crapo	Lugar	Warner
DeWine	McCain	

NAYS—47

Akaka	Dorgan	Levin
Baucus	Durbin	Lieberman
Bayh	Edwards	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Nelson (FL)
Breaux	Harkin	Nelson (NE)
Byrd	Hollings	Pryor
Cantwell	Inouye	Reed
Carper	Jeffords	Reid
Clinton	Johnson	Rockefeller
Conrad	Kennedy	Sarbanes
Corzine	Kohl	Schumer
Daschle	Landrieu	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Leahy	

NOT VOTING—3

Campbell	Kerry	Specter

The PRESIDING OFFICER. On this vote, the ayes are 50, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. FRIST. Mr. President, I am disappointed that we did not invoke cloture on the asbestos reform bill. As I have said numerous times in recent days, this is an important issue, an issue we are not going to give up on. It is too important to the American people. It is an issue with victims, with veterans, with all people who are affected by asbestos. It would be a great disservice just to drop this issue; therefore, we are not going to drop it.

We have devoted now more than 300 days trying to work out the details of this bill, which I do believe is more than adequate time to reach consensus. Thus, later today, the Democratic leader and I—we have been in discussion over the course of the morning—will be discussing on the Senate floor a possible method of moving these discussions forward with the stakeholders over the next several days and possibly weeks. We will engage in a colloquy later in the day as to what that specific proposal will be.

I am confident we can make progress on this important issue, that we can move the stakeholders to a final agreement. I say that because people just saw the vote and that does not close the door in any way. In fact, it inspires us to work together more over the next several days and weeks.

For the information of Senators, next we will begin consideration of S. 2329, which is the victims' rights bill. It was introduced yesterday by Senators KYL, FEINSTEIN, and others. The order provides for up to 2 hours of debate before the vote on passage of that bill. That vote will likely be the last vote of this week.

Following the victims' rights bill, we will turn to, in the early part of next week, Monday, the Internet access tax bill. Discussions have been underway over the course of the morning and afternoon on that bill as to when we will actually begin consideration, and later this afternoon, I will have more to say about that bill.

As I believe I said this morning, following completion of the Internet tax bill, we will be turning to FSC/ETI, the JOBS bill. That is several days from now.

Mr. President, again, I am very disappointed in the cloture vote today, but we will be back, and I will talk more about that this afternoon.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to make a couple of comments about the asbestos bill. I see my colleague from Delaware. Does he want to say something before I make a short speech?

Mr. CARPER. Mr. President, yes, I want to mention to Senator FRIST, as I did to Senator DASCHLE in the last few minutes, my appreciation for the way each of them are, as leaders, engaging in a bipartisan way to address the asbestos issue as something we have to get done; we can do better than the status quo and take up the bill under the good work of the Judiciary Committee and the Specter-Becker process. There is a good process in place showing results, and I am delighted both Senator FRIST and Senator DASCHLE are embracing that process and enabling us to work together and resolve the remaining issues.

I mentioned when Senator FRIST was not here that work has a way of expanding to fill the amount of time we allocate to a project. Senator FRIST

knows that better than I do. If we say we are going to take the rest of the year to resolve the asbestos bill, it will take the rest of the year. There is value in setting a date certain. Senator FRIST may want to consider returning to this bill right before the Memorial Day recess. That gives us 3 weeks to buckle down, get the interested parties in a room together, and Senators who want to participate and their staff, along with Judge Becker, our leaders, and let's get this job done.

I thank the Senator for yielding.

Mr. FRIST. Mr. President, briefly in response, I understand the importance of setting dates and also of having a sense of urgency, since we do have victims who are suffering today. We will have more to say about overall timing when I have a colloquy with the Democratic leader a little bit later today.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent that following the remarks of Senator NICKLES we proceed to consideration of the legislation which the leader announced so that Senator FEINSTEIN can commence her presentation and hopefully have her first presentation concluded before 1 o'clock.

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

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to make a few remarks concerning the asbestos legislation we failed to reach cloture on a motion to proceed. I am disappointed that we did not go to the legislation. I came down yesterday to speak and others were engaged. Maybe it is more appropriate that I speak now.

We have a very serious problem dealing with asbestos in this country. I held a hearing in the Budget Committee 2 years ago and stated that some of the biggest problems that we face, as far as our economy, is regulations and litigation abuse. And heading the list of litigation abuse in this country is asbestos litigation. We have 8,000 companies now listed as defendants in suits, and 60 or 70 companies have already gone bankrupt. Thousands of jobs have been lost. I believe over 60,000 jobs have been lost from the bankrupt companies that have gone out of business. Maybe another 100,000 jobs have not been created as a result of the negative impact that asbestos litigation has on the economy, and it is wrong. When we find out that two-thirds of the awards or settlement payments have been going out to people who are not sick, something is wrong. So this system needs to be fixed.

I also want to compliment Senator HATCH, Senator FRIST, and Senator SPECTER for their efforts. There has been a lot of work going into this legislation.

However, I have very serious problems with this particular legislation, S. 2290. In my opinion, a legislative solution that would propose creating a large federal trust fund is a mistake. I think there simply is a better way to do it. I asked the Congressional Budget Office to provide the Budget Committee analysis of the legislation, that we had before us, and the essence of its potential cost effects. I now ask to include their entire statement into the record. It states that CBO estimates operations of the fund would increase federal budget deficits by $13 billion over the first 10 years of the fund.

Thus, they estimate, that even though it will take in $118 billion of contributed funds over the life of trust, in the first 10 years it is going to add $13 billion to the deficit. Though the legislation says you can borrow against future anticipated revenues, it is still going to add to the deficit, and the Fund itself will become insolvent at some point because fund resources will be overwhelmed by anticipated claims liability. There are going to be major problems with this fund, too many problems.

As a matter of fact, I estimate that if we go with the trust fund approach there are going to be a lot of unqualified claimants saying, ''We want to be covered under this fund.'' We can expect that, unless there is very strict medical criteria enforced, and this bill does not have very strict medical criteria. By very strict medical criteria, I mean there should be legislation in place that requires claimants to prove that they have an asbestos-related disease before they are compensated by the fund. And this bill does not do that.

Also, I hope we would abandon the idea of creating a trust fund, under this legislation, that has a fixed, capped, amount that must be contributed into the fund by insurers and defendant companies involved, while the liability remains virtually unlimited. What one should easily see, is that the insurers are limited in what they must contribute and the defendant companies are limited in what they must contribute, but the extent of liability is unlimited. This should indicate to my colleagues that this Fund may not work. The claims may greatly exceed the fund, there is a shortage, and we end up with an insolvent fund.

The bill says, well, we presume if the fund goes insolvent, the fund will terminate from a Government-funded fund managed by the Department of Labor, and then claimants who did not get in on the money are going to simply seek redress in the federal courts. I question that. I can see people coming back to Congress and saying: ''Hey, we want the Federal Government to pay for it.'' This puts the taxpayer at risk.

So what is the solution? I am not trying to be critical. But, I think we should come up with realistic solutions. I have a couple of ideas I think we could do. One is to impose strict medical criteria in the existing tort system. The American Bar Association has said Congress should establish strict medical criteria in the tort system: in other words, a person must prove they have an asbestos related injury before they file a claim and get compensated. Let's make sure we are not paying payments to people who have lung cancer resulting from other causes, like a life-long smoking habit. My mother had lung cancer and my brother had cancer as a result of smoking. They should not be compensated out of an asbestos compensation fund. We should hold to the principle that if people are going to receive compensation from asbestos exposure they should have an asbestos-related disease; and they must prove it was the substantial contributing factor to the injury. If they prove it, they should be compensated.

We should also toll the statute of limitations for asbestos injuries to protect the legal rights of claimants who should develop a disease or impairment in the future. If they discover they have an asbestos-related disease in the distant future, the statute of limitations should not begin to run until that time. They would be able to file suit. That would eliminate a lot of these bogus claims and the mass action claims where people are filing claims saying, ''We think we could develop asbestos disease in the future, and we understand the statute of limitations is going to run out, so therefore we are going to file claims now.'' Over two-thirds of the claimants today do not have asbestos-related disease, but they are filing claims. Let's enact legislation to toll the statute of limitations, so if it is proven that 10 or 20 years from now an individual develops asbestos-related disease, and it is proven, they can be justly compensated.

Finally, let's eliminate the abusive venue shopping. Let's keep it in court jurisdiction where the claim belongs, and stop bargain-hunting plaintiffs from shopping their claims in only the most lucrative district or State courts in the country.

There does not have to be a new Federal fund, or a new entitlement program, created to provide a reasonable solution to this problem. If we simply require claimants to prove in court that they have an asbestos-related disease or impairment, then we can compensate those who are truly sick and they can be compensated well. The defendants companies and the insurance companies could all pay a lot more to the most deserving victims of asbestos exposure, if they did not have to needlessly pay money to the two-thirds who do not have asbestos-related disease.

Many of these plaintiffs lawyers who are involved in these mass action suits, those who represent legitimate victims who are being pushed aside by the non-injured, actually say that a medical criteria bill would be the right solution. We do not need take away anybody's ability to go to court. The truly sick can be truly compensated. And do not need to pay false or premature claims. We simply do not need to pay claims to people who, frankly, should

not be receiving benefits. The fact is, people who do not have asbestos-related disease are clogging the courts, and they are denying people who do have the disease just compensation.

I have introduced such legislation that will go a long way to solving these problems. I have kind of held back to see whether or not this trust fund approach would work, and, frankly, I do not believe it will work, whether it is $118 billion or $153 billion.

I heard many of my Democratic colleagues say if it had a little more money maybe they could support it. It will not work. My guess is if there was a fund of $153 billion or even $173 billion, as much money as that is, with the medical criteria being lax as it is in this bill especially for smokers, it will not work because you will still have thousands of unqualified people saying, ''My lung cancer should be covered too.''

As a matter of fact, if one looks at one of the compensation plans under this bill, yes, under levels VII, VIII and IX section C, smokers get compensation without having clear proof it was caused by their asbestos exposure. Now, maybe they worked in a plant that might have had asbestos present, but if they cannot prove that it was the cause of their cancer and not, for example, the five packs of cigarettes they smoked each day for thirty years, then they should not be compensated, but this Trust Fund bill would do this.

My point is, let's go back to the drawing board. I do not believe a trust fund approach is the right approach. I happen to think that S. 2290 is almost an invitation for people to say here is a bunch of money, probably not enough money, so let's make sure we run our claims early, fast, and get in while the money is still there. So the claims would greatly exceed the money available no matter what size the pot of money is on the table. And when it runs out the net result will be that people will come to the Federal Government to keep it going. This trust fund will simply not be adequate to compensate all the claims, especially not with lax medical criteria.

So I urge our colleagues to rethink this. Let's establish medical criteria in the courts using medical evaluation standards proposed by the American Medical Association, and consistent with a resolution endorsed by the American Bar Association, that calls on Congress to establish criteria standards along those lines and toll the statute of limitations for those who may become sick in the future. Let's compensate those families, those individuals, who are truly sick. Let's help the victims, and not reward people who do not even have asbestos disease or injury by giving them two-thirds of the benefits under this present flawed system.

I urge my colleagues to seriously review such an alternative approach when we reconsider this bill in the not too distant future.

I ask unanimous consent that the CBO letter of April 20, 2004, be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 20, 2004.

HON. DON NICKLES,
Chairman, Committee on the Budget,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, CBO has prepared a cost estimate for S. 2290, the Fairness in Asbestos Injury Resolution Act of 2004, as introduced on April 7, 2004. The bill would establish the Asbestos Injury Claims Resolution Fund (Asbestos Fund) to provide compensation to individuals whose health has been impaired by exposure to asbestos. The fund would be financed by levying assessments on certain firms. Based on a review of the major provisions of the bill, CBO estimates that enacting S. 2290 would result in direct spending of $71 billion for claims payments over the 2005–2014 period and additional revenues of $57 billion over the same period. Including outlays for administrative costs and investment transactions of the Asbestos Fund, CBO estimates that operations of the fund would increase budget deficits by $13 billion over the 10-year period. The estimated net budgetary impact of the legislation is shown in Table 1.

S. 2290 contains both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate direct cost of complying with the intergovernmental mandates in S. 2290 would be small and would fall well below the annual threshold ($60 million in 2004, adjusted annually for inflation) established in UMRA. CBO also estimates that the aggregate direct cost of complying with the private-sector mandates in S. 2290 would well exceed the annual threshold established in UMRA ($120 million in 2004 for the private sector, adjusted annually for inflation) during each of the first five years those mandates would be in effect.

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF S. 2290

	By fiscal year, in billions of dollars—									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN DIRECT SPENDING										
Claims and administrative expenditures of the Asbestos Fund:										
Estimated budget authority	*	18.5	12.8	12.9	5.3	5.3	5.3	5.2	5.0	4.9
Estimated outlays	*	7.5	10.7	14.6	9.8	7.6	5.3	5.3	5.2	5.0
Investment transactions of the Asbestos Fund:										
Estimated budget authority	5.4	2.0	−4.8	−3.3	0	0	0	0	0	0
Estimated outlays	5.4	2.0	−4.8	−3.3	0	0	0	0	0	0
Total direct spending:										
Estimated budget authority	5.4	20.6	8.0	9.6	5.3	5.3	5.3	5.2	5.0	4.9
Estimated outlays	5.4	9.5	5.9	11.3	9.8	7.6	5.3	5.3	5.2	5.0
CHANGES IN REVENUES										
Collected from bankruptcy trusts [1]	1.0	0	0	4.6	0	0	0	0	0	0
Collected from defendant firms	3.3	2.8	2.8	2.8	2.7	2.7	2.7	2.7	2.7	2.6
Collected from insurers	2.7	7.5	2.2	1.6	1.6	1.6	1.6	1.6	1.6	1.6
Total revenues	7.0	10.3	5.0	9.0	4.4	4.3	4.3	4.3	4.3	4.3
Estimated net increase or decrease (−) in the deficit from changes in revenues and direct spending	−1.5	−0.8	1.0	2.3	5.5	3.2	1.0	1.0	0.9	0.8

[1] Cash and financial assets of the bankruptcy trusts have an estimated value of about $5 billion. The federal budget would record the cash value of the noncash assets as revenues when they are liquidated by the fund's administrator to pay claims.

Notes.—Numbers in the table may not add up to totals because of rounding. * = less than $50 million. CBO estimates that by 2014 the Asbestos Fund under S. 2290 would have a cumulative debt of around $15 billion. Borrowed funds would be used during this period to pay claims and would later be repaid from future revenue collections of the fund. We estimate that interest costs over that period would exceed $2.5 billion, and CBO's projections of the fund's balances reflect those costs. However, they are not shown in this table as part of the budgetary impact of S. 2290 because debt service costs incurred by the government are not included in cost estimates for individual pieces of legislation.

Major provisions

Under S. 2290, a fund administrator would manage the collection of federal assessments on certain companies that have made expenditures for asbestos injury litigation prior to enactment of the legislation. Claims by private individuals would be processed and evaluated by the fund and awarded compensation as specified in the bill. The administrator would be authorized to invest surplus funds and to borrow from the Treasury or the public—under certain conditions—to meet cash demands for compensation payments. Finally, the bill contains provisions for ending the fund's operations if revenues are determined to be insufficient to meet its obligations.

S. 2290 is similar in many ways to S. 1125. A more detailed discussion of the fund's operations and the basis for CBO's estimates of the cost of compensation under these bills is provided in our cost estimate for S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003, which was transmitted to the Senate Judiciary Committee on October 2, 2003.

Budgetary impact after 2014

CBO estimates that S. 2290 would require defendant firms, insurance companies, and asbestos bankruptcy trusts to pay a maximum of about $118 billion to the Asbestos Fund over the 2005–2031 period. Such collections would be recorded on the budget as revenues.

We estimate that, under S. 2290, the fund would face eligible claims totaling about $140 billion over the next 50 years. That projection is based on CBO's estimate of the number of pending and future asbestos claims by type of disease that would be filed with the Asbestos Fund, as presented in our cost estimate for S. 1125. While the projected number of claims remains the same, differences between the two bills result in higher projected

claims payments under S. 2290. The composition of those claims and a summary of the resulting costs is displayed in Table 2.

Although CBO estimates that the Asbestos Fund would pay more for claims over the 2005–2014 period than it would collect in revenues, we expect that the administrator of the fund could use the borrowing authority authorized by S. 2290 to continue operations for several years after 2014. Within certain limits, the fund's administrator would be authorized to borrow funds to continue to make payments to asbestos claimants, provided that forecasted revenues are sufficient to retire any debt incurred and pay resolved claims. based on our estimate of the bill's likely long-term cost and the revenues likely to be collected from defendant firms, insurance companies, and certain asbestos bankruptcy trust funds, we anticipate that the sunset provisions in section 405(f) would have to be implemented by the Asbestos Fund's administrator before all future claimants are paid. Those provisions would allow the administrator to continue to collect revenues but to stop accepting claims for resolution. In that event, and under certain other conditions, such claimants could pursue asbestos claims in U.S. district courts.

TABLE 2.—SUMMARY OF ESTIMATED ASBESTOS CLAIMS AND AWARDS UNDER S. 2290

[Dollars in billions]

	Initial 10-year period		Life of fund	
	Number of claims	Cost	Number of claims	Cost of claims
Claims for malignant conditions	59,000	$36	127,000	$82
Claims for nonmalignant conditions	627,000	17	1,230,000	36
Pending claims	300,000	22	300,000	22
Total	986,000	75	1,657,000	140

Major differences in the estimated costs of claims under S. 1125 and S. 2290

You also requested that CBO explain the major differences between our cost estimates for S. 1125 and S. 2290. On March 24, 2004, in a letter to Senator Hatch, CBO updated its October 2, 2003, cost estimate for S. 1125, principally to reflect new projections about the rate of future inflation and an assumed later enactment date for the bill. That letter explains that we now estimate enactment of S. 1125 at the end of fiscal year 2004 would result in claims payments totaling $123 billion over the lifetime of the Asbestos Fund (about 50 years).

Three factors account for the difference between the estimated cost of claims under S. 1125 and that under S. 2290 (see Table 3):

The award values specified in S. 2290 are higher for certain types of diseases. That difference would add about $11 billion to the cost of claims, CBO estimates.

Under S. 2290, most asbestos claims could not be settled privately once the bill is enacted. In contrast, under S. 1125, asbestos claims could continue to be settled by private parties between the date of enactment and the date when the Asbestos Fund is fully implemented; defendant firms could credit any payments made during that period against required future payments to the fund. Consequently, CBO estimates that the fund created by S. 2290 would face about $5 billion in claims that, under S. 1125, we anticipate would be settled privately.

S. 2290 specifies that administrative expenses of the program would be paid from the fund. Under S. 1125, in contrast, administrative costs would be appropriated from the general funds of the Treasury. That difference would increase costs to the fund by about $1 billion over its lifetime.

In the limited time available to prepare this estimate, CBO has not evaluated the differences between the two bills in administrative procedures. Under S. 2290, the Asbestos Fund would be operated by the Department of Labor rather than the U.S. Court of Federal Claims. This and other differences between the two bills could affect the cost of administration, the timing and volume of claims reviewed, and the rate of approval for claims payments.

TABLE 3.—DIFFERENCES IN ESTIMATED CLAIMS AGAINST THE ASBESTOS FUND UNDER S. 1125 AND S. 2290

	In billions of dollars
Estimated cost of asbestos claims under S. 1125:	123
Added costs due to higher award values under S. 2290	11
Additional claims not privately settled after enactment under S. 2290	5
Administrative costs under S. 2290 [1]	1
Total estimated claims against the fund under S. 2290	140

[1] Under S. 1125 administrative costs would be appropriated from the general fund of the Treasury.

Major differences in estimated revenue collections under S. 1125 and S. 2290

CBO estimates that the Asbestos Fund under S. 2290 would be limited to revenue collections of about $118 billion over its lifetime, including contingent collections. CBO has not estimated the maximum amount of collections that could be obtained under S. 1125, but they could be greater than $118 billion under certain conditions. In our cost estimate for S. 1125, we concluded that revenue collections and interest earnings were likely to be sufficient to pay the estimated cost of claims under that bill. That is not the case for S. 2290.

Over the first 10 years of operations, we estimate that revenue collections under S. 1125 would exceed those under S. 2290 by $7 billion. Thus, under S. 2290 we estimate that there would be little interest earnings on surplus funds and that the Asbestos Fund would need to borrow against future revenues to continue to pay claims during the first 10 years of operations.

Estimates of the cost of resolving asbestos claims are uncertain

Any budgetary projection over a 50-year period must be used cautiously, and as we discussed in our analysis of S. 1125, estimates of the long-term costs of asbestos claims likely to be presented to a new federal fund for resolution are highly uncertain. Available data on illnesses caused by asbestos are of limited value. There is no existing compensation system or fund for asbestos victims that is identical to the system that would be established under S. 1125 or S. 2290 in terms of application procedures and requirements, medical criteria for award determination, and the amount of award values. The costs would depend heavily on how the criteria would be interpreted and implemented. In addition, the scope of the proposed fund under this legislation would be larger than existing (or previous) private or federal compensation systems. In short, it is difficult to predict how the legislation might operate over 50 years until the administrative structure is established and its operations can be studied.

One area in which the potential costs are particularly uncertain is the number of applicants who will present evidence sufficient to obtain a compensation award for nonmalignant injuries. CBO estimates that about 15 percent of individuals with nonmalignant medical conditions due to asbestos exposure would qualify for awards under the medical criteria and administrative procedures specified in the legislation. The remaining 85 percent of such individuals would receive payments from the fund to monitor their future medical condition. If that projection were too high or too low by only 5 percentage points, the lifetime cost to the Asbestos Fund could change by $10 billion. Small changes in other assumptions—including such routine variables as the future inflation rate—could also have a significant impact on long-term costs.

Intergovernmental and private-sector mandates

S. 2290 would impose an intergovernmental mandate that would preempt state laws relating to asbestos claims and prevent state courts from ruling on those cases. In addition, the bill contains private-sector mandates that would:

Prohibit individuals from bringing or maintaining a civil action alleging injury due to asbestos exposure;

Require defendant companies and certain insurance companies to pay annual assessments to the Asbestos Fund;

Require asbestos settlement trusts to transfer their assets to the Asbestos Fund;

Prohibit persons from manufacturing, processing, or distributing in commerce certain products containing asbestos; and

Prohibit certain health insurers from denying or terminating coverage or altering any terms of coverage of a claimant or beneficiary on account of participating in the bill's medical monitoring program or as a result of information discovered through such medical monitoring.

S. 2290 contains one provision that would be both an intergovernmental and private-sector mandate as defined in UMRA. That provision would provide the fund's administrator with the power to subpoena testimony and evidence, which is an enforceable duty.

CBO estimates that the aggregate direct cost of complying with the intergovernmental mandates in S. 2290 would be small and would fall well below the annual threshold ($60 million in 2004, adjusted annually for inflation) established in UMRA. CBO also estimates that the aggregate direct cost of complying with the private sector mandates in S. 2290 would well exceed the annual threshold established in UMRA ($120 million in 2004 for the private sector, adjusted annually for inflation) during each of the first five years those mandates would be in effect.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs, who can be reached at 226–2860, Melissa Merrell (for the impact on state, local, and tribal governments), who can be reached at 225–3220, and Paige Piper/Bach (for the impact on the private sector), who can be reached at 226–2960.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Mr. NICKLES. I yield the floor.

SCOTT CAMPBELL, STEPHANIE ROPER, WENDY PRESTON, LOUARNA GILLIS, AND NILA LYNN CRIME VICTIMS' RIGHTS ACT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 2329, which the clerk will report.

The bill clerk read as follows:

A bill (S. 2329) to protect crime victims' rights.

The PRESIDING OFFICER. Under the previous order, each of the following Senators control 30 minutes: Senators KYL, HATCH, LEAHY, and FEINSTEIN.

The Senator from California is recognized.