

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

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

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

The Senator from Pennsylvania is recognized.

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

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

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

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

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