

critical components. I will look forward, once we get on the bill itself, to talking about a number of those components.

I am delighted with the debate thus far. I look forward to continued participation on this important bill. We have seen at the State level that liability reform can work. This particular bill we are trying to bring to the floor is a bill based on the MICRA system, Medical Injury and Compensation Reform Act that was passed in California in the mid-1970s. We know that is a big State. It has a high cost of living. Yet the overall premiums paid by physicians there have been much more controlled than in other parts of the country. MICRA works. We have that track record. We have that to look back to. That is why I feel so good about the legislation we will hopefully bring to the floor.

There will be lots of blame passed around in terms of why the system today is not working. Some people say it is the doctors. Some people say it is hospitals. Others will say it is the insurance companies. Some people say the stock market and the bond market. We will have this crisis blamed on lots of different things as we go forward. I would argue that at the heart of the crisis is the current liability system which promotes these excessive lawsuits, and that it can be fixed. It can be fixed. That is what I look forward to doing with my colleagues on the floor of the Senate.

Passage of this measure will help on both the access issues in health care as well as the expense issues for all Americans. If we do it, and we do it right, it will improve health care for all Americans.

#### EXECUTIVE SESSION

#### NOMINATION OF BRUCE E. KASOLD, OF VIRGINIA, TO BE A JUDGE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Mr. FRIST. Pursuant to the order of June 27, I ask that the Senate proceed to executive session for the consideration of Calendar No. 132.

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Bruce E. Kasold, of Virginia, to be judge for the United States Court of Appeals for Veterans Claims for the term prescribed by law.

#### RESOLUTIONS PLACED ON EXECUTIVE CALENDAR

Mr. FRIST. I now send a resolution to the desk to discharge from the Judiciary Committee the nomination of David W. McKeague, of Michigan, to be a United States Circuit Judge for the Sixth Circuit. I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Mr. President, reserving the right to object, this nomination for the Sixth Circuit, and the others that will be made by the majority leader, have not had the benefit of any hearing before the Senate Judiciary Committee. I believe that hearing should take place before a lifetime appointment is given to any person to the Circuit Court. So, on behalf of Senators CARL LEVIN and DEBBIE STABENOW of Michigan, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, I now send a resolution to discharge from the Judiciary Committee the nomination of Susan Bieke Nielson of Michigan to be a U.S. circuit judge for the Sixth Circuit, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Mr. President, for the same reasons, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. I now send a resolution to discharge from the Judiciary Committee the nomination of Henry W. Saad of Michigan to be a U.S. circuit judge for the Sixth Circuit, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Mr. President, for the same reasons, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. Mr. President, I now send a resolution to discharge from the Judiciary Committee the nomination of Richard Griffin of Michigan to be a U.S. circuit judge for the Sixth Circuit, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. For the same reasons, I object.

The PRESIDING OFFICER. Objection is heard.

The foregoing resolutions will be placed on the Executive Calendar.

#### LEGISLATIVE SESSION

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate resume legislative session, and the motion to proceed.

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

#### PATIENTS FIRST ACT OF 2003—MOTION TO PROCEED—Continued

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, at the outset, I thank my colleagues and the clerical staff awaiting my arrival from the customary Monday travel day from Philadelphia to Scranton to Harrisburg to Washington. For those who may be about to venture onto the Baltimore Washington Parkway, the traffic is very heavy indeed. Although when I ar-

rived in the Senate Chamber and I saw active debate, I am not quite sure my late arrival has caused too much inconvenience.

I support legislation which would address the serious problems faced today by doctors, hospitals and other medical professionals and at the same time provide balance to treat fairly people who are injured in the course of medical treatment.

While most of the attention has been directed to medical malpractice verdicts, the issues are much broader, involving medical errors, insurance company investments and administrative practices.

I support caps on noneconomic damages so long as they do not apply to situations like the paperwork mix-up leading to the erroneous double mastectomy of a woman or the recent death of a 17-year-old woman on a North Carolina transplant case where there was a faulty blood test.

An appropriate standard for cases not covered could be analogous provisions in Pennsylvania law which limit actions against governmental entities or in the limited tort context which exclude death, serious impairment of bodily function, and permanent disfigurement or dismemberment.

Beyond the issue of caps, I believe there could be savings on the cost of medical malpractice insurance by eliminating frivolous cases by requiring plaintiffs to file with the court a certification by a doctor in the field that it is an appropriate case to bring to court. This proposal, which is now part of Pennsylvania State procedure, would be expanded federally, thus reducing claims and saving costs. While most malpractice cases are won by defendants, the high cost of litigation drives up malpractice premiums. The proposed certification would reduce plaintiff's joinder of peripheral defendants and cut defense costs.

Further savings could be accomplished through patient safety initiatives identified in the report of the Institute of Medicine.

On November 29, 1999, the Institute of Medicine—IOM—issued a report entitled: To Err is Human: Building a Safer Health System. The IOM Report estimated that anywhere between 44,000 and 98,000 hospitalized Americans die each year due to avoidable medical mistakes. However, only a fraction of these deaths and injuries are due to negligence; most errors are caused by system failures. The IOM issued a comprehensive set of recommendations, including the establishment of a nationwide, mandatory reporting system; incorporation of patient safety standards in regulatory and accreditation programs; and the development of a non-punitive culture of safety in health care organizations. The report called for a 50 percent reduction in medical errors over 5 years.

The Appropriations Subcommittee on Labor, Health and Human Services and Education, which I chair, held three

hearings to discuss the IOM's findings and explore ways to implement the recommendations outlined in the IOM report. The FY 2001 Labor-HHS appropriations bill contained \$50 million for a patient safety initiative and directed the Agency for Healthcare Research and Quality—AHRQ—to develop guidelines on the collection of uniform error data; establish a competitive demonstration program to test best practices; and research ways to improve provider training. In Fiscal Year 2002 and Fiscal Year 2003, \$55 million was included to continue these initiatives. We are awaiting a report, scheduled to be issued in September by the Department of Health and Human Services, which will detail the results of the patient safety initiative.

There is evidence that increases in insurance premiums have been caused, at least in part, by insurance company losses, the declining stock market of the past several years, and the general rate-setting practices of the industry. As a matter of insurance company calculations, premiums are collected and invested to build up an insurance reserve where there is considerable lag time between the payment of the premium and litigation which results in a verdict or settlement. When the stock market has gone down, for example, that has resulted in insufficient funding to pay claims and the attendant increase in insurance premiums. A similar result occurred in Texas on homeowners' insurance where cost and availability of insurance became an issue because companies lost money in the market and could not cover the insured losses on hurricanes.

In structuring legislation to put caps on jury verdicts, due regard should be given to the history and development of trial by jury under the common law where reliance is placed on average men and women who comprise a jury to reach a just result reflecting the values and views of the community.

Jury trials in modern tort cases descend from the common law jury in trespass, which was drawn from and intended to be representative of the average members of the community in which the alleged trespass occurred. This coincides with the incorporation of negligence standards of liability into trespass actions.

This "representative" jury right in civil actions was protected by consensus among the state drafters of the U.S. Constitution's Bill of Rights. The explicit trial by jury safeguards in the Seventh Amendment to the Constitution were adaptations of these common law concepts harmonized with the Sixth Amendment's clause that local juries be used in criminal trials. Thus, from its inception at common law through its inclusion in the Bill of Rights and today, the jury in tort/negligence cases is meant to be representative of the judgment of average members of the community—not of elected representatives.

The right to have a jury decide one's damages has been greatly cir-

cumscribed in recent decisions of the United States Supreme Court. An example is the analysis that the Court has recently applied to limit punitive damage awards.

In recent cases, the Court has shifted its Seventh Amendment focus away from 2 centuries of precedent in deciding that federal appellate review of punitive damage awards will be decided on a de novo basis and that a jury's determination of punitive damages is not a finding of fact for purposes of the re-examination clause of the Seventh Amendment which provides that "no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law". Then, earlier this year, the Court reasoned that any ratio of punitive damages to compensatory damages greater than 9/1 will likely be considered unreasonable and disproportionate, and thus constitute an unconstitutional deprivation of property in non-personal injury cases. Plaintiffs will inevitably face a vastly increased burden to justify a greater ratio, and appellate courts have far greater latitude to disallow or reduce such an award.

These decisions may have already, in effect, placed caps on some jury verdicts in medical malpractice cases which may involve punitive damages.

Consideration of the many complex issues on the Senate floor on the pending legislation will obviously be very difficult in the absence of a markup in committee or the submission of a committee report and a committee bill.

The pending bill is the starting point for analysis, discussion, debate, and possible amendment. I am prepared to proceed with the caveat that there is much work to be done before the Senate would be ready, in my opinion, for consideration of final passage.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The majority leader.

#### CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion to the desk on the pending motion.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

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 the consideration of Calendar No. 186, S. 11, the Patients First Act of 2003.

Bill Frist, Mitch McConnell, John Ensign, Craig Thomas, Rick Santorum, Larry E. Craig, George V. Voinovich, John Cornyn, Trent Lott, Ted Stevens, Michael B. Enzi, James M. Inhofe, Chuck Hagel, Jon Kyl, Judd Gregg, Pat Roberts, John E. Sununu.

Mr. FRIST. Mr. President, I ask unanimous consent that the live quorum, as provided for under rule XXII, be waived.

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

Mr. FRIST. Mr. President, this cloture vote will occur Wednesday morning. I will announce, during tomorrow's session, the precise timing of this vote for Wednesday.

#### MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

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

#### ADDITIONAL STATEMENTS

##### TRIBUTE TO MARGARET SEALS

● Mr. BUNNING. Mr. President, I pay tribute to one of Kentucky's finest citizens. On July 29, 2003, Margaret Seals of Winchester, will be inducted into the Kentucky Civil Rights Hall of Fame for the significant contributions she has made to the Commonwealth of Kentucky in the areas of civil and human rights.

After decades of putting the interests of others above her own, Margaret has distinguished herself as a leader. Upon attending the Lafayette Vocational School, where she developed the skills necessary to succeed, Margaret remained determined to remain a member of the workforce in order to provide for her two children. In Lexington, Margaret was the first African-American to be employed by the Social Security Administration in 1964. While she served in a number of occupational fields, some of her notable accomplishments include her service to the Winchester Board of Commissioners and the Winchester Municipal Utilities Commission.

Margaret has participated in a wide range of other public service projects including the Generations Center Board, the Urban Renewal Development Board, and the Winchester Solid Waste Committee. Her span of contributions also include the Clark County United Way Distribution Committee where she served since 1995, the same year she graduated Leadership Winchester. Margaret also remains an active member of the Elk Club. For her outstanding efforts, Reverend E. Baker, Sr., a retired pastor of the Broadway Baptist Church and an inductee into the Kentucky Civil Rights Hall of Fame nominated Margaret to receive this distinguished honor.

Margaret's commitment to education, hard work, family and community are an inspiration to many. Her contributions have made a difference in the lives of many and have paved a path for generations to come. Margaret's example should be emulated throughout Kentucky and across our Nation. I thank the Senate for allowing me to recognize Margaret Seals and voice her praises. She is Kentucky at its finest.●