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Joan Claybrook, President

November 16, 2005

Hon. George V. Voinovich, Chairman
Hon. Tim Johnson, Vice Chairman
Select Committee on Ethics
United States Senate
Room 220 Senate Hart Office Building
Washington, DC 20510

Request for investigation into qualified blind trusts of Sen. William H. Frist

Dear Chairman Voinovich and Vice Chairman Johnson:

As you know, serious questions have been raised about Senate Majority Leader Bill Frist and the conduct of his qualified blind trusts as approved by the committee under Senate ethics rules.¹ The Department of Justice and the Securities and Exchange Commission are investigating the matter, focusing on whether Sen. Frist may have directed sale of stock in HCA Inc., a family business, based on insider knowledge that the stock's value was likely to drop.

We write to request that the committee investigate additional matters regarding Sen. Frist and his blind trusts. As detailed below, our examination of disclosure documents on file with the Senate Office of Public Records indicates that:

- Similar to the situation with HCA, there have also been questionable transactions lucrative to Frist family members in stocks of other companies that had ties to the Frist family.
- There appear to be inconsistencies between what Sen. Frist and his trustees reported as being in the blind trusts.
- There may have been improper communications between the senator and the trustees running his trusts.

¹ In all, there are 13 publicly disclosed qualified blind trusts covering Sen. Frist, his wife and children.

As you know, a blind trust is meant to be a way of insulating an official from financial conflicts of interest, and by extension, of shoring up the public confidence in public officials that's necessary for democratic government to function well. Our findings, however, raise fundamental questions about the operation of Sen. Frist's blind trusts. These include: Given exceptionally well-timed transactions by the trusts in the stock of companies that had ties to the Frist family, was any trading based on insider information? Was there improper communication between Sen. Frist and his trustees? Did trustees handle trust assets appropriately? Were trust assets accurately reported and/or delivered to the trustees?

Because public confidence in government is so important, we ask that you fully investigate the matters described below. In addition, we note that our examination was necessarily based only on publicly available information, which does not include the full range of information reported to the committee. Examination of all relevant records may change our analysis or indicate additional concerns.

1. Several Frist family trusts may have reaped multimillion-dollar gains through investments in another company that had ties to the Frist family.

American Retirement Corp., headquartered in Brentwood, Tenn., offers services to seniors including independent living, assisted living, skilled nursing and Alzheimer's care. It was established in 1978, and among its chief founders was Dr. Thomas F. Frist Sr., one of the principal founders of HCA and father of Sen. Frist.² Frist family members remained major investors in the company until at least the late 1990s, corporate records show.³ Frist Sr. worked closely with the company for many years, in 1995 joining with American Retirement to found the Frist Center at Belmont University in Nashville.⁴ Today, American Retirement regularly touts its past affiliation with Frist Sr.⁵, although it's not clear there is a significant continuing association with the family.

In what appear to be exceedingly well-timed transactions in 2003 and 2005, three of the Frist family blind trusts reaped large gains by acquiring and selling American Retirement stock, according to disclosure documents.

² See "Corporate Profile" at www.arclp.com/investor-overview.html.

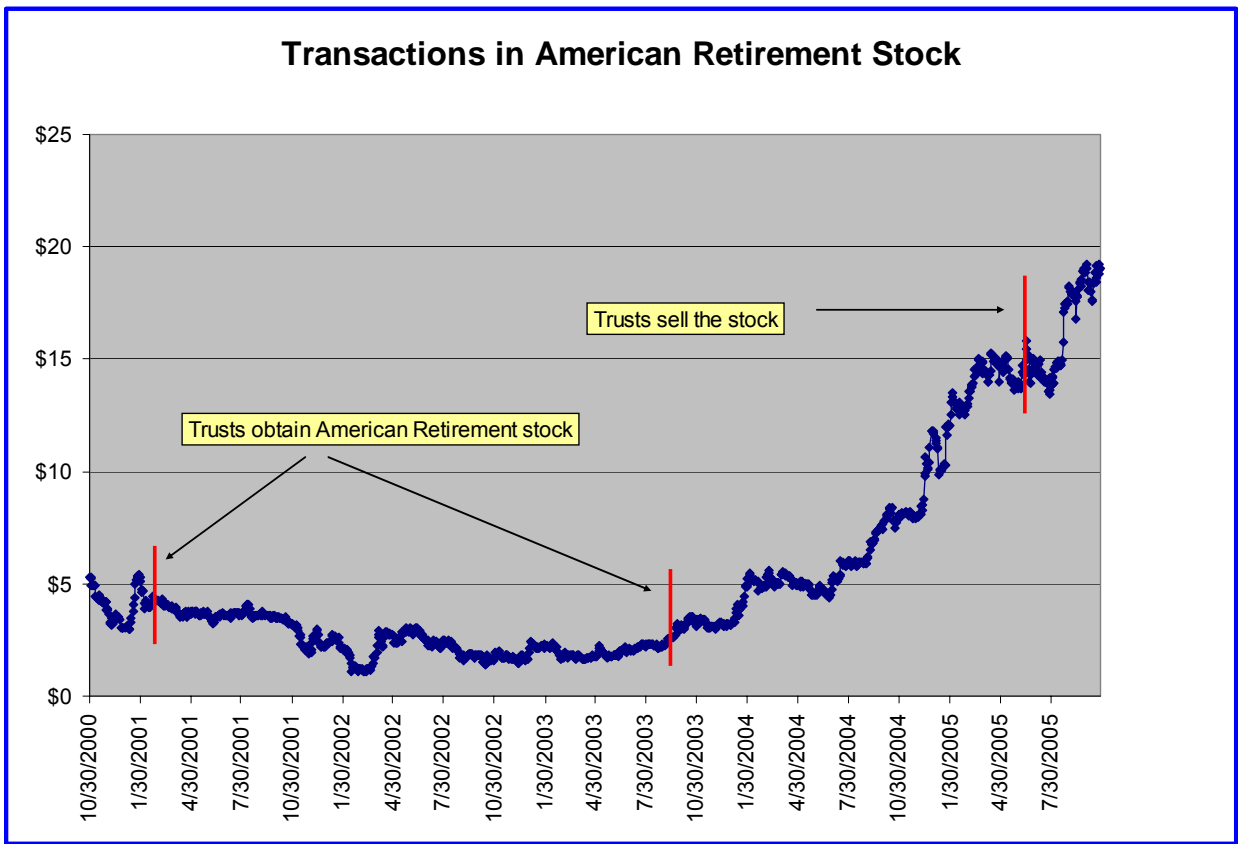
³ See, for example, American Retirement Corp. proxy statements filed with the Securities and Exchange Commission for 1998 and 1999.

⁴ See American Retirement's S-1 statement filed with the Securities and Exchange Commission, March 12, 1997. "...[T]he Company, together with Dr. Frist, founded The Frist Center at Belmont University in Nashville, Tennessee. The Frist Center is a non-profit foundation providing training, education, and career services for management and front line personnel involved in the senior living and health care services industry. The Company works closely with The Frist Center...."

⁵ As American Retirement said, in a representative statement in its 2004 10-K filing with the Securities and Exchange Commission: "We were established in 1978 and our operating philosophy was inspired by the vision of our founders, Dr. Thomas F. Frist, Sr. and Jack C. Massey, to enhance the lives of seniors by striving to provide the highest quality of care and services in well-operated communities designed to improve and protect the quality of life, independence, personal freedom, privacy, spirit, and dignity of our residents."

In a letter dated November 12, 2003, the law firm of Bass, Berry & Sims PLC reported that the W. Harrison Frist Jr. 1991 Qualified Blind Trust, the Bryan E. Frist 1991 Qualified Blind Trust and the Jonathan M. Frist 1991 Qualified Blind Trust each acquired shares of American Retirement on September 25, 2003 worth between \$100,000 and \$250,000.⁶ This means the aggregate value was between \$300,000 and \$750,000. The closing price of the stock on this date was \$3.13.

The price of American Retirement stock had been languishing for several years, but after acquisition by the Frist family trusts, the price rose dramatically. In a letter dated July 8, 2005, Northern Trust reported American Retirement shares had been “completely disposed of” as of June 30, 2005. Although the exact date of that sale was not reported, on that day, the closing price was \$14.62 – a 367 percent gain over the price at time of acquisition. The following chart shows the well-timed acquisition and subsequent run-up in price.



Based on this price move, the aggregate value would have increased to \$1.4 million to \$3.5 million. However, as also shown in the chart, there was also an earlier acquisition of American Retirement shares. It was reported in a February 26, 2001, letter from Bass,

⁶ We note a slight discrepancy: Although the lower bound of the value range in Senate reporting documents is “\$100,001,” it was stated as “\$100,000” in the letter.

Berry & Sims.⁷ This acquisition also consisted of three Frist trusts – the WHF Jr. 2000 Qualified Blind Trust, the BEF 2000 Qualified Blind Trust, and the JMF 2000 Qualified Blind Trust – each receiving stock valued between \$100,001 and \$250,000. This means the aggregate value was between \$300,003 and \$750,000.⁸ The closing price of the stock on February 26, 2001 was \$4.25. Assuming these shares, plus the shares acquired in 2003, were held until sale on June 30, 2005, the total value would have been between \$2.4 million and \$6.1 million.

The sale of the American Retirement shares apparently came at the same time as Sen. Frist’s well-publicized sale of HCA stock.

We underscore that we have no information confirming that anything improper took place in these Frist family trust transactions. Yet the favorable timing, coupled with the company’s past ties to the Frist family, raise questions about whether the transactions were proper. Once again, if only from a public confidence standpoint, resolving the questions are important.

2. Another Frist trust made well-timed sales in the stocks of two other companies that were spun off from Frist’s family company.

The pattern of well-timed stock transactions by the Frist family trusts can be seen in both large and small investments.

A) Triad Hospitals Inc., a Plano, Texas, company that owns and manages hospitals and ambulatory surgery centers, was spun off from HCA in 1999.⁹ In a letter dated May 7, 2002, Equitable Trust Co. reported sale of Triad stock from the William H. Frist GST Exempt Trust.¹⁰ This sale took place six weeks before the stock reached a peak and began a 10-month-long slide during which the price fell 56 percent. Disclosure documents suggest, but do not clearly show, that the value of the stock involved was relatively small – about \$12,350. Thomas F. Frist III, Sen. Frist’s nephew, is a director and major shareholder of Triad,¹¹ and the company is in business dealings with HCA.¹²

⁷ The February 26 letter reports the acquisitions, but does not give a date for them. Thus, the February 26 date is taken as a proxy for the date of the transactions.

⁸ The acquisitions were not actually meant for the three trusts indicated here. In a letter dated November 12, 2003, Berry, Bass & Sims said the American Retirement shares had been mistakenly placed in the three trusts indicated here, and that they were transferred into the correct trusts – the W. Harrison Frist Jr. 1991 Qualified Blind Trust, the Bryan E. Frist 1991 Qualified Blind Trust Agreement and the Jonathan M. Frist 1991 Qualified Blind Trust Agreement – in 2002.

⁹ See “Corporate Profile” at http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=TRI&script=2100, and “About the Company” at http://media.corporate-ir.net/media_files/NYS/TRI/reports/99AR.pdf.

¹⁰ The May 7 letter reports the sale, but does not give a date for it. Thus, the May 7 date is taken as a proxy for the date of the transaction.

¹¹ See 2005 proxy statement filed with the Securities and Exchange Commission April 22, 2005.

¹² “While independent, Triad continues to have HCA connections. It is midway through a seven-year contract to acquire information systems technology from HCA and has an equity share in a buying cooperative whose members include HCA and another HCA spin-off, LifePoint Hospitals of Brentwood (Tenn).” “Building bridges to better health care,” *The Tennessean*, Dec. 29, 2002.

B) LifePoint Hospitals Inc., a Brentwood, Tenn. hospital company that focuses on non-urban care, was likewise spun off from HCA in 1999.¹³ Two transactions are of interest for this company. In a letter dated July 27, 2001, Equitable Trust reported the sale of LifePoint stock from the William H. Frist GST Exempt Trust.¹⁴ This sale took place about four weeks before the stock reached a peak and began a three-month decline during which the price fell 40 percent. About 10 months later, in a letter dated May 7, 2002, Equitable Trust reported the sale of LifePoint stock from the same trust.¹⁵ This sale took place very near a peak, from which the price fell 57 percent over the following 12 months. Disclosure documents likewise suggest the value of the stock was relatively small. LifePoint continues to have business dealings with HCA, including through HealthStream Inc., a health care industry training company.¹⁶ The chief executive officer and a co-founder of HealthStream is Robert A. Frist Jr., Sen. Frist's nephew.¹⁷

Once again, we have no confirmation of impropriety, but the timing of these transactions in advance of steep declines raises questions.

3. Sen. Frist and his trustees have provided inconsistent accounts of what was in the blind trusts.

In several instances, there appears to be inconsistencies about which assets were reported as being in the trusts.

A) The trust agreement for the WHF 2000 Qualified Blind Trust contains this provision:

"2. Acceptance of Trust by Trustee. The Trustee agrees to hold, manage, and invest the assets listed in the attached Schedule A coming into the Trustee's hands according to the provisions hereof...." (emphasis added)

¹³ See "About LifePoint" at www.lifepointhospitals2.com/.

¹⁴ The July 27 letter reports the sale, but does not give a date for it. Thus, the July 27 date is taken as a proxy for the date of the transaction.

¹⁵ The May 7 letter reports the sale, but does not give a date for it. Thus, the May 7 date is taken as a proxy for the date of the transaction.

¹⁶ See for example:

- "While independent, Triad continues to have HCA connections. It is midway through a seven-year contract to acquire information systems technology from HCA and has an equity share in a buying cooperative whose members include HCA and another HCA spin-off, LifePoint Hospitals of Brentwood (Tenn)." "Building bridges to better health care," *The Tennessean*, Dec. 29, 2002 (emphasis added).

- HealthStream Inc. news release Oct. 24, 2001: "HealthStream, Inc. ... today announced that HealthTrust Purchasing Group (HPG), a group purchasing organization, has signed an agreement that establishes HealthStream as the endorsed provider of e-learning solutions for their 587 hospital members. ... HPG's decision to sign with HealthStream allows their major hospital network members -- including Health Management Associates, LifePoint Hospitals, and Triad Hospitals -- to take advantage of HPG's negotiated agreement to adopt the Web-based Healthcare Learning Center(TM) for their employees." (emphasis added)

- Exhibit 10.25 to S-1/A statement filed with the Securities and Exchange Commission March 30, 2000.

¹⁷ See background information for Robert A. Frist Jr. at

http://www.b2i.us/profiles/investor/Management.asp?BzID=804&sm_quote_field=HSTM&CName=

A November 20, 2002, letter from Equitable Trust to Sen. Frist regarding the WHF 2000 Qualified Blind Trust reports disposition of several blocks of shares “originally contributed” to this trust:

1. Midcap Standard & Poor’s Trust Unit SR. 1
2. Nasdaq 100 Trust Unit SR. 1
3. Standard & Poor’s Depository Units
4. International Business Machines (valued at the time of creation of the trust in December 2000 from \$15,001 to \$50,000; values for items 1-3 not available.)

However, Sen. Frist’s Schedule A attachment does not show the holdings indicated in items 1-3 above. Thus, while the trustee reports holdings “originally contributed” to the trust as being sold, Sen. Frist’s original trust document shows no such assets as being originally contributed. It thus appears there is a conflicting account of what was initially in the trust.

B) A July 1, 2005, letter from Equitable Trust to Sen. Frist reports the sale, as per Sen. Frist’s instructions, of HCA Inc. stock in several trusts, including the William H. Frist Charitable Remainder Unitrust.

The letter says: “Pursuant to your letter of direction dated June 13, 2005, all securities issued by HCA, Inc. and securities as a result of owning securities of HCA, Inc. have been sold...There remain no holdings...that were held by said trust at the time it became subject to [blind trust rules] on the date of funding, December 29, 2000.”

This language suggests the trust contained HCA stock on that date of funding. However, Sen. Frist’s Schedule A attachment does not show any HCA holdings at that time. Once again, there appears to be a conflicting account of what was initially in the trust.

C) The William H. Frist GST Exempt Trust agreement contains this provision:

“FOURTH: The trustee shall not knowingly or negligently disclose to the public or to any interested party any information as to the acquisition, retention, or disposition of any particular securities or other Trust property; except that, the Trustee shall promptly notify the Grantor, the U.S. Senate Select Committee on Ethics, and the Secretary of the Senate, Office of Public Records when the holdings of a particular asset transferred to the Trust by any interested party have been completely disposed of or when the value of that asset becomes less than \$1,000.” (emphasis added)

A November 20, 2002, letter from Equitable Trust to Sen. Frist regarding this trust reports disposition of several blocks of shares, including:

“HCA-Healthcare Co.” (valued at the time of amendment of the trust in December 2000 from \$100,001 to \$250,000.¹⁸)

Thus, according to the trust agreement, when the trustee reported the sale of HCA stock, that sale ostensibly represented disposition of all HCA holdings. (If less than all of his holdings were sold, the report would have been in violation of the trust agreement.)

However, the July 1, 2005, letter from Equitable Trust to Sen. Frist indicates a sale of HCA stock from several trusts, including the William H. Frist GST Exempt Trust. If the previous sale of HCA stock in this trust did indeed represent disposition of all HCA holdings in this trust, there should not have been any remaining shares to be sold. If there were not any remaining shares to be sold, there would have been no reason for the trustee to report in the July 1 letter that HCA stock had been sold. (It is possible that if all the HCA shares had been sold previously, new HCA shares could have been acquired and contributed in the meantime. But there is no documentation to that effect, even though such transactions were reported in other instances.)

More broadly, and in the same vein, there are also a number of instances in which it is not clear whether sales being reported by the various trusts are of assets contributed at the time of creation of the trusts, or whether the assets were acquired subsequent to establishment of the trusts.

The committee’s consent letter of December 28, 2000, appears to indicate that sales are to be reported when assets contributed at the creation of the trusts are sold in their entirety. As the committee’s letter stated:

“The trustees are obligated to notify Senator and Ms. Frist and this Committee whenever a holding of the Trusts (that was initially transferred to the Trusts by an interest party) has been disposed of or when the value of such holding is less than \$1,000.” (emphasis added)¹⁹

But if this is true, a number of sales reported in the disclosure documents appear to be incorrect. We do not catalog them all here, but cite this example: In a letter dated August 22, 2002, Northern Trust reports MedQuist Inc. assets transferred to the KMF 2000 Qualified Blind Trust had been “completely disposed of.” Yet an October 28, 2003, letter from Northern Trust also reports complete disposal of MedQuist holdings.

These cases may be no more than a clerical issue. Nevertheless, they create confusion about trust holdings, or could represent improperly reported sales. Some of them could have had the effect of providing an opportunity for Sen. Frist to learn of trust holdings and transactions, thus defeating the purpose of a qualified blind trust. At a

¹⁸ According to disclosure documents, the predecessor of the William H. Frist GST Exempt Trust was created in March 1996. Sen. Frist reorganized the trust, agreeing to administer it as a qualified blind trust under Senate rules, in December 2000.

¹⁹ Letter dated December 28, 2000 to James C. Gooch of Bass, Berry & Sims, from Victor Baird, chief counsel and staff director, Senate Select Committee on Ethics, page 2.

minimum, the transactions are difficult to interpret, thus lessening their disclosure and oversight value.

4. There may have been improper communication between Sen. Frist and his trustees regarding trust transactions.

February 26, 2001, letter from Bass, Berry & Sims, PLC to the Senate Office of Public Records (discussed above in section 1), with a copy sent to Sen. Frist

A) The WHF Jr. 2000 Qualified Blind Trust contains these provisions:

“2. Acceptance of Trust by Trustee. ...The Trustee...in the exercise of its authority and discretion to manage and control the assets of this Trust, shall not consult or notify any interested party.

“7. Communications Between Trustee and Grantor.

(a) General rule. There shall be no direct or indirect communications authorized between the Trustee and the Grantor or any member of the Grantor’s family or any of their affiliates with respect to the Trust except as specifically authorized in paragraph 7(b) and (c) of this agreement.

(subsection b omitted)

(c) Permitted Reports from Trustee. The Trustee shall not knowingly or negligently disclose to the public or to any interested party any information as to the acquisition, retention, or disposition of any particular securities or other Trust property except as specifically authorized in this paragraph 7(c), as follows:

(1) Notice of sale. The Trustee shall promptly notify the Grantor, the U.S. Senate Select Committee on Ethics, and the Secretary of the Senate, Office of Public Records when the holdings of a particular asset transferred to the Trust by any interested party have been completely disposed of or when the value of that asset becomes less than \$1,000.”
(emphasis added)

The February 26, 2001, letter reports “transfers” of assets to, among others, the WHF Jr. 2000 Qualified Blind Trust. These assets were valued from \$100,001 to \$250,000. The nature of this transfer, or the other transfers discussed in sections B and C following, is not clear from publicly available records. The transfer could represent an “acquisition” of “particular” securities, with the letter being notice of that acquisition. If so, it would appear to have been an improper communication from the trustee to Sen. Frist about this transaction.

B) The BEF 2000 Qualified Blind Trust contains the same items 2 and 7 noted above. The February 26, 2001, letter likewise reports a transfer of assets to this trust. These assets were valued from \$100,001 to \$250,000. This transfer could represent an “acquisition” of “particular” securities, with the letter being notice of that acquisition. Therefore, this may also have been an improper communication from the trustee to Sen. Frist about this transactions.

C) The JMF 2000 Qualified Blind Trust contains the same items 2 and 7 noted above. The February 26, 2001, letter likewise reports a transfer of assets to this trust. These

assets were valued from \$100,001 to \$250,000. Similarly, this transfer could represent an “acquisition” of “particular” securities, with the letter being notice of that acquisition. Therefore, there may have been an improper communication from the trustee to Sen. Frist about this transaction.

Section 3 of the trust agreements allows “contribution of additional assets to the trust,” but is silent on “transfers.” (emphasis added) The February 26, 2001, letter also refers to “contributions to Frist blind trusts,” but nevertheless describes them as “transfers.” In examining the transactions, we accept the terms as drafted. The distinction, if any, between a contribution and a transfer is important, because in one case, the communications to Sen. Frist may have been proper, while in the other, they may not have been.

Sen. Frist’s chief of staff, Eric Ueland, has said that Sen. Frist was notified only when new assets were contributed or when assets were liquidated.²⁰ However, the description of transactions in the correspondence is at odds with the express terms of the trust agreements.

The November 12, 2003, letter from Bass, Berry & Sims, PLC, to the Senate Office of Public Records (discussed above in section 1), with a copy sent to Sen. Frist

A) The W. Harrison Frist, Jr. 1991 Qualified Blind Trust Agreement contains these provisions:

- “SECOND: The Trustee shall administer this trust in accordance with the requirements of the Act and, in the exercise of its authority and discretion to manage and control the assets of this Trust, shall not consult or notify any interested party.” (emphasis added)
- and
- “FOURTH: The trustee shall not knowingly or negligently disclose to the public or to any interested party any information as to the acquisition, retention, or disposition of any particular securities or other Trust property; except that, the Trustee shall promptly notify the Grantor, the U.S. Senate Select Committee on Ethics, and the Secretary of the Senate, Office of Public Records when the holdings of a particular asset transferred to the Trust by any interested party have been completely disposed of or when the value of that asset becomes less than \$1,000.”
- and
- “SIXTH: An interested party shall not receive any report on the holdings...of the trust [other than provided by the FOURTH provision, and with exceptions for quarterly and annual reports on total value and income, and information on net income or loss, for purposes of income tax filing]. (emphasis added)

²⁰ Letter to the editor, Washington Post, October 27, 2005.

The November 12, 2003, letter noted above describes “Additions to Trusts in 2003” for this trust. The two “additions” reported to this trust may be an “acquisition” of “particular” securities, with the letter being notice of that acquisition. Therefore, there may have been an improper communication from the trustee to Sen. Frist about this transaction.

B) The Bryan E. Frist 1991 Qualified Blind Trust Agreement contains the same SECOND, FOURTH and SIXTH provisions noted above. The November 12, 2003, letter also reports “Additions to Trusts in 2003” for this trust. The two “additions” reported to this trust may be an “acquisition” of “particular” securities, with the letter being notice of that acquisition. Therefore, there may have been an improper communication from the trustee to Sen. Frist about this transaction.

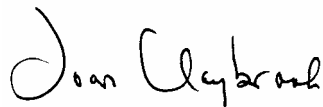
C) The Jonathan M. Frist 1991 Qualified Blind Trust Agreement contains the same SECOND, FOURTH and SIXTH provisions noted above. The November 12, 2003, letter also reports “Additions to Trusts in 2003,” for this trust. The two “additions” reported to this trust may be an “acquisition” of “particular” securities, with the letter being notice of that acquisition. Therefore, there may have been an improper communication from the trustee to Sen. Frist about this transaction.

As noted above, Sen. Frist’s chief of staff has said that Sen. Frist was notified only when new assets were contributed or when assets were liquidated. However, the descriptions of transactions are at odds with the express terms of the trust agreements.

For all the foregoing reasons, we believe our examination has raised substantive questions about handling of Sen. Frist’s qualified blind trusts. Given the fact that Sen. Frist has significant financial interests in health care matters; that he has played a key role in health care legislation; that he is one of the highest-ranking officers of the Senate; and that the public has an overriding interest in ethical government, we believe an investigation into these matters is necessary and appropriate.

We look forward to your prompt action.

Sincerely yours,



Joan Claybrook



Frank Clemente
Director
Public Citizen’s Congress Watch