## 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. This morning the Senate will begin debate on the Medicare conference report. Senators who wish to make statements on this historic bill are encouraged to come to the floor during today's session. If possible, we will need to be in session tomorrow, Sunday, to continue debating the Medicare bill. It is my hope that we will be able to schedule a vote on the conference report for Monday. I will continue to work with the Democratic leadership to reach an agreement for a final vote. I do not anticipate votes this weekend. However, Senators should prepare for votes early on Monday.

At this point, I announce that no votes should occur any time until afternoon Monday, and we will be in discussion with the Democratic leadership as to the appropriate time for votes over that day.

## RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The minority leader is recognized.

Mr. DASCHLE. Mr. President, it is my understanding that we already have an agreement where we will alternate in recognition of Senators on either side of the aisle as we debate the Medicare bill. We have several hours of requests already from our colleagues. I will not propound a unanimous consent request, but I might propose that we consider limiting at least comments today on the floor to 15 minutes to accommodate as many Senators as possible.

I know there are a lot of Senators who are going to be attempting to schedule their day around their opportunity to come to the floor. If we have that understanding, if there are four or five in line, it would seem to me it would work. As I say, I will talk to the majority leader about that. I do hope Senators on this side of the aisle will call the cloakroom or call Senator REID or myself to let us know their intentions with regard to speaking so that we can coordinate the effective use of time.

As the majority leader has already announced, we will be in tomorrow as well. So Senators will have an opportunity to speak throughout the weekend in addition, of course, to Monday. We will work with him to accommodate all Senators who wish to speak. We will work on a time certain for a vote at a later date.

I yield the floor.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, as our colleagues are well aware, the Democratic leader and I have set aside all day today, and we can stay as late today as necessary. We initially said around 5, but this issue is so important, and there are so many people, as the distinguished leader implied, who do want to come to the floor, and it is the only opportunity for some to come, therefore, we are going to spend all day today on it, as much time tomorrow as necessary, and in all likelihood Monday morning.

I hesitate a little bit trying to limit people to 15 minutes because I do know some people have 30 minutes of comments, but I think that we should stress keeping the comments to as short a period as possible to make their points because we have a lot of people on both sides of the aisle who have called and said we are going to be there all day Saturday; we want to be able to participate.

With this many Senators, it does mean that people need to keep their remarks fairly short. I understand we will be alternating back and forth. We do want to keep the time equally divided so that both sides will have the opportunity over the course of the day to speak. Then if there are a number of people who have waited and are unable to talk today or tonight, if we need to go into later tonight, we can come in a little bit earlier tomorrow or stay longer tomorrow as well.

Again, I appreciate the cooperation of all of our colleagues because it is not customary for us to be in session on Saturday, and certainly not on Sunday, but in order to pay respect to people's schedules over the holidays and to address this very important issue, we have elected to spend all day today and possibly tomorrow.

The PRESIDENT pro tempore. The minority leader.

Mr. DASCHLE. I ask the majority leader if it is his intention to set aside a moment of silence this afternoon in commemoration of the 40th anniversary of the assassination of President Kennedy. It is my understanding that some thought had been given to that time, and I think it would be helpful, if that time has been set aside, if we could make that announcement in the interest of all Senators.

Mr. FRIST. Mr. President, I believe the time will be set aside at 12:30 today. If there is a change in that particular time, we can make that announcement very shortly.

Mr. President, I do have a statement on an unrelated issue, which I can do now or we can proceed.

## RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

## ASBESTOS LITIGATION CRISIS

Mr. FRIST. Mr. President, before entering into the debate on Medicare, I will comment on an issue that the Democratic leader and I have worked on very aggressively over the last several months, and it relates to the current asbestos litigation crisis. The current asbestos litigation system is broken, and it is clear that we in this Congress should fix it. We have an obligation, a real responsibility, to fix it.

I would like to lay out what our plans are to resolve this asbestos litigation crisis early next year. We have made very good progress toward enacting Chairman HATCH's FAIR Act, which is the Fairness in Asbestos Injury Resolution Act. I have made it a personal priority that the Senate participate aggressively in resolving this challenging issue.

Why do we call what is occurring today a crisis? First, the events that are occurring are overwhelming. The torrent of asbestos litigation has wreaked havoc on asbestos victims, on American jobs, and this havoc has extended into our economy.

Over 600,000 claims have been filed and those 600,000 claims have already cost about $54 billion in settlements, judgments, and litigation costs. Yet even after 600,000 claims and $54 billion, the current asbestos tort system has become nothing more than a litigation lottery at this point in time.

Why do I say that? First, a few victims receive adequate compensation but far more suffer long delays for what ends up being unpredictable rewards—also, if one looks at the data, inequitable awards. Some deserving victims do not receive anything at all. It is a system that there is only one real consistent winner, and that is the plaintiffs' trial lawyers.

I say that because of all of these settlements. They are taking as much as half of every dollar that is awarded to the victims.

If you look to the future, it is a problem that only gets worse. It is accelerating in the negative aspect. But if you look to the future, it gets even worse.

Future funds for asbestos victims are threatened because company after company after company is going bankrupt. About 70 companies have gone bankrupt, and about a third of those have gone bankrupt in the last 2½ to 3 years. The pace of bankruptcies of very large companies with thousands and thousands of employees is accelerating.

Again, this is an issue for us to address. That is why I want to set a schedule for that in a few minutes.

Companies such as Johns Mansville, bankrupt; Owens Corning, bankrupt; U.S. Gypsum, bankrupt; and, W.R.

Grace, bankrupt: these are large reputable companies that have gone bankrupt because of this crisis with the associated job losses.

Now the hunt is on to get new targets and to go out and sue. People say this is easy money, and the easy way is to go out in terms of bringing a lawsuit and filing a lawsuit. Thus, the hunt is on for new targets to sue. What is unfair and inequitable is that many of these lawsuits have no connection at all to asbestos. If you really look at the connection between asbestos and the victims, it is just not there.

Victims aren't the only ones who suffer but also the workers of these companies that are going bankrupt suffer. Asbestos-related bankruptcies spell doom for these workers' jobs; thus, their families, and, of course, incomes and retirement savings. Already, these lawsuits have cost more than 60,000 Americans their jobs. For those who lose their jobs, the average personal loss in wages over a career is as much as $50,000, and that doesn't include the loss of retirement wages or the loss of health benefits. Workers at asbestos-related bankrupt firms with 401(k) plans lost about 25 percent of the value of their 401(k) accounts because of this.

The economic reality of this crisis is not lost on my colleagues in this body. They understand that under the status quo the national asbestos crisis could cause our economy more than the savings and loan crisis of the 1980s and 1990s, and more than the Enron debacle or the WorldCom debacle. Member after Member from both sides of the aisle has voiced their agreement with the assessment of the Supreme Court that the system is broken and the Congress should fix it.

There is only one question: what can we do? Can we create a system better than the status quo? The answer is yes.

The FAIR Act—the Fairness in Asbestos Injury Resolution Act—has already made significant headway, and we look forward to progress today. Under the leadership of Chairman HATCH, it was passed by the Senate Judiciary Committee last July, and there have been ongoing discussions and negotiations since then.

I commend Chairman HATCH and the ranking minority member, Senator LEAHY, for their hard work on the bill.

I also want to recognize Senator SPECTER for his hard work in conjunction with Judge Becker.

I also want to note that my Democratic colleagues, organized labor, and other stakeholders have been deeply involved throughout the process. Led by Senator HATCH, bipartisan breakthroughs have been made on issues that previously have proved impossible to address, including such issues as—and there are many of them—the linchpin issue of the medical criteria that had proven historically to be so difficult and controversial.

In addition, agreements among stakeholders following the committee markup have resulted in even more modifications. The resulting bill creates a system that, while not perfect, is far superior to the current tort system for resolving asbestos issues.

I became deeply involved in the post-Judiciary Committee negotiating process, working in concert with Senator DASCHLE, as well as Chairman HATCH and Senators LEAHY, SPECTER, DODD, and CARPER, and some others on both sides of the aisle. We have made good progress. I know during the debate over this legislation all of the relevant issues have been unearthed. They have been exposed to public debate, and all parties have had an opportunity to get involved to contribute their points of view.

What emerged under S. 1125 and the current negotiations is a streamlined national trust fund for paying asbestos claimants quickly, paying them fairly, and paying them efficiently. The new system provides more certainty and efficiency for claimants, and more certainty and predictability for businesses.

Passing this bill will create enormous economic benefits. I say that because the certainty that flows from the bill will stimulate capital investment. It will also preserve existing jobs and create new jobs as well.

I had hoped that we would bring this bill to the floor before the end of this session, but we were unable to achieve that goal. Chairman HATCH and Senator LEAHY worked hard to resolve many difficult issues at the committee level. Senator DASCHLE and I, along with our staff, have continued to work with stakeholders to put more issues behind us over the past several months.

While there are several issues that remain outstanding, the core principles of an effective bill are now clear.

What are they?

First, the bill must create a trust fund that is capable of awarding adequate compensation to victims while providing more financial certainty and finality to the business community. The new funding proposal that I put on the table would generate payments that would exceed by $10 billion the expected funds which victims would receive if the current flawed tort system is left intact.

Second, the legislation must establish a schedule of claims values that will ensure victims consistent and equitable awards. We cannot tolerate the current system where payments can depend on where a plaintiff lives or which is capable of awarding only pennies for every dollar promised.

I am also prepared to consider further modest increases in claims values as requested by the Democrats and as requested by organized labor, provided that any new increase is targeted to the most severe disease categories where the relationship to asbestos exposure is most certain.

We must make sure, however, that lung cancer claims not caused by asbestos are not allowed to overwhelm the fund.

Third, the fund must be a nonadversarial program that ensures prompt payment of awards to eligible claimants while minimizing transaction costs, including attorney's fees. Care must be taken to ensure that the fund is established on an expedited basis, and adequate moneys are available to pay exigent claims from the outset.

Fourth, we must preserve the bipartisan medical criteria included in S. 1125 as reported by the Judiciary Committee. Only by ensuring the use of real diagnoses of asbestos-related illnesses can the fund avoid the pitfalls that plague the current mass tort system.

Fifth, and finally, asbestos victims should not bear the risk of inadequate funding or incorrect predictions about future claims, as is the case under the current tort system.

The legislation should make clear that if the fund cannot guarantee that victims will receive all of their claims, a program review is triggered, and if not corrected the fund should end and claims should revert to the tort system. To work, however, such a reversion would have to be to Federal court and should contain certain additional protections to ensure the current litigation morass is not recreated.

Such an approach reduces, if not eliminates, the need to worry about which claims projections are correct.

Clearly, a more thorough discussion of these observations, recommendations, and outstanding issues is warranted.

I ask unanimous consent that a document entitled ''Moving Forward in Asbestos Injury Resolution Act, S. 1125'' be printed in the RECORD at the conclusion of my remarks.

The PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit I)

Mr. FRIST. Mr. President, this allows a more complete discussion of the principles and observations I have made thus far. I do hope people take a look at that document.

As for the future, if we intend to make good on our collective hope to pass legislation, at some point the ongoing discussions and negotiations must cease and a bill must be brought to the floor. Victims are still going uncompensated today, companies are still going bankrupt today, and the economy is still unnecessarily burdened. We must act.

The minority leader as well as Senator LEAHY and other Democratic Members have made clear to me their interest in working toward consensus legislation. It is clear we still need a little more time for discussion. Consequently, we will not force a vote on the FAIR Act this session. Instead, I will give stakeholders more time to negotiate a compromise. There will, however, be a limit to these discussions because we must act. Thus, I will commence floor action on an asbestos bill by the end of March 2004. Again, I will commence floor action on an asbestos bill by the end of March of 2004.

There is no perfect solution to the current asbestos litigation crisis, but it is clear that maintaining the status quo is unacceptable. We have a responsibility to act, and we will act in this body. We must not let this historic opportunity to enact fair and meaningful reform pass in order to pursue a perfect solution that is unachievable. The time has come for the Senate to fashion the right solution to one of the most pressing issues facing us, facing our economy and this Nation today.

EXHIBIT I

MOVING FORWARD ON THE FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT, S. 1125—STATEMENT OF SENATOR FRIST

To bring an end to the current asbestos litigation crisis, Congress must pass legislation creating a national no-fault asbestos trust fund (''Fund'') that ensures adequate compensation to victims, while providing financial certainty to the business community. This kind of program would provide more direct compensation, more quickly to victims than the current system can deliver. Moreover, it would provide that compensation without the bankruptcies or the lost workers' jobs, incomes, and retirement savings that asbestos personal injury litigation produces. It represents, therefore, a tremendous achievement in the creation of a solution to a problem whose future economic consequences are enormous—in the magnitude of more than $100 billion if the claims stay in the tort system.

This past July, under the leadership of Chairman Hatch, the Senate Judiciary Committee approved S. 1125, the Fairness in Asbestos Injury Resolution Act (''FAIR Act''), which establishes the framework for reaching a bipartisan solution. To reach a consensus, we must build upon that structure, making improvements where possible but not jeopardizing the two most fundamental elements of the legislation—adequate, timely, and equitable compensation for claimants and financial predictability for the business community.

I. ENSURING ADEQUATE COMPENSATION FOR VICTIMS

According to the two actuarial studies on the magnitude of the problem, one by Tillinghast-Towers Perrin and the other by Milliman USA, ultimate loss and expenses under asbestos personal injury litigation are projected to reach $200 to $265 billion. With $70 billion already spent, total estimated future costs thus range from $130 to $195 billion. Victims, however, can expect to receive barely half that amount in actual compensation.

According to RAND's analysis of asbestos compensation, transaction costs under the current system—plaintiffs' attorney fees, defense costs, and expenses—consume more than half of the money that goes into the asbestos litigation system. In other words, only about 40 cents on every dollar spent in the asbestos tort system actually reaches victims. Thus, while today's system has a future price tag of $130 to $195 billion, victim compensation is estimated at only $61 to $92 billion of that total.

If adopted, the Act will rein in those runaway transaction costs and provide quick, certain, and fair payment for victims. In fact, my funding proposal, which has been agreed to by the defendant companies and insurers, will actually provide asbestos victims at least $10 billion more than they would receive if the current litigation crisis is left intact.

The primary source of funding under the Act is derived from mandatory contributions: the Act (as reported) required $104 billion in total mandatory contributions from defendants and insurers. In reaching that total, companies and insurers were to be assessed equally and according to specific statutory provisions. Meanwhile, confirmed bankruptcy trust contributions are estimated to provide an additional $4 billion, bringing total mandatory funding under the Act (as reported) to $108 billion.

That funding proposal represented a very fair amount to solve the problem, and provided victims more in direct compensation than they would receive under the current system. The Committee, however, went well beyond this benchmark during markup. S. 1125 (as reported) included significant additional funding provisions. An amendment offered by Senators KOHL and FEINSTEIN authorized the Administrator to compel companies and insurers to pay additional contingent contributions of up to $31 billion, and allowed the Administrator to request back end contributions that could have reached a combined total of $48 billion.

The net effect of these changes to the Act was dramatic. S. 1125 (as reported) could have required businesses and insurers to provide compensation at up to two times the most credible estimates of total future plaintiffs' recoveries under the tort system. As a result, insurers almost uniformly withdrew their support for the Act, calling it ''dangerously unaffordable'' and ''potentially worse than the existing system.''

In order to get the legislation back on track, I initiated a mediation process between insurers and defendant companies. We were able to reach agreement on such major issues as overall funding, allocation of funding obligations, and insurance policy erosion, and gain renewed insurer support for the Act. The agreed-upon revisions not only garnered the support of the business community and insurers for the Act, but would also ensure greater Fund liquidity.

Under my funding proposal, insurers would make nominal mandatory contributions of $46.025 billion on an accelerated payment schedule. Meanwhile, defendants would pay $57.500 billion in total mandatory contributions and, if necessary, defendants would provide $10 billion in additional contingency funding. Most importantly, with confirmed bankruptcy trust assets and interest earned, my proposal would provide at least $10 billion more than the current tort system. It will also preserve one of the great breakthroughs that made widespread business community support for the Act possible—the landmark agreement on a fair and reasonable formula for sharing the funding obligation among defendants. Chairman Hatch is to be commended for shepherding the larger business community to his unprecedented agreement.

In addition, my proposal would better address the Fund's liquidity needs than the Act (as reported). The greatest stress on the Fund is expected to be in the early years when it is required to pay pending as well as current claims. In order to address the resulting liquidity demands, the Act (as reported) allows the Administrator to borrow against the Fund in an amount equal to that of the following calendar year's anticipated contributions. My proposal would give the Administrator authority to obtain billions of dollars of additional funds, if needed, by expanding the Administrator's borrowing authority. All of the Fund's repayment obligations would be fully collateralized by the defendants' and insurers' mandatory contributions, ensuring that federal monies are not put at risk.

Although there are still some funding issues to be worked out, the progress we have made to date is the result of unprecedented cooperation between industry and insurers to find an acceptable solution to the asbestos litigation crisis. We are confident that we can bridge the few remaining differences in the time frame provided.

II. AWARD VALUES

A further step on the path to providing fair compensation for asbestos victims is the establishment of a schedule of claim values that will result in consistent awards. The history of awards under the current tort system is one plagued by uncertainty and unfairness to asbestos victims. Many plaintiffs receive little or nothing, or die before their cases can be heard in court. Of those who do receive awards, the amount of compensation typically depends more on where and when the claims are filed than on the nature of the plaintiffs's illness. In one 1999 Mississippi case involving 4,000 plaintiffs, allocation of a $160 million settlement was based on how far plaintiffs lived from the courthouse in Mississippi. The Mississippi residents each received $263,000. Similarly situated plaintiffs from Ohio, Pennsylvania, and Indiana received only $14,000 each. (See David Cosey, et al. v. E.D. Bullard, et al).

As introduced, S. 1125 contained claim values that were among the highest of any federal compensation program: For example, the award value for claimants compensated under disease level X (mesothelioma) exceeded by three times the maximum death benefits generally available under the National Childhood Vaccine Injury Act, one of the most generous of comparable existing federal programs. Claimant compensation under the FAIR Act's other most serious disease levels was also very generous compared with existing federal programs. Moreover, although the Act's claim values were based loosely on those awarded in existing bankruptcy trusts, it ultimately paid more in real dollars. The Manville Trust, for example, has a scheduled value of $350,000 for mesothelioma claimants, but is only able to pay 5 cents on the dollar, resulting in an award of $17,500. Under S. 1125 (as introduced) such a claimant would have received $750,000—about 43 times the amount actually paid by the Manville Trust. Nonetheless, many Democrats indicated that the values under the Act should be even more generous to claimants.

During Committee consideration of S. 1125, a bipartisan amendment offered by Senators Graham and Feinstein significantly increased the claim values. This amendment was approved by a 14–3 vote of the Judiciary Committee. The Committee also considered and rejected an amendment offered by Senators Leahy and Kennedy to provide even higher claim values. That amendment misallocated funds too heavily toward those with illnesses less clearly linked to asbestos exposure. In addition, the Committee adopted an amendment to index claim awaard values to inflation, further providing billions of dollars in additional payments. Moreover, all claimants meeting Level I requirements—potentially over a million exposed workers—would be eligible for medical monitoring reimbursement and would have their statute of limitations tolled so that, if they do get sick, they would have recourse to all the benefits of the Fund. Since the Committee's consideration, Democrats and organized labor have suggested that the medical monitoring should include the out-of-pocket cost of the physician's examination. I believe this is reasonable and should be in the final bill.

With the changes reported out of Committee, the scheduled values under the FAIR Act were even more generous than before. Continuing an example previously mentioned, S. 1125 (as reported) set the Level X (mesothelioma) claim value at an amount that was not three times, but four times