

Received(Date): 7 OCT 2002 09:37:15

From: "Taylor, Paul" <Paul.Taylor@mail.house.gov> ("Taylor, Paul" <Paul.Taylor@mail.house.gov> [UNKNOWN])

To: ""Wayne_Abernathy@banking.senate.gov"" <Wayne_Abernathy@banking.senate.gov> (""Wayne_Abernathy@banking.senate.gov"" <Wayne_Abernathy@banking.senate.gov> [UNKNOWN]), Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

Cc: "Pinkos, Steve" <Steve.Pinkos@mail.house.gov> ("Pinkos, Steve" <Steve.Pinkos@mail.house.gov> [UNKNOWN])

Subject: : Terrorism Insurance

Begin Original ARMS Header

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR:"Taylor, Paul" <Paul.Taylor@mail.house.gov> ("Taylor, Paul" <Paul.Taylor@mail.house.gov> [UNKNOWN])

CREATION DATE/TIME: 7-OCT-2002 09:37:15.00

SUBJECT:: Terrorism Insurance

TO:"Wayne_Abernathy@banking.senate.gov"" <Wayne_Abernathy@banking.senate.gov> (""Wayne_Abernathy@banking.senate.gov"" <Wayne_Abernathy@banking.senate.gov> [UNKNOWN])

READ:UNKNOWN

TO:Brett M. Kavanaugh (CN=Brett M. Kavanaugh/OU=WHO/O=EOP@EOP [WHO])

READ:UNKNOWN

CC:"Pinkos, Steve" <Steve.Pinkos@mail.house.gov> ("Pinkos, Steve" <Steve.Pinkos@mail.house.gov> [UNKNOWN])

READ:UNKNOWN

End Original ARMS Header

Brett and Wayne, Steve Pinkos asked me to coordinate with you both regarding an offer we would send over to the Senate today regarding terrorism insurance.

As I see it:

The WH, H, and S agree on a federal cause of action and consolidation in federal court.

The WH and H agree on banning punitive damages, and the S has agreed to a "clear and convincing" standard.

The WH and the H support a "fair share" rule for noneconomic damages, and the S has opened the door to that by referring to HR 1 as a model.

The H supports limits on attorneys fees and a collateral source rule.

Here are two ideas on possible agreement:

(1) We can say to the Senate, if HR 1 is to be used as a model, then perhaps if the Senate comes closer to a ban on punitive damages vis a vis HR 1 (say, by agreeing to a "clear and convincing evidence" standard), then the House could modify the fair share rule and come closer to the Senate's opposition to a noneconomic damages rule vis a vis HR 1 by, say, by having the provision provide that a defendant only gets the benefit of a fair share rule if they're less than 50% responsible. The House could also drop the collateral source provision. The House might also continue to push for the

attorneys fees provisions (tied to awards that come from the federal Treasury) since the policy rationale there is simply an extension of that behind the Federal Tort Claims Act. We'd also insist on Treasury Secretary approval of settlements.

(2) We can let the Senate out of their fair share rule box and agree to drop the fair share rule in return for a complete ban on punitive damages. The House might also continue to push for the modified attorneys fees provisions and drop the collateral source provision. We'd also insist on Treasury Secretary approval of settlements.

What are you thoughts on this? Might we arrange a conference call or a meeting on this this morning or soon thereafter? My direct line is 225-7157. My cell phone is P6/b(6)