

well, including those who serve and work in these corporations. I am not against them at all, but they are making their decisions in what they determine is in their best interests and the best interests of their shareholders. I respect that.

But I have a higher obligation. I have an obligation, not only to that shareholder but to the people who work for them as well. I respect those who only have to worry about the narrow constituency, but I wasn't elected by the people of Connecticut to come here and merely worry about that narrow constituency. I have another obligation. I serve in the Senate, not just a State legislature. When I am here and I vote and I cast ballots, they don't just affect the people who live in my State, that I represent; they are part of the 280 or 290 million people across this country.

I look at the 2.8 million who have lost their jobs in manufacturing, the close to 3 million who will lose their jobs to outsourcing in the coming days, maybe as many as 14 million, we are being told, over the next couple of years. I didn't dwell on this particular chart at this moment, but 14 million additional jobs are in danger of being shipped overseas. Those people want to know whether or not we have anything to say to them.

So I urge my colleagues to support this amendment. I don't know of another issue that is more important to the American public at this hour than this one. We have seen it all across the country in the last number of days. National news programs talk about it every single night and report nightly about corporations that are outsourcing more and more jobs.

The American people want to know what we have to say to them. So I regret we have not been able to vote on this earlier. I didn't intend to take this time. I was prepared to vote 2 hours ago, 3 hours ago, but there are those who do not want to vote on this amendment right now. My hope is we will be able to do so first thing in the morning and say with a very loud, clear, and my hope is a unanimous voice that we stand with those who worry about whether America is squandering its wealth and its treasury, not just the treasury of dollars and cents but a far more important treasury, the human capital that is the American workforce.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I respect the distinguished Senator from Connecticut, as he knows. I will certainly look at this amendment. But throughout this day I have seen others on the other side continually talk about jobs and loss of jobs like we are not doing anything about it. Nothing could be farther from the truth. This very bill, FSC/ETI, is a very important bill. We call it the Jumpstart Our Business Strength on Jobs bill because it will

help us to increase the number of jobs in this country by huge dimensions. It also is a smart thing to do. It also saves us \$4 billion in assessed costs with the E.U. in international trade, if we get this done. That is very important.

Some of the comments I have heard today, not those of the distinguished Senator from Connecticut—in fact, I exclude his comments—some of the comments I have heard today would have you believe the only way you are going to get jobs is more of the same: More Government, more Government support, more and more controls, more and more approaches towards unionizing America.

I am one of the few Members of this body who ever held a union journeyman's card. I worked 10 years in the building construction trade unions and earned my journeyman lather's card. The laths trade was one of the most interesting trades. In the early days it was wood lathing, little partitions of woods that you put on partitions and ceilings that you would plaster over. In my day it was metal lath, which was a much more high-tech approach towards putting up partitions and ceilings and elliptical arches and Gothic arches, and it was a very skilled trade and I was fortunate that I was able to do that and I am proud I was able to do that.

Today, the lathing trade is no longer in existence because we priced ourselves out of the marketplace. Today, all of the lathers who used to work in this very skilled trade had to transition into the carpenters' union because their trade no longer could pay for itself.

As a matter of fact, you don't see many buildings plastered today. The reason you don't, it is just too expensive. So drywall has become the norm. I am not criticizing anybody. What I am saying is, we can price ourselves out of the marketplace.

I can remember time after time, my fellow union lathers would say: Hey, kid, slow down. We are not going to have any work if you keep working so fast.

My father was one of the best lathers in the world and taught me the trade.

He said: Look, you give an honest day's work for an honest day's dollar and you work as hard as you can.

It was anathema to me to slow down so we could have more work. That is what happened. They slowed down and the work dissipated and, of course, the trade no longer exists.

I think we are worse off because we don't have lath and plaster in a lot of our buildings today. I am not blaming my fellow union members, but sometimes we have to acknowledge that there are gives and takes in the business world. The fact that some businesses do their business offshore is not necessarily bad because in many cases we get even more jobs onshore. Sometimes we don't. Sometimes it is bad. But by and large, business in this country has always worked because we be-

lieve in the free market system. We believe in competition. We believe in high productivity.

My feeling is that this country cannot be beat in productivity. If we really work hard and we continue to do the best we can, we are always going to be able to compete.

But where we cannot compete because of low wages and government subsidization and violations of international trade laws, then, my gosh, let's not quit. Let's go and find new jobs.

This administration inherited some terrifically bad times. The whole last year of the Clinton administration was headed into recession, and everybody knows it. Anybody who says otherwise is not telling the truth. Everybody knows that. So this President inherited that.

I don't particularly blame the Clinton administration. We do have cycles. But I have to say I think they could have done some things to have prevented it. But that is probably true of everything. He then inherited this recession, and on top of that comes September 11, which created magnificent problems for all of us. It was very costly and expensive and put pressure on the budget. It cost us in so many ways, even from a productivity and jobs standpoint.

But economic growth for the third quarter of last year was up over 8 percent. In the fourth quarter, it was 4.1 percent. I know years here when we would have killed for 4.1 percent. Frankly, I believe the first quarter of this year is going to be all right too, even though normally it is a slow quarter.

I think all we have to do is do our best to work together as Democrats and Republicans without all the screaming and shouting like one side has all the answers and the other side doesn't, which I have heard a lot of today, and put aside the politics and do what is best for our country. Unfortunately, some just can't seem to do that.

I believe the President is doing a great job. I believe his various Cabinet-level officials are doing great work. In fact, I have never seen better in my 28 years in the Senate. I believe it is time to be fair, decent, and honorable.

#### THE FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT

Mr. HATCH. Mr. President, I rise today to support the comments from the distinguished majority leader of last Friday with respect to the asbestos legislation. This is an absolutely vital issue for this country's civil justice system and, most importantly, to our economy.

If you want to have jobs, then let us get this asbestos reform bill through and we will get hundreds of thousands, if not millions, of jobs back, and perhaps the 70 large companies which have gone into bankruptcy will be able to

resurrect themselves and be able to employ more people.

We now have the opportunity with S. 1125, the Fairness In Asbestos Injury Resolution Act, to correct what has become a gross injustice against asbestos victims and the defendants who are relentlessly hauled into court despite having never manufactured or ever sold a shred of asbestos fibers.

It has been a long road for this legislation so far. But I concur with Senator FRIST, our distinguished majority leader, that we are finally in a position where we can enact this legislation.

We went through a grueling markup of this bill last year, and since then have engaged in focused discussions over remaining differences under the stewardship of my friend from Pennsylvania, Senator SPECTER, and Judge Becker of the third circuit court of appeals. The stakeholders and Members involved in these discussions all agree that this process has proved to be quite successful, not only in clarifying areas of disagreement but in proposing workable solutions to these areas. As a result, there now remains a mere handful of issues left to consider. But given the timeframe set forth by the leader last Friday, I believe more needs to be done to help bridge the gap on the remaining issues. Therefore, I propose that we get the primary stakeholders and interested Members together for a 2-day-long negotiating session sometime in mid- to late-March with this type of focus on the last handful of these issues. I believe we can resolve the remaining differences in this bill. There is nothing we can't solve, if we will work together. This issue is too important, and we are too close not to give this one last effort through an extended 2-day-long meeting. I know Judge Becker and the stakeholders and the key Republican Members have all expressed their desire to participate in this 2-day meeting. I hope my Democratic colleagues who have been working on this issue will join us in the final push toward reaching consensus.

Let me give some background for those who have not been as steeped in this legislation over the past year or so. For more than 20 years, compensation to legitimate victims of asbestos exposure has been unacceptably diminished and delayed. It has become quite evident to the committee that tens of thousands of true asbestos victims are faced with agonizing pain and suffering with uncertain prospects of a meaningful recovery in our existing tort system. These victims are left with little to nothing because precious resources are being diverted to unimpaired plaintiffs and a handful of creative trial lawyers who are looking to make a quick buck.

I am a member of the American Trial Lawyers Association, having been a trial lawyer in my former non-Senate life, since we Mormons believe in a premortal existence. I have to say that my fellow ATLA members are embarrassed by this small cadre of personal

injury lawyers who are thinking only of themselves and the huge fees they make, with the approximately 50 to 60 percent of the moneys that go to attorneys. They are embarrassed by it. They won't say that because they don't want to cut up their fellow personal injury lawyers. But that is what is going on here.

In up to 90 percent of the cases that have been filed, the person has never had a sick day in his life with regard to asbestos. In most of those cases, they have been sent to doctors who will find injury no matter what. It borders on fraud and in some cases it is fraudulent. It is wrecking the country. Seventy major companies are now in bankruptcy, and there are over 8,400 or more, going up to 15,000, that possibly will be thrown into bankruptcy that never had anything to do with asbestos or made anybody ill from asbestos.

At the same time, scores of companies with almost no connection to the problem have had to file for bankruptcy, as I have said, and hundreds of others live under the constant threat of insolvency from this litigation. What this translates into is lost jobs, depleted pensions, and weaker financial markets.

If my friends on the other side of the aisle want to do something about jobs, let us get serious about asbestos reform. Let us get serious about doing what is right for those who are truly ill and who won't get very much at all. Those who were employed by 70 companies are getting 5 cents on the dollar. We take care of them with this trust fund.

We have heard the statistics but they bear repeating. The RAND Institute for Civil Justice tells us, to date, 70 companies have been forced into bankruptcy—at least 3 with operations in my home State of Utah.

The number of claims continues to rise as does the number of companies pulled into the web of this abusive litigation, often with little, if any, culpability. More than 600,000 people have filed claims, and more than 8,400 companies have been named as defendants in asbestos litigation.

This has become such a gravy train for some abusive personal injury lawyers that over 2,400 additional companies were named in the last year alone. RAND, this great research institution, also notes in its bipartisan research that about "two-thirds of the claims are now filed by the unimpaired, while in the past they were filed only by the manifestly ill."

That is a low number. It is really up to 90 percent. But let us take their number. Two-thirds of them are filed by people who really are not impaired.

Former Attorney General Griffin Bell, amongst many others, has denounced this type of "jackpot justice."

To address this national problem, I introduced a bipartisan bill with my friends, Senators BEN NELSON, MIKE DEWINE, ZELL MILLER, GEORGE VOINOVICH, GEORGE ALLEN, SAXBY

CHAMBLISS, and CHUCK HAGEL. This bill creates a trust fund which provides expedited no-fault compensation to victims while reducing the wasteful transaction costs. Attorney's fees and transactions costs have been as high as 60 percent of the amounts recovered.

After weeks of marking up the bill, we passed this legislation favorably from the committee with bipartisan support last July. No one can accuse us of being unwilling to compromise. When I look at where our bill started—and it was a good start—and where it is now, our willingness to compromise is abundantly clear.

Let me show you this chart. In total, we have made 53 changes to this bill to accommodate concerns raised by our friends on the other side, the Democrats.

Let me review a brief history of these changes. In May, we circulated a bipartisan draft measure, and my staff met then with Democratic staff to listen to their concerns. As a result of these discussions, we incorporated many of their requests even before introduction.

We then embarked on several weeks of markups that saw dozens of Democratic-initiated amendments adopted into this legislation. I didn't agree with all of these amendments, but it can't be said that there hasn't been strong participation with Democrats on this bill.

By the way, I met for a couple of hours with the head of the AFL-CIO to explain this bill to him. I know deep in my soul that he knows I am doing everything in my power to do what is right. I know he knows that we have done what is right. I respect and appreciate the fact that he sat down with me and talked with me about it.

This chart behind me summarizes some of the major changes we made at the behest of the Democrats.

Raising the level of mandatory contributions to well over \$100 billion; 111 different changes to increase the value of awards to victims; 22 changes to make it easier for asbestos victims to be eligible for compensation; a historic, bipartisan agreement on eligibility criteria where the unions and everyone came together; reimbursement for medical monitoring—now they will pay for medical monitoring of people who are not sick and especially those who are; five additional provisions to guarantee payment of mandatory contributions; relief for asbestos victims in Libby, MT, where asbestos was mined; a Federal ban on asbestos and "bad actor" protections.

Look at this chart. "To build bipartisan support, more than 53 changes to S. 1125 have already been made at the urging of the Democrats. These occurred prior to the bill's introduction, during negotiations between introduction and committee consideration, and throughout the four committee markups devoted to the legislation."

I ask unanimous consent all of these changes be printed in the RECORD.

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

#### BUILDING A CONSENSUS ON ASBESTOS

To build bipartisan support, more than 53 changes to S. 1125 have already been made at the urging of the Democrats. These occurred prior to the bill's introduction, during negotiations between introduction and Committee consideration, and throughout the four Committee mark-ups devoted to the legislation. The changes include:

Raising the Level of Mandatory Contributions to well over \$100 Billion;

11 Different Changes to Increase the Value of Awards to Victims;

22 Changes to Make It Easier for Asbestos Victims to be Eligible for Compensation;

An Historic, Bipartisan Agreement on Eligibility Criteria;

Reimbursement for Medical Monitoring;

5 Additional Provisions to Guarantee Payment of Mandatory Contributions;

Relief for Asbestos Victims in Libby, Montana;

A Federal Ban on Asbestos and "Bad Actor" Protections;

Raising the compensation value for eligible mesothelioma claims to \$1,000,000;

Limiting the offset of collateral sources to judgments and settlements, thus increasing the value of awards to claimants;

Indexing the scheduled award values for future inflation;

Specifying that awards should be paid over 3 years, but in no event over more than 4 years;

Moving the Asbestos Court established under S. 1125 to the United States Court of Federal Claims;

Changing the two-year statute of limitations to four years;

Eliminating the rule of construction on the statute of limitations in favor of the Fund;

Striking language requiring a claimant to submit evidence of product identification as a factor in proving asbestos exposure;

Reducing the latency period to 10 years for all disease categories;

Eliminating the requirement that the diagnosing physician be the "treating" physician;

Increasing the compensation level for the most severe asbestosis claims to \$750,000;

Providing alternatives to the physical examination diagnostic requirement for claimants who are deceased;

Eliminating language requiring that the diagnosing physician independently verify the claimant's exposure;

Dropping language that would have stipulated that an attorney retention agreement not be required as a prerequisite to a medical examination or medical screening for purposes of obtaining a medical diagnosis or other medical information;

Raising the compensation level available for eligible lung cancer claims with underlying pleural disease (Level VIII) to a maximum of \$1,000,000 (depending on smoking history);

Expanding eligibility to include U.S. citizens exposed while serving on U.S. flagships and U.S. citizens exposed while employed overseas by a U.S. company;

Allowing take-home exposures to meet the exposure requirements under the Act;

Eliminating a requirement of at least 6 months of occupational exposure to asbestos prior to December 31, 1982;

Creating an entirely new eligibility category to compensate claimants who fail the test for restrictive disease;

Raising the compensation value for eligible asbestos claims (Level III) to \$75,000;

Adding bilateral pleural calcification to the definition of bilateral asbestos-related nonmalignant disease;

Removing the requirement of a grade B2 or greater for pleural conditions, including thickening and plaques, to show underlying bilateral asbestos-related non-malignant disease;

Replacing the definition of "significant occupational exposure" with a definition of "substantial occupational exposure," including the clarification that "on a regular basis" means "on a frequent or recurring basis";

Providing an exception to the year and industry weighting of the occupational exposure requirements for claimants whose exposures were above applicable OSHA standards;

Establishing a scheduled value of compensation for Level II claims (mixed disease with impairment) at \$20,000;

Expanding the class of claimants eligible for compensation under Level III to include anyone showing a 20% reduction in pulmonary function, even if their overall pulmonary function is still within normal limits;

Creating an additional category of non-malignant disease to reflect an intermediate level of impairment (Level IV);

Reducing the ILO requirement from 2/1 to 1/1 for severe asbestosis;

Creating standards for moderate and severe asbestosis categories based on the AMA Guide to the Evaluation of Permanent Impairment;

Allowing alternative tests to show impairment based on DLCO and PO2 for Level V;

Increasing the compensation level for intermediate (Level IV) asbestosis claims to \$300,000;

Providing eligibility for compensation for colorectal cancer claims;

Providing three scheduled value ranges for smokers, former smokers and non-smokers for each of the lung cancer categories;

Creating a separate category of eligible lung cancer claims for current smokers with no evidence of underlying asbestos-related non-malignant disease;

Establishing a compensation range for eligible lung cancer claims without underlying asbestos-related non-malignant disease to a maximum of \$600,000 (depending on smoking history);

Creating an exceptional medical claims panel to address those claims that might not meet the medical criteria in the bill (e.g. no pulmonary function test);

Providing that CT scans may be submitted (with an x-ray) to review exceptional medical claims;

Strengthening the enforcement authority of the Administrator with respect to payment of mandatory contributions;

Amending Title 18 of the United States Code to prohibit fraud on the Asbestos Insurers Commission and Office of Asbestos Injury Claims Resolution;

Limiting the time period in which an inequity adjustment will be in effect;

Providing that the adjustments may be reinstated in the event there is a material change in the defendant participant's conditions;

Doubling the amount of the hardship and inequity adjustments available under the Act;

Providing for inequity adjustments when the defendant's prior asbestos expenditures primarily consist of defense costs where settlements were entered into or where no adverse judgments were found;

Providing for inequity adjustments where the amount of contribution is exceptionally inequitable when compared with the defendant's likely future liability and with the liability of the other defendant participants in the same tier;

Establishing that a successor in-interest of any participant would be liable under the Act;

Revising federal sentencing guidelines for environment crimes to prevent "bad actors" from recklessly exposing individuals to asbestos health risks;

Requiring an annual report by the Administrator as to the status of the Fund;

Making the Freedom of Information Act applicable to the Asbestos Insurers Commission; and

Increasing the compensation levels available for eligible lung cancer claims with underlying asbestosis a maximum of \$1,000,000 (depending on smoking history).

Mr. HATCH. That chart is amazing. I don't agree with all those changes, but we made them to accommodate our friends on the other side. Just look at all these changes. No one can tell us we are not doing everything we can to make this bill a consensus bill and to be fair to everybody.

We know there are a lot of people who will be compensated under this bill who have never suffered a bit from asbestos, but we have given the benefit of the doubt. Many of them are union workers who have smoked all their lives and got cancer from smoking but have had something to do with asbestos at one time or another in their career but probably have shown no feasible asbestos.

Literally thousands and thousands, hundreds of thousands, will be compensated. There comes a point where you have to say, Let's do what is right here. Let's not just keep loading this bill up so you can beat your breast and claim you get more money, more blood out of these companies.

Moreover, even though our original claim values would have on average provided more money to legitimate claimants, we increased the values even more and we removed most collateral source offsets to ensure more of the award goes directly to the claimant. That means even though they received moneys, we removed those as offsets.

These changes listed on the chart behind me do not even include other changes we have offered since the bill was reported out of committee. Through the leadership of the majority leader, we got contributors to add an additional \$6 billion in overall funding along with significant increases in claims values in many categories. We started at \$94 billion in mandatory funding because this amount would give more money to claimants on average than they received in the current tort system. Nonetheless, through the markup in the Frist financing agreement, we increased the fund to have the capacity to pay out \$114 billion to claimants. It is not just money, either. The Frist financing deal adds more flexible borrowing authority as yet another safeguard for solvency. Senator

FRIST has my cooperation and support in doing this.

Our willingness to resolve the Democratic concerns speaks for itself by virtue of where this bill stands today. I again thank Senators FRIST and SPECTER for their willingness to help resolve some of the difficult issues on this legislation and, of course, the cosponsors as well.

Let me talk about the final issues. Even though we made all of these changes that show up here, I understand some want to make further changes, including streamlining the claims process even more. I have said I am willing to look at such proposals, but the time has come and the time is past to wrap up this process. It passed out of the committee last summer and we need to stop talking and do something. With all of this whining about jobs that all of us want to get in this country, this bill would do more to create jobs and solidify our economy than any other bill we can pass this year. This bill makes sense except for how costly it is, but even then we are willing to do that. This is why we need to continue working for the next several weeks on the issues and sit down in a 2-day meeting sometime in the last half of March to see if we can finally get agreement on all of the issues.

I thank Senator SPECTER and Judge Becker for their valuable assistance. I was not really happy because we had gone through so much and I had commitments from so many people if we got to \$108 billion, this bill would go and they would support it. I got it to \$108 billion—and I think they thought

we could not do it—and they said we have to have more and more and more. We are giving them more, even.

I also appreciate the willingness of Senator SPECTER and Judge Becker to help finally resolve these issues in a 2-day session. My friends, Senators LEAHY, DODD, and DASCHLE, have been graciously willing to sit down with us at a staff level to narrow the differences and I am confident they will be willing to join in this 2-day meeting as well. We are willing to accommodate schedules to get full participation in this meeting within a reasonable fashion.

We simply cannot delay any longer. We need to ensure the truly sick get paid and paid in a timely manner. We need to provide stability to our economy by stemming the rampant litigation that resulted in a tidal wave of bankruptcies and stop endangering jobs and pensions through the current broken system. This crisis reaches far and wide and it hurts everyone.

What is happening with these bad acting personal injury lawyers who have been handling some of these cases, they forum-shop the cases into jurisdictions where juries go wild and judges support them and judges are in the pocket of the plaintiffs' lawyers. In one case, if I recall it correctly, five people, not one of whom experienced a sick day up to that time, got \$125 million, while thousands and thousands of very sick people get nothing. That is wrong.

For anybody to keep supporting that process the way some have done is wrong. That is why I am here on the

floor to challenge all of our colleagues to work together in good faith, put our differences aside and let's get this bill done in the best interests of our country and the best interests of jobs. If that is not done, I would not listen to one "mouthing" word from people on jobs because they are playing politics rather than doing the art of the doable, doing what needs to be done, what must be done in the interests of the sick people, the truly sick people and, I might add, many others who did not get their sickness from asbestos, but we give them the benefit of the doubt.

This bill really will work even though I have to admit it is very tough on the companies that have to come up with this \$114 billion.

I yield the floor.

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#### ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 6:36 p.m., adjourned until Thursday, March 4, 2004, at 9:30 a.m.

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#### NOMINATIONS

Executive nomination received by the Senate March 3, 2004:

##### ENVIRONMENTAL PROTECTION AGENCY

BENJAMIN GRUMBLES, OF VIRGINIA, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE GEORGE TRACY MEHAN, III, RESIGNED.