



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152

WASHINGTON, TUESDAY, FEBRUARY 14, 2006

No. 18

Senate

Statement of Senator Dianne Feinstein

On the Motion to Waive the Congressional Budget Resolution in regards to the FAIR Act

Mrs. FEINSTEIN. Mr. President, let me give you at least my bottom line of this bill. Up to 2004, 74 American companies had been bankrupted. Salaries have been diminished for a large number of people. More people are thrown into the unemployment market as a product of bankruptcy. Victims receive less than 50 cents on the dollar. Those are facts. It is deeply disturbing to me. I deeply believe that a no-fault fund, which has a medical board that evaluates the medical condition of an individual and automatically grants that individual an amount of money, is a much sounder way to go.

Now, clearly, this is complicated legislation and there are difficult and technical issues involved. But a lot of misinformation has plagued the asbestos debate, and it continues to be repeated. I cannot say we have a perfect bill, but we have tried, and tried very hard. This has not been a take-it-or-leave-it bill. The chairman and the ranking member have been open to suggestions. They have been open to requests for amendments. There will be a substitute amendment that further refines the bill.

Today, I want to discuss the concerns raised by those who oppose the bill and provide what I hope are important points.

On Thursday, one Senator argued:

It really comes down to a very basic question -- the question of whether or not this bill has been carefully crafted, whether or not

it contains enough money in the trust fund to compensate the hundreds of thousands of asbestos victims that will have to count on it.

Let me address the beginning of that statement, Mr. President. I cannot think of any other bill where more time, more effort, and more man-hours have been committed to thoroughly understanding and trying to address all of the complex issues, and even to respond to the hypothetical issues that might potentially come up. The drafters of this legislation have worked for literally thousands of hours through the process of dozens of meetings over the past six years. The Judiciary Committee has held at least 8 hearings on the asbestos bill -- 4 just in the past year -- and has heard testimony from 57 witnesses. We have met with experts from all sides who currently evaluate asbestos claims and make statistical projections for companies, for victims, and the courts. We met with doctors, victims, corporate CEOs, and general counsels. We met with trial lawyers, insurance representatives, and individuals who work for asbestos bankruptcy trusts.

I recognize that there are real concerns from the opponents of the bill. Some people are unsatisfied with some of the compromises that have been incorporated. But to assert that the legislation was not carefully drafted is one argument that has no basis in reality.

Now for the second part of the argument. Again, it is important to

remember the history. Through this extensive consultation process, it became clear that there was an expected range of claims that could come into the fund. From this, several different experts, including Goldman Sachs, calculated the amount of funding necessary to cover the claims' values that the bill provided and the number of claims that the fund would pay based on the range of claims.

We learned that the amount necessary to create a national trust was between \$90 billion and \$155 billion. The legislation now on the floor has funding of \$140 billion -- clearly, on the high side of the range of what the technical experts expect.

I also think it is important to remember that previous versions of the asbestos bill had significantly less guaranteed contributions. S. 1125 provided \$108 billion, with a \$45 billion contingent fund. S. 2290 provided \$104 billion, with a \$10 billion contingent fund. However, each of these bills assumed that part of the money to pay claims would be collected through interest on savings. They did not meet the full funding through guaranteed contributions by businesses and insurers as this bill does. That is a significant difference.

The underlying assumption of the prior two bills was that the amount of money being paid into the trust would be more than sufficient to pay claims and, instead, there would be an excess that the administrator could invest to help build the trust fund's assets. So the amount of money being paid into

the fund was much less than \$108 billion and \$104 billion. In addition, neither of those bills contained provisions to guarantee that the remaining companies would be required to make up any potential shortfall. Yet the bill on the floor of the Senate today is over \$30 billion above S. 1125 and S. 2290 in guaranteed contributions, with no contingency funding.

In addition, when the CBO was asked to evaluate how much money the fund would need to pay claims, it projected that "the proposed fund would be presented with valid claims worth \$120 billion to \$150 billion."

This is the CBO language:

CBO expects that the value of valid claims likely to be submitted to the fund over the next 50 years could be between \$120 billion and \$150 billion, not including possible financing (debt service costs) costs and administrative expenses.

Again, \$140 billion is well within the expected range. I think it is also important to note that throughout the process, the medical criteria has been tightened. I don't believe anybody really speaks to this.

One category of claims -- individuals who had lung cancer but no underlying asbestos markers -- has been eliminated from the bill. An Institute of Medicine study has been added to the legislation that requires an evaluation of the link between asbestos exposure and cancer, other than lung cancer. If that link cannot be established by the IOM, then those claims will not receive compensation. With these modifications, the number of claims coming into the trust will be substantially reduced.

Finally, many protections have been put in place that ensure that if, in the long run, the trust does not have sufficient funding to cover all claims, individuals will be returned to the tort system -- the very solution opponents are advocating now. So if the trust were to run out of money, the

individual would go back to the tort system.

Some opponents also argue that passage of this act would lead to federalizing the responsibility for asbestos claims. We just heard this in the Democratic Caucus. It is this argument that is being used to make the case for a budget point of order against the bill. Some opponents have argued that the trust creates a new, albeit capped, entitlement for claimants. However, this statement is very misleading.

According to the Congressional Research Service, entitlement programs are a form of mandatory spending which require the payment of benefits to persons if specific criteria established in the authorized law are met. If one only looked at the first part of the definition of entitlement, this concern may be understood.

However, CRS further states that entitlements are not subject to discretionary appropriation from Congress. Instead, they are subject to mandatory appropriations. Entitlement payments are legal obligations of the Federal Government, and beneficiaries can sue to compel full payment. This is not the case here.

Let me state that again. This is not the case here.

The trust fund created by this legislation will be privately funded. The money collected for the trust comes from businesses and insurance companies. It does not come from the U.S. Treasury. While some opponents acknowledge that the Federal Government must play a role in the trust fund for it to be classified as an entitlement, they inaccurately conclude that if an individual satisfies the medical criteria and filing deadlines, then he or she is entitled to compensation from the Federal Government. This is not true.

Although the program will be housed in the Department of Labor, the bill ensures that all expenses, including administrative expenses, are paid by the moneys collected from

businesses and insurers. In addition, as an extra protection, it is expressly stated several times throughout the bill that the United States, or the U.S. Treasury, will in no way be required to satisfy any claim or any costs if the amount in the trust is inadequate.

This bill expressly provides:

Repayment of moneys borrowed by the administrator is limited solely to amounts available in the fund.

It also states that nothing in this act shall be construed to create any obligation of funding from the U.S. Government, including any borrowing authorized. Read section 406(b). This is what the opponents say is not there. This is the face of the bill. It is there:

Nothing in this act shall be construed to create an obligation of funding from the United States Government...or obligate the United States Government to pay any award or part of an award, if amounts in the fund are inadequate.

I don't know what better guarantee there can be. If someone can suggest one, I am sure the chairman and the ranking member, and certainly myself, would agree to add it to the bill. With these explicit statements throughout the bill, it is abundantly clear that this legislation will not be a burden on the U.S. Treasury.

While Congress can obviously pass any law it so chooses in the future, this bill specifically states multiple times in the text that taxpayers and the U.S. Treasury will in no way be required to cover any shortfall, any administrative costs, any debt or interest costs, or any costs incurred by the trust fund. Therefore, the only way taxpayers will be called upon to subsidize this legislation is if a future Congress chooses to pass, and the President signs, new legislation which would create such an obligation. This seems to me very unrealistic and highly unlikely. But even if it were to come to pass, we should not defeat this bill because of what some other Congress

and some other President may or may not do at some time in the future.

Opponents also argue that the Federal Government's liability is likely to arise through the debt service. They argue that the administrator could borrow beyond the fund's ability to repay the Treasury.

I wish to respond to that. This statement ignores the plain text of the bill. The administrator's ability to borrow funds from the Federal Financing Bank is only available for the first 5 years.

Section 221 states:

The administrator may borrow from the Federal Financing Bank in accordance with section 6 of the Federal Financing Bank Act of 1973 as needed for performance of the administrator's duties under this act for the first 5 years.

So for the first 5 years, there can be some borrowing. How is that borrowing limited and how is the loan paid back? This same section specifically limits the borrowing capacity of the administrator so that he or she may not overextend the fund's assets by borrowing beyond what the trust fund will be able to repay.

Again, section 221 states:

The maximum amount that may be borrowed under this subsection at any given time is the amount that, taking into account all payment obligations related to all previous amounts borrowed in accordance with this subsection and all committed obligations to the fund at the time of borrowing, can be repaid in full with interest in a timely fashion from the available assets of the fund as of the time of borrowing, and all amounts expected to be paid by participants during the subsequent 10 years.

So it requires the administrator to look at what he or she could

potentially repay and what contributions are still outstanding.

It is hard to believe that any private lending institution would risk lending money to the trust fund which it could not clearly repay in the future. However, even if some private institution decided to take that risk, the bill specifically prohibits the administrator from entering into such a financially risky transaction.

As I just read, the explicit language in the bill limits the administrator's borrowing capacity to an amount that can be repaid in full with interest from the available assets of the fund as of the time of borrowing and all amounts expected to be paid by participants during the subsequent 10 years.

Finally, those who support the budget point of order argue that collection of the contributions by the businesses and insurers could fail to materialize, leaving the U.S. taxpayer on the hook to cover the costs, and we should look at that. We should look at it very carefully, and we did. This argument ignores explicit provisions contained in the legislation.

Senator Leahy and I fought hard to ensure that the payment obligations included in the bill were enforceable and guaranteed.

First, the bill gives the administrator enforcement authority to compel payment by the companies, both defendant businesses and insurers alike.

Let me quote section 223. It provides:

If any participant fails to make any payment in the amount of, and according to, the schedule under this Act or as prescribed by the Administrator after demand and a 30-day opportunity to cure the default, there shall be a lien --

Not there may be a lien; there shall be a lien, mandatory language --

for the amount of the delinquent payment (including interest) upon all property and rights to

property, whether real or personal, belonging to such participant.

The participants of the fund are liable for the maintenance of the fund. I don't see how it could be any clearer.

The chairman of the committee who is the author of this bill is in the Chamber. If someone has an amendment and comes to the chairman and says: Look, we think there is an oversight here or there, it could be tightened up by doing X or Y, I am sure this chairman will listen. But the language is very specific: If any participant fails to make any payment in the amount in the schedule under this act or as prescribed by the administrator after a demand and 30 days to cure the default, there shall be a lien for the amount of the payment, including interest, upon all property and rights to property. That includes every big business, every big insurance company, everyone that contributes to this fund, and it is only within that initial period that the administrator can, in fact, borrow from the Federal Financing Bank.

So how people come to the conclusion that the Government is on the hook for \$40 billion I will never understand. If the company refuses to pay or fails to pay, the administrator must get a lien from a court on the company's assets in order to compel payment.

Secondly, the bill ensures that if any one company cannot pay its obligation under the trust fund -- and this is important -- if any one company can't pay its obligation under the trust fund, the other companies must shoulder the cost.

Specifically, section 204(h) -- please read it, opposition -- Guaranteed Payment Surcharge, states that if the required contribution does not come in, the administrator shall assess a guaranteed payment surcharge.

Here it is, section 204(h)(3):

To the extent it is insufficient to satisfy the required minimum

aggregate annual payment, the administrator shall --

Not may --

shall assess a guaranteed payment surcharge.

So the administrator shall collect any shortfall in contributions from other defendant companies. This legislation contains specific language to require that companies pay and that if the enforcement mechanism should fail for any reason, the money still comes into the trust through payments from other companies.

With explicit language protecting the American taxpayer and the U.S. Treasury from ever having to contribute to the fund, with explicit language limiting the administrator's borrowing authority, and with explicit language ensuring that the anticipated contributions are made, this legislation makes it abundantly clear that in no way, shape, or form can the trust harm the Federal budget.

Opponents of the bill argue that those of us who support the bill have "significantly distort[ed] CBO's conclusions" and, at the same time, they assert that CBO "likely understates" the amount of money needed for the trust. They argue that because CBO uses qualifiers in their estimates such as acknowledging uncertainties in calculating the number of claims and the amounts to be paid, that one must draw the conclusion that CBO actually believes the cost to be much higher than that which is contained in their paper.

Yet time and time again, when CBO has been asked to review their estimate and make changes based on new information, including the rather notorious Bates White study, they have declined to make changes. I was in that hearing; I heard the Director of CBO decline to make changes directly after the Bates White testimony. With each request, CBO has refused to alter its estimate of the projected costs. This is what they said in a letter to Chairman Specter dated December 19, 2005:

The Bates White Report contains no new information that would cause CBO to revise its cost estimate.

The size of the fund is based on the strongest statistical data and economic models available. Now, that is the best that is out there. That is the state of the art. Some can say it isn't enough. I can't counter that. All I know is that the committee sought the best, the committee sought the most responsible.

As I said on the floor previously, a leading actuary with Tillinghast-Towers Perrin, an actuarial firm for the Manville Trust, testified before the committee that "\$108 billion appears to be more than adequate," and the RAND Institute estimates the future remaining costs of asbestos-related loss and expense at \$130 billion. In addition, the new projections calculated by Tillinghast also confirm that the contributions to the asbestos trust fund should be sufficient.

While opponents argue that the latest Tillinghast studies support their argument that there is inadequate funding, a closer analysis reveals that the new Tillinghast projections are actually in line with the projections used to calculate the money necessary to pay claims under the bill. Let me tell you how that happens.

The new Tillinghast claims projections include claims for foreign exposures as well as Manville's level VI cancers. Both of these categories of claimants are ineligible for compensation under this bill's medical criteria. When these changes are accounted for and the Tillinghast numbers are adjusted, their new projections fall squarely within the range that the asbestos trust fund is based on, and the adjusted Tillinghast numbers are actually less than CBO's projections.

In addition, by using a no-fault administrative system, the fund will significantly reduce the substantial transaction costs of the current tort system, costs which almost all experts agree consume more than half of the

total amount paid out for asbestos claims.

Remember at the beginning I said that one of the most startling things to me was to realize what happens with settlements, what happens to those dollars. The fact is that 61 percent of all of the settlement and award dollars go for defendant costs, go for plaintiff costs, go for court costs, go for legal fees. Sixty-one percent. Sixty-one percent, then, of any tort court sum goes not to the victim but to lawyers and to tort costs.

In addition, by using a no-fault administrative system, the fund significantly reduces the substantial transaction costs of the current tort system: (A) you don't need a lawyer; and (B) if you want to come in with a lawyer, that lawyer is limited to a 5-percent fee -- not 30, 40, 50, 60, or 70 percent of a recovery, but 5 percent.

According to the most recent RAND Institute report, 58 percent of the money spent on asbestos claims goes toward attorney's fees alone -- 31 percent to defense attorneys, and 27 percent to plaintiff attorneys. So only 3 percent goes toward court costs and legal fees, and 58 percent goes to the attorneys. Victims are left with only 39 percent of the settlement and award dollars.

I urge everyone to read the RAND Institute's recent study. It is 168 pages. It describes what is happening in the tort system, and it is an independent, very good analysis.

The bottom line: The asbestos bill needs less money to pay victims fair compensation since it eliminates these transaction costs which drain money away from the individual.

This bill as amended obligates defendant and insurer participants to contribute \$136 billion -- that is a lot of money -- \$136 billion to the fund, and at least \$4 billion more would be contributed from confirmed bankruptcy and other asbestos compensation trust funds. In fact, CBO recently estimated that the amount to be contributed by

bankruptcy trusts will likely be around \$8 billion. Here is what CBO said:

The value of cash and financial assets of the asbestos bankruptcy trust funds would be \$7.5 billion in 2006 and \$8.1 billion when liquidated.

As I stated previously, if the projections are wrong and the amount of money available proves to be insufficient in the long run, victims will be allowed to return to the courts. With this safety net, the legislation ensures that no one is left without an avenue of recourse.

Some people have said there is a lack of certainty. A lack of certainty is not unusual when projecting what might occur in the future for the Federal budget or for future programs. I do not believe that uncertainty or ambiguity necessarily leads to the conclusion that the trust fund will require more funding. But I would hope opponents would view the ambiguities for what they are -- an acknowledgment that no one can predict the future with 100 percent certainty, and the best anyone can do is make projections using sound statistical analyses, which this committee's bill has attempted to do.

We don't know how many people have been exposed to asbestos and, of course, who will develop a disease -- nor can we possibly know. However, that should not mean that we do nothing, that we let the present system, which we know is not good, prevail. That does not mean that the analyses and projections that have been done are useless, not valuable, or inaccurate. Instead, we have to find the best projections available, the most sound, the ones that are based on sound calculation and real-world experience of other trusts. That is what this legislation does.

Another argument made by opponents is that there will be additional costs related to the debt service that could overwhelm the trust. Some have declared:

Debt service contributes greatly to the trust fund's insolvency,

underlining the severe mismatch between the timing of payments into the fund.

Opponents have said that this conclusion is based on the argument that there will be a flood of claims at the start of the trust. However, this concern has also been examined and addressed through the process of drafting this bill.

The so-called upfront funding has been significantly increased to the point where the trust fund now will have \$42 billion in the first 5 years to pay claims. Under S. 2290 -- the old bill -- the administrator would have collected up to \$19 billion during the first 3 years and only \$29 billion in the first 5 years. The difference is \$15 billion has been added to the upfront funding of this bill. That is a 30-percent increase in the startup funding from what was provided in the bill last Congress.

In addition, the Judiciary Committee adopted an amendment to speed up the initial contributions by insurers, defendant companies, and bankruptcy trusts so that the administrator can pay claims quickly.

Section 204 requires the defendant companies to pay their initial payment within 90 days from the date of the enactment, and we are very serious about that. Section 212 requires the insurers to make their first payment within the same time line. And Section 402 requires the bankruptcy trusts to also make their first payment within the first 90 days.

Here is what the bill says:

Each defendant participant shall file, not later than 90 days; insurer participants, not later than 90 days.

This is bill language.

The assets in any trust established to provide compensation shall be transferred to the fund not later than 90 days after enactment.

So everything has been done in this bill to ensure a fast start. Within 3 months, the administrator will have collected initial payments from all the participants and will have almost \$9 billion.

Next, the bill includes a streamlined process to settle claims of terminally ill individuals immediately -- immediately -- upon enactment of this legislation. That is what is so attractive to me. Someone who has a very short time to live, someone with mesothelioma, has a chance of getting paid upfront, right away -- much more than a chance, a commitment.

This provision ensures the terminally ill individuals will have their claims processed quickly, and it should resolve some of the most pressing and most expensive claims before the trust is up and running so that there will not be an overwhelming flood of claims filed with the trust on day one.

Senator Specter included language in the statute of limitations to give individuals sufficient time to file their claims -- 5 years -- so there will not be a need to rush to the fund for fear of being cut off and the administrator and the medical board can concentrate on the sickest people first.

Finally, as I mentioned previously, there are tight restrictions on how much the administrator may borrow for the express purpose of ensuring that the trust does not face a shortfall simply because of a debt service problem.

I would like to address the Bates White study in a little more depth. When opponents argue that the projections are too low, many of the arguments made to support this conclusion appear to be based on the Bates White study.

During consideration of this legislation, the Committee held a hearing on the Bates White study and asked CBO to review its conclusions. I was present and listened carefully to the testimony. Several criticisms and concerns were raised about the Bates White study, its assumptions, and its

methodology. Witnesses before the Committee made several points that significantly undermined the credibility of the Bates White study.

First, experts argued that the Bates White study overestimated occupational exposure. In determining the overall number of individuals who could recover from the bill the Bates White study appears to have counted every employee who ever worked in an industry where there was asbestos exposure. This conclusion was reached by comparing the Bates White study to the Nicholson study.

The Nicholson, Perkel and Selikoff study, conducted in 1982, set the standard on this subject and is considered the most comprehensive asbestos study. It provides a good foundation for estimating the future cases of asbestos disease, and has been utilized in many of the models to develop future asbestos disease claims projections, including claims projections made for the Manville Trust. Yet, Bates White's conclusions are almost triple Nicholson's.

Navigant, a consulting firm that has worked on asbestos claims since the 1980s doing evaluations of claims projections and costs to companies, explained during the hearing that this discrepancy seemed to occur because Bates White simply used a straight percentage of the total U.S. workforce, whereas Nicholson conducted an extensive and in depth analysis of the industry and occupational exposure to asbestos.

Next, Bates White did not make a distinction in its calculations between exposed populations and eligible populations. This means that in the Bates White study it appears that every person who was ever exposed to asbestos was counted as eligible under the trust fund. However, not all individuals who are exposed to asbestos will become sick, nor will all individuals who are exposed to asbestos be able to meet the medical criteria and the exposure requirements necessary to receive compensation from the trust.

While considering asbestos legislation, several witnesses have pointed out that just because someone may have been exposed to asbestos at some point in their lifetime, it does not follow that they will become sick or will qualify for payment. I think this is an important point and is feeding some of the misperceptions around this bill. The science has not determined that every person who is exposed to asbestos will get sick.

This is true not just because each individual is different from one another and has differences in their immune systems, but because developing an asbestos-related disease usually requires prolonged and sustained exposure. Asbestos is a naturally-occurring mineral and many of us have been exposed to asbestos dust simply by walking outdoors. However, the current science concludes that casual contact is rarely sufficient to develop an asbestos disease.

Dr. James Crapo is Professor of Medicine at the National Jewish Medical and Research Center. He has more than 25 years of experience with asbestos-related issues, including medical research and clinical treatment of patients suffering from asbestos-related diseases and has published in the field of environmental toxicology, including the basis of asbestos-induced lung injury.

He testified that:

All of us are exposed to asbestos from the environment and consequently have asbestos in our lungs. This background level of exposure does not cause any asbestos-related disease. Those diseases normally require substantial occupational exposures or the equivalent.

In addition, the Navigant and the labor witnesses pointed out that the Bates White study did not seem to take into account that exposure rates within certain occupations decreased over time. This means that the Bates White study did not account for the fact that as companies became more aware of the dangers of asbestos they

often did more to protect their workers.

The committee heard from Dr. Laura Stewart Welch, a board-certified physician in internal medicine and occupational medicine. She has an active medical practice and treated many workers with asbestos-related disorders. She is currently medical director for The Center to Protect Workers Rights, a research institute affiliated with the Building and Construction Trades department of the AFL-CIO, and has authored over 50 peer-reviewed publications and technical reports in the field of occupational and environmental medicine, including papers describing the findings of asbestos-related disease in this group of construction workers.

Dr. Welch pointed out that the overall number from which the Bates White study calculated the claims that will go into the trust is at least ten times too big. She explained that the Bates White study extrapolated from a study that uses 2-3 fiber years as the basis for what constitutes significant exposure. The reference to fiber years is a way to calculate how much asbestos an individual has been exposed to. However, the legislation requires at least 25-40 fiber years to constitute significant exposure. So the legislation requires a much higher level of exposure to qualify. Witnesses concluded that by failing to adequately consider each of these factors, the Bates White study provided a significant overestimation of claims.

Next, the Committee heard testimony that argued the estimates made by the Bates White study do not reflect current experiences. The Bates White study asserts that by creating a no-fault system there will be a huge increase in filing of other cancer claims because it is no-fault rather than the adversarial system in the courts. However, the Manville Trust has similar, and in some cases exactly the same, medical criteria as the criteria in the FAIR Act, and it does not have litigation costs nor the deterrent of the adversarial system.

The Manville Trust was formed in 1988, and is the first and largest asbestos trust. In fact, it is not just the largest asbestos trust, but it is the largest toxic tort or personal injury trust of any kind. As of mid-2005 the trust had paid about \$3.3 billion to settle 655,096 claims. The Manville Trust has gained so much experience in the field of asbestos claims settlements that it plans to begin offering claims-resolution services to other companies. Therefore, the experience of the Manville Trust should be considered the best starting point for evaluating projections.

When comparing the Bates White study to Manville, witnesses from the committee hearing asserted Bates White projections are four times higher for other cancers than Manville. This was viewed as well outside a reasonable difference.

In addition, witnesses pointed out that there are several evidentiary requirements that do not seem to be adequately accounted for. In the two areas where the Bates White study predicts significant growth in claims, it does not account for the role of the physicians panel which is made up of three doctors who will personally review claims.

Lastly, the committee heard from experts who stated that the Bates White study used a methodology that has not been accepted by the unions, businesses, insurers, trial lawyers, CBO, the current bankruptcy trusts, or the courts now hearing asbestos cases.

For all these reasons, many of us concluded that the Bates White analysis fell far outside acceptable ranges for projections. To be clear, throughout this process both the AFL-CIO witness as well as business witnesses disputed the assumptions underlying the Bates White study and rejected its conclusion.

The next argument used by opponents is that the asbestos trust fund is going to fail because other trust funds have failed. This is not a new concern. In fact, throughout the process we looked at previous trust funds and attempted to evaluate the problems that arose.

The Black Lung Disability Fund was established by the Black Lung Benefits Revenue Act to pay black lung benefits to eligible miners whose mine employment ended before 1970 or whose employers were no longer in existence and therefore could not be assigned liability for their benefits. It was funded by excise taxes levied on coal sold by mine operators, but the Act includes language for repayable advances to the fund from the U.S. Treasury. This meant that when the Black Lung Trust Fund's resources were inadequate to meet its obligations the U.S. Treasury could advance the fund money to cover the costs. This provision is intentionally not included in the asbestos bill and instead language stating the opposite is included.

It is true that the number of black lung benefit claims were vastly underestimated and the costs of the black lung program were also underestimated. However, while the Black Lung Fund's costs were to be paid by industry, by 1977, 7 years after enactment, industry had made very few payments to the fund. The fund then sustained a deficit and the U.S. Treasury had to pay claims because of this default by mining companies. We did not ignore the problems created by the Black Lung Fund, rather we included several provisions in the asbestos bill to prevent this situation from taking place.

They are: explicit language prohibiting the Administrator from requiring any costs to be paid by U.S. Treasury; limits on borrowing authority and capacity; strong enforcement provisions if businesses default; requirements that other companies cover any potential shortfall; and reversion to the tort system if the trust runs out of money. I have already discussed the language in the asbestos bill to ensure that the business and insurer contributions are made and enforced, and to limit how much the administrator may borrow.

I should say I think this is a very important bill. Let me end with where I started. People who think the tort

system is the way to go, who think it is OK that 61 percent of the settlement and award dollars go to transaction costs, who think that the victims who do not get this money are best served by the tort system -- they are going to vote to sustain the point of order against the bill.

For those of us who believe it is the sickest victims who are going to be best taken care of in this trust, that this trust sets up an orderly and medically oriented protocol for a no-fault trust system and that victims are going to benefit from it and businesses will cease going into bankruptcy because of it, if you think that is a worthy thing, then you will vote for us.

I thank the Chair. I particularly thank the chairman and the ranking member of the committee. This has not been an easy bill. I truly believe they have both done a wonderful job, in the finest interests of the Senate, by working together across the aisle.