

## 6. The smoking matrix.

These matters can, I believe, be put into consensus bill form quickly, and I will seek to establish a timetable at Thursday's meeting.

Another key area on which the parties seem close to agreement is the status of settlements and pending cases. The views that you expressed—that a case that has been settled should be out of the National Trust—seemed to be accepted by all. There were two caveats. One related to partial settlements—with some but not all potential defendants, but I believe that a formula can be worked out to deal with that situation. The second related to generalized agreements between plaintiffs' counsel with large inventory of cases and insurance carriers as to the terms of settlement when the cases become ripe. I do not believe that such "settlements" should qualify. I believe that other pending cases should go into the S. 1125 National Trust. I note, however, that there are 300,000 pending cases, and unless start-up can be quite effective Labor would prefer that they be processed in the tort system. I still believe that the pending claim issue is resolvable.

Another critical area where much progress has been made is "sunset." Based on representations at last week's meeting, I believe that we are in striking distance of an agreement on sunset, including the timing of sunset; program review (so as to anticipate the need for sunset); and return to the tort system. There is some disagreement as to whether the return to the tort system should be in state or federal court. I understand that your position is that the return should be to federal court, so as to avoid the excesses of certain state jurisdictions. I agree, and believe that the stakeholders, with the exception of the trial lawyers, will be satisfied with that result. Another sunset-related issue that is under discussion and needs resolution is whether, in the event of sunset, the Tier 1 companies (those presently in Chapter XI) go back to the Bankruptcy Court, so as to assure that funds dedicated to Bankruptcy not be dispersed (disbursed) at large. I believe that issue too to be capable of early resolution.

In our recent meeting with high officials of the railroad industry and the rail unions, we discussed in depth the treatment of rail workers with asbestos disease under S. 1125. It was the position of the rail unions that the preemption by S. 1125 of the right of rail workers to file claims under the Federal Employers Liability Act (FELA) is unfair because non-rail workers maintain their full rights to seek workers' compensation from their employers for asbestos related diseases. However, our discussion revealed that the supposed discrimination was largely illusory because 95% of the rail workers with asbestos disease are retired and would have no traditional workers' compensation claims. It was acknowledged by all that the scheme of S. 1125 does leave non-retired rail workers modestly worse off than their non-rail counterparts, and we charged the stakeholders with coming up with a formula that would create parity. We are awaiting the results of their deliberations. If they do not reach agreement, the Senate could settle it.

The insurers and reinsurers are struggling to come up with an allocation formula that would obviate the need for an Asbestos Insurer's Commission (appointed by the President). If they cannot, the Commission can remain in the bill (as a kind of "club"—for S. 1125 already provides that if an allocation formula is agreed to by all participants in each insurer group and approved by the Commission and the House-Senate Judiciary Committees, the Commission will terminate. Section 212(2). I have entreated the stake-

holders to work on a redraft on the Asbestos Insurer's Commission language, §219 et seq., which is presently cumbersome, and they have agreed to do so. At the very least, the requirement of 100% agreement seems too high. I note that the creation of a Commission is not a matter of great urgency because it is anticipated that the start-up payment of both the insurers and reinsurers will be very substantial, postponing the need for a Commission decision on allocation. We also discussed last week mechanisms for assuring the contributions (and collecting of contributions) from offshore reinsurers. A number of potential statutory provisions were discussed, and I think that this aspect of the matter can be resolved.

We had a good deal of discussion last week about what to do with pending bankruptcies. I expressed the view, based upon a conversation that morning with the bankruptcy judge who is handling most of the asbestos bankruptcy cases, that it will be quite some time, at least a year and probably a good deal longer, before the major bankruptcies can be resolved; even if plans are agreed upon and are confirmed, the insurers will appeal. Consequently, I urged that the pending bankruptcies be folded into the National Trust. The Tier 1 (Chapter XI) companies are liable under S. 1125 for roughly 20% of the Trust funding, so that their participation in the National Trust is essential. Additionally, it appears that, with fast start up, the claimants will receive compensation from the Trust Fund much more quickly than they would from the bankruptcy trusts. I believe that the stakeholders are comfortable with this view. Drafting is simple.

It appears that Labor feels that the Tier 1 companies should pay more than S. 1125 provides, i.e. what they would pay on bankruptcy. The Tier 1 companies, however, point out that they will already pay a significantly greater percentage than the non-bankrupt companies, and further argue that any effort to make them pay into the Trust Fund the amount they might have to pay in bankruptcy is not sound, because: (1) in most cases these amounts are at present speculative (usually agreed to by only one class of creditors), and, at all events, subject to approval of the Bankruptcy Court (in one case the Court disapproved); (2) the deal under S. 1125 is different because in bankruptcy they are forever discharged whereas under S. 1125 they may be back in the tort system; and (3) companies such as Armstrong would be dealt a body blow by such a provision. Since the increment is at most \$1 billion, I do not think that this is a "deal breaker."

I turn now to the few remaining issues. Medical screening and education for high risk workers must be resolved. I do not think that one is too tough. Some technical bankruptcy issues such as the problematic floating Chapter XI lien and some points raised by the Bankruptcy Administration Division of the Administrative Office of the United States Courts must be resolved. These are just drafting problems. There are, however, three critical issues remaining, the second and third of which will make or break the bill, and they are related.

The first is subrogation of workers' compensation payments (health insurer subrogation is apparently not a problem). Labor firmly believes there should be no subrogation; it represents that no similar federal program provides for it. The insurers and business think there should be subrogation to avoid "double dipping." One major manufacturer represented at the talks did not see failure to provide for workers comp subrogation as a problem, but others thought that the failure to mention subrogation in the bill would alter future behavior by encouraging more comp claims. We charged the stake-

holders with ascertaining the dollar amounts involved. I suspect that they are not as great as imagined, especially in view of the number of workers with asbestos disease who are retired. These appears to be a will to work this out.

The second issue is "transparency"—the need to assure Labor and the claimants that the funding formula (for insurers and especially manufacturers and other defendants) will yield the sums projected by the bill's sponsors. Labor maintains that on the present record there is no way to know this. Business concedes that there is no extant list of the companies who will be in the various tiers, and that there will not be one. The companies acknowledge that they must come up with a solution to the transparency problem, whether it is joint or several liability, or guarantees, or surcharges, or something else, or there can be no consensus. They have promised to come up with something.

The final—and most difficult issue—is the funding level. Labor claims that the projected \$114 billion is grossly inadequate to pay the needed compensation to the injured workers. This matter is well beyond my portfolio. I believe that Labor must come down considerably from the Leahy-Kennedy values, and that business must "sweeten" considerably the Frist values. If all the other issues can be worked out, perhaps the Senate leadership can prevail on the stakeholders to reach agreement on the projected dollars.

One final comment. I cannot praise too highly the representatives of the stakeholders who have participated in our dialogue. They are working assiduously, constantly (two or three meetings per week), and, in my view, earnestly, and in a spirit of cooperation and in good faith to try to reach consensus. Senate staff has also been of very great help. I believe that if we can keep up the current pace for another four weeks, five at the most, we can get the job done. I may be wrong. The dollars may be the final stumbling bloc. However, I am prepared to give it my "best shot," and to come to your office every week to work with you to keep the ball rolling.

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**TRIBUTE TO HANH THAI DUONG**

Mr. MCCONNELL. Mr. President, I rise today to pay tribute to Hanh Thai Duong, a woman who epitomizes the American dream. Duong is the owner of a restaurant in my hometown of Louisville, KY, The Lemongrass Café.

Duong's journey from Vietnam to America is a miraculous one. In 1979, when she was only 10 years old, the Vietnamese government told her family that they would be able to leave Vietnam because of her father's Chinese ancestry, but only if they gave up all of their possessions and paid a sum in gold to the Vietnamese government. They decided the trip would be worth the risk, so they left everything behind and boarded a fishing boat that took them to a new life in Hong Kong.

A year later, with the help of a relative in Louisville and a number of Catholic charities, Duong and her family left Hong Kong for Kentucky. Duong's unwavering determination and a belief in the importance of an education, helped her work her way through the University of Louisville and earn a degree in finance and international business.

After her parents retired, Duong followed in their footsteps and opened her own restaurant, The Lemongrass Café, bringing a taste of her native land to her new home. I ask my colleagues in the Senate to recognize and pay tribute to this remarkable woman.

Mr. President, I ask unanimous consent that the article, "Restaurant a testament to Vietnamese family's drive" from The Courier-Journal, be printed in the RECORD.

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

[From the Louisville Courier-Journal, Feb. 22, 2004]

RESTAURANT A TESTAMENT TO VIETNAMESE FAMILY'S DRIVE  
(By Byron Crawford)

The Lemongrass Cafe in Louisville's Highlands neighborhood is more than a quaint oasis for Thai, Vietnamese and Chinese cuisine. It is a monument to one Vietnamese family's appetite for freedom and opportunity.

The cafe's proprietor, Hanh Thai Duong, 34, was 10 years old in 1979 when the Vietnamese government told her parents that because of her father's Chinese ancestry the family would be allowed to leave Vietnam—if they gave up all their possessions and paid the government a sum in gold.

"You really leave empty-handed, but my mom and dad were thinking for a better future for their children," Duong said. "My parents always said that the United States was the land of opportunity. We left on a fishing boat for Hong Kong."

Such voyages were treacherous. The boats were small and often unsafe.

The trips sometimes took weeks. Twenty to 30 passengers jammed into tight quarters and often went days without food. Pirates roamed the South China Sea, sometimes boarding the fishing vessels, killing, raping and taking women and children captives.

"We were lucky. It only took us four or five days to reach Hong Kong, but my aunt and her twins did not get to Hong Kong . . . for like a month or so, and one of the twins died of hunger and they ended up burying her out at sea," Duong said. "As soon as my aunt stepped on the ground in Hong Kong, she passed away, too."

Duong's baby sister was badly burned in an accident soon after the fishing boat reached Hong Kong Harbor and was taken to the mainland for treatment. The family lost track of the child for months but finally found her in a refugee camp. Duong's mother, not having seen the baby for months, did not immediately recognize her.

Another of Duong's aunts, who then lived in Louisville, sponsored the family to immigrate in 1980, and they were flown to America by Catholic Charities, which they later repaid. Duong's father, Trung Thai, had owned a successful grocery-supply business in Vietnam, and her mother, Nga, was a good cook. They opened a small restaurant from which they have since retired.

Duong married at an early age but was determined to get an education, and she worked her way through the University of Louisville to earn a degree in finance and international business. She and her husband, Edward Duong—who had twice been captured while trying to leave Vietnam in violation of government orders—later lived in New York City. But they soon decided that they preferred Louisville, where Edward Duong now works at Ford's Kentucky Truck Plant.

Hanh Duong's older brother and younger sister both earned degrees from UofL and are

working in business. Another sister owns a nail salon and her youngest sister is working her way through college.

"You think about your parents' sacrifice for you and you don't want to fail," she said. "You don't take things for granted and you don't give up easily."

Duong has forgotten much of her early life in Vietnam, but a few vivid memories remain: one of her parents running with her for shelter as bombs exploded nearby, and her mother being wounded by a stray bullet near their home in Saigon (now known as Ho Chi Minh City).

Today, Duong works hard in the Lemongrass Cafe, on Bardstown Road to make happier memories for her children—a daughter, Cheryl, 17, a senior at Male High School and a Governor's Scholar who will enter the University of Kentucky next fall, and a son, Nick, 9, a student at Greathouse/Shryock Traditional Elementary School. Many of their grandmother's favorite recipes are helping to lure customers to their mother's cafe.

"Other than the delicious food, I guess it was just the simplicity of Lemongrass and the personality of Hanh that I like about the place," said Jeannie Treitz, a frequent customer.

A few years ago, Hanh said, she took her children to Vietnam to show them the country their parents and grandparents had fled.

"They were raised here and they don't know how people have to struggle in Vietnam," she said. "I took them back so they could understand that they have bundles of opportunities here, and that they should work hard and never give up on anything."

RFIDS AND THE DAWNING MICRO MONITORING REVOLUTION

Mr. LEAHY. Mr. President, today I outlined some of the privacy challenges we will soon face as new micro monitoring technologies begin to proliferate in our society. I spoke in particular about breakthroughs in Radio Frequency Identification, also known as RFID.

My remarks were offered at Georgetown University Law Center, during a conference on the legal and technological challenges of video surveillance. Micro monitoring is a subject that deserves the attention of the Senate and of the American people, and I ask unanimous consent the text of my address be printed in the RECORD in the interest of advancing this discussion.

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

THE DAWN OF MICRO MONITORING: IT'S PROMISE, AND ITS CHALLENGES TO PRIVACY AND SECURITY

In our post-9/11 world, technology often has been our crucial but silent partner in helping us to ramp up our law enforcement and national security capabilities. We in this city are profoundly aware of the new risks we face. But we also need to do it right. The public does not want false assurances, nor do they want to be unduly alarmed. What the American people want is to actually be safer. And we still have a way to go in accomplishing that.

TENSION BETWEEN LIBERTY AND SECURITY

In our constitutional system there is always tension between liberty and security and never more so than since September 11th. One of the difficult challenges we face

is to strike the right midpoint. Our constitutional checks and balances are intended to help us do that.

The video technologies you are discussing today offer tools that are better, faster and smarter, on scales of magnitude that are unprecedented. As an advocate of emerging technologies who also has a keen interest in them, I watch these breakthroughs with great interest.

I have sought to find ways to encourage the commercial sector to create new products and opportunities, and I have promoted use of new technologies by law enforcement agencies, while also protecting consumer privacy and constitutional freedoms. That was the balance I sought to strike in my work on CALEA and in other legislation that blends law enforcement's needs, the needs of our robust technology sector, and the privacy interests of the American people. The hands-off approach to the Internet that I have favored is another example, and right now I am working with others to extend the Internet tax moratorium, to keep the Internet free from discriminatory and multiple state and local taxes.

ON THE CUSP OF A MICRO-MONITORING REVOLUTION

The marriage of information-gathering technology with information storing technology, manipulated in increasingly sophisticated databases, is beginning to produce the defining privacy challenge of the information age. Modern databases, networks and the Internet allow us to easily collect, store, distribute and combine video, audio and other digital trails of our daily transactions. We are on the verge of a revolution in micro-monitoring the capability for the highly detailed, largely automatic, widespread surveillance of our daily lives.

RFIDS

And one of the most dramatic and dazzling new challenges we all will be facing soon is the emergence of a relatively new, surveillance-related technology called radio frequency identification—R-F-I-D for short.

RFID tags are tiny computer chips that can be attached to physical items in order to provide identification and tracking by radio. Their potential invasiveness is obvious from their size, which already is surprisingly small. And they will only get smaller.

In their basic function, RFID chips are like barcodes, which by now are ubiquitous in our stores and offices and crime labs and manufacturing plants.

BARCODES ON STEROIDS

But RFID chips are like supercharged barcodes—barcodes on steroids, if you will. They are so small they can be tagged onto almost any object. They do not have to be in open view; RFID receivers just have to be within the vicinity—at a security checkpoint, in a doorway, inside a mailbox, atop a traffic light. And RFID chips can carry a lot more information than barcodes. Some versions are recordable so that they can carry along the object's entire history.

RFID chips are more powerful than today's video surveillance technology. RFIDs are more reliable, they are 100 percent automatic, and they are likely to become more pervasive because they are significantly less expensive, and there are many business advantages to using them. RFIDs seem poised to become the catalyst that will launch the age of micro-monitoring.

I have followed RFID technology for some time and have welcomed its potential for many constructive uses. I have supported the use of RFIDs in a Vermont pilot program for tracking cattle to curtail outbreaks, like mad cow disease, and our Vermont program