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## *House of Representatives*

The House was not in session today. Its next meeting will be held on Tuesday, February 14, 2006, at 2 p.m.

## *Senate*

THURSDAY, FEBRUARY 9, 2006

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord God, our eternal Father whose majesty fills the universe, we give thanks for Your enduring mercy and steadfast love. We are mindful that every sunrise is a gift and every day an opportunity to honor You in book, word, and deed.

Gracious Lord, we ask this morning for Your special blessing on our Nation's Senators, and those who so skillfully serve them here in our Nation's Capitol and in home districts. Grant them the wisdom, courage, discernment, and grace needed to nobly discharge their crucial duties.

Lord, may the radiant warmth of Your eternal providence shine upon this great Republic. May all citizens of this noble land know the width, length, and depth of Your life-transforming presence.

We pray this in Your holy Name.

Amen.

### PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. FRIST. Mr. President, a little later this morning, after we conclude our 30 minutes of morning business, we will return to the consideration of S. 852, the asbestos legislation. When that bill is laid before us this morning, amendments will be in order. Chairman SPECTER will be ready to consider those amendments related to the underlying asbestos issue, and we expect rollcall votes during today's session.

We have had good debate up to this point, but it is finally time to begin working on the underlying issues of the asbestos bill. Therefore, we will be here ready and available into the evening to debate and vote on the amendments.

I remind everybody that last night I filed a cloture motion in relation to a Defense Department nomination on the Executive Calendar that has been held up. That vote will be tomorrow morning, and we hope we can get cloture and vote on the nomination early Friday. We have 2 days remaining this week, and Senators should have ample time to offer and debate amendments on the asbestos legislation.

### RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

### ASBESTOS LEGISLATION

Mr. REID. Mr. President, it is not often that you see a legislative plan with such bipartisan opposition. The asbestos bill before the Senate is an example of how you should not proceed on a piece of legislation. I have explained throughout the week, as have others, that the so-called FAIR Act is not fair. I have explained how this legislation will harm victims by trapping them in an administrative claims system that is irreparably defective and doomed to fail. It is a bill that is not only unfair to victims but to businesses, except for a few large corporations. Major industries oppose this, such as the insurance industry. It is terribly unfair to the American taxpayer, terribly unfair to the veterans.

The trust fund set up under this bill to pay for victims' claims is woefully underfunded. Expert after expert has opined that \$140 billion will not be sufficient to satisfy expected claims, and it doesn't properly account for expected borrowing and administrative costs. Adding insult to injury, the mechanics of the trust fund claims system unacceptably abridge the rights of victims with unworkable startup and sunset provisions.

It is no surprise that the asbestos bill that has reached the Senate floor is in such poor shape when it is the product of such an unusual legislative process. Ordinarily, Senate deliberation on a bill is open and transparent. But consider all the ways this bill is shrouded in mystery.

- This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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First, we still do not know which companies will contribute to the asbestos trust fund and how much each company will contribute. Senator DURBIN asked for a list on the floor yesterday, and in response the distinguished manager of the bill, Senator SPECTER, said: Well, we didn't have to subpoena Government agencies. Well, they had to be private companies. Whom are they? He would not say. It is not clear that the list Chairman SPECTER obtained by subpoena even lists the contribution amounts. We don't know. For a bill such as this, not to know? Without this information, the Senate can have no confidence that the trust fund will raise \$140 billion or, in fact, anything.

Second, the sponsors have promised a managers' amendment. Mr. President, as I said on the floor yesterday, I don't have the legislative experience of the distinguished President pro tempore, but I have a lot of experience—three decades of legislative experience. This is, by far, the worst piece of legislation with which I have ever had to deal. But think about this—and I want all Senators, all Democrats and all Republicans, to understand what is happening. Anyone who has a problem, they can go to Senator SPECTER and they will stick it in the managers' amendment. One of my colleagues had five concerns. Within a short period of time, it was all taken care of in the managers' amendment.

Of course, nobody can see the managers' amendment. It is composed of over 40 amendments. How could anyone vote for a piece of legislation such as that—a managers' amendment with 42 separate amendments? Now, these amendments were not put in, in a conference committee. People complain about that. But at least in a conference committee, you have people working together, sticking things in. Sometimes Democrats complain and sometimes Republicans complain—whichever is in the minority here: Well, we didn't get enough consultation; you cut us out of the process. But at least you had a group of Democrats and Republicans in the process. Here, you have one person making a decision as to what is going to be in the managers' amendment. There is no way to know what is in it. How could anyone say: OK. You have taken care of me, but I don't want to see the other 40 amendments—because with this legislation, similar to all legislation, you put something in one spot, and you have to take something out someplace else.

Well, another way this bill is shrouded in mystery is, yesterday, we received a statement of administration policy on this bill. Ordinarily, these documents contain several pages of detailed analyses of pending bills. The administration outlines its problems with the bill. This is standard procedure. It is a detailed analysis of the bill. Yesterday, the statement on this 400-page bill that some say should be \$280 billion, not \$140 billion, is 2 paragraphs. One of them is a short paragraph:

Although the administration has serious concerns about certain provisions of the bill, the administration looks forward to working with Congress in order to strengthen and improve this important legislation before it is presented to the President for his signature.

Mr. President, what can we expect? What does this mean? What provisions do they not like? How are they going to work with Congress? This bill is not ready for Senate floor consideration.

The letter contains no list of which provisions raise concerns or what the concerns are, just an implicit promise that once the bill gets to conference, the White House will rewrite it to its satisfaction.

Finally, also in the mystery shroud, yesterday, we learned that the managers intend to evade a valid budget point of order by including language in the bill to prohibit more than \$5 billion in payments each 10-year period, even though that would leave the program paying far less than \$140 billion in claims. One of the complaints everybody has is that the trust fund will have their money stolen, in effect, with this legislation. The insurance industry, the businesses, and not the least of which are the claimants, the victims—they don't have enough money with \$140 billion. Now they are going to be told that to avoid this point of order, they will limit how much money can be paid. If it is not enough, limit what the victims get. It is a terrible situation. This bill, if it weren't so serious, would be an example of how not to handle legislation, with a managers' amendment that contains more than 40 amendments, and the basis for the legislation is secret. Members of the Judiciary Committee—not someone in the Commerce Committee or the Appropriations Committee—nobody, not even members of the Judiciary Committee, are entitled, according to the manager of the bill, to see how they arrived at the \$140 billion. He said that on the Senate floor.

I am not too sure the Judiciary Committee should have jurisdiction of this bill. I think maybe it should have been a joint referral to the Environment and Public Works Committee. I have not spoken to the chairman of that committee, Senator INHOFE. I have been chairman of that committee on two separate occasions. I will bet Senator INHOFE wonders why his committee hasn't had something to do with this. I have had some differences with the Senator from Oklahoma, but I have never, ever had a problem with him not telling me or anybody on the committee how they arrived at the numbers. We did over \$300 billion at one time on a highway bill, and there were no secrets as to how the numbers got in there. There were computer printouts. Sometimes it took several hours for the printouts. But here we don't know where they came up with these numbers.

This is not the way to legislate. It demeans the Senate, demeans the legislative process. I recognize that people

consider me partisan on a lot of occasions, and maybe they have a right to do that. I try not to do it, but sometimes things happen. But I want the record to be spread that this is not a partisan attack on this legislation. There are people who believe this legislation is unfair. I see my friend from Alabama, and he can speak for himself, as we all know, but I have understood—I have not talked to him personally, but I understand that he is concerned about the trust fund amounts that will be set up to pay the claims. They are going to be stripped of their money in this legislation.

The whole premise of this bill is flawed. It deprives Senators and the public of an opportunity to consider the bill on its merits. The Senate should operate in the spirit of transparency and candor, not secrecy. The proponents claim there is an absolute asbestos litigation crisis in this country and this crisis requires that we act on this deeply flawed legislation. There is no asbestos litigation crisis, Mr. President.

We have an asbestos disease crisis. The consumer advocacy organization Public Citizen stated:

There is no logjam of asbestos cases in the courts. [Moreover], [t]he best obtainable statistics . . . do not support the oft-repeated contention that an avalanche of asbestos lawsuits is paralyzing state and federal courts.

Consider some of these facts. In Federal courts, which account for 20 percent of asbestos cases, new Federal filings for asbestos liability have been on the decline, both in recent years and compared to much higher levels at the start of the 1990s. Most recently, new Federal filings have declined from 9,111 in 1998 to 1,400, a drop of 84 percent, according to the U.S. Administrative Office of our courts.

Asbestos suits as a fraction of all product liability suits have fallen considerably, from two-thirds of all cases in 1990 now to 4.2 percent in 2004. The number of asbestos product liability trials in Federal courts is down sharply in recent years, from 271 in 1991 to zero in several recent years, according to the U.S. Department of Justice Bureau of Justice Statistics.

In State courts, among tort cases disposed of by trial in 2001, in the Nation's 75 largest counties—which together account for about 23 percent of the population—there were 31 asbestos trials, .4 percent of an estimated total of 7,948 cases. Among major categories of State cases, asbestos product liability cases going to trial had the shortest median period for disposition for 2001, the latest period for which data is available. While the disposition time for other cases was little changed since 1996, the disposition time for asbestos trials fell by 80 percent, from 50 months to 10 months.

Overall, the rate of growth for new asbestos claims has markedly slowed. In the mid-1980s, the number of claims for mesothelioma, other cancers, and

nonmalignant cases each was growing by 25 percent annually, but now the rate of growth is down by 76 percent for mesothelioma, down by 96 percent for other cancers, and down by nearly half for nonmalignant cases.

Even the largest number of asbestos claimants in a single year, 2002—about 95,000—amounts to a little more than one-half of 1 percent of new annual State and Federal cases.

Our system of justice is unique. State courts have seen the problems and they have done something about them. I have talked to Republican Senators and Democratic Senators. Texas has a system we should take a look at here. Illinois has a great system. What they have established is what they call a pleural registry. What they do there, if you have been around asbestos and you think you might get sick—because some of these periods of dormancy can be for years and years—you give your name and the statute of limitations is tolled. If nothing happens to you, no problem. If 10, 20, 30 years later something comes up, you can go into court. It has worked great in Illinois, where a lot of cases were being filed. It protects the most serious cases, the mesothelioma and asbestosis.

There is no litigation crisis. These facts contradict any assertion there is some type of asbestos litigation crisis overwhelming the courts.

In addition, the pleural registry and the system they have in Texas and other States—take, for example, US Gypsum. My brother worked for US Gypsum his whole professional life. They had a lot of problems with asbestos. Why? Because that is what they manufacture stuff with. With US Gypsum, they set up a program and settled all their cases. Right now they have settled all their cases for about \$900 million. Other companies have done the same thing. They have gotten money together: “Let’s get rid of this litigation.” So anyone talking about a crisis with litigation—the crisis is these big companies are trying to escape responsibility.

I read here on the floor the day before yesterday an example of four companies, hundred-year-old companies, that pay nothing in asbestos now. But one company, even though they paid not a penny for asbestos litigation, under this proposal will pay \$19.5 million a year. They will go bankrupt and a 100-year-old American company is gone.

We do not need to pass this defective legislation. We should instead pass legislation to help the thousands of victims of asbestos exposure and the companies that have contributed to their injuries.

#### MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there is now a time for morning business not to exceed 30 minutes, with Senators permitted to speak therein, the first 15 minutes under the control of the Democratic leader or his designee, the second 15 minutes under the control of the majority leader or his designee.

Who seeks recognition?

Mr. BENNETT. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. SESSIONS. I believe my colleagues on the other side are not going to use any of their morning business time that is remaining. A minute or less remains. I ask unanimous consent that I be able to commence my remarks at this time.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator is recognized in morning business.

#### NSA TERRORIST SURVEILLANCE PROGRAM

Mr. SESSIONS. Mr. President, last night I was in my office in the Russell Senate Office Building and we were evacuated to the parking deck, and following the excellent leadership of the Capitol Police, people responded professionally and well without any undue alarm and showed good discipline and good spirits.

I point that out to ask, have we forgotten there is an enemy out there who desires to attack us, desires to attack our Nation’s Capitol, or any other spot in our country, desires to cause us harm, and that we are spending billions of dollars, that some of the best people in this country are working night and day, like our Capitol Police, in localities all over this country to protect us? From local sheriffs, police officers, State police officers, the FBI, the CIA, the Customs Service, the Immigration Service, to all the agencies that are involved in protecting us, they are out there working their hearts out, and sometimes I think we in this body have gotten too comfortable about this. We have been the subject of a declaration of war by al-Qaida. Bin Laden has declared war on the United States. He has asserted it is his right and, indeed, the duty of his followers to attack Americans and even civilian targets, men, women and children.

We have authorized the U.S. Government, the President, and the executive branch to exercise certain rights because it is war. It is not a criminal matter. If we capture our enemies, they are not entitled to a trial in the

southern district of New York because they are prisoners of war. They are entitled to be held without trial as every prisoner of war since the beginning of the Republic and the rules of war have been instituted. They are held without trial. In the Hamdi case, the U.S. Supreme Court stated that even an American citizen engaged in the war against the United States can be held without trial as an enemy combatant against the United States because it is not a criminal matter. A state has one primary responsibility, and that is to maintain its existence against those forces that would destroy it.

I would ask if anyone thinks we would have any liberties at all if bin Laden ran this country. He would tell you what clothes to put on in the morning. We would have people not only not being free, they wouldn’t be able to drive an automobile—women would not be—under his mentality.

This is a serious question, and we need to respond to the challenge to this country in an effective way consistent with our heritage of laws and liberties. There is no doubt about that.

Secretary Rumsfeld has pointed out recently something that is so obvious, but we should think about it. He said the military challenge today is to find, fix, and finish the enemy. He said there is no doubt if we target and develop a plan, we can finish them successfully. We have that military capability. There is no military in the world capable of destroying the military of this United States.

I ask you to remember what we heard after 9/11. What we heard was our intelligence is weak. What we heard was we did not have enough intelligence, that we did not have enough information to find the enemy; that they had sleeper cells in this country and those sleeper cells were activated by phone calls from Afghanistan and bin Laden over here to encourage them to step forward to carry out the events that led to September 11. Isn’t that what happened? And we had this spasm of self-flagellation about intelligence and how we operate our intelligence community. Our job unfortunately was based on the fact that there were failures and we could have done better, had we had interceptions of some of those 18 responsible for 9/11 prior to 9/11, that if we had been able to listen to those conversations, we could well possibly have taken steps to avoid that and 3,000 American citizens would have civil liberties today. Now they have none because they are no longer with us.

We have to ask those questions and go back and look at the history of our country and what is the legitimate power of the President and our forces in a time of war.

What do our intelligence leaders tell us about the capability of the National Security Agency as it has dealt with the ability to intercept international phone calls involving al-Qaida members? What do they tell us? What do all three of our top intelligence people

#### RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, leadership time is reserved.