

the energy security of our Nation, I urge that this much-needed legislation be approved as soon as possible. There is a moral imperative to act, and we must not delay.

Mr. President, I ask unanimous consent that Senators SPECTER, KERRY, and CLINTON be added as cosponsors of S. 2231, the Federal Mine Safety and Health Act of 2006.

The PRESIDING OFFICER (Mr. SUNUNU). Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the Senate, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I commend my friend and colleague from West Virginia for once again giving focus to this issue of national proportion and importance. I know he recognizes that those extraordinary mine tragedies at Sago struck the heart and soul of all Americans. I had the opportunity to visit with the families from that community. I want him to know that as a member of the HELP Committee, which has some jurisdiction over the measure he introduced, we are going to work closely with him to ensure, to the greatest extent possible, safety for miners.

We have seen an example of what has been done in Canada with the 36 or 37 miners who were locked in the bowels of a mine for several days and they walked out because they had oxygen available. We have seen other miners who have been saved in other parts of the world, such as Australia, because they had communications which permitted them to be warned about the dangers of mines.

He raises an issue that is of central importance, not just to the people of West Virginia but to all who care about those families who make such a difference not only to their communities but to our country and to our energy needs. I thank him and look forward to working with him.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Massachusetts, Mr. KENNEDY. He is always sensitive to the problems that occur in West Virginia. He is always mindful of the coal miners and their problems, their sorrows.

I thank him for being such a steadfast partner with the two West Virginia Senators and such a steadfast friend throughout the years to our fellow West Virginians. I thank the Senator.

Mr. KENNEDY. Mr. President, at the present time, the Judiciary Committee is meeting with the Attorney General. I am necessarily absent from that meeting so I can make comments on the asbestos legislation which is now pending. I will return.

As I understand it, Senators SPECTER and LEAHY and others involved will have a chance to speak. I ask unanimous consent to speak in morning business for 25 minutes, if there is no objection.

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

#### FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2006

Mr. KENNEDY. Mr. President, the real crisis which confronts us is not an asbestos litigation crisis, it is an asbestos-induced disease crisis. Asbestos is the most lethal substance ever widely used in the workplace. Between 1940 and 1980, there were 27 million workers in this country who were exposed to asbestos on the job, and nearly 19 million of them had high levels of exposure over long periods of time. That exposure changed many of their lives. Each year, more than 10,000 of them died from lung cancer and other diseases caused by asbestos. Each year hundreds of thousands of them suffer from lung conditions which make breathing so difficult that they cannot function at all. Even more have become unemployable due to their medical condition, and because of the long latency period of these diseases, all of them live with fear of premature death due to asbestos-induced disease. These are the real victims. They deserve to be the first and foremost focus of our concern.

As this chart indicates, asbestos mortality will likely peak around 2015, reflecting the heavy exposures in the 1970s. We are going to see this is not an issue that is going to diminish, in terms of the impact on the workers, workers' lives, their families, and their communities, but is actually going to increase in terms of those who are going to be adversely impacted and affected.

All too often the tragedy these workers and their families are enduring becomes lost in a complex debate about the economic impact of asbestos litigation. We cannot allow that to happen. The litigation did not create these costs; exposure to asbestos created them. They are the costs of medical care, the lost wages of incapacitated workers, and the cost of providing for the families of workers who died years before their time. Those costs are real. No legislative proposal can make them disappear. All legislation can do is shift those costs from one party to another. Any proposal which would shift more of the financial burden on to the backs of injured workers is unacceptable to me and should be unacceptable to every one of us.

I have consistently said throughout the long debate on asbestos legislation that I would support a properly designed and adequately funded trust fund bill. That legislation would have to fairly compensate all the victims of asbestos-induced disease in a timely way. It would put more money into the pockets of these injured workers than the current system of reducing transaction costs. This is not such a bill.

Senators SPECTER and LEAHY have devoted an enormous amount of time and effort to this asbestos trust fund legislation. They deserve great credit

for their work. But the bill before us contains fundamental flaws which make it both unfair and unworkable. It does not provide a reliable guarantee of just compensation to the enormous number of workers who are suffering from asbestos-induced disease.

The argument that there are serious inadequacies in the way asbestos cases are adjudicated today does not mean any legislation is better than the current system. Our first obligation is to do no harm. We should not be supporting legislation that excludes many seriously ill victims from receiving compensation and that fails to provide a guarantee of adequate funding to make sure injured workers will actually receive what the bill promises them. This bill will do harm.

The problem is that powerful corporate interests responsible for the asbestos epidemic have fought throughout this process to escape full accountability for the harm they have inflicted and, as a result, the focus has shifted from what these companies should pay victims to what they are willing to pay victims. That is preventing the Senate from enacting trust fund legislation that will truly help the workers who have been seriously injured by this industrial plague.

The Senate should not be proceeding to this asbestos bill at this time. Despite all the work Senators SPECTER and LEAHY and other supporters have done, S. 852 is simply not ready for floor consideration. There are too many unanswered questions, and the numbers do not add up.

This legislation does not provide sufficient funding to keep the promises of compensation it makes to those asbestos victims it purports to cover. Even if the entire \$140 billion the sponsors anticipate raising is paid to the fund, it will not be sufficient to fully compensate the projected number of eligible victims, and it is extremely unlikely the full amount will ever be paid.

The formula in the bill is based on highly questionable estimates of the number of companies that would be required to contribute and how much each one would pay, contained in a secret list known only to the asbestos study group, the key lobbyists for the bill. None of the relevant information has ever been made public. There is reason to believe far fewer companies would be contributing than the ASG projects. There will also be serious court challenges brought against the new law that are certain to at least significantly delay statutorily mandated payments and could result in the loss of substantial anticipated revenue.

Because of these problems, seriously ill victims are likely to wait for years in legal limbo, unable to proceed in court and unable to obtain compensation from the trust fund if this bill passes.

The legislation also fails to permit victims to quickly return to the court system should the trust fund become

insolvent. Victims are the losers at both ends.

These problems are far too complex to be fixed on the Senate floor with a few last-minute amendments. If they could not be resolved in the 3 years that the many Senators have worked on this bill, they cannot be corrected in a few days. S. 852 is the legislative version of the famous Spruce Goose—an ill-conceived plan too complex and cumbersome to ever get off the ground. As designed, it simply will not work. It is not a reliable vehicle for compensating the victims of asbestos disease. It should be sent back to the drawing board.

The list of serious flaws of S. 852 is, unfortunately, a long one. I will focus my remarks on several of the most egregious.

First, the financial inadequacy. Experts tell us that the asbestos trust fund created by this legislation is seriously underfunded. The funding plan in this bill relies on very substantial borrowing in the early years as the only way to pay the flood of claims. The result will be a huge debt service cost over the life of the trust that could reduce the \$140 billion intended to pay claims by as much as \$30 billion or \$40 billion. The amount remaining would be far too little to pay claims to cover all those who are entitled to compensation under the terms.

In addition, there is a strong constitutional argument that the existing bankruptcy trusts cannot be forced to turnover all their assets, which will place \$7.6 billion of the projected funding in jeopardy. Many companies are also likely to challenge their obligation to finance the asbestos trust. It is not at all clear how much will actually be available to pay eligible victims what the legislation promises they will receive.

CBO's analysis of S. 852 raises serious concerns about the adequacy of funding. The report states:

CBO expects that the value of valid claims likely to be submitted to the fund over the next 50 years could be between \$120 and \$150 billion, not including possible financing (debt services) costs and administrative expenses. The maximum actual revenues collected under the bill would be around \$140 billion, but could be significantly less. Consequently, the fund may have sufficient resources to pay all asbestos claims over the next 50 years, but depending on claim rates, borrowing, and other factors, its resources may be insufficient to pay all such claims.

There is likely to be a serious shortfall in the early years, when nearly 300,000 pending cases will be transferred to trust for payment. Studies show the trust will not have the resources to pay those claims in a timely manner. Payments to critically ill people may be delayed for years.

One way to reduce the enormous financial burden on the fund in the early years would be to leave many of those cases in the tort system, especially cases which were close to resolution. That would be fair to the parties in those cases and it would greatly im-

prove the financial viability of the fund. Unfortunately, that proposal has been repeatedly rejected by the sponsors of the bill. As a result, there will be a serious mismatch between the number of claims the trust fund will face when its doors open and the payments begin coming into the fund. That will force major borrowing in the first 5 years. The debt service resulting from that borrowing will financially cripple the trust.

In its report, CBO recognizes the seriousness of this debt-service problem, explaining:

Because expenses would exceed revenues in many of the early years of the fund's operations, the Administrator would need to borrow funds to make up the shortfall. The interest cost of this borrowing would add significantly to the long-term costs faced by the fund and contributes to the possibility that the fund might become insolvent.

This is only one of several major financing problems with S. 852 that experts have identified. There are also major questions about the projections of pending and future claims that further cloud the trust fund's financial viability.

For example, there has been a significant increase in the number of mesothelioma cases in recent years. The only known cause of mesothelioma is asbestos exposure. This new information suggests that the CBO cost estimate may understate the cost of the mesothelioma claims that the trust fund will incur by more than \$15 billion. This is by no means the only instance where there is strong evidence to suggest that the number of eligible claimants will substantially exceed CBO estimates.

If S. 852 is enacted, the United States Government will be making a commitment to compensate hundreds of thousands of seriously ill asbestos victims but will not have ensured that adequate dollars are available to honor its commitment. That will precipitate a genuine asbestos crisis, and this Congress will bear the responsibility for it.

The legislation before us would close the courthouse doors to asbestos victims on the day it passes, long before the trust fund will be able to pay their claims. Their cases will be stayed immediately. Seriously ill workers will be forced into a legal limbo for up to 2 years. Their need for compensation to cover medical expenses and basic family necessities will remain, but they will have nowhere to turn for relief.

Under the legislation, even exigent health claims currently pending in the courts will be automatically be stayed for 9 months as of the date of enactment. An exigent health claim is one in which the victim has been diagnosed "as being terminally ill from an asbestos-related illness and having a life expectancy of less than one year."

By definition, these cases all involve people who have less than a year to live due to mesothelioma or some other disease caused by asbestos exposure. Their cases would all be stayed

for 9 months. Nine months is an eternity for someone with less than a year to live. Many of them will die without receiving either their day in court or compensation from the trust fund.

The stay language is written so broadly that it would even stop all forward movement of a case in the court system. A trial about to begin would be halted. An appellate ruling about to be issued would be barred. Even the deposition of a dying witness could not be taken to preserve his testimony. The stay would deprive victims of their last chance at justice. I cannot believe that the authors of this bill intended such a harsh result, but that is what the legislation does.

The bill does contain language allowing an "offer of judgment" to be made during the period of the stay in the hope of producing a settlement. However, this provision is unlikely to resolve many cases because it requires the agreement of the defendants. There is no incentive for defendants to agree to a settlement when the case has been stayed. Those who have tried cases know that it is only the imminence of judicial action which produces a settlement in most cases. Delay is the defendant's best ally; and under this bill, the case is at least delayed for 9 months and may never be allowed to resume if the fund becomes operational. If, however, these exigent cases were not stayed, and judicial proceedings could continue, there would be far more likelihood of cases settling under the offer of judgment process.

I strongly believe that, at a minimum, all exigent cases should be exempted from the automatic stay in the legislation. Victims with less than a year to live certainly should be allowed to continue their cases in court uninterrupted until the trust fund became operational. Their ability to recover compensation in the court should not be halted until the trust fund is operational and they are able to receive compensation from that Fund. It is grossly unfair to leave these dying victims in a legal limbo. For them, the old adage is especially true—justice delayed is justice denied.

Under the legislation, defendants would receive a credit against what they must contribute to the trust fund for whatever payments they make to these dying victims; so they would not be "paying twice," as some have claimed.

Allowing the exigent cases to go forward in the courts without interruption is a matter of simple fairness. Staying the cases of victims who have less than a year to live is bureaucratic insensitivity at its worst. Most of these victims will not live to see the doors of the trust fund open.

We should not deprive them of their last chance—their only chance—to receive some measure of justice before asbestos-induced disease silences them. They should be allowed to receive compensation in their final months to ease their suffering. They should be allowed

to die knowing that their families are financially provided for. S. 852 in its current form takes that last chance away from them.

The way the legislation is written, victims will lose out at the back end of the process as well, should the trust fund run out of money after several years of operation.

If the trust fund does become insolvent, a very real possibility, workers will not have an automatic right to immediately return to the court system. The process outlined in the current bill could take years. Workers could end up trapped in the trust with reduced benefits and long delays in receiving their payments. There needs to be a clear, objective trigger—inability of the trust to pay a certain percentage of claims within a set period of time—that will automatically allow victims to pursue their claims in court if the trust runs out of money. The Judiciary Committee's 2003 legislation contained such a provision, but this bill does not. We cannot allow seriously injured workers with valid claims who are not paid in a timely manner by the trust to be denied their day in court. That would be a shameful injustice.

The asbestos trust is being presented as an alternative source of compensation for victims suffering from asbestos-induced disease. If that alternative runs out of money and can no longer compensate those victims in a full and timely manner, their right to seek compensation through the judicial system should be immediately restored with no strings attached. No principle is more basic. Yet, this bill violates that principle.

I am particularly upset by the way lung cancer victims are treated in this bill. Under the medical criteria adopted by the Judiciary Committee overwhelmingly 2 years ago, all lung cancer victims who had at least 15 years of weighted exposure to asbestos were eligible to receive compensation from the fund. However, that was changed in S. 852. Under this bill, lung cancer victims who have had very substantial exposure to asbestos over long periods of time are denied any compensation unless they can show asbestos scarring on their lungs. The committee heard expert medical testimony that prolonged asbestos exposure dramatically increases the probability that a person will get lung cancer even if they do not have scarring on their lungs. Deleting this category will deny compensation to more than forty thousand victims suffering with asbestos-related lung cancers. Under the legislation as now drafted, these victims are losing their right to go to court, but are receiving nothing from the fund. How can any of us support such an unconscionable provision?

Since we began considering asbestos legislation, no aspect has concerned me more than the treatment of lung cancer victims. My top priority has been to make sure that these severely ill workers receive just and fair com-

pensation, and I have not been alone. A number of other members have spoken out about the importance of adequately providing for lung cancer victims who have been exposed to substantial amounts of asbestos over long periods of time.

Now we find that these victims, many of whom will have their lives cut short because of asbestos-induced disease, will not receive one penny in compensation from the trust fund. They are losing their right to go to court, but are also being denied any right to compensation under the fund. They are, in essence, being told to suffer in a legally imposed silence with no recourse whatsoever.

One of the arguments we hear most frequently in favor of creating an asbestos trust fund is that in the current system, too much money goes to people who are not really sick and too little goes to those who are seriously ill. Well, lung cancer victims who have years of exposure to asbestos are the ones who are seriously ill. They are the ones this legislation is supposed to be helping. Yet, they are being completely excluded.

The committee heard extensive testimony from distinguished medical experts—Dr. Laura Welsh and Dr. Philip Landrigan—that prolonged exposure to asbestos can cause lung cancer even if the victim does not also have markers of nonmalignant asbestos disease. They cited numerous medical authorities supporting their position. They even described treating lung cancer victims whose disease was clearly caused by asbestos but who had neither pleural thickening or asbestosis.

In a situation where people are undeniably severely ill and undeniably had 15 or more years of weighted exposure to asbestos, it is wrong to completely exclude them from compensation under the trust fund. Some of the proponents of S. 852 have attempted to justify excluding them by claiming that smoking probably caused their lung cancers. But, the evidence refutes this contention.

First, even those lung cancer victims with 15 or more weighted years of exposure to asbestos who had never smoked were removed from eligibility for compensation under the trust fund. So, this is about more than just the relationship between asbestos and smoking.

Second, regarding the smoking issue, Dr. Landrigan testified that smokers who have substantial exposure to asbestos have 55 times the background risk of developing lung cancer, while smokers who were not exposed to asbestos have 10 times the background risk of developing lung cancer. Clearly, the asbestos exposure makes a huge difference.

There is a powerful synergistic effect between asbestos and tobacco in the causation of lung cancer. Both are substantial contributing factors to the disease. The smoker with substantial asbestos exposure should receive less compensation from the trust fund than

the nonsmoker with lung cancer. That principle appears throughout the bill. But smoking is not a reason to exclude the smoker from all compensation.

Asbestos and tobacco are analogous to joint tortfeasors. Each is partly responsible and each should pay a proportionate share of the compensation. Without prolonged exposure to asbestos, the smoker would have been far less likely to contract lung cancer. It is a gross injustice to completely exclude these severely ill workers.

This bill also tampers with the agreed-upon medical criteria carefully negotiated between representatives of business and labor by raising the standard of proof for each disease category. The language in S. 852 requires the workers to prove that asbestos was "a substantial contributing factor" to their disease, instead of just "a contributing factor."

This is a major increase in the burden workers must overcome to receive compensation. It is significantly higher than most states currently require in a court of law. Rather than having to show that asbestos exposure contributed to their illness, they will now have to address the relative impact of asbestos and other potential factors. This change is a serious step in the wrong direction, raising the bar even higher on injured workers.

Another major shortcoming of this legislation is its failure to compensate the residents of areas that have experienced large-scale asbestos contamination. S. 852 simply pretends that this problem does not exist. It fails to compensate the victims of all asbestos-induced diseases, other than mesothelioma, whose exposure was not directly tied to their work. There is very substantial scientific evidence showing that the men, women and children who lived in the vicinity of asbestos-contaminated sites, such as mining operations and processing plants, can and do contract asbestos-induced disease.

The reason that this legislation needs a special provision to compensate the residents of Libby, MT, is because it does not compensate victims of community contamination generally. The residents of Libby are certainly entitled to compensation, but so are the residents who lived near the many processing plants from Massachusetts to California that received the lethal ore from the Libby mine. The deadly dust from Libby, MT was spread across America. W.R. Grace shipped almost 10 billion pounds of Libby ore to its processing facilities between the 1960s and the mid 1990s. One of the places it was shipped was to the Town of Easthampton, MA, where the operations of an expanding plant spread the asbestos to the surrounding environment, into the air and onto the soil. I intend to discuss this problem in great detail as the debate moves forward.

I raise it now as a dramatic example of one of the major injustices caused by the arbitrary exclusion of a large number of asbestos victims from compensation under the trust fund.

The red spots on this chart show where these other communities were contaminated. The larger the spot, the more shipments. We can see these spots all over the country. Yet these communities are not compensated for it, although one community is; other communities are not.

The problem of (community contamination is not limited to the sites receiving ore from Libby. Community asbestos contamination can result from many different sources. For example, medical experts believe it may result from exposure to asbestos after the collapse of the World Trade Center. Because of the long latency period, we often do not learn about community asbestos contamination until long after it occurs. Certainly these victims of asbestos are entitled to fair treatment as well. They should not be arbitrarily excluded from compensation as if their suffering is somehow less worthy of recognition than the suffering of other asbestos victims. Yet, that is what S.852 does.

This is a bill that shifts more of the financial burden of asbestos-induced disease to injured workers by unfairly and arbitrarily limiting the liability of defendants. It does not establish a fair and reliable system that will compensate all those who are seriously ill due to asbestos. It lacks a dependable funding stream which can ensure that all who are entitled to compensation actually receive full and timely payment. These are very basic shortcomings.

We cannot allow what justice requires to be limited by what the wrongdoers are willing to pay. I intend to vote "no" and I urge my colleagues to do the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to address the Senate until 3 p.m.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ALEXANDER. Thank you, Mr. President. The Presiding Officer will be relieved because I am to preside at 3 p.m.

#### NUCLEAR POWER

Mr. ALEXANDER. Mr. President, today, President Bush made an announcement of something he calls the Global Nuclear Energy Partnership. It is part of the President's 2007 budget for the U.S. Department of Energy. In that budget, at a time when there is not much extra money, there is \$250 million to deal with the objectives of the Global Nuclear Energy Partnership.

Part of the initiative we have heard about before. It calls for advanced technology for nuclear reactors—reactors from which we can produce clean energy, reactors which are smaller than the reactors that we have today

that produce about 20 percent of all the electricity we use in the United States. But I want to call attention to a part of the President's proposal which we have not heard much about before—at least from him—that is the part about reprocessing and recycling the fuel that is used in nuclear reactors. That has been something we haven't been doing in the United States for a long time, except in limited cases, and it is something that requires a great deal of attention. My hope is that, while it is a small part of a large budget, the idea of reprocessing and recycling spent fuel from nuclear reactors would have a significant, measured, and careful bipartisan discussion on the floor of the Senate.

Even though it is a small part of the big budget, dealing with the issue of reprocessing spent fuel can make a big difference in the solution to a number of large problems.

For example, whether we are able to deal with global warming within a generation, the only technology we have, of which I am aware, which will produce large amounts of carbon-free energy which would permit the United States and the world to reasonably hope to deal with global warming in this generation is nuclear power.

Even though it is 20 percent of our electricity in the United States today, it produces 70 percent of the carbon-free electricity.

Solving the reprocessing and recycling problem which deals with the issue of energy independence—and it has been talked a lot about on both sides of the aisle—if we want to be independent of other countries, we have to have ways to produce large amounts of energy in a clean way. And other than conservation and efficiency, nuclear power, in my judgment, is the only way to do that today.

A third area has to do with clean air. We have other forms of energy production such as coal, a very important form, but coal still produces large amounts of sulfur and nitrogen pollution. It produces mercury. The idea of recapturing the carbon and the integrated gasification process of making that coal-produced electricity clean is something we still have a lot of work to do on.

Dealing with reprocessing will have a lot to do with solving the problems of proliferation concerns that we have about other countries getting hold of spent fuel and turning it into material that can produce nuclear weapons. We read about it every day in terms of Iran and North Korea. It has to do with a balance of payments in the United States.

Some country is going to produce these advanced nuclear technology powerplants. Russia, for example, might produce 30 or 40 of these. When it does, it will have the technology available to sell those powerplants to India, China, and other parts of the world where they need large amounts of energy which is clean. The United

States will be left behind if we are not a part of that process.

I have mentioned all of these issues as if they were American issues—global warming, energy independence, clean air, proliferation, balance of payments. These are worldwide issues. By one account, 30 percent of pollution in the Los Angeles basin comes from Asia. If India and China aren't able to deal with the global warming issue, with the clean air issues, and with the proliferation issue, every American will be affected.

Today, there are about 430 nuclear reactors in the world being used to produce electricity. About 100 are in the United States. We have a classified number—maybe it is about the same—of them which have been used in our nuclear Navy since the 1950s. It is not difficult to imagine a world with 1,000 nuclear reactors. There are 124 nuclear reactors on the drawing board today, or under construction. Until recently, none of those were in the United States. We haven't built one new nuclear powerplant from scratch since the 1970s. It is very odd because we have a large demand in this country for large amounts of low-cost, clean energy. We invented the technology. We have used it in our Navy since the 1950s without a single incident.

France is now about 80 percent reliant on electricity from nuclear powers. And Japan, which suffered under our use of nuclear weapons, has used nuclear power to produce electricity.

Things though are changing. While nuclear power has some problems, so does every other alternative for producing the large amounts of energy that we and the world needs.

Coal, which I mentioned, produces pollutants, and no one has yet produced a way to deal with all of the carbon that is produced by coal to make it the strategy for future.

Many environmental groups—I am one of those persons who is hopeful about that—but the idea of recapturing such large amounts of carbon and putting it underground is something we haven't able to do yet.

Drilling for new oil produces lots of arguments in this body and close votes. Importing oil produces many resolutions and arguments in this body as well.

Wind energy is appealing to some, but you would have to cover up the whole State of Massachusetts to produce what one or two nuclear powerplants would be able to produce.

Today, solar energy is less than one-tenth of 1 percent of what we use in America.

So we need nuclear power. In order to have nuclear power, we are going to have to deal with the problem of where we put the spent fuel and what we do about proliferation.

I am glad that the President suggested in his budget today the Global Nuclear Energy Partnership. I am glad he put \$250 million in it to advance the idea of processing and recycling.