in placing a cap on those punitive damages. Punitive damages are not intended as compensation, they are intended to be punishment. In the case of Browning Ferris Industries versus Kelso, 1989, all nine members of the Supreme Court of the United States expressed concern regarding punitive damages. Those justices are not extremists, those justices are not Republicans, those justices look at the law in the cases that come before them.

Justice Brennan, who is hardly a rightwing extremist, and countless other members of the Court have stated time and time again that punitive damages are for punishment of aggravated conduct and are a windfall to the plaintiffs.

The impact of such a windfall recovery is both unpredictable and at times substantial, said the court in Newport versus Fall Concerts, 1981. ''Juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused,'' said the Supreme Court in Gertz versus Robert Welsh, Inc., 1974.

Let us put some sense in this area. Let us reject the Furse amendment.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentlewoman from Oregon [Ms. FURSE].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Ms. FURSE. Mr. Chairman, I demand a recorded voter.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 155, noes 272, not voting 7, as follows:

[Roll No. 223]

AYES—155

Abercrombie	English	LaFalce
Ackerman	Eshoo	Lantos
Andrews	Evans	Laughlin
Baldacci	Farr	Levin
Barcia	Fattah	Lewis (GA)
Becerra	Fields (LA)	Lipinski
Beilenson	Filner	Lofgren
Bentsen	Flake	Lowey
Berman	Foglietta	Luther
Bishop	Ford	Maloney
Bonior	Fox	Manton
Borski	Frost	Markey
Brown (CA)	Furse	Mascara
Brown (FL)	Gejdenson	Matsui
Brown (OH)	Gephardt	McDade
Bryant (TX)	Gibbons	McDermott
Clay	Gonzalez	McHale
Clayton	Green	McKinney
Clyburn	Gutierrez	Meehan
Coble	Hall (OH)	Meek
Coleman	Hastings (FL)	Mfume
Collins (IL)	Hefner	Miller (CA)
Collins (MI)	Hilliard	Mineta
Conyers	Hinchey	Minge
Costello	Holden	Mink
Coyne	Hoyer	Moakley
de la Garza	Istook	Murtha
DeFazio	Jackson-Lee	Nadler
DeLauro	Jefferson	Neal
Dellums	Johnson (SD)	Oberstar
Deutsch	Johnson, E. B.	Olver
Dicks	Johnston	Ortiz
Dingell	Kanjorski	Owens
Dixon	Kennedy (MA)	Pallone
Doggett	Kennedy (RI)	Pastor
Doyle	Kennelly	Payne (NJ)
Durbin	Kildee	Pelosi
Engel	Klink	Pomeroy
Poshard	Serrano	Velazquez
Rahall	Skaggs	Vento
Reynolds	Skelton	Visclosky
Richardson	Slaughter	Ward
Rivers	Stark	Waters
Rose	Stokes	Watt (NC)
Roybal-Allard	Studds	Waxman
Rush	Stupak	Williams
Sabo	Tejeda	Wilson
Sanders	Thompson	Wise
Sawyer	Thurman	Woolsey
Schroeder	Torres	Wyden
Schumer	Traficant	Yates
Scott	Tucker	

NOES—272

Allard	Fowler	Meyers
Archer	Frank (MA)	Mica
Armey	Franks (CT)	Miller (FL)
Bachus	Franks (NJ)	Molinari
Baesler	Frelinghuysen	Mollohan
Baker (CA)	Frisa	Montgomery
Baker (LA)	Funderburk	Moorhead
Ballenger	Gallegly	Moran
Barr	Ganske	Myers
Barrett (NE)	Gekas	Myrick
Barrett (WI)	Geren	Nethercutt
Bartlett	Gilchrest	Neumann
Barton	Gillmor	Ney
Bass	Gilman	Norwood
Bateman	Goodlatte	Nussle
Bereuter	Goodling	Obey
Bevill	Gordon	Orton
Bilbray	Goss	Oxley
Bilirakis	Graham	Packard
Bliley	Greenwood	Parker
Blute	Gunderson	Paxon
Boehlert	Gutknecht	Payne (VA)
Boehner	Hall (TX)	Peterson (FL)
Bonilla	Hamilton	Peterson (MN)
Bono	Hancock	Petri
Boucher	Hansen	Pickett
Brewster	Harman	Pombo
Browder	Hastert	Porter
Brownback	Hastings (WA)	Portman
Bryant (TN)	Hayes	Pryce
Bunn	Hayworth	Quillen
Bunning	Hefley	Quinn
Burr	Heineman	Radanovich
Burton	Herger	Ramstad
Buyer	Hilleary	Reed
Callahan	Hobson	Regula
Calvert	Hoekstra	Riggs
Camp	Hoke	Roberts
Canady	Horn	Roemer
Cardin	Hostettler	Rogers
Castle	Houghton	Rohrabacher
Chabot	Hunter	Ros-Lehtinen
Chambliss	Hutchinson	Roth
Chapman	Hyde	Roukema
Chenoweth	Inglis	Royce
Christensen	Jacobs	Salmon
Chrysler	Johnson (CT)	Sanford
Clement	Johnson, Sam	Saxton
Clinger	Jones	Scarborough
Coburn	Kaptur	Schaefer
Collins (GA)	Kasich	Schiff
Combest	Kim	Seastrand
Condit	King	Sensenbrenner
Cooley	Kingston	Shadegg
Cox	Kleczka	Shaw
Cramer	Klug	Shays
Crane	Knollenberg	Shuster
Crapo	Kolbe	Sisisky
Cremeans	LaHood	Skeen
Cunningham	Largent	Smith (MI)
Danner	Latham	Smith (NJ)
Davis	LaTourette	Smith (TX)
Deal	Lazio	Smith (WA)
DeLay	Leach	Solomon
Diaz-Balart	Lewis (CA)	Souder
Dickey	Lewis (KY)	Spence
Dooley	Lightfoot	Spratt
Doolittle	Lincoln	Stearns
Dornan	Linder	Stenholm
Dreier	LoBiondo	Stockman
Duncan	Longley	Stump
Dunn	Lucas	Talent
Edwards	Manzullo	Tanner
Ehlers	Martinez	Tate
Ehrlich	Martini	Tauzin
Emerson	McCarthy	Taylor (MS)
Ensign	McCollum	Taylor (NC)
Everett	McCrery	Thomas
Ewing	McHugh	Thornberry
Fawell	McIntosh	Thornton
Fazio	McKeon	Tiahrt
Fields (TX)	McNulty	Torkildsen
Flanagan	Menendez	Torricelli
Foley	Metcalf	Towns
Upton	Watts (OK)	Wolf
Volkmer	Weldon (FL)	Wynn
Vucanovich	Weldon (PA)	Young (AK)
Waldholtz	Weller	Young (FL)
Walker	White	Zeliff
Walsh	Whitfield	Zimmer
Wamp	Wicker	

NOT VOTING—7

Cubin	Livingston	Rangel
Forbes	McInnis	
Kelly	Morella	

☐ 1646

The Clerk announced the following pairs: On this vote:

Mr. Rangel for, with Mr. Forbes against.

Mr. CHAPMAN and Mr. TORRICELLI changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. KELLY. Mr. Chairman, I voted ''nay'' on the Furse amendment to H.R. 956, Common Sense Product Liability and Legal Reform Act, but my vote did not register by the electronic voting device.

PERSONAL EXPLANATION

Mr. MCINNIS. Mr. Chairman, I was unable to vote on rollcall Vote No. 223 because I was serving as the chairman pro tem of the Committee on Rules, during this vote. Had I been present, I would have voted ''no'' on the amendment offered by Representative FURSE.

The CHAIRMAN. It is now in order to consider amendment No. 8 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HYDE

Mr. Chairman, I offer an amendment at the desk, made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE: Page 3, line 12, strike ''are'' and insert ''is''.

Page 3, line 15, strike ''protect'' and insert ''project''.

Page 3, line 23, strike ''and is costing'' and insert ''causing''.

Page 4, line 18, strike ''transactions'' and insert ''transaction''.

Page 8, beginning in line 2, strike ''Except as provided in subsection (c) in'' and insert ''In''.

Page 8, line 11, strike ''the'' and insert ''a''.

Page 18, redesignate subsection (e) as subsection (f) and insert after line 16 the following:

(e) EXCEPTION.—

(1) REASONABLE CARE.—A failure to exercise reasonable care in selecting among alternative product designs, formulations, instructions, or warnings shall not, by itself, constitute conduct that may give rise to punitive damages.

(2) AWARD OF OTHER DAMAGES.—Punitie damages may not be awarded in a product liability action unless damages for economic and noneconomic loss have been awarded in such action. For purposes of this paragraph, nominal damages do not constitute damages for economic and noneconomic loss.

Page 18, line 17, strike ''CONSIDERATION'' and insert ''CONSIDERATIONS''.

Page 29, in lines 8 and 12, strike ''has'' and insert ''has or should have''.

MODIFICATION TO AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I ask unanimous consent to delete lines 1 through 9 on page 1 of my amendment in subparagraph E, and on page 2, lines 1 through 4.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment offered by Mr. HYDE: Strike out ''Page 18, redesignate'' and all that follows through the proposed new subsection (e) of section 201.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. CONYERS. Mr. Chairman, reserving the right to object, I want to commend the gentleman from Illinois [Mr. HYDE] for this modification, which has come about as a result of the discussions between our staffs. I think this is a very important deletion, because it makes the amendment more technical and takes out the part that was giving us a lot of trouble. I commend the gentleman.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The CHAIRMAN. The amendment is modified.

The text of the amendment, as modified, is as follows:

Amendment offered by Mr. HYDE, as modified: Page 3, line 12, strike ''are'' and insert ''is''.

Page 3, line 15, strike ''protect'' and insert ''project''.

Page 3, line 23, strike ''and is costing'' and insert ''causing''.

Page 4, line 18, strike ''transactions'' and insert ''transaction''.

Page 8, beginning in line 2, strike ''Except as provided in subsection (c), in'' and insert ''In''.

Page 8, line 11, strike ''the'' and insert ''a''.

Page 18, redesignate subsection (e) as subsection (f) and insert after line 16 the following:

Page 18, line 17, strike ''CONSIDERATION'' and insert ''CONSIDERATIONS''.

Page 29, in lines 8 and 12, strike ''has'' and insert ''has or should have''.

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] is recognized for 5 minutes, and a Member in opposition will be recognized for 5 minutes.

The Chair recognizes the gentleman from Illinois.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment consists primarily of technical corrections to the text of H.R. 1075. It is almost exclusively technical in nature.

In section 101, Findings and Purposes, the amendment changes the tense of words, corrects typographical errors, and makes a plural word singular.

In section 105, Misuse or Alteration, it removes the reference to a nonexistent subsection (c) and says ''a'' defendant, rather than ''the'' defendant.

In the heading for subsection 201(f) the amendment makes the word ''Consideration'' plural, because there is a list of nine different factors that the jury is directed to consider.

In section 303 which is the Definitions section of the Biomaterials Suppliers title, the amendment makes it clear that a person would not be a ''biomaterials supplier'' within the meaning of title III, if it has ''or should have'' registered with the Secretary of Health and Human Services pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act, or has ''or should have'' included a medical device on the list of devices filed with the Secretary of HHS pursuant to section 510(j) of the same law.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. Without objection, the gentleman from Michigan [Mr. CONYERS] can claim the 5 minutes in opposition to the amendment.

There was no objection.

Mr. CONYERS. Mr. Chairman, I do so, and I yield myself such time as I may consume. Mr. Chairman, I agree that the interpretation given by the chairman of the Committee on the Judiciary is correct. I think the gentleman has facilitated this, with a lot of time being saved by his having made the deletion. We have no objection to the technical amendment, and urge support of the amendment.

I yield back the balance of my time.

Mr. HYDE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. HYDE] as modified.

The amendment, as modified, was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 9 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. OXLEY

Mr. OXLEY. Mr. Chairman, I offer an amendment made in order pursuant to the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. OXLEY: Page 19, insert after line 19 the following:

(f) DRUGS AND DEVICES.—

(1)(A) Punitive damages shall not be awarded against a manufacturer or product seller of a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)) or medical device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) which caused the claimant's harm where—

(i) such drug or device was subject to premarket approval by the Food and Drug Administration with respect to the safety of the formulation or performance of the aspect of such drug or device which caused the claimant's harm or the adequacy of the packaging or labeling of such drug or device, and such drug was approved by the Food and Drug Administration; or

(ii) the drug is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(B) Subparagraph (A) shall not apply in any case in which the defendant, before or after pre-market approval of a drug or device—

(i) intentionally and wrongfully withheld from or misrepresented to the Food and Drug Administration information concerning such drug or device required to be submitted under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 of the Public Health Service Act (42 U.S.C. 262) that is material and relevant to the harm suffered by the claimant, or

(ii) made an illegal payment to an official or employee of the Food and Drug Administration for the purposes of securing or maintaining approval of such drug or device.

(2) PACKAGING.—In a product liability action for harm which is alleged to relate to the adequacy of the packaging (or labeling relating to such packaging) of a drug which is required to have tamper-resistant packaging under regulations of the Secretary of Health and Human Services (including labeling regulations related to such packaging), the manufacturer of the drug shall not be held liable for punitive damages unless the drug is found by the court by clear and convincing evidence to be substantially out of compliance with such regulations.

The CHAIRMAN. Pursuant to the rule, the gentleman from Ohio [Mr. OXLEY] will be recognized for 20 minutes, and a Member opposed to the amendment will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Chairman, I rise to offer the bipartisan FDA defense amendment, along with my colleagues Mr. COBURN, Mr. BURR, Mr. TAUZIN, Mr. BREWSTER, and Mr. STENHOLM.

Mr. Chairman, the amendment states simply that when the manufacturer of a drug or medical device receives premarket approval from the FDA and complies with all post-approval reporting requirements, the manufacturer will not be liable for punitive damages in a civil suit.

The amendment protects the rights of plaintiffs to receive full compensatory damages, including pain and suffering. Punitive damages are not compensatory. They are intended to punish malicious conduct. To bring a drug from the laboratory to the marketplace takes on average 9½ years and costs manufacturers $350 million. The sponsors and supporters of this amendment believe that compliance with the process, and post-approval reporting requirements, clearly demonstrate a lack of malice. Punitive damages are quasi-criminal in nature, and careful adherence to an expensive 10-year process is certainly not criminal.

Members have asked me, what if the manufacturer knows the drug is dangerous, but still goes through the process and gets FDA approval? The defense is denied in that case, as it is when a manufacturer discovers a problem after approval. The defense only applies when the maker of the drugs or device acts in good faith and discloses all relevant information.

This amendment is needed to provide some predictability for liability in the development of life-saving drugs and medical devices. Because of our liability lottery, drugs are more expensive in the United States than almost anywhere on Earth. Products are kept off the market, or withdrawn after introduction. The effect of our liability system on drugs and medical devices was recently summarized by the American Medical Association:

> Innovative new products are not being developed or are being withheld from the market because of liability concerns * * * Certain older technologies have been removed from the market not because of sound scientific evidence indicating lack of safety or efficacy, but because product liability suits have exposed manufacturers to unacceptable financial risks.

Mr. Chairman, writing on punitive damage damages, Justice Lewis Powell said, ''* * * punitive damages invite punishment so arbitrary as to be virtually random.''

Faced with a threat of random punishment, many manufacturers are understandably reluctant to put a new drug or device on the market. Our amendment says to them invest $350 million, wait 9½ years, obtain FDA approval, observe all reporting requirements, disclose fully, and we will say you did not act wantonly or maliciously. If your product causes injury, you are responsible for compensation. That determines the difference between economic and noneconomic and punitive damages. The plaintiff will be able to recover economic and noneconomic damages.

This amendment is common sense and deserves the support of this body. I urge my colleagues to support this amendment.

Mr. Chairman, I reserve the balance of my time.

□ 1700

The CHAIRMAN. Is there a Member who wishes to manage opposition to the amendment?

Mr. DINGELL. Mr. Chairman, I do.

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] is recognized for 20 minutes.

Mr. DINGELL. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, the FDA defense has been a topic of considerable discussion and controversy over the years. In the past I have supported the adoption of provisions affording the FDA defense. This was done based on my belief that strong support and appropriate oversight by the Congress would enable the FDA to provide thoughtful, careful review for drug and medical device approvals and scrupulous post-market surveillance, all of which are essential to the protection of the American consuming public.

If this were to be the case, there would be no question but what Congress should afford the FDA approval as a defense against punitive damages. Regrettably, that appears not, however, to be the case. Times have changed and it appears that congressional support for FDA and support for a strong, viable, adequately-funded, well-staffed agency is at risk at this particular time.

We have been hearing about privatizing, cutting back, reducing and eliminating FDA. It is my strong belief that until these questions have been satisfactorily resolved and until we are satisfied that FDA approval really means something, that we should not then afford a weakening of the civil suit process which affords protection to the American consumer from misbehavior by manufacturers of devices and prescription pharmaceuticals.

The ability of FDA to properly process the business before them, to see to it that the new drugs are properly approved, that all information necessary is produced, to see to it that there is no deceit or duplicity in the offer, to see to it that there are no changes in the drugs as manufactured, to see to it that the Food and Drug Administration's requirement for good manufacturing practices be met during the manufacturing of the drugs is absolutely essential to consumer safety. If that is to be tampered with or impaired with through the budget process or through actions of Congress or through less than vigorous enforcement by the administration because of lack of adequate funds or because of congressional pressure, then clearly this kind of amendment is not in the public interest.

I would urge, therefore, that until we have seen more fully the state of affairs with regard to the strength and the adequacy of FDA supervision of new drugs, new drug applications, and with regard to the safety and adequacy of supervision by FDA of devices, that this Congress should not relax the supervision that is given to manufacturers of both devices and prescription pharmaceuticals until we are more sure that the protections of FDA are meaningful and have not been impaired by budget cuts, by reductions in the authority of the agency, by roll back of the abilities of the agency to carry out its responsibility or by actions like those taken more recently by the Congress in setting up cost-benefit analyses and things of that kind. Those are actions which are inimical to good protection of the consumer and to assurances of adequate safety, because if FDA must take that length of time to do these things, they will not be looking at the question of safety of prescription pharmaceuticals or devices from the standpoint only of health and safety of the individual who purchases that commodity.

Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from North Carolina [Mr. BURR].

Mr. BURR. Mr. Chairman, I rise today in support of the FDA exemption amendment. In the past several weeks, we have made many efforts to streamline government and to eliminate unnecessary duplication. This is another area where we can effectively do just that.

The Food and Drug Administration has been charged with scientifically weighing the risks and benefits that go along with the development of pharmaceuticals and medical devices. Anyone would be hard pressed to successfully argue that randomly selected tort juries are more qualified to reach these difficult, scientific conclusions.

Progress comes with a certain degree of risk. Opponents of this amendment have argued that it will limit the ability of those harmed by a minimal risk factor to receive compensatory and non-economic damages such as pain, suffering, and lost wages.

This amendment does not preclude their right to just compensation.

By offering this exemption from punitive damages, our amendment will allow many people to reap the benefits of drugs and devices that companies have not manufactured, for fear of litigation.

Support life drug research. Support a scientific balance between benefits and risk. Support the Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment to H.R. 1075.

Mr. DINGELL. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I just wanted to cite a case of corporate wrongdoing that would benefit by the passage of this amendment as an example of why it should not pass. This is the O'Gilvie versus International Playtex case from Kansas, 1985, where Playtex voluntarily removed from the market tampons linked to toxic shock syndrome after a Federal court jury awarded compensatory and punitive damages. A Kansas woman died from toxic shock syndrome using the company's super-absorbent tampons.

Playtex had complied with FDA regulations. It had gotten that approval fair and square. However, the jury found that the FDA requirements only set minimum standards and mere compliance with those standards had been inadequate under the circumstances.

Mr. Chairman, the 10th circuit, in reviewing the case on appeal, found that there is an abundance of evidence that Playtex deliberately disregarded studies and medical evidence linking high-absorbency tampon fibers with increased risk of toxic shock at a time when other manufacturers were responding to this information by modifying or withdrawing their product. Moreover, there is evidence that Playtex deliberately sought to profit from this situation by advertising the effectiveness of its high-absorbency tampons when it knew that other manfacturers were reducing the absorbencies of their products due to the evidence of casual connection between high absorbency and toxic shock.

Mr. Chairman, consumers are now protected from this product. With the

passage of this amendment, we will be turning the clock back on consumer protection. Unfortunately, it is consistent with the loser pays and limits on awards and other discouragements from people bringing these meritorious suits to protect the consumer from these products.

I hope we will defeat the amendment.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Oklahoma [Mr. COBURN].

Mr. COBURN. Mr. Chairman, I want to thank the gentleman from Virginia for bringing this up for in fact that is a misconception on the case against the Playtex. And under this bill, they would be fully liable. They would not be excluded under this amendment from full prosecution, and they would have been exposed to FDA clearance and punitive damages. This bill would not have excluded that agreement from punitive damages. Because, in fact, they have knowledge or did have knowledge of the worsening condition which was required to be reported to the FDA.

Mr. SCOTT. Mr. Chairman, will the gentleman yield?

Mr. COBURN. I yield to the gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, if they complied and provided all of the information and FDA approved it anyway, when there were studies that the FDA just approved it, when the jury found that only minimum standards were set——

The CHAIRMAN. The time of the gentleman from Oklahoma [Mr. COBURN] has expired.

Mr. DINGELL. Mr. Chairman, how much time remains on both sides, please?

The CHAIRMAN. The gentleman from Michigan [Mr. DINGELL] has 14 minutes remaining, and the gentleman from Ohio [Mr. OXLEY] has 14 minutes remaining.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I thank the gentleman for yielding time to me.

Just on this last point, the exemption from immunity for punitive damages is the defendant before or after premarket approval of a drug or device intentionally and wrongfully withheld from or misrepresented to the FDA information concerning such drug or device. It is not whether or not the party knew that harm could come from the product, whether there was any of that kind of conduct. It is withholding of information from the FDA. That is the only escape clause here.

I disagree, from what I have heard about this case, with the gentleman.

The point I would like to make follows up a little bit on the gentleman from Michigan's point. We are getting, sometimes there is a great deal of pressure on the FDA to loosen up its regulatory process to allow drug approval quicker. In my own area where the medical device manufacturers, they are furious and being driven crazy by the delays they have in getting products on the market. But never one has ever said to me that they should be able to get away from accountability and responsibility for their negligence or avoid punitive damages for the conduct, intentional or wanton disregard, conduct, or reckless conduct from tort liability.

I just find it very strange that the same party that is promoting the concept of deregulation so strongly now wants to undermine the other way in which we can keep parties responsible to a high standard of conduct, which is the accountability through the judicial process. When you do both, I promise you the consequence is going to be greater negligence, greater harm, less willingness to take the kinds of precautions necessary to avoid danger. That is why I think this is a bad situation.

I would like to read about one case myself. In 1980 the drug Zomax, a painkiller, was marketed by the McNeil Drug Co. Reports in 1982 of allergic reactions causing death and severe illness came to McNeil. McNeil reported those adverse drug reactions to the FDA as required, thereby not getting out of avoiding that problem of the punitive damage suit if this were to be in effect, and the company embarked on a massive selling campaign to get rid of the supply before the word spread about the negative side effects. The salesmen were instructed to not bring up the subject.

During the McNeil sales campaign 14 people died and over 400 suffered life-threatening allergic reactions. Incidentally, McNeil Pharmaceutical called its Zomax campaign one-eleven, representing the $111 million sales target by McNeil.

When you have this law in place, FDA has approved it, FDA had all the information, but Zomax acted wrongfully and in an intentional—McNeil acted wrongfully and in an intentional fashion to market a product they knew had adverse reactions without advising the consumers of this and without letting the FDA know that they were increasing their marketing.

Mr. OXLEY. Mr. Chairman, I yield 1 minute and 30 seconds to the gentlewoman from New York [Ms. MOLINARI].

Ms. MOLINARI. Mr. Chairman, I rise today in strong support of the amendment of the gentleman from Ohio [Mr. OXLEY], and I urge my colleagues to include it in the bill.

The purpose of the amendment is very simple. If the FDA has approved a drug or a device, then the manufacturer cannot be held liable for punitive damages, unless, as in the case of the tampons and the toxic shock syndrome, the company withheld information regarding potential damages. This amendment in that case clearly would not apply.

Mr. Chairman, I find it disturbing that some opponents of this amendment claim it is antiwoman. This is a provision that is prowomen. I will tell you why.

Last year $600 million was spent on cosmetic research, $30 million was spent on contraceptive research. Only two companies currently perform contraceptive research. The reason why is they fear huge punitive damages. Research in this area and in the larger area of reproductive health is too risky for companies. And it is not just reproductive health research. It is research on other diseases, too.

One in nine women will get breast cancer in her lifetime, and although there are treatments, there are no cures. It frightens me that there may be a cure out there but companies will not find it, because the risk liability is too great. We cannot afford to let this happen, not for breast cancer, not for uterine cancer, not for any disease that strikes predominantly men or women.

It is a tragedy, but we should not punish companies that play by FDA's stringent rules. If you ask me, I think it is a far greater tragedy that young men and women die because drug companies are afraid to pursue research.

□ 1715

Mr. DINGELL. I yield 4 minutes to the gentleman from California [Mr. WAXMAN].

(Mr. WAXMAN asked and was given permission to revise and extend his remarks.)

Mr. WAXMAN. Mr. Chairman, let us understand that this legislation before us today sets a very high threshold before punitive damages can be awarded. I think what this amendment is doing is using the FDA as a cover for manufacturers whose products have caused real harm to consumers. Even in cases where the manufacturers' behavior has been egregious, malicious, or knowingly negligent, there is a high standard for collection of awards. Title II of the bill states that in order to collect punitive damages, a claimant must be able to show by clear and convincing evidence that a manufacturer specifically intended to cause harm or engage in conduct that illustrated a conscious, flagrant indifference to the safety of others.

If a plaintiff who is injured can maintain that threshold and show that a company acted with flagrant disregard for the safety of others, why should a drug company be protected because of the FDA approval? The FDA approval does not mean that the FDA is there as a watchdog, to be sure that the company, after it has that approval, is doing everything it properly should. The FDA may never know about the complaints that the company has had that the product that they manufacture is now causing a lot of harm to people, yet they continue to sell it. Should an injured consumer be punished if a company continues to sell a product which it knows or suspects is not performing properly, when the company was in possession of numerous consumer complaints or other

kinds of reports that it may, technically, not have been ''required to submit'' to the FDA?

Mr. Chairman, the FDA has very limited independent legal authority to demand documentation from manufacturers, nor does the agency have the resources to police these manufacturing facilities. The agency relies on the manufacturers to be honest and to follow the rules. The majority of them, no doubt, do that.

However, what about those cases where they do not, but they still technically meet the test of this amendment; that is, they submitted what was required to FDA, they have not bribed an official, they have not lied to the FDA during the product review in order to receive an approval? What about those cases where there is harm and that harm is a result of the company's misconduct, or of the company's taking chances on safety, of a company's operating just on the razor's edge of legality?

For those cases, this bill establishes, elsewhere, a high standard under which consumers would seek punitive damages. That standard is sufficient to protect ethical, honest, careful companies. Such companies do not need to hide behind the shield of this FDA defense that this amendment would provide.

Mr. Chairman, I would like to point out that we do not have a crisis of high punitive damages being awarded in these cases. The reports about this kind of national crisis traceable to outlandish and numerous awards of punitive damages are not supportable by actual data. Contrary to what the supporters of this amendment would like us to believe, punitive damages are not common in product liability lawsuits. In the cases where such damages are awarded, they are not excessively high.

A number of scholarly legal studies published between 1987 and 1991 concluded that punitive damages in a variety of State jurisdictions was awarded in no more than 8 percent of the cases. In those cases, awards were on the average comparable in size to amounts awarded for compensatory damages.

Mr. OXLEY. Mr. Chairman, I yield 6 minutes to my good friend, the gentleman from Texas [Mr. STENHOLM].

Mr. STENHOLM. Mr. Chairman, I thank the gentleman for yielding me this time, and I yield to the gentlewoman from California [Ms. HARMAN].

Ms. HARMAN. Mr. Chairman, as a woman, mother of four, and corporate lawyer, my life experience intersects the issues involved in this amendment in many ways. My decision to support it was a close one for me, and I thank my colleagues on both sides for giving me the time to explain my views.

On the one hand, all of us are horrified by the stories of individuals, many of them women, injured by drugs and medical devices. However, on the other hand, there is a fundamental fairness argument, and real evidence that our present system chills research and development on new drugs and medical device breakthroughs which could be enormously helpful to various at-risk communities, especially women.

This amendment is based on the view that if a drug manufacturer is in full compliance, and I stress, full compliance with Federal regulatory requirements, it should not be liable for damages designed to otherwise punish that behavior. I agree. To be sure, the FDA is not all-knowing when it comes to assuring product safety, but it is the best mechanism we have available in balancing the social values associated with drugs and medical devices and the unfortunate injuries which may result from known or unknown side effects. If there are ways to improve the FDA's performance, let us do it.

There are risk living in a modern, technologically advanced society. I hope we can minimize those risks, but I give a very high priority to the development of a predictable and fair system where pharmaceutical and biotechnology firms can rely on Government approval and reasonable limits on liability, and thus, invest the millions of dollars it takes to develop medical breakthroughs that will benefit all our citizens. Without these breakthroughs, women really will not have choice, none of us will have choice. None of us will have the opportunities that our first-rate and first-in-the-world medical system could offer.

I urge support of this amendment, and would make three related comments about this legislation. First, I hope as it moves through the Congress, two things will change. First, I think the noneconomic damages, which are extremely important to women, will be brought to a parity with economic damages, and, second, I think the cap on punitive damages should be raised at least to $1 million. I know many of us would have supported an amendment in this body to do so.

And third, my colleagues from California, Mr. WAXMAN, who preceded me to the well, was correct in pointing out that the explosion of civil suits has not been in the personal injury area. In California, at least, the number of personal injury suits has been level if not on the decline. Indeed, the number of such suits declined from 132,000 in 1988 to 88,000 in 1992. Still the bill before us is important in that it replaces the costly patchwork of state laws with a uniform law that speeds recovery and provides certainty to manufactures.

Mr. STENHOLM. Mr. Chairman, I yield to the gentleman from Oklahoma [Mr. BREWSTER].

(Mr. BREWSTER asked and was given permission to revise and extend his remarks.)

Mr. BREWSTER. Mr. Chairman, I rise this afternoon to support this legislation. As a pharmacist, I know firsthand the need for the passage of the Oxley amendment. Our country has the most rigorous drug approval process in the world. A company which has researched and developed a new drug spends an average of $359 million to get that drug from the laboratory to the market.

They undertake exhaustive clinical trials involving thousands of individuals, spanning many years, before they are able to sell the product on the market. Often during the course of the trials problems arise and the project is stopped. Often a treatment has been in the research and development pipeline for many years before warning signs or problems have arisen and the trials are halted. Such clinical trials are similar to the gut-wrenching dry holes those of us in the oil patch are all too familiar with.

This amendment puts no limits on actual or noneconomic damages. It simply protects companies who have, in good faith, invested many years of work and millions of dollars in a product, from the fear of frivolous lawsuits and out-of-sight jury awards. I encourage my fellow Members on both sides of the aisle to vote ''yes'' on the amendment.

Mr. STENHOLM. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I thank the gentleman from Ohio [Mr. OXLEY] for his generosity with time. I rise in strong support of the amendment. This is an attempt to put some common sense back into our public liability system, and to allow technology in America to move forward.

Most of the criticisms of this amendment have to be balanced with a commonsense statement of saying that our current system is broken. Perhaps there are weaknesses by moving forward, but in my judgment, adopting this amendment, allowing technology to move forward, and saying to any individual company that if you in fact have a product that is approved under the best technology possibly available, and then something goes wrong because CHARLES STENHOLM uses it, at that time no punitive damages should be allowed because you have followed the rules.

If we cannot bring ourselves to adopt this kind of legal law, we are going to have a difficult time competing in the future marketplace.

Mr. Chairman, I rise in strong support of the Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment to H.R. 956, the Common Sense Product Liability and Legal Reform Act.

Our amendment offers a limited exemption from punitive damages for Food and Drug Administration [FDA] approved products. Manufacturers of drugs and medical devices are already subject to the agonizing delays and costly bureaucratic scrutiny of the FDA approval process, in order to determine if the benefits of a product outweigh the risks—not to assert that the use of a product carries no risk, or that all uses, under any circumstances are completely safe. In doing so, the FDA and medical community decide if the risks that a product poses are socially acceptable.

Under our current liability system, a jury second guesses this scientific evaluation done by the medical community and can punish manufacturers because their products are inherently risky.

Our amendment is simple, if a manufacturer or product seller of a drug or medical device which caused the claimants harm was premarket approved by the FDA, punitive damages shall not be awarded.

Opponents of this measure have said that it will prevent plaintiffs from suing drug and device manufacturers, and that it will hurt the consumer. This is simply not true. Punitive damages can still be sought in appropriate cases—those where the manufacturer was at fault, either by withholding or misrepresenting information or through participation in fraudulent activities. More importantly, injured parties will still be able to sue for compensatory damages. This amendment in no way limits compensation for loss, damages, pain and suffering.

The Oxley-Burr-Coburn-Tauzin-Brewster-Stenholm amendment makes good sense. I urge my colleagues to support this important amendment.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in reluctant opposition to the amendment, reluctant because one of the sponsors is my colleague, the gentleman from North Carolina [Mr. BURR].

However, I have concerns about this amendment on three counts. First, the FDA's responsibility is to set minimum standards for bringing a product to the market, and we should note that while we are setting a clear and convincing standard in our courts of law to win these cases, no such standard applies to the FDA.

Second, the regulatory process is subject to political pressures, economic pressures, and pressures that hopefully the jury system is not subject to. We factor out all of these things in the court, we hope, to the best extent possible, and get a fair and impartial verdict in the process.

The third point I want to make, Mr. Chairman, is when all else fails, I have started to read the fine print in these amendments that are being offered. I would submit to my colleague, the gentlewoman from California [Ms. HARMAN], that I do not see anything in this amendment which talks about full compliance.

I do see a second provision in the bill that goes beyond simply FDA approval, which says that the producer or manufacturer is exempt if the drug is generally recognized as safe and effective, pursuant to conditions established by the Food and Drug Administration. I have no idea, and I would submit to my colleagues that they have no idea, what kind of Pandora's box that opens up for litigation, because every kind of product or drug which comes to the market that ever gets through the process is going to be recognized, we hope, as generally safe and effective.

Mr. Chairman, I think when we start setting one standard, clear and convincing, to win cases, we ought to at least be holding the regulatory bodies to that same standard if we are going to say that compliance with their regulations will make the manufacturer immune from liability.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BILBRAY], a valuable member of the Committee on Commerce.

Mr. BILBRAY. Mr. Chairman, tonight we are speaking a lot about lawyers, a lot about corporations, a lot about pharmaceutical companies, but we are talking about consumers only as victims. However, the victimization goes both ways, Mr. Chairman. We hear a lot about the things that go wrong in our society when people use products. We hear about the bad things that the consumer products do.

However, Mr. Chairman, we do not talk about the fact, about the woman who goes to her pharmacist to be able to get a drug that she has used for years, but that drug no longer is available to her, not because the FDA found it not safe, not because a court found that it was not safe, but because of the huge liability that was being created by lawsuits that were being brought forward without merit, but with substantial resources, to the point where they were driving these products off the market.

Mr. Chairman, for years Bendectin has been used by pregnant women for a long time, and it is not available today for one reason, and that is because of lawsuits.

□ 1730

Mr. DINGELL. Mr. Chairman, I yield 1 minute to the gentleman for Louisiana [Mr. TAUZIN], a member of the committee.

Mr. TAUZIN. I thank my good friend, the gentleman from Michigan [Mr. DINGELL], for yielding me the time.

Mr. Chairman, let me just say that when we talk about punitive damages, we are talking about quasi-fines. Quasi-fines. It is one thing to say that you are going to fine somebody for doing something wrong. It is another thing to say that we are going to first authorize you to do it as a Government agency and then allow you to be fined for doing it even though we said it is OK to do it. That is the issue in this debate.

The FDA goes through an extraordinary process of approving drugs for the American public. It is a lengthy, complicated process. Once they approve something for us, they put their stamp of approval on it, should we as a government say now we are going to allow somebody to sue you and collect a fine after we have authorized you to sell that particular drug or product to the American public?

It seem a bit ludicrous. I suggest to Members that if the speed limit says you can go 35, you ought not have to pay a fine if you have stayed under that speed limit. That is essentially what this argument is all about. I urge Members to adopt the amendment and make this bill a better bill.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Georgia [Mr. NORWOOD], a member of the committee.

(Mr. NORWOOD asked and was given permission to revise and extend his remarks.)

Mr. NORWOOD. Mr. Chairman, I rise to strongly support the Oxley-Burr amendment.

Mr. Chairman, I know the FDA is not perfect, I will admit that, but if we have to choose between the FDA and tort juries, the FDA is obviously better suited to make judgments as to what products should be on the market. This amendment is intended to prevent tort juries from second-guessing and overriding often very, very difficult but essential and scientific conclusions and risk-benefit assessments the FDA must make in approving a drug and deciding what warnings must and must not accompany a drug.

We must pass this amendment, Mr. Chairman, for the health of our Nation. When juries are permitted to punish defendants for conduct approved by the FDA, substituting their amateur scientific judgment and cost-benefit analysis for the judgment of the FDA's professional scientists, it makes drug manufacturers very wary of producing new products.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Florida [Mr. MCCOLLUM].

(Mr. MCCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. MCCOLLUM. Mr. Chairman, I thank the gentleman for yielding me the time.

I rise to strongly support this amendment today. It is very clear from the work we did in the Committee on the Judiciary that this is essential. What we are talking about is only application to punitive damages and it is obvious that if a pharmaceutical company gets the approval of the Food and Drug Administration for a pharmaceutical product, then the Government has gone through about 12 years of processing to determine if that product is indeed sound and safe.

No product is 100 percent safe, but for gosh sakes if the FDA has approved it and sanctioned it, why should we be subjecting a pharmaceutical company to the threat of punitive damages for something that goes awry in that product that comes out later? We are only stifling the opportunity to develop the diversity of new products that we need for the health of America.

I urge in the strongest of terms that this amendment be adopted today. It is a good, sound exemption and safeguard for the pharmaceutical industry, for the health of the future of this country if we give this particular protection in those cases, those limited punitive damage cases where the FDA has approved a pharmaceutical product.

Mr. OXLEY. Mr. Chairman, I yield 1 minute to the gentleman from Oregon [Mr. COOLEY].

Mr. COOLEY. Mr. Chairman, before coming to Congress and being in the cattle business for a few years, I spent 10 years as director of regulatory affairs for an international pharmaceutical company. Our company literally spent millions and millions of dollars in complying with the FDA approval process. This process is the most rigorous process in the entire world to prove safety and efficacy of a drug. If we have no confidence in the FDA to do this, then we should find another agency to do this job for us.

As long as a company complies with the licensing requirements and continues the research after a drug is introduced on the market, I cannot believe that we can have punitive damages which should be only directed toward those companies who have reckless misconduct in the selling and administering of the drug. Currently prices of important drugs and medical devices are artificially high because of the cost of the liability insurance. Under this amendment plaintiffs still will have full compensation.

I urge passage of this amendment.

Mr. OXLEY. Mr. Chairman, I yield 30 valuable seconds to the gentleman from Ohio [Mr. CHABOT].

Mr. CHABOT. Mr. Chairman, I strongly support this amendment. It makes no sense to allow punitive damages against companies that have acted in good faith and gotten the FDA's approval. Most importantly, this amendment will help those who truly need help the most, those who need drugs which otherwise would probably not come on the market at all to relieve agonizing pain and those who need drugs which may preserve life itself.

The CHAIRMAN. The Chair will inform the committee that the gentleman from Ohio [Mr. OXLEY] is entitled to close debate.

PARLIAMENTARY INQUIRY

Mr. WATT of North Carolina. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. WATT of North Carolina. My inquiry has to do with why the gentleman on that side has the right to close debate. We are defending the committee position on this side this time.

The CHAIRMAN. If the Chair might respond to the inquiry, the gentleman from Ohio is the author of the amendment and there is no official committee position that is being represented here by opposition to the amendment. So the gentleman from Ohio is entitled to close debate on the amendment.

POINT OF ORDER

Mr. WATT of North Carolina. Mr. Chairman, I make a point of order.

The CHAIRMAN. The gentleman will state the point of order.

Mr. WATT of North Carolina. Mr. Chairman, I make this point of order, and I have already gone through this with the parliamentarian today.

The CHAIRMAN. The Chair is aware of that.

Mr. WATT of North Carolina. Any time that anyone makes a position that is contrary to the committee's position which in this case is the bill, and the amendment is contrary to the bill, I was told earlier today that whoever is defending the committee's position would be entitled to close.

The CHAIRMAN. In response to the gentleman's question, this amendment does not strike language from the bill at all.

Mr. WATT of North Carolina. Mr. Chairman, pursuing my point of order, the amendment on which I made the inquiry this morning did not strike any language from the bill. It was Mr. SCHUMER's amendment——

The CHAIRMAN. The Chair is not aware of exactly what amendment it was that was being discussed with the parliamentarian.

The gentleman may proceed.

Mr. WATT of North Carolina. I thank the Chair. I thought we had gotten to the point in this body that a Member cannot even make a point of order anymore.

The inquiry that I made this morning was on Mr. SCHUMER's amendment which struck nothing from the bill, and I was told at that time by the parliamentarian that any amendment that was contrary to the position, and it was presumed that the position of the bill was that it would not be amended at all, it would be the party that was defending the committee's position, which in this case is presumed to be the bill itself, not the amendment, that would be allowed to close.

The CHAIRMAN (Mr. DREIER). The Chair has perceived that the gentleman from Michigan [Mr. DINGELL] is not necessarily carrying the position of the committee.

The Chair will acknowledge that it is a difficult call, but that is the determination of the Chair.

PARLIAMENTARY INQUIRIES

Mr. FRANK of Massachusetts. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Are there any standards by which the Chair perceives? This is a very disturbing statement the Chair has just made.

The gentleman from Michigan is the ranking minority member, I believe, of one of the two committees of jurisdiction over this bill, and when we have had stated that there is nothing in the bill one way or the other, are we totally dependent——

The CHAIRMAN. The gentleman offers a very good parliamentary inquiry. The issue is addressed as follows:

It is the call of the Chair and it is the determination of the Chair that the gentleman from Michigan [Mr. DINGELL] does not represent the position of the committee. It is for that reason that it has been determined that the gentleman from Ohio [Mr. OXLEY], the author of the amendment, would be entitled to close debate on the amendment.

Mr. FRANK of Massachusetts. I have a parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. Mr. Chairman, we have a very important point here, and I must say I am distressed by the tone of these rulings. By what standards can Members know how a chairman is going to divine whether or not someone represents the position of the committee? Is there no objective standard as to who represents the position of the committee when the ranking minority member defends the position of the committee? I would point out this amendment as I understand it was considered at least in one of the committees and rejected by one of the committees. What are the standards?

The CHAIRMAN. Under the rules of the House, the proponent of the amendment has the right to close unless the committee position is being offered by another member.

Mr. FRANK of Massachusetts. I have further parliamentary inquiry, Mr. Chairman.

Anytime there is silence in the bill on an amendment, can we safely assume that the proponent of an amendment will then be allowed to close?

The CHAIRMAN. The Chair does not take that position.

Mr. FRANK of Massachusetts. Or does the chairman take the position whatever he wants will be the case and if he wants to give his party an advantage, he will do it?

The CHAIRMAN. The Chair has stated that the proponent of the amendment has the right to close unless the committee position is being represented by another Member.

Mr. FRANK of Massachusetts. But the question is, by what standard do you determine that? My parliamentary inquiry is, are there any standards by which you determine that? Or is it just arbitrary as it appears to be in this case?

The CHAIRMAN. There is not an absolute objective standard that exists for making that determination.

Mr. FRANK of Massachusetts. Is there a relative standard?

The CHAIRMAN. It is the prerogative of the Chair to make that determination and the Chair has determined that in this case, the proponent of the amendment, because a position of the committee is not being represented by another Member, has the right to close.

Mr. FRANK of Massachusetts. I have another parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. FRANK of Massachusetts. Mr. Chairman, if the Chair decides to give partisan advantage, is there any recourse?

The CHAIRMAN. The gentleman will state his inquiry.

Mr. FRANK of Massachusetts. If the chairman decides then to simply follow partisan instincts, does the Member have any recourse?

The CHAIRMAN. This is the discretion of the Chair, and this is the ruling of the Chair.

Mr. WATT of North Carolina. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state his inquiry.

Mr. WATT of North Carolina. My inquiry is, is the Chair expecting to consult with the parliamentarian? Because the parliamentarian clearly gave me this morning a completely contrary opinion. Is the Chair planning to consult with the parliamentarian?

The CHAIRMAN. It is the determination of the Chair that in this instance, the proponent of the amendment will close debate as the committee position is not being represented by another Member.

Mr. WATT of North Carolina. I have parliamentarian inquiry, Mr. Chairman.

My inquiry is, is the Chair planning to consult with the parliamentarian?

The CHAIRMAN. The Chair will consult with the parliamentarian. It is the determination, having consulted with the parliamentarian, that in this instance the gentleman from Ohio, the proponent of the amendment, has the right to close as the committee position is not being represented by another Member.

Mr. WATT of North Carolina. A parliamentary inquiry Mr. Chairman.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. WATT of North Carolina. Does the Chair have some psychic connection with the parliamentarian since nobody here has seen him consult?

The CHAIRMAN. That is not a parliamentary inquiry.

Mr. SENSENBRENNER. Regular order, Mr. Chairman.

The CHAIRMAN. The gentleman knows that is not a parliamentary inquiry.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding me time.

Mr. Chairman, I rise in strong support of the Oxley amendment as cochair of the bipartisan House Medical Technology Caucus.

Why in the world, Mr. Chairman, should any manufacturer be deemed malicious if it has complied with all regulations, reported all relevant information, and received FDA approval to market a product?

Mr. Chairman, let's quit stifling medical innovation. Let's quit stifling research and development, drugs and medical devices. Let's adopt the Oxley amendment.

Mr. Chairman, I rise in strong support of the Oxley amendment, as cochair of the bipartisan House Medical Technology Caucus. This amendment is needed because manufacturers are currently being forced to withhold life-saving drugs and medical devices rather than face unlimited liability.

Why in the world should any manufacturer be deemed malicious if it has complied with all regulations, reported all relevant information, and received FDA approval to market a product?

The FDA defense was originally in H.R. 917 and should be part of this important tort reform legislation. Let's quit stifling research and development in drugs and medical devices. Let's quit stifling medical innovation. Let's help those consumers and patients who need lifesaving drugs and medical devices.

Let's adopt the Oxley FDA amendment.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from Indiana [Mr. MCINTOSH].

(Mr. MCINTOSH asked and was given permission to revise and extend his remarks.)

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Mr. MCINTOSH. Mr. Chairman, I rise in support of this amendment. It is vitally needed.

In talking with one of the leading medical device industry specialists, Mr. Dane Miller of Indiana, he has told me it is becoming extremely difficult if not impossible for that industry to provide lifesaving devices because of the threat of liability. The reason: I think liability risks are forcing the suppliers of raw materials, companies such as DuPont and Dow Chemical which have an outstanding record will not take the risk of providing the materials because of the threat of liability.

I urge Members to vote in favor of this amendment.

Mr. OXLEY. Mr. Chairman, may I inquire how much time I have remaining?

The CHAIRMAN. The gentleman from Ohio [Mr. OXLEY] has 2 minutes remaining, and the gentleman from Michigan [Mr. DINGELL] has 3 minutes remaining.

Mr. OXLEY. Mr. Chairman, I yield 30 seconds to the gentleman from North Carolina [Mr. HEINEMAN].

(Mr. HEINEMAN asked and was given permission to revise and extend his remarks.)

Mr. HEINEMAN. Mr. Chairman, the FDA defense is simple and it is fair. If the Food and Drug Administration approves a drug, then the pharmaceutical company which manufactures that drug should not be liable for punitive damages.

Currently the fear of unnecessary litigations stifles innovations and limits the types of drugs which are available to the American consumer. Without the FDA defense, beneficial drugs will be driven out of the marketplace and manufacturers will continue to be discouraged from developing new drugs to treat illnesses such as AIDS and cancer. I urge my colleagues to support the amendment.

Mr. DINGELL. Mr. Chairman, I yield 3 minutes, my remaining time, to the distinguished gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Chairman, I thank the gentleman from Michigan for yielding me this time. He has worked on this matter for many years, and I have noted his change of position, his reluctance now to allow FDA approval to reign superior in this instance; we now have those who are seeking this amendment, many of them are at the same time holding FDA in a suspended state of animation, which could result in an important diminution of its powers and resources and ability to do the job.

I have heard it said here on the floor several times, if there are ways to improve the FDA's ability to get the job done, then let us do it. But we may be going in the opposite direction. As badly as the FDA needs support, the problem right now is whether it is going to be able to continue funding at its present level.

So I rise in clear opposition to an amendment which will ultimately have the effect of immunizing manufacturers of defective products who happen to obtain FDA approval.

This amendment would provide a complete defense to liability for any drug or medical device that received premarket approval from the FDA. In other words, if the FDA for whatever reason allows a defective product on the market, the victims would not be able to sue at all. Even if both the manufacturer and the FDA have evidence of the dangers of a product but permitted it to be marketed anyway, the innocent, injured victim would be left without any opportunity for compensation whatsoever.

Do the authors of this amendment really want us to place that much faith in an underfunded Federal regulator?

It goes without saying that the amendment would have a disproportionate impact on the ability of women in particular to recover punitive damages which could occur from grossly negligent conduct, since many of the cases that involve large awards involve defective medical products placed inside women's bodies, the very products likely to need FDA approval.

These are products such as the Dalkon Shield, the Cooper-7 IUD device, high-absorbency tampons linked to toxic shock syndrome and silicone breast implants. For each of these products, the manufacturer had information indicating the dangers posed by the product.

So join me and the gentleman from Ohio in opposing this amendment.

The CHAIRMAN. The gentleman from Ohio [Mr. OXLEY] is recognized for 1½ minutes to close debate.

Mr. FRELINGHUYSEN. Mr. Chairman, I strongly support this amendment which will strengthen H.R. 956, the Common Sense Product Liability and Legal Reform Act and address what I see as a deterrent to research and development of lifesaving pharmaceuticals and medical devices.

The out-of-control tort situation in our country is forcing companies that research and develop medical equipment and lifesaving drugs to back away from developing important new treatments for diseases such as AIDS or cancer.

The United States has the most rigorous drug and medical device approval process in the world. Companies which research and develop new medical treatments spend millions, sometimes billions of dollars, on developing and testing these products in order to meet FDA standards and approval, before they are able to make these important products available to the public. In addition to the money spent, the time involved with the process of FDA approval can take up to 10 years.

The proposed limitation on punitive damages makes sense. Even when every effort is made to ensure the safety and efficacy of the drug for the illness or condition it is designed to treat, no drug is 100 percent risk free. The FDA recognizes this and in making its approval decision must weight the risks and benefits of each new pharmaceutical in order to minimize, if not eliminate, risk of injury. If injury does occur, despite all the companies research and the government's review, and the manufacturer has complied with all relevant federal requirements, it should not then be held liable for ''punitive damages.''

Without this amendment, there remains a powerful disincentive to certain types of pharmaceutical research. Enacting the government-standards defense will encourage new research and development.

I am pleased to support this amendment which I believe offers a fair balance of protection for consumers and businesses alike.

Mr. ROEMER. Mr. Chairman, I rise today to support the amendment to H.R. 956 offered by the gentleman from Ohio [Mr. OXLEY]. This amendment will bar punitive damages for the sale or manufacture of drugs or devices which have been approved by the Food and Drug Administration.

Our medical device and pharmaceutical companies must be able to continue to pioneer life-saving, cost-effective products. The explosion of litigation and the skyrocketing costs that are attendant to such lawsuits are in great part responsible for the high costs of healthcare in the United States. They also dampen our enthusiasm for innovative and breakthrough research that produces products that enhance our quality of life. This amendment would produce a ''government standards'' defense where companies that adhere to strict government regulations designed to preserve safety would not be held liable for punitive damages involving a product.

New medicines and medical devices increase life expectancy and make life better for those who need it most: people afflicted with disease or people with disabilities. Our approval process for these items is the most stringent in the world, and require huge investments of funding and human resources. The testing process is rigorous and complete. Clinical trials are exhausting. Paperwork substantiating these processes usually runs 100,000 pages or more for a single product.

Clearly the decision to allow such products on the market prove that their benefits outweigh any risk that may be involved. Punitive damages were designed to punish businesses or individuals for willfully negligent or harmful behavior. Companies that submit products for FDA review do not do so in bad faith.

Mr. Chairman, in my Indiana District we are the home of three important producers of biomedical products. The Biomet, Zimmer and DePuy Corporations are the makers of orthotic and prosthetic devices that are critical to the health and well-being of people throughout the world. They invest constantly in improving their products, and in turn create good jobs and contribute heavily to our trade balance. The work they do is only for the common good, and their contribution to modern health and quality of life must be acknowledged in this legislation.

This amendment provides a level of protection for these companies while protecting the rights of individuals to seek damages for expenses, pain or suffering. I commend the gentleman from Ohio for offering this measure and encourage my colleagues to support this important provision.

Mr. OXLEY. Mr. Chairman, this has been a very worthwhile debate. I am only sorry we did not have more time. This has been a worthwhile and edifying debate.

Let me conclude by answering some questions that have been raised during the debate and particularly from some conversations I have had with my good friend from New York, Mr. TOWNS, as to what this amendment does or does not do.

First of all, this amendment applies only to punitive damages. Second, the amendment does not cap noneconomic damages in any way, so that the plaintiff would be entitled to receive economic and noneconomic damages; only punitive damages would not be permitted.

Thirdly, the FDA is the agency we rely on to regulate food and drug purity and the only agency authorized to give premarket approval.

This amendment encourages innovations, it protects consumers and it makes good common sense.

Mr. Chairman, this was a bipartisan effort on this amendment, and we think it goes to the heart of the entire process of approving medical devices and drugs. It is in the best interests of our consumers and of our constituents that we have a system that we can rely on and that provides adequate protection against voracious punitive damage awards against drug companies or other manufacturers of medical products.

The Oxley bipartisan amendment is an amendment that all Members can and should support.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. OXLEY].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 10 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HOKE

Mr. HOKE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

Amendment offered by Mr. HOKE: Page 19, redesignate section 202 as section 203 and insert after line 19 the following:

SEC. 202. DEPOSIT OF DAMAGES.

If punitive damages of more than $250,000 are awarded in a civil liability action, 75 percent of the amount of such damages in excess of $250,000 shall be deposited—

(1) if the action was in a Federal court, in the treasury of the State in which such court sits, and

(2) if the action was in a State court, in the treasury of the State in which such court sits.

This section shall be applied by the court and shall not be disclosed to the jury.

The CHAIRMAN. Pursuant to the rule, the gentleman from Ohio [Mr. HOKE] will be recognized for 10 minutes and a Member in opposition to the amendment will be recognized for 10 minutes.

The Chair recognizes the gentleman from Ohio [Mr. HOKE].

Mr. HOKE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this punitive damages amendment is fairly simple and straightforward. What it does is it restores the original intent of punitive damages awards which is namely to punish wrongdoers, it is not to compensate plaintiffs.

Every day in courtrooms across America, plaintiffs are compensated for lost wages, for medical and rehabilitation costs, loss of the use of property, emotional distress, injury to their reputation, humiliation, and loss of companionship or consortium. These are the awards that are intended to make the defendant whole or complete. These are compensatory awards.

But in addition to these economic and noneconomic damages, plaintiffs are receiving themselves windfalls that were never meant to play part in making them whole. This windfall comes in the form of punitive damages that by their very definition are intended to be punishment for wrongdoing defendants. This punishment is intended to deter future wrongdoing.

The key to a fine's effectiveness is not who receives it but who is forced to pay. That is why I am proposing that 75 percent of punitive damages in excess of $250,000 be paid to the State in which the action is litigated. In other words, plaintiffs will still receive 100 percent of any punitive damages up to $250,000 and will receive 25 percent of any amount awarded in excess of $250,000.

I believe this arrangement strikes a very good balance between maintaining the plaintiff and the plaintiff's attorney's incentive to seek punitive damages, and emulating the model of a criminal fine.

This amendment also stipulates that the arrangement is to be applied by the court and is not to be disclosed to the jury. This provision safeguards against juries using punitive damages to finance State initiatives in a way that would improperly bias their outcome.

Ten States have adopted laws sending a portion of punitive damages to their State for a variety of purposes.

The Georgia Supreme Court has upheld its law sending a portion of punitive damage awards directly to the State.

This has broad support, Mr. Chairman. It is supported by people from former Attorney General Griffin Bell to the State legislatures of 10 States across this country.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Is there a Member who wishes to manage the opposition to the Hoke amendment? Does the gentleman from Michigan [Mr. CONYERS] wish to manage the opposition to the Hoke amendment?

Mr. CONYERS. I do, Mr. Chairman.

The CHAIRMAN. The gentleman from Michigan [Mr. CONYERS] is recognized for 10 minutes.

PARLIAMENTARY INQUIRY

Mr. CONYERS. Mr. Chairman, on a point of procedure, would I have the right to close on this since this is an amendment against the bill?

The CHAIRMAN. As a member of the reporting committee, the gentleman has the right to close.

Mr. CONYERS. Mr. Chairman, I yield myself 3½ minutes.

Mr. Chairman, this amendment continues chipping away at the entire concept of punitive damages by reducing punitive damages over $250,000 by an additional 75 percent and giving it to the Federal or State treasury rather than to the individual who sued.

Do State treasuries want these awards? New York said, ''No thanks,'' and repealed its apportionment law. In Colorado, the supreme court held that giving punitive awards to a State fund was an unconstitutional ''taking.''

Who benefits? The corporations who will simply build economic damages into their costs of doing business, without fear of facing large punitive damages that would have deterred them from knowingly selling products that cause devastating injury to the buyer.

Who loses? Those at the lower end of the economic scale who will have less incentive to sue, especially when their recovery is determined by how much they earn rather than the outrageousness of the defendant's conduct.

Some Members on the other side will argue that punitive damages should punish wrongdoers and are not intended to compensate plaintiffs, but they should know better. Lawsuits brought by victims, not Government regulation, brought about safety improvements like restricting asbestos use, like beepers on reversing garbage trucks that had resulted in numerous injuries to children, like recalling the Dalkon Shield. Punitive damages put an end to the exploding fuel tank and the heart by-pass drug that resulted in amputation caused by gangrene.

The likely result if this amendment passes is more dangerous products on the market and less incentive for the victims to sue, a prospect that does not advance the common good but will only please the sponsors of this Contract with Corporate America.

□ 1800

Please reject the Hoke amendment.

Mr. HOKE. Mr. Chairman, I point out once more, while we are talking about our punitive damages, not compensatory damages, compensatory damages are already paid to compensate a victim for his economic and non-economic losses.

Mr. Chairman, at this time I yield 1 minute to the gentleman from Illinois [Mr. HYDE], the chairman of the committee.

Mr. HYDE. I thank the gentleman for yielding this time to me.

Mr. Chairman, the amendment offered by the gentleman from Ohio [Mr. HOKE] provides for 75 percent of punitive damages awards in excess of $250,000 to be deposited to the treasury of the State in which the particular Federal or State court sits. Since punitive damages are limited under Section 201(b) to $250,000 or 3 times the damages awarded for economic loss—whichever is greater—punitive damages can exceed $250,000 only if the damages for economic loss exceed $83,333.33. I support this proposal because it effectuates the public interest in allowing large punitive damages awards to benefit the appropriate State without either compromising the rights of claimants to full compensation for injuries sustained or eliminating incentives to seek punitive damages.

Punitive damages are designed to punish or deter egregious misconduct—in contrast to compensatory damages that compensate claimants for both economic and non-economic losses. Compensatory damages cover such monetary items as medical expenses and lost wages and such non-monetary items as pain and suffering. Claimants who are fully compensated for both monetary and non-monetary losses receive windfalls when they also collect punitive damages. It makes eminent good sense for punitive damages to be allocated for public purposes—which essentially is what we accomplish by directing such funds to state treasuries. The States in turn can decide on the best uses to be made of these funds.

Although in theory all of these awards should go to the appropriate State, we recognize the practical need to retain incentives for claimants to seek such awards. For that reason, the amendment leaves untouched State law schemes that allow claimants to collect punitive damages up to $250,000. The claimant's share of amounts in excess of $250,000 will equal 25 percent provided the law of the particular State permits the claimant to collect it. The amendment includes sufficient incentives for claimants to continue seeking punitive damages in appropriate cases while recognizing the public interest in retaining benefits from large punitive damages awards.

The amendment is meritorious and represents a positive contribution to this legislation.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from New York [Mr. NADLER].

Mr. NADLER. I thank the gentleman for yielding this time to me.

Mr. Chairman, I recognize the intention of the gentleman from Ohio [Mr. HOKE]. I had a similar amendment, similar but different, in committee, which I am sorry that the Committee on Rules did not make in order.

The purpose of punitive damages, the main purpose, is to deter, to deter egregious, terrible conduct. When we are dealing with a malefactor of great wealth, as the Republican President once put it, you need a large punitive award.

But why should the individual victim be unjustly enriched just because the tort feasor was a very wealthy individual or a big corporation.

So I do not mind the limit of $250,000 or 3 times the economic damage, whichever is greater, as the recovery for the victim. But that will totally limit the deterrent effect against the large tort feasor.

So I suggested let the victim get the $250,000 or 3 times economic damage, whichever is greater, and let government, for deficit reduction, get any award in excess of that.

So you still get the deterrent effect, but not unjust enrichment.

The gentleman from Ohio turned it around, and he says let us give 75 percent to the government of the excess over $250,000 below 3 times economic damages. So if the economic damage was $400,000, 3 times economic damages would be $1.2 million. Mr. HOKE says limit what the victim gets to $250,000 plus a quarter of that difference.

So this is reducing below what the bill said the possible recovery is. I think this is wrong because the victim is entitled to some reasonable recovery of punitive damages in relation to economic damages.

Mr. HOKE. Mr. Chairman, will the gentleman yield?

Mr. NADLER. I yield to the gentleman from Ohio.

Mr. HOKE. I thank the gentleman for yielding.

Mr. Chairman, I ask the gentleman, is it not true what his amendment would have done would have been to eliminate the cap on punitive damages?

Mr. NADLER. Yes. Reclaiming my time, that is exactly the point. There should not be a cap on punitive damages necessary as a deterrent but to avoid unjust enrichment. I can understand the cap on the recovery to the victim. But to cap the total award and then to say underneath that cap we are going to say the victim cannot get it all, that I think is wrong to the victim and does not provide an adequate deterrent to the tort feasor.

Mr. HOKE. Would the gentleman not agree that it is true that we just rejected that concept by rejecting soundly the First Amendment in this Congress? We just rejected that idea.

Mr. NADLER. Well, I think the majority is wrong.

Mr. HOKE. But we had a vote on what the gentleman wanted.

Mr. NADLER. But what the gentleman is doing goes further. What the gentleman is saying is the cap of 3 times economic damages $250,000, and we are going to deny part that have to the victim.

If you want to say we should not have any cap at all, then it makes sense to say to the victim he should not unjustly enrich himself to any extent.

I urge defeat of the amendment.

Mr. HOKE. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. I thank the gentleman for yielding and commend him for what I think is a very good amendment.

In fact, it is an amendment that helps to cure one of the objections raised on the other side to the fact that there is a cap on punitive damages. The cap is important in order to keep juries from becoming legislators. They are not elected. They do a very good job of resolving disputes between individuals, but when you have multimillion-dollar awards, you have a problem with juries imposing rules on society that ought to be imposed by State legislatures.

In this case, you are now dealing with the problem that they observe once you impose the cap, and that is that it is discriminatory because they said somebody with a very wealthy background might have high economic losses, they got 3 times that and recover far more than somebody with a poorer background who could only have a $250,000 cap.

So I compliment the gentleman because he is saying that everybody up to $250,000 is equal. Once you get beyond $250,000, we have gone already beyond the purpose of punitive damages. They are not to reward an individual or even compensate an individual for loss they get from the economic loss and the noneconomic loss.

That is medical bills that they are entitled to be reimbursed for, lost income, pain and suffering, all of that is not affected by punitive damages.

So, by saying that 75 percent of the amount above $250,000 will go to the public treasury where it should go because it is, in effect, a fine is a very good idea. And that is exactly the parallel to fines.

The standard for punitive damages is a very high one. It is only for people who do serious wrong.

So when we impose a fine on people and it is a serious wrong meeting a high standard, it ought to go into that public treasury just as a fine imposed on a criminal wrongdoer.

That was exactly the point made by former Supreme Court Justice Lewis Powell, who said that the private windfall aspects of punitive damages aggravates the problems that we have with the whole rack of standards in punitive damages because, unlike fines, which go to the public treasury, punitive damages go to the private plaintiffs. To a limited extent, that is fine, and your bill does it. Beyond that, it goes into the public treasury.

I commend the gentleman for a very good amendment.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Virginia [Mr. SCOTT], a member of the Committee on the Judiciary.

Mr. SCOTT. Mr. Chairman, we keep hearing these generalities about excessive awards, but we do not hear specific cases that outraged juries so much that they actually awarded punitive damages.

We have to put this amendment in the context of the other amendments that we have already had and recognize punitive damages are designed to be high enough to protect society from a corporate calculation that it is easier to pay the damages for somebody injured, maimed or killed, than it is to correct the situation.

Earlier today we talked about the situation with flammable pajamas where the court found that the corporation knew that the pajamas—that newsprint burned only slightly faster than the pajamas. Because of the punitive damages, children can now go to bed safely knowing they are not wearing these things.

In the context of loser pays and a separate trial for punitive damages, this amendment would essentially remove any incentive that a plaintiff would have to go after punitive damages, thereby removing the safety valve that others will enjoy by virtue of the fact that corporations are afraid of these punitive damages. The loser pays, you can win the case, on the compensation, you could even win punitive damages. But if you come in under the offer, you end up paying your attorneys' fees, the other peoples' attorneys' fees, and you are therefore discouraged from bringing these cases.

This amendment is another discouragement in protecting society from corporate wrongdoing and ought to be defeated.

Mr. HOKE. Mr. Chairman, I would just like to respond to the last speaker by saying that clearly when you still have a $250,000 amount of money, I do not know why that is not considered to be an incentive, not to mention that in terms of criminal fines that is a tremendous fine. If somebody is fined for criminal negligence or felonious activity, a $250,000 fine is disproportionate to almost anything you will find in a State legislature's code of criminal penalties.

Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BILBRAY].

Mr. BILBRAY. I thank the gentleman for yielding this time to me.

Mr. Chairman, frankly, I think if you tried to explain this to the average citizen in the United States, they would think it is absurd that somebody is going to be given a fine and that fine is going to be given to the plaintiff. With fines and forfeitures in criminal cases, we do not have those fines and forfeitures going to the victim of the crime. That may be more logical than what we have here because at least in the criminal case they have not been made whole.

By definition, they should have been made whole before punitive is ever considered.

I think what we have to do is get the lottery out of this. I would ask that we support this amendment. I would prefer that all punitive damages go to a public fund because that is where penalty fees should be going. They go to a public fund in a criminal case. By definition, they should be going to such a fund.

Mr. HOKE. Mr. Chairman, I yield 1 minute to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. Mr. Chairman, I rise in strong support of this amendment.

I think the concept has oft been repeated today about compensatory and punitive damages and the purposes of each. Clearly, we have established today that punitive damages are to punish and deter. We have a parallel concept in the criminal code when we have restitution and fines. In that instance, the court may award restitution; that is to the victim of the crime. But the fine that they punish that criminal with goes to the State.

In the instance of the civil justice system, punitive damages are used in a civil case to deter conduct. In our civil justice system, punitive damages are used to deter conduct for the good of society as a whole. Under those circumstances it is only right that society as a whole should reap the benefit of the punitive damages. For that reason I strongly support and commend the gentleman from Ohio for his amendment.

Mr. HOKE. I thank the gentleman for those kind words.

I will close with two thoughts. First of all, I want to thank the gentleman from California [Mr. BILBRAY] for wanting to speak on this subject. He has been walking around with pneumonia for 3 days. He felt so strongly enough, he said he wanted to come down and speak on this, and I think that says a great deal.

Mr. Chairman, this is not a far-fetched amendment, by any means. What you are going to hear from the other side is somehow this is taking rights away, money away, dollars away from people. Nothing could be further from the truth than that.

□ 1815

The fact is that a punitive damage award is meant to take the place of a criminal fine. We are saying that the first $250,000 of that can go to the victim. After that, it still goes 25 percent to the victim and 75 percent to the

State. It was never intended to make a plaintiff whole. We have already done that with economic and noneconomic compensatory damages. That is not what this is intended to do, never has been, never will be. But what we have to do is we need to put the money back to the State. That is where criminal fines go. That is where this, the punitive damage awards should go.

That is what this bill is all about; it is a common sense balancing approach to this problem.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan [Mr. CONYERS] for 1½ minutes to close debate.

Mr. CONYERS. Members of the Committee, we have seen a chipping-away effect that has now reached the point that I think Members on the other side will begin to be repelled by it. The entire concept of punitive damages are now being reduced by an additional 75 percent when they exceed $250,000 by giving it to the Federal or State treasury rather than to the individual who sued.

When is this going to end? What reason does a person have to come into court with a lawyer, to risk his all, under the accentuated costs and risks that he must not attend, and then, if he recovers, it goes not to him, but it goes to the State or to the Federal Government itself? What kind of nationalistic scheme are we talking about?

I say to my colleagues, ''You don't have to be a supporter of states rights to take exception to this.''

Where will we draw the line? What are we doing? Has each citizen become an apparatchik for the State even when he or she goes to court and recovers?

The New York State court has said ''no,'' the Supreme Court of Colorado has said ''no,'' and now we should say ''no'' to the gentleman from Ohio [Mr. HOKE].

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio [Mr. HOKE].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. HOKE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 162, noes 265, not voting 7, as follows:

[Roll No. 224]

AYES—162

Andrews	Bliley	Chrysler
Archer	Boehner	Coburn
Armey	Bonilla	Collins (GA)
Baker (CA)	Browder	Condit
Ballenger	Brownback	Cox
Barr	Bryant (TN)	Crane
Barrett (NE)	Bunn	Cremeans
Bartlett	Buyer	Cunningham
Barton	Calvert	Deal
Bereuter	Camp	DeLay
Bevill	Chenoweth	Doggett
Bilbray	Christensen	Doolittle
Dornan	Kasich	Rogers
Dreier	Kim	Rohrabacher
Dunn	Kingston	Roth
Ehlers	Klug	Royce
Ehrlich	Knollenberg	Sabo
Emerson	Kolbe	Salmon
English	LaFalce	Sanford
Ewing	Laughlin	Saxton
Fawell	Leach	Scarborough
Fields (TX)	Lewis (KY)	Schaefer
Flanagan	Lincoln	Schumer
Fowler	Linder	Seastrand
Frisa	Luther	Sensenbrenner
Funderburk	Maloney	Shaw
Gallegly	Martinez	Shuster
Ganske	McCollum	Skeen
Geren	McCrery	Smith (MI)
Gilchrest	McInnis	Smith (TX)
Gillmor	McKeon	Smith (WA)
Goodlatte	McNulty	Solomon
Goodling	Metcalf	Souder
Goss	Mica	Spence
Greenwood	Miller (CA)	Stenholm
Gunderson	Miller (FL)	Stump
Gutknecht	Moorhead	Talent
Hancock	Neumann	Tanner
Hastert	Norwood	Tauzin
Hastings (WA)	Orton	Taylor (NC)
Hefley	Oxley	Thomas
Heineman	Packard	Thornberry
Hilleary	Parker	Thurman
Hobson	Paxon	Towns
Hoke	Payne (VA)	Upton
Hostettler	Peterson (MN)	Vucanovich
Houghton	Petri	Walker
Hunter	Pombo	Watts (OK)
Hyde	Pomeroy	Weldon (FL)
Inglis	Porter	Weller
Jacobs	Portman	Williams
Johnson, Sam	Pryce	Wolf
Jones	Regula	Young (FL)
Kanjorski	Roberts	Zimmer

NOES—265

Abercrombie	de la Garza	Hoekstra
Ackerman	DeFazio	Holden
Allard	DeLauro	Horn
Bachus	Dellums	Hoyer
Baesler	Deutsch	Hutchinson
Baker (LA)	Diaz-Balart	Istook
Baldacci	Dickey	Jackson-Lee
Barcia	Dicks	Jefferson
Barrett (WI)	Dingell	Johnson (CT)
Bass	Dixon	Johnson (SD)
Bateman	Dooley	Johnson, E. B.
Becerra	Doyle	Johnston
Beilenson	Duncan	Kaptur
Bentsen	Durbin	Kelly
Berman	Edwards	Kennedy (MA)
Bilirakis	Engel	Kennedy (RI)
Bishop	Ensign	Kennelly
Blute	Eshoo	Kildee
Boehlert	Evans	King
Bonior	Everett	Kleczka
Bono	Farr	Klink
Borski	Fattah	LaHood
Boucher	Fazio	Lantos
Brewster	Fields (LA)	Largent
Brown (CA)	Filner	Latham
Brown (FL)	Flake	LaTourette
Brown (OH)	Foglietta	Lazio
Bryant (TX)	Foley	Levin
Bunning	Ford	Lewis (CA)
Burr	Fox	Lewis (GA)
Burton	Frank (MA)	Lightfoot
Callahan	Franks (CT)	Lipinski
Canady	Franks (NJ)	Livingston
Cardin	Frelinghuysen	LoBiondo
Castle	Frost	Lofgren
Chabot	Furse	Longley
Chambliss	Gejdenson	Lowey
Chapman	Gekas	Lucas
Clay	Gephardt	Manton
Clayton	Gilman	Manzullo
Clement	Gonzalez	Markey
Clinger	Gordon	Martini
Clyburn	Graham	Mascara
Coble	Green	Matsui
Coleman	Gutierrez	McCarthy
Collins (IL)	Hall (OH)	McDade
Collins (MI)	Hall (TX)	McDermott
Combest	Hamilton	McHale
Conyers	Hansen	McHugh
Cooley	Harman	McIntosh
Costello	Hastings (FL)	McKinney
Coyne	Hayes	Meehan
Cramer	Hefner	Meek
Crapo	Herger	Menendez
Danner	Hilliard	Meyers
Davis	Hinchey	Mfume
Mineta	Ramstad	Taylor (MS)
Minge	Reed	Tejeda
Mink	Reynolds	Thompson
Moakley	Richardson	Thornton
Molinari	Riggs	Torkildsen
Mollohan	Rivers	Torres
Montgomery	Roemer	Torricelli
Moran	Ros-Lehtinen	Traficant
Morella	Rose	Tucker
Murtha	Roukema	Velazquez
Myers	Roybal-Allard	Vento
Myrick	Rush	Visclosky
Nadler	Sanders	Volkmer
Neal	Sawyer	Waldholtz
Nethercutt	Schiff	Walsh
Ney	Schroeder	Wamp
Nussle	Scott	Waters
Oberstar	Serrano	Watt (NC)
Obey	Shadegg	Waxman
Olver	Shays	Weldon (PA)
Ortiz	Sisisky	White
Owens	Skaggs	Whitfield
Pallone	Skelton	Wicker
Pastor	Slaughter	Wilson
Payne (NJ)	Smith (NJ)	Wise
Pelosi	Spratt	Woolsey
Peterson (FL)	Stark	Wyden
Pickett	Stearns	Wynn
Poshard	Stockman	Yates
Quillen	Stokes	Young (AK)
Quinn	Studds	Zeliff
Radanovich	Stupak	
Rahall	Tate	

NOT VOTING—7

Cubin	Hayworth	Ward
Forbes	Rangel	
Gibbons	Tiahrt	

□ 1838

Messrs. ZELIFF, TATE, BUNNING of Kentucky, BREWSTER, HANSEN, VENTO, BONO, BARCIA, DICKS, KENNEDY of Massachusetts, OBERSTAR, CALLAHAN, WAMP, MONTGOMERY, CHAMBLISS, EVERETT, and SISISKY, and Ms. BROWN of Florida changed their vote from ''aye'' to ''no.''

Messrs. PAYNE of Virginia, PAXON, GREENWOOD, MCINNIS MCCRERY, and DORNAN changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. It is now in order to consider amendment No. 11, printed in House Report 104–72.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. COX of California:

Page 1, strike line 7 and all that follows through the matter that precedes line 1 on page 2, and insert the following:

(b) TABLE OF CONTENTS.—The table of contents is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the civil justice system, which is designed to safeguard our most cherished rights, to remedy injustices, and to defend our liberty, is increasingly being deployed to abridge our rights, create injustice, and destroy our liberty;

(2) our Nation is overly litigious, the civil justice system is overcrowded, sluggish, and excessively costly, and the costs of lawsuits, both direct and indirect, are inflicting serious and unnecessary injury on the national economy;

(3) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability have a direct and undesirable effect on interstate commerce by increasing the cost and decreasing the availability of goods and services;

(4) the rules of law governing product liability actions, damage awards, and allocations of liability have evolved inconsistently within and among the several States, resulting in a complex, contradictory, and uncertain regime that is inequitable to both plaintiffs and defendants and unduly burdens interstate commerce;

(5) as a result of excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability, consumers have been adversely affected through the withdrawal of products, producers, services, and service providers from the national market, and from excessive liability costs passed on to them through higher prices;

(6) excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability jeopardize the financial well-being of many individuals as well as entire industries, particularly the Nation's small businesses, and adversely affects governments, taxpayers, nonprofit entities and volunteer organizations;

(7) the excessive costs of the civil justice system undermine the ability of American companies to compete internationally, and serve to decrease the number of jobs and the amount of productive capital in the national economy;

(8) the unpredictability of damage awards is inequitable to both plaintiffs and defendants and has added considerably to the high cost of liability insurance, making it difficult for producers, consumers, and individuals to protect their liability with any degree of confidence and at a reasonable cost;

(9) because of the national scope of the problems crated by the defects in the civil justice system, it is not possible for the several States to enact laws that fully and effectively respond to those problems;

(10) it is the constitutional role of the national government to remove barriers to interstate commerce; and

(11) there is need to restore rationality, certainty, and fairness to the civil justice system in order to protect against excessive, arbitrary, and uncertain damage awards and to reduce the volume, costs, and delay of litigation.

(b) PURPOSES.—Based upon the powers contained in Article I, Section 8, Clause 3 of the United States Constitution, the purposes of this Act are to promote the free flow of goods and services and to lessen burdens on interstate commerce by—

(1) establishing certain uniform legal principles of product liability which provide a fair balance among the interests which provide a fair balance among the interests of product users, manufacturers, and product sellers;

(2) placing reasonable limits on damages over and above the actual damages suffered by a claimant;

(3) ensuring the fair allocation of liability in civil actions;

(4) reducing the unacceptable costs and delays of our civil justice system caused by excessive litigation which harm both plaintiffs and defendants; and

(5) establishing greater fairness, rationality, and predictability in the civil justice system.

Page 2, strike line 3 and all that follows through line 24, and page 4 (and redesignate subsequent sections accordingly).

Page 11, strike lines 17 through 24 (and redesignate subsequent sections accordingly).

Page 12, strike line 24 and all that follows through line 2 on page 13 (and redesignate the subsequent section accordingly).

Page 17, strike lines 10 through 12 and insert the following:

TITLE II—LIMITATION ON SPECULATIVE AND ARBITRARY DAMAGE AWARDS

SEC. 201. TREBLE DAMAGES AS PENALTY IN CIVIL ACTIONS.

Page 17, line 21, insert ''rights or'' before ''safety''.

Page 17, beginning in line 25, strike ''for the economic loss on which the claimant's action is based'' and insert ''for economic loss''.

Page 18, insert after the period in line 2 the following: ''This section shall be applied by the court and shall not be disclosed to the jury.''.

Page 18, line 3, strike ''AND PREEMPTION''.

Page 18, strike ''title'' in lines 4 and 6 and insert ''section''.

Page 18, beginning in line 7, strike ''in any jurisdiction that does not authorize such actions'' and insert after the period in line 8 the following: ''This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages.''.

Page 19, after line 19, insert the following new sections (and redesignate the subsequent section accordingly):

SEC. 202. FAIR SHARE RULE FOR NONECONOMIC DAMAGE AWARDS.

(a) FAIR SHARE OF LIABILITY IMPOSED ACCORDING TO SHARE OF FAULT.—In any product liability or other civil action brought in State or Federal court, a defendant shall be liable only for the amount of noneconomic damages attributable to such defendant in direct proportion to such defendant's share of fault or responsibility for the claimant's actual damages, as determined by the trier of fact. In all such cases, the liability of a defendant for noneconomic damages shall be several and not joint.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the application of the theory of joint liability to any kind of damages.

Page 19, after line 21, insert the following new paragraph:

(1) The term ''actual damages'' means damages awarded to pay for economic loss.

Page 19, line 22, strike ''(1)'' and insert ''(2)''.

Page 20, line 4, strike ''(2)'' and insert ''(3)''.

Page 20, line 12, strike ''(3)'' and insert ''(4)''.

Page 20, line 18, strike ''(4)'' and insert ''(5)''.

Page 20, after line 20, insert the following new paragraph (and redesignate subsequent paragraphs accordingly):

(6) The term ''noneconomic damages'' means damages other than punitive damages or actual damages.

Page 20, line 21, strike ''(5)'' and insert ''(7)''.

Page 21, line 1, strike ''(6)'' and insert ''(8)''.

Page 30, strike lines 6 and 7, and insert the following:

TITLE IV—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

SEC. 401. APPLICATION LIMITED TO INTERSTATE COMMERCE.

Titles I, II, and III shall apply only to product liability or other civil actions affecting interstate commerce. For purposes of the preceding sentence, the term ''interstate commerce'' means commerce among the several States or with foreign nations, or in any territory of the United States or in the District of Columbia, or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia and any State or territory or foreign nation.

Redesignate subsequent sections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentleman from California [Mr. COX] and a Member opposed will each be recognized for 20 minutes.

PARLIAMENTARY INQUIRY

Mr. FRANK of Massachusetts. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. FRANK of Massachusetts. As a member of the reporting committee, I wonder, by whatever process of mental divination the Chair uses, if he would decide that I had the right to close on this.

The CHAIRMAN. The gentleman is correct, he will have the right to close.

Mr. FRANK of Massachusetts. I thank the Chair.

The CHAIRMAN. The Chair recognizes the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, the tenor of the debate on this entire bill and all of the amendments to this bill is pretty clear: We have too many lawsuits in America. We have become too litigious. It costs too much money, and simple justice is not being served.

The amendment that I am proposing, along with my colleague, Mr. PETE GEREN from Texas, advances a simple rule that will go a long way to making

sure that fair justice exists once again in our courts. Our simple rule is called the fair-share rule.

Under this provision, a person will be made to pay for the damages that he, she, or it caused, but no person will be made to pay for damages that someone else caused. Our rule will hold wrongdoers responsible for their actions, and our rule will permit people who are not responsible for that damage to understand that their conduct will have been rewarded faithfully by the law.

The so-called joint and several liability doctrine is really the fair-share rule stood on its head. If you are adjudged 1 percent liable, you can be required to pay under the current system 100 percent of the damages caused by someone else if it turns out that you are the only one in the picture that has any money. It is known to plaintiffs' trial lawyers as the deep-pockets opportunity. Find somebody, not necessarily a rich person, perhaps just a small business person or an individual who has an insurance policy, who you think can therefore be made to pay, or just from whom a settlement can be extorted, and bring them into the lawsuit.

Take the case of a drunk driver going down the street, goes off the sidewalk onto the front lawn and kills someone. If that person is sued and the jury were to find, and this is approximately the facts in a real case in California, the jury finds that the drunk driver is 95 percent liable for the damage that the drunk driver caused, but the city is 5 percent liable because there was a pothole on the way, and the drunk driver does not have any money, then the taxpayers are stuck for all of the damage caused by the drunk.

□ 1845

That is our current system. Under the fair share rule, someone adjudged 5 percent liable will pay 5 percent of the damage. That is the fair share rule.

I urge support for this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 4 minutes and 30 seconds to the gentleman from Michigan [Mr. CONYERS], the ranking member of the full Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding time to me.

We are confronted with a very strange amendment here, because what has not been mentioned by the author of it is that it seeks to exclude foreign manufacturers from the service of process requirement that American manufacturers are subject to. And so members of the committee, we are back to the same amendment on the other end that we voted only a few hours ago, where we said that a foreign manufacturer was subject to the same discovery proceedings that a national manufacturer, a domestic manufacturer is subject to.

We said that we should not be able to have them avoid litigation because their discovery may take them to Europe or to Japan, that they must subject themselves to discovery. And this amendment, although strangely enough it has not been said yet, and you are going to have to read pretty carefully to find it anywhere, is that this is going to change the service of process in suits brought against foreign manufacturers.

It is another way to let them out of playing the game on a level playing field with domestic manufacturers.

I think we all know what some of them are doing. They sell their goods, freight on board, in Japan or Germany, just so they will not be treated as having contacts in this country which could subject them to suit there. They know that this makes U.S. citizens go through repeated hurdles to bring suit against them, ranging from translating the complaint into another language and asking the State Department to serve action, and even then the foreign business may elect to ignore the action.

This is another backdoor way of giving a foreign manufacturer a leg up. To make sure that everybody knows what the gentleman is doing, I do not know why the gentleman did not just come out, the gentleman from California did not just come out and say what this is going to do. It is going to change the way service of process is implemented by a foreign manufacturer, and that is just the front door way of getting around the discovery amendment that would have given them a break that we just rejected.

Why do you want to give different rules in court to foreign companies? What benefit do you see in that? I know there are a lot of foreign companies here, but do you not see, my friend, that citizens that are sued and want to sue will need to have service of process. And if you try to take this out, we are going to be doing ourselves a grave disservice to all of our constituents?

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from California.

Mr. COX of California. Mr. Chairman, the gentleman makes a very fair point. In fact, the effect of gentleman's just having won on his amendment is that the provisions of this amendment that would otherwise have dealt with service of process will have no effect. The gentleman has carried the day, and the gentleman's amendment will in fact be successfully included in this bill.

Mr. CONYERS. Reclaiming my time, the current language in this bill is carefully balanced. It offers a carrot and a stick. The end result is a substantially more balanced playing field.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. My sense would be, in most parliamentary situations, that the last enactment would supersede the previous one. So the notion that by a prior action we could somehow control a subsequent action is a dubious proposition at best. The gentleman has got a drafting problem. He cannot solve it by something that we did a couple of hours ago, because by a subsequent action we would be deemed to have amended or modified the previous action.

Mr. CONYERS. Mr. Chairman, this amendment strikes a blow against U.S. citizens, the same as the other discovery amendment tried to do.

Mr. COX of California. Mr. Chairman, I yield 3 minutes to the gentleman from Texas, Mr. PETE GEREN.

(Mr. PETE GEREN of Texas asked and was given permission to revise and extend his remarks.)

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from California.

Mr. COX of California. Our amendment dealt with section 109 and struck it. The gentleman from Michigan added a new section 110. Our amendment has no effect on it. So the gentleman has carried the day.

Mr. PETE GEREN of Texas. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in support of this amendment. The amendment in front of us applies to noneconomic damages known to most people as pain and suffering, emotional distress. Joint and several liability for noneconomic damages is a system that asks Peter to pay for Paul's sins. The bill currently remedies this inequity for all products cases.

However, our amendment extends this much-needed reform to all civil actions. This means that each defendant will be liable for damages for pain and suffering in an amount proportional to his fair share.

When joint and several liability was first developed, plaintiffs had to be found completely blameless to recover damages. Now with few exceptions, plaintiffs can recover damages even if they are partially or mostly at fault. In a recent case involving Walt Disney and a woman injured on bumper cars, Walt Disney was found 1 percent at fault in an accident, yet the trial court held and the Florida Supreme Court affirmed that Disney had to pay 86 percent of the plaintiff's damages.

It may make sense to require that a single defendant be held accountable for all economic damages to make sure that the defendant is made financially whole to the extent that dollars can account for the problems suffered by the plaintiff, but there is little justification for allocating liability in this manner for highly subjective noneconomic damages.

I urge my colleagues to join me in voting for this amendment. The problems of joint and several liability are not limited exclusively to the product liability area. Excessive noneconomic damages are not commmonplace in all types of cases, including claims against

citizen, small businesses, charities, and the Little League.

Let us ask each citizen to pay his or her fair share of the damages, no more, no less. That is fair.

Mr. Chairman, I ask my colleagues to support this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan [Mr. DINGELL].

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, the House a little earlier rejected an amendment which would have denied discovery to American firms which were involved in product liability cases where foreigners were taking advantage of them and where they were receiving shelter under the bill. Note that the vote was 258 in favor of that amendment, an overwhelming win. This amendment would, and language of section 109, eliminate the requirement that foreign companies inside this country appoint an agent for purposes of receiving service in the case of product liability suits.

I say that the House has once rejected that principle and should again reject it. Under the previous amendment, you could not get discovery. Now you cannot even get into court under this amendment.

Let us talk about something other. In eliminating the joint and several liability, a man hires two hoodlums to kill his mother-in-law. The woman is horribly disfigured. Judgment is collected ultimately by the woman against the husband and the two hoodlums. She can only collect approximately a third because no longer is there joint and several liability.

Another case: A Member of Congress is liabled by his local newspaper, charged with contributing to the delinquency of a minor. No longer under this amendment is there joint and several liability. He sues the newspaper and the two reporters. Because joint and several liability is no longer there, we can only collect approximately a third of the damages which would have been appropriately assessed against the wrongdoers.

This is a bad amendment. It is an admirable reason for why we ought not write legislation of this kind on the floor. It carries the question of liability. It carries the question of compensation well beyond the question of product liability.

It carries it into all civil wrongs and all civil litigation.

The amendment should be rejected. It favors foreigners, it favors wrongdoing. It puts the innocent at risk. It denies people proper recovery for serious wrongs, intentional or otherwise.

I urge the amendment be rejected.

Mr. DOGGETT. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Texas.

Mr. DOGGETT. Mr. Chairman, the section that is being deleted by the Cox amendment requires the foreign manufacturer to appoint an agent for service or process. The prior amendment of the gentleman from Michigan [Mr. CONYERS] did not touch that issue at all. So what this is doing is something very inconsistent with the spirit of the Conyers amendment, but if this amendment should pass, contrary to the author's representations, it would do great damage just as the gentleman has suggested.

Mr. DINGELL. Reclaiming my time, Mr. Chairman, it strikes the provision relative to service of process. It strikes the proper requirement that foreign companies appoint an agent for purposes of receiving service.

Mr. DOGGETT. Mr. Chairman, if the gentleman will continue to yield, the House, previously, by an overwhelming margin adopted the amendment of the ranking Member, the gentleman from Michigan [Mr. CONYERS]. It does deal with trying to assure parity that we, for once, do not give all the advantages to the foreign manufacturers, that we realize the importance of American manufacturers and now the spirit and the principle of that amendment is being undermined by the amendment being offered at this point, because it deletes the section in this particular provision that requires these foreign manufacturers to have an agent for process, something that every American manufacturer has to do.

Mr. DINGELL. The House has already spoken. Foreigners should respond in discovery. But this amendment strikes the ability to even get them in court. It takes away the ability of an American injured by foreign misbehavior in the area of product liability to even get service, because no longer must the foreigner appoint an agent for purposes of receiving service under this legislation.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

It is very interesting to note that the fair share rule that we are proposing in this amendment is apparently so unobjectionable that the minority chooses not even to debate it, but rather to debate the red herring, first, that the Conyers amendment that we earlier passed might be stricken by this amendment. They have now conceded that the Conyers amendment is protected, is part of this bill. We have just passed it. It is not stricken.

But the argument is raised that the service of process provisions in another part of the bill, which are required in order to make the Conyers amendment work, would be stricken. That is neither here nor there because the Hague Service Convention already provides procedures consistent with our international agreements that will permit the Conyers amendment to work perfectly fine.

Mr. Chairman, I yield 3 minutes to the gentleman from Nebraska [Mr. CHRISTENSEN].

Mr. CHRISTENSEN. Mr. Chairman, I thank the gentleman for yielding time to me.

I rise in support of the Cox-Geren-Ramstad-Christensen bill under debate here. This is an important piece of legislation that will ensure small businesses and volunteer organizations, to make sure that they are brought under the umbrella of protection that we have sought to provide other American manufacturers.

This amendment will extend the prohibition against the unjust application of joint and several liability to all civil cases involving interstate commerce.

□ 1900

The litigation explosion is having an adverse affect, not only on our manufacturing, but also on the Nation's start-up businesses and other small businesses. Frivolous and excessive litigation has an especially destructive affect on small businesses.

We all know these sorts of businesses. They are undercapitalized and understaffed, which means they cannot afford either the lawyer bills or the ridiculous amounts of time it takes for an individual to deal with a legal matter.

Under the rule of joint and several liability, a small business can find itself literally driven out of business by a jury in search of a pocket, and a pocket with money in it. It is usually the deep pocket they are looking for.

But small businesses are not alone in being threatened by joint and several liability. We have all heard the horror stories about the vastly increased insurance premiums that volunteer organizations and municipalities across the country are being forced to pay because of the ridiculous rulings against them.

Those rulings, based on the doctrine of joint and several liability, based on the idea that you can be held entirely responsible for the injury if you are only 1 percent or 2 percent at fault, are absolutely wrong. When trial lawyers go looking for a State that has been very kind to them, and sympathetic juries, they go to States like Alabama and Texas. I will tell the Members, it is time to restore some common sense back to this rule.

That is why Congress needs to exercise its authority to serve as the arbiter on the issues that are involving interstate commerce, so that we have cases that are judged similarly in New York and in Texas and in Alabama and in Omaha, NE, where I am from.

We need to end the arbitrary doctrine of joint and several liability, and we need to end it today. I urge my colleagues to vote for this Cox-Ramstad-Geren-Christensen amendment, and to do it today.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. BATEMAN].

Mr. BATEMAN. I thank the gentleman for yielding time to me.

Let me say first of all, Mr. Chairman, there is bipartisan support for this amendment, but my opposition I hope will demonstrate that there is indeed some bipartisan opposition to this amendment. I wish there were more than 2 minutes in order for me to explain all of the variety of reasons why I do so.

Fundamental to it is, No. 1, the recitations of the findings and purposes of the amendment I think are inordinately broad. They represent a conclusion by this Congress that we think there are too many lawsuits being brought in America, and plaintiffs are winning too many of them. That may or may not be the case, but I suggest it is not even the function of this Congress to make that judgment. The function of this Congress is as to Federal law, to set forth the ground rules, the parameters, and the substantive law for the Federal courts in cases where there is Federal jurisdiction.

I complain of this amendment because it federalizes a significant aspect of the law which, until now, has been relegated to the State courts and to a State court system in which most of the litigation is brought. I would suggest that we make a mistake to federalize civil justice in this United States from this Congress, and would say to my colleagues, especially on this side of the aisle, if we do it today in this fashion, under these findings, for these purposes, it can be done tomorrow for entirely different purposes.

Mr. Chairman, let me finally say that this notion of joint and several liability is bottomed on principles, principles that were part of the common law of England, brought to America in the 13 original colonies, and a part of the law of all of those 13 original colonies forming the Union, and have been a part of the law of all of the States for all of the years since.

I wish there was time for me to discuss with the Members, and I hope someone else will, the principle on which that rule regarding joint and several liability is bottomed. There is a principle involved.

Mr. COX of California. Mr. Chairman, I yield 3 minutes to the gentleman from Minnesota [Mr. RAMSTAD].

Mr. RAMSTAD. I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in strong support of this amendment to extend the fair-share rule to all civil actions.

Mr. Chairman, other than the vote on final passage, make no mistake about it, this will be the most important vote we will have on tort reform. The bottom-line question for each of us to answer is this: Why on earth should a defendant with 1 percent or 2 percent of liability be held 100 percent responsible for payment of noneconomic damages. That is the question each of us has to answer. That is not fair, and everyone knows it.

Let me stress what this amendment will not do. It will not end joint liability for medical expenses. Thus, even though a party may be only 1 or 2 percent at fault, such a defendant could still be held 100 percent liable for the plaintiff's medical expenses and other economic damages, such as lost wages.

While this also may not be fair to such a defendant, it would be more unfair to deny an injured plaintiff the means to be made whole again, and that is what our tort system is all about, to make an injured plaintiff whole.

Mr. Chairman, let us make it perfectly clear that this amendment simply limits noneconomic damages in proportion to each defendant's share of fault. This, Mr. Chairman, is just common sense. Let me give Members an idea of an actual case involving the problem that joint liability can cause.

Those of the Members who have been there or lived there know that in Minnesota we have two seasons, winter and road construction. We see signs for most of the year ''Slow down, give them a break, under construction.''

Now, picture among these signs a drunk driver careening at an excessive speed through detours posted at 45 miles an hour. The end result is a crash. Next comes a lawsuit brought by the drunk driver. Who does the drunk driver sue? For starters, he sues the State highway department, but the State in this case imposes limits on its liabilities, so the driver's attorney sues every deep pocket imaginable: in this actual case, not only the State but the road contractor, the utility company who owned the adjoining property, the engineering firm who designed the detour through which the drunk driver plowed his car, and so forth.

In the end, the defendants decided to settle out of court for $35,000 each. This was after a 15-member engineering firm spent over $200,000 in legal fees over 5 years, and 100 hours of work that should have been spent on engineering. Clearly, the drunk driver's attorney would have thought twice about suing all possible deep pockets if joint liability were not available.

I urge all of my colleagues to support this amendment to restore common sense to our legal system, to restore proportionate liability and the fair share rule.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, the intellectual weakness of the arguments of the proponents is really quite amazing, if you take just a couple of moments to think about it. First, every case they cite talks about the 1-percent negligent party, but the vast majority, I believe all the Republicans, voted for a rule which prohibited amendments to eliminate any minor wrongdoer, anyone below 20 percent, from having joint liability, while keeping the major wrongdoers in the case, because in the end, the issue is who is going to get shafted. Either it is the plaintiff, or it is one of the wrongdoers.

We concede, at least in my amendment that I offered, and it was denied, that minor tort feasor should not have to pay the entire judgment. Second, a great deal is made about how important and logical this is, and it is only fair, but it does not apply to economic damages.

The gentleman from Massachusetts [Mr. FRANK] had an amendment to exclude anybody who is under for economic or noneconomic damages. If it is unfair to pay the pain and suffering, why is it fair to pay the economic damages?

I know why you did not do it that way, because it looked too cruel, because the proponents of the amendment talk about ''We are just dealing with the feelings part of this.'' If a person becomes a quadriplegic because of the negligence of another, and they say ''You pay the medical bills and the wage loss and that is it, everything else is just about feelings,'' you amputate the wrong leg because of the negligence of the hospital or the doctor, you pay whatever wage loss there is, there may be none, you pay the medical bills, and then everything else is just feelings, we are talking about compensating the person and making them whole.

Get rid of the minor tort feasors by excluding the 1 percent, 2 percent, 5 percent, 10 percent case. Do not let off the major wrongdoers, and leave the plaintiff without being made whole, without compensation. You talked about the drunk driving case. What you have passed with title II in this bill is a punitive-damages statute which keeps a person who is injured by a drunk driver from suing the drunk driver for punitive damages on State remedies.

The amendment is so broad it reaches into the typical automobile case in a neighborhood in any city in America. It is not limited to product liability. It is not limited to interstate commerce. It is the most far-reaching, intrusive kind of amendment imaginable.

The best comments I have heard today were from the gentleman from Virginia [Mr. BATEMAN], a true conservative, who wanted to know what business is it of Congress' whether in an automobile accident case at an intersection, there is joint and several liability or not?

We can make arguments either way, but the State legislature and the Governor, they are the people to decide. They are the ones closest to the voters. There is no Federal question involved in this, but there are some economic interests and some insurance companies who want it, and I do not believe that is the motivation, because I am not into attributing motivations to people; some people see that perspective, but they do not see what is going to be left for the plaintiff or for the concept of Federalism.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman who just spoke stated ''It isn't limited to interstate commerce.'' Were that true, I would not support this amendment, but of course, it is expressly limited to interstate commerce, which is precisely the role of this Congress under Article 1, section 8.

Mr. Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE], the distinguished chairman of the Committee on the Judiciary.

Mr. HYDE. Mr. Chairman, I shall have to talk fast.

Mr. Chairman, 33 States have abolished joint and several liability. That is the problem. There are 33 different laws, different methods of avoiding and evading joint and several liability, which is very unfair. The serious problem of inconsistency in the tort laws of the 50 States is there. This seeks uniformity, which makes legal common sense.

Mr. Chairman, let me briefly address the federalism aspect that I have heard so much about today. I have heard from Members on our side of the aisle who are troubled by our preempting of State laws. They insist that the States are important and should not be administrative districts of the Federal Government.

I just want them to know what the passing of time has done to that notion. We have the Environmental Protection Agency, Food and Drug Administration, Occupational Safety and Health Administration, Consumer Product Safety Commission, Equal Employment Opportunity Commission, National Labor Relations Board, Federal Trade Commission, Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Commodities Futures Trading Commission. Every aspect of life is regulated by the Federal Government. I have not mentioned the Americans with Disabilities Act, ERISA.

The only facet of our great economy that is left untouched is the multibillion-dollar litigation industry. It seems to me it is eminently justified that we try to put some common sense and rationality, predictability, into this big business of lawsuits. That is what the gentleman is trying to do. I support it wholeheartedly.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, in these cases, all the victim knows is that he was injured. If you have a doctor who is clearly negligent, the doctor can escape some liability by saying it was 5 percent the nurse's fault, 10 percent the anesthesiologist's, 10 percent the hospital, 10 percent the product, and now where are we in the lawsuit?

The plaintiff has to have five different defendants, five different sets of lawyers, five different judgments, five different collections, some insolvent. This consumer just has to, I guess, get over it. They are not going to be able to become whole.

Mr. Chairman, we have always had loser pays. Even if they win, they might be having to pay opposing counsel. We have limited damages. We have come up with new defenses.

Mr. Chairman, this reduces the accountability of wrongdoers. It allows wrongdoers to escape responsibility for their actions, at the expense of the innocent victims. Consumer protection is taking another giant step backward. I would hope that we would defeat this amendment.

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, 50 States, 50 different State laws affecting interstate commerce, and we have for so long allowed a tremendous ripoff. It blows my mind that we have tolerated this for so many years.

Mr. Chairman, I rise in support of Common Sense Product Liability and Legal Reform Act of 1995, and I rise in support of the amendment of the gentleman from California [Mr. COX] and the gentleman from Texas [Mr. PETE GEREN] the fair share amendment.

It is so simple. It does not take a lot of words, a lot of legalese. The bottom line is so simple. If you are responsible, you should pay your proportionate share of whatever problem you caused, but if you are not responsible, you should not be held liable.

When I hear of the outrageous awards that are given to an individual plaintiff, and then I learn of the liability that company had, which was 100 percent, when in fact they only caused 5 or 10 percent of the action, and then I think ''Who pays?'' I pay, you pay. We all pay for this outrage. This outrage needs to end.

□ 1915

The bottom line is so simple, it is so clear and maybe it is just one has to be an attorney to find it confusing. If you are in fact responsible, you should pay. If you are 50 percent responsible, you should pay 100 percent of your 50 percent. But you should not have to pay when you are not responsible in the vast majority of the cases.

I urge my colleagues to vote this amendment and vote this bill. I consider it of all the bills coming before this Chamber the most important bill that we will vote on in this entire 2 years.

Mr. FRANK of Massachusetts. Mr. Chairman, I reserve the balance of my time.

Mr. COX of California. May I inquire of the Chair how much time remains on each side?

The CHAIRMAN. The gentleman from California [Mr. COX] has 3 minutes remaining and the gentleman from Massachusetts [Mr. FRANK] has 5½ minutes remaining.

Mr. DOGGETT. Perhaps the gentleman might yield on section 109.

Mr. COX of California. As I indicated, I would like to reserve time at the end for such purpose.

Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. BRYANT].

Mr. BRYANT of Tennessee. I thank the gentleman for yielding me the time.

I rise in strong support of this bill to abolish the doctrine of joint and several liability. The core of our judicial system, I think, is one of fairness and has been repeated so often today.

In this context, it just seems to me the fairest thing, that a person at fault have to pay and if a person is not at fault, then they should not have to pay, that it ought to be grossly unfair for this system to require a defendant to pay the full judgment, 100 percent of a judgment, when a jury has decided that they are not 100 percent liable, perhaps as little as 1 percent liable.

The example that I have seen used so many times, you have got 3 defendants, X, Y, and Z, and X is held to be 10 percent at fault and Y and Z 45 percent at fault each for a total of 100 percent. If 10 percent is the deep pockets in the case and they are going to have to pay 100 percent of the judgment, they may have a right to go back against the other two defendants, Y and Z, but if Y and Z have no money, which is usually the case, it is worthless.

Let me address just briefly before I sit down two examples that have been brought forward from the other side. One had to do with the doctor who might be 5-percent liable and point the finger at the nurse and this nurse and this doctor and this hospital and that the lawsuit would result in more defendants coming in. Let me assure the gentleman from Virginia that the lawsuit will certainly include all of those people, anyway. There is a shotgun approach that is used so often in litigation to sue anybody that might be at fault and that is what happens in the type of system we are working under.

Under another example cited by the gentleman from Michigan, he used the example of a husband hiring two hoodlums to beat up his wife and somehow that the husband might escape 100-precent fault on that because of the actions of the hoodlums. I would suggest that the legal theory of principal and agent would be at work there and certainly whatever the hoodlums did to his wife, he would be held 100-percent accountable and I would assume a jury would so find him and he would be 100-percent liable for the judgment to his wife. Again I think this is the only fair thing to do under the circumstances, and I strongly support the bill.

Mr. FRANK of Massachusetts. Mr. Chairman, I reserve the balance of my time for the purpose of closing.

Mr. COX of California. Would the gentleman from Massachusetts who

has significantly more time be willing to yield to the gentleman to ask a question?

Mr. FRANK of Massachusetts. No.

Mr. COX of California. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Chairman, I just learned something this evening. O.J. Simpson does not have the most creative lawyers in the world; the most creative lawyers in America are right in this Chamber.

Did Members hear some of these arguments? One fellow from Michigan who I admire a great deal got up and said, ''Don't vote for this amendment, people in Congress, because if you do, you can't sue your local newspaper if they wrong you.''

Have you ever heard of a Congressman winning a case against a local newspaper? In fact, Sullivan versus New York Times says you cannot sue your local newspaper.

The reason that this is a great amendment comes not from this body but from George McGovern. Remember him? After he left the Senate, he went into business, and here is what he said in the New York Times. He said,

America is in the midst of a new Civil War, a war that threatens to undercut the civic basis of our society. The weapons of choice are not bullets and bayonets but abusive lawsuits brought by an army of trial lawyers subverting our system of civil justice while enriching themselves.

That is why this is a good amendment. The Manhattan Institute says it costs $100 billion a year. Vote for this amendment. It is a great amendment.

The CHAIRMAN. To close debate, the Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. To begin, Mr. Chairman, there is not the remotest evidence that George McGovern was talking about this particular amendment, because this amendment is not about product liability. The restriction on joint and several liability for noneconomic damages on product liability is in the bill. This bill, and I was glad to hear the gentleman from Illinois proclaim the death of States rights, because what this bill says is, ''This section shall apply to any product liability or other civil action brought in any Federal or State court on any theory where noneconomic damages are sought.''

This is an amendment that does not deal with product liability but that is already covered. This says any lawsuit anywhere in America where people are looking for noneconomic damages, we will tell the States how to run things. People said, ''Well, we've got to protect our manufacturing. We do a lot of exports.'' Then they mentioned the Little League. Well, it is not my impression we export that many little leaguers. I know the kids go overseas to play ball, but most come home. They rarely leave but one or two behind. The fact is that this is a statement by the Republican Party on the whole, not all of them, saying, ''We don't trust local juries, we don't trust local legislatures, we don't trust local judges. We will tell you how to run, not manufacturing, not interstate commerce, any civil lawsuit.'' Someone falls down the steps, someone is sued for libel, someone claims alienation of affection, anyone, so it is the most arrogant grab from the States by the Federal Government. Because it is not about manufacturing. We do not need that. The amendment is about every single lawsuit and it says we cannot trust the juries and we cannot trust the States.

As to the noneconomic damage thing, I offered an amendment that said if you are less than 20 percent responsible, you do not get joint liability for economic or noneconomic damages. That must have been a good amendment. How do I know? The Committee on Rules would not let it in. The Committee on Rules is for openness on any amendment they think they can beat.

The argument made is that it is unfair to the small tort-feasor to give that person joint liability. It is unfair economically and it is unfair in the noneconomic. The distinction is not between economic and noneconomic damages in a logical world but between the large and the small degree of responsibility.

So I said all right, let's not discriminate between economic and non-economic with the gender bias and the class bias that that implicates, let's cut off the small versus the large. But the Republican Committee on Rules said, ''Oh, no, that's too logical and we can't have that, because if we're going to tell every State court in America how to deal with every lawsuit in America where anybody alleges noneconomic damages, then we better do it the other way.''

Plus we also have the gentleman's amendment which does weaken the amendment of the gentleman from Michigan. Under the amendment of the gentleman from Michigan, a foreign manufacturer must name an agent to be served here. The gentleman strikes that in this amendment. We would still theoretically have jurisdiction if we can find them to serve them.

I mean in Croatia, they have jurisdiction over Serbian war crimes but they are not going to try many Serbs and we will still have technical jurisdiction over foreign manufacturers but if the gentleman from California's amendment passes and they do not have to designate an agent for accepting process, we will not get many of them into court. It is an abstract discussion and what he is saying is to every State court in America, every State court in America, if there is a foreign manufacturer, you can't require them to serve process and if you want to sue them in State court, good luck to you. Maybe the United Nations can pick them up on the way to try and find some Serbs in Croatia, because they will have about as much chance.

This belies the notion that the Contract is about empowering the States. This says when we feel that the economic interests with which we are in most sympathy will be better served by nationalizing matters that have been State law for 200 years, we will do so. And we will claim it is according to interstate commerce, that will be the entering wedge. Then we will give you an amendment which says any civil action in any Federal or State court on any theory.

This is the ''anys'' amendment. Every ''any'' that applies got put into this amendment. Any case, any State, any cause of action, any reason they want, congratulations, you are now under Federal law.

This amendment brings back Selective Service. You have just drafted every State court and every State jury and every State cause of action and it has nothing to do with interstate commerce. Maybe the Republican party has adopted the theory that there is no more interstate commerce.

Mr. COX of California. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. No, no more than the gentleman would yield to the gentleman from Texas.

Maybe you have now adopted a theory that there is no more interstate commerce, that we are all one big unitary society. I think you are going a little far myself, but I take it after we heard the gentleman from Illinois who said everything in American life has been nationalized except this, that you have now conceded that everything is now fair game nationally and we will not hear the States rights arguments again.

Fifty different State laws, is that not terrible? Of course where poor children are concerned, 50 different State laws is a good idea. Where school lunches are concerned, 50 different low levels of State nutrition, that is a good idea. Where Aid to Dependent Children 3- and 4-year-olds who need economic support, let's give it back to the States.

I have never seen such selectivity about what goes to the States and what does not.

I yield to my friend the gentleman from Texas.

Mr. DOGGETT. This amendment deletes section 109 from the bill. Section 109 of this bill requires that a foreign manufacturer to benefit from this bill at all, to get any benefit from it, appoint an agent for service of——

The CHAIRMAN. The time of the gentleman has expired.

The question is on the amendment offered by the gentleman from California [Mr. COX].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. COX of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 263, noes 164, not voting 7, as follows:

[Roll No. 225]

AYES—263

Allard
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Danner
Davis
Deal
DeLay
Dickey
Dicks
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fazio
Fields (TX)
Flanagan
Foley
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kennelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Maloney
Manzullo
McCarthy
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (CA)
Miller (FL)
Molinari
Montgomery
Moorhead
Morella
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pombo
Pomeroy
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schumer
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—164

Abercrombie
Ackerman
Andrews
Barrett (WI)
Bateman
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Chapman
Clay
Clayton
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
de la Garza
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dingell
Dixon
Doggett
Doyle
Durbin
Engel
Eshoo
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gonzalez
Green
Gutierrez
Hall (OH)
Hastings (FL)
Hayes
Hefner
Hilliard
Hinchey
Hoyer
Istook
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kildee
Kleczka
Klink
LaFalce
Lantos
Laughlin
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Manton
Markey
Martinez
Martini
Mascara
Matsui
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Mfume
Mineta
Minge
Mink
Moakley
Mollohan
Moran
Nadler
Oberstar
Obey
Olver
Orton
Oxley
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (FL)
Pickett
Poshard
Rahall
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Scott
Serrano
Skaggs
Skelton
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tauzin
Thompson
Thornton
Thurman
Torres
Towns
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wyden
Wynn
Yates

NOT VOTING—7

Cubin
Forbes
Gibbons
Murtha
Owens
Rangel
Tucker

□ 1945

Messrs. POSHARD, HAYES, and COLEMAN changed their vote from ''aye'' to ''no.''

Messrs. HOLDEN, MILLER of California, FAZIO, TEJADA, and Mrs. KENNELLY changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1945

The CHAIRMAN. It is now in order to consider amendment No. 12, printed in section 2 of House Resolution 109, as modified.

AMENDMENT OFFERED BY MR. COX OF CALIFORNIA

Mr. COX of California. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. COX of California:

Page 19 redesignate section 202 as section 203 and after line 19 insert the following:

SEC. 202. LIMITATION ON NONECONOMIC DAMAGES IN HEALTH CARE LIABILITY ACTIONS.

(a) MAXIMUM AWARD OF NONECONOMIC DAMAGES.—In any health care liability action, in addition to actual damages or punitive damages, or both, a claimant may also be awarded noneconomic damages, including damages awarded to compensate injured feelings, such as pain and suffering and emotional distress. The maximum amount of such damages that may be awarded to a claimant shall be $250,000. Such maximum amount shall apply regardless of the number of parties against whom the action is brought, and regardless of the number of claims or actions brought with respect to the health care injury. An award for future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the limitation on noneconomic damages, but an award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment or by amendment of the judgment after entry. An award of damages for noneconomic losses in excess of $250,000 shall be reduced to $250,000 before accounting for any other reduction in damages required by law. If separate awards of damages for past and future noneconomic damages are rendered and the combined award exceeds $250,000, the award of damages for future noneconomic losses shall be reduced first.

(b) APPLICABILITY.—Except as provided in section 401, this section shall apply to any health care liability action brought in any Federal or State court on any theory or pursuant to any alternative dispute resolution process where noneconomic damages are sought. This section does not create a cause of action for noneconomic damages. This section does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of noneconomic damages. This section does not preempt any State law enacted before the date of the enactment of this Act that places a cap on the total liability in a health care liability action.

(d) DEFINITIONS.—As used in this section—

(a) The term ''claimant'' means any person who asserts a health care liability claim or brings a health care liability action, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent or a minor.

(b) The term ''economic loss'' has the same meaning as defined at section 203(3).

(c) The term ''health care liability action'' means a civil action brought in a State or Federal court or pursuant to any alternative dispute resolution process, against a health care provider, and entity which is obligated to provide or pay for health benefits under any health plan (including any person or entity acting under a contract or arrangement to provide or administer any health benefit), or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, in which the claimant alleges a claim (including third party claims, cross claims, counter claims, or distribution claims) based upon the provision of (or the failure to provide or pay for) health care services or the use of a medical product, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, or defendants or causes of action.

Page 17, line 10, insert ''and other'' after ''punitive''.

The CHAIRMAN. Pursuant to the rule, the gentleman from California

[Mr. COX] will be recognized for 20 minutes, and a Member in opposition will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. COX].

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we are coming to the conclusion of our debate about reform of our civil justice system in America so that the courts will once again earn the maxim ''Equal justice under law,'' and no longer will people have to fear the courthouse and think it is not a place for them and think it merits rather the admonition from Dante's Inferno, ''Abandon hope, all ye who enter here.''

It is impossible, it is unthinkable, to handle lawsuit reform in the Congress without considering health care, because nowhere in our American life have the skyrocketing costs of lawsuits done more damage than in our health care system.

For the last 2 years, in 1993 and 1994, we debated health care in this country. And during that last 2 years of debate, in 1993 and 1994, through all the hearings, we all know the story. The American people came to the essential realization that we need to control health care costs so that we can increase access for those who are least able to afford basic care from doctors and good hospitals.

We decided we did not want a government-run system, but we decided if we can, we would like to get rid of all of the extra costs that lawsuits and lawyers suck out of our health care system, to get rid of all of the extra costs that defensive medicine imposes on our health care system, that is all the unnecessary tests that all doctors perform. Three-quarters admit they do this because of the threat of liability, if for no other good reason, $9 billion in extra malpractice premiums attributed to defensive medicine. Another $20 or $30 billion according to various estimates are attributed to this defensive medicine, which is doctors behaving not in the best interests of the patients, but lawyers, so Ralph Nader and Joel Hyatt seem to have more to say about the kind of health care we have in this country than doctors and patients.

We have a system in place in several States in this country, in particular my home State of California, that has worked very well, called MICRA. It has limited our health care premiums for the average Californian from somewhere between 33 percent and over 50 percent less than other States without these reforms. That is what I propose in this amendment today. The only change that this makes is in health care cases; not all civil cases like the last one, just health care cases.

We believe that we should have a system in America that compensates without limit, 100 percent of all of the damages that somebody might suffer. They should be able to claim these through a lawsuit, all of the damages for their medical expenses, for their doctors' expenses, for their hospital expense, without limit, all of their rehabilitation expenses, all of their future estimated lost income and earnings. All of these things called economic damages should be compensable without limit.

We have already decided that on top of that, they should be able to multiply all of their real, actual damages times three and get that in punitive damages. In our country uniquely we have something called noneconomic damages. That means things we cannot really monetize, we cannot figure out how much it is worth, but we just want to add extra on top of all the real damages and punitive damages.

Only four other countries in the world allow this kind of damage. For the rest of the world it is zero, and for the other countries that allow it limit it sharply. In Canada this type of damage award is limited to $180,000. In California we limit it to $250,000. That is what we would do in this amendment.

Mr. Chairman, I urge my colleagues to vote for this vitally important health care reform. We know we need it. I hope that Members will act upon it.

Mr. Chairman, I reserve the balance of my time.

Mr. BERMAN. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from California [Mr. BERMAN] is recognized for 20 minutes.

Mr. BERMAN. Mr. Chairman, I yield myself two minutes.

Mr. Chairman, let me initially correct some of what I am sure are the inadvertent misrepresentations of the gentleman from California. No. 1, California's health care premiums did not go down 33 percent over what they would have been. The gentleman is referring to the malpractice premiums paid by physicians, not the health care premiums paid by citizens.

Second, this bill is not in any fashion limited to medical malpractice. It covers, with a $250,000 limit on pain and suffering, any health care liability action which is defined in this bill under any theory, tort, or contract, that a contractor could have a provision for liquidated damages, anything like that that goes beyond the medical costs and the lost wages, and it seeks to put this $250,000 limit on that.

The anomaly is when this day is done, if this amendment passes, and you ride in a car which is manufactured defectively, it explodes, and you are paralyzed, there is no limit on what you can get for pain and suffering. Difficult to quantify, but very real. You are paralyzed for the rest of your life, you are a quadriplegic, the wrong leg is amputated, there is something there beyond wage loss, and there is something there beyond just the simple cost of your medical treatment.

If you are injured in that explosion by that defective car, no limit. If you are injured because of the negligence in a defective medical device and it results in your being paralyzed, you are capped at $250,000.

What is the logic of the distinction? I do not know. I will be interested in hearing the gentleman speak to that particular issue.

Once again, we have gone way beyond the issue of product liability and gone way beyond the issue of medical malpractice. In California there are a series of damage remedies for bad faith insurance practices. If it is a health insurance policy and the health insurance company does not pay and the result is serious injury to the person, if he is arbitrarily canceled and there are massive losses and a breach of contract, under that theory, no matter what the contract provision provides for damages, this comes in and caps the pain and suffering with those limitations.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to respond to the gentleman from California by saying he is correct that as a result of the health care lawsuit reform passed in California, by a Democratic legislature I should add, medical liability premiums are 33 percent to 50 percent lower on average than those in other States that do not have these reforms.

Mr. Chairman, I yield to the distinguished coauthor of this amendment, the gentleman from Texas [Mr. PETE GEREN], 2 minutes.

(Mr. PETE GEREN of Texas asked and was given permission to revise and extend his remarks.)

Mr. PETE GEREN of Texas. Mr. Chairman, I rise in support of this amendment, and I want to direct Members' attention to the change that has been made in this amendment. This was an amendment that was the subject of the rules change earlier today in the printing in DSG that describes it as a limit on noneconomic damages for all civil actions. That is no longer correct. This is limited to health care liability actions. It is patterned after the MICRA system in California.

The Office of Technology Assessment reported in 1993 that limits of this type that will come about as a result of this amendment are the single most effective reform in containing medical liability premiums. Ohio is a good example of a State in which a cap on noneconomic damages had a substantial impact on costs until it was struck down. Prior to the enactment of the cap, Ohio's payment of medical malpractice claims was 3.7 percent of the total nationwide. That declined to 2.9 percent while the reforms were in force. In 1982, the Supreme Court invalidated the claim, and by 1985 the percentage of nationwide claims had almost doubled to 5.4 percent.

California had the highest liability premiums in the Nation prior to its enactment of a cap of this type. Since its

enactment, cap premiums are now one-third to one-half of those in New York, Florida, Illinois and other States that do not have these kind of limits.

Contrary to what many are saying, a ceiling on noneconomic damages will not in any way restrain the ability of an injured party to recover medical expenses, lost wages, rehabilitation costs, or any other economic out-of-pocket loss suffered. It only limits those damages awarded for pain and suffering, loss of enjoyment, and other intangible items. These items routinely account for 50 percent of the total payment of a suit and are highly subjective.

Mr. Chairman, this system has worked in California, it is an important planning in any health care reform we consider as a country, and it will help us hold down the skyrocketing costs of health care in this country.

Mr. Chairman, I urge my colleagues to support this amendment.

□ 2000

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. Mr. Chairman, I do not profess to be an expert on any subject. But I come to this debate with some experience. Prior of my election to Congress, I spent 10 years practicing law, specializing in medical malpractice. I defended doctors, and I brought suit against them.

Let me ask my colleagues, if they can for a few moments, to forget the lobbyists, forget the companies, the insurance companies, and forget all of the special interests and listen to one simple tragic story.

One of my first cases involved a baby girl. I would say to the gentleman from California, Mr. COX, and to the gentleman from Texas, Mr. PETE GEREN, that like most parents in America, these parents took their baby girl to the pediatrician for her baby shots. Unfortunately, this little girl has suffered from a rash called roseola a few days before she went for her shots. Because of the doctor's failure to ask and examine, the little girl suffered a devastating reaction to the vaccination. The brain damage was so severe she was left in a permanent vegetative state. She would never speak, never walk, never go to school. She would be in diapers as long as she lived.

For 5 years or 50 years or more, she and her loving parents would suffer from the negligent act of that doctor.

Mr. COX and his amendment would decide that no matter how long she lived, no matter how long she suffered, her maximum recovery for pain and suffering would be $250,000. Mr. COX would take away from any court or jury in America the right to decide that she and her parents deserve 1 penny more.

My Republican colleagues call this common sense legal reform. Limiting a deserving victim's right to recover for pain and suffering does not even reach the threshold of common decency.

We are not talking about frivolous lawsuits. We are talking about parents facing a lifetime of caretaking because of a doctor's negligence. We are not talking about verdicts that we giggle about when we hear about them on the radio. We are talking about verdicts that when you hear about them you say, it could not be enough. You could not pay me enough money to live with that injury to myself or my baby.

But Mr. COX is prepared to say no matter what your injury, no matter what your pain, no matter how many years you will be crippled and broken, your right to recover will be limited.

Our system of justice is far from perfect, but this Cox amendment would invite tragic, unjust results which would be visited on the lives of innocent victims and their families for decades to come.

This amendment is mean in the extreme. Vote ''no.''

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the gentleman from Nebraska [Mr. CHRISTENSEN].

(Mr. CHRISTENSEN asked and was given permission to revise and extend his remarks.)

Mr. CHRISTENSEN. Mr. Chairman, do not be confused about the opponents that I just heard visit on this, this little child will be compensated for those damages for the rest of her life. The plaintiffs bar are going to try to confuse the issue here, but in Omaha, NE, an ob/gyn pays 20,000 in medical malpractice insurance. Just across the river that same ob/gyn pays 60,000 in medical malpractice insurance. Why? Because of the reason we have tort reform in Nebraska. We have a cap on medical malpractice in Nebraska. And that is why we need to continue to enforce this State by State so other States can enjoy what we have in my home State.

Because of the litigation explosion, the cost of insurance to obstetricians jumped 350 percent between 1982 and 1988. In some areas a doctor will spend over 100,000 on medical malpractice insurance. Faced with these numbers, many doctors cannot afford to deliver babies in rural areas and poor areas. We need to put a reasonable ceiling on health care liability so it will open the way for lower insurance costs. Too many personal injury lawyers are making their careers out by waging war on doctors these days. Because of their activity, men and women and children across this land are going to suffer each and every day. This bill restores some common sense to what we need to restore in our civil justice system.

I yield to the gentleman from Georgia [Mr. BARR].

Mr. BARR. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, this begins an important process that is not independent of the process but it begins an important process, this legislative proposal, in curbing the worst excesses of the current tort system. In the future, I propose that we address additional amendments that will take into account extraordinary circumstances warranting adjustments to these otherwise generous caps.

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Oklahoma [Mr. ISTOOK].

Mr. ISTOOK. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise in opposition to this amendment. I believe this is a deadly amendment. I believe it is a damaging amendment. I think it is an amendment that fails to take stock of reality. Under this bill, your losses must be one of two types: either they must be economic damages, as defined on page 20 of the bill, something that is a financial loss. Everything else is noneconomic damage.

If you lose your sight, it is noneconomic damage. If you lose any other organ, your ears, your hearing, it is noneconomic damage. If you lose your arm, if you lose both legs, if you are paralyzed for the rest of your life, it is noneconomic damage. And it is capped; it is treated under the same cap as intangibles such as pain and suffering.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. ISTOOK. I yield to the gentleman from Missouri.

Mr. SKELTON. Mr. Chairman, what does this do to the nature and extent of the injuries such as someone with an amputated foot?

Mr. ISTOOK. This means that if you can still make a living with your amputated foot, then you are restricted in what you can recover, even if you can no longer play football with your kids or soccer or baseball. If you lose your sight, you cannot even go to a movie or watch a TV program. You cannot see your children. You cannot see a family picture. You cannot check out and watch a video. Whatever it may be, that is what we are restricting if this amendment is adopted.

Mr. SKELTON. I thank the gentleman for yielding to me.

Mr. ISTOOK. I want to urge my fellow Republicans, those of us who have been supporting tort reform, to vote down this amendment. I do not think a lot of Members realize what you are lumping in. The reference in the text of the amendment to pain and suffering is only by way of example and inclusion. It is not the complete definition of noneconomic damages. It does not pretend to be. Do not tell me that there is no difference between having a lifetime where you may have perpetual pain.

I had a young man that I hired in my office as a staff member that was a paraplegic in a wheelchair. Do not tell me that because he was still able to work, which he did, tremendous young man, tremendous worker, but do not tell me because of that, the accident that cost him his feelings from below the waist, is not worth anything more than someone that says, I hurt or I have emotional distress. Do not treat those as the same. Do not treat someone that

has this type of disability as no different than someone who just says, I have pain or I have emotional distress.

This amendment does that. I urge my colleagues, even those who support tort reform, vote down this amendment.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

I am sure that the gentleman from Oklahoma did not mean to mischaracterize in his statement. He said that there are only two types of damages, economic and noneconomic. He inadvertently left out punitive damages which has been the subject of much debate here. Under our legislation, punitive damages are allowed, in addition, up to three times all of the actual damage.

I should also point out that there is another more important reason that we need to do health care lawsuit reform tonight. It is that the poor and the disadvantaged who use our public hospitals, our free clinics and our community clinics are the worst injured by the high liability costs today.

Qualified doctors increasingly are refusing to do high-risk procedures. And where do these high-risk procedures occur but in our public hospitals.

The front page of the New York Times last Sunday is a great example. The bottom line for babies weighing over 5½ pounds, the cutoff they use as a general gauge of good health for babies, the death rate the first 4 weeks after birth in New York City's public hospitals is 80 percent higher than for babies born at private hospitals. New York's unlimited tort liability system has not stopped malpractice cases.

They hired as an obstetrician a man who had failed for 14 years his national exams. Just a few months after he was hired by the city hospitals of New York, he became another one of their malpractice cases. New York, unlike California, does not have this kind of health care reform.

They have thousands of lawsuits. Over the past two decades those lawsuits have not stopped malpractice. They have made it worse. A 1992 report studied lawsuits of 64 children in those New York hospitals who have been left brain damaged or permanently crippled because of negligence in the delivery room. These 64 lawsuits alone cost city hospitals $78 million and another 793 lawsuits were still pending. What is seen is that more and more lawsuits lead to ever higher liability premiums and this leads to even fewer qualified doctors willing to handle the kinds of higher-risk cases that typify low-income health care.

That in turn leads to less and less access to quality care for the poor. The patients suffer.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. THOMAS].

(Mr. THOMAS asked and was given permission to revise and extend his remarks.)

Mr. THOMAS. Mr. Chairman, I want to thank the gentleman from California [Mr. COX] and the gentleman from Texas [Mr. PETE GEREN] for having the courage to bring this amendment to the floor.

I just wanted to tell my colleagues that the high point in the last Congress for me was as ranking member of the health subcommittee in discussing the President's health care plan. Democrats and Republicans together in a bipartisan way passed a medical malpractice reform provision out of the subcommittee. It was, of course, denied in the full committee, and we went on not to do anything at all on the floor of the 103d Congress about health care reform.

And 3 months into this Congress, on the floor of the House, is the key to health reform.

A yes vote on this amendment will, of course, lower health care costs by lowering malpractice insurance rates. A yes vote on this amendment will remove the defensive medicine costs and lower health care rates. A ''yes'' vote on this amendment will get rid of the ridiculous border games now played between States and doctors because of the nonuniformity of malpractice laws across this country.

But more important and fundamentally, get your eyes off of this amendment and look up. This vote is on health care reform. It this amendment loses, the chances of meaningful health care reform in this Congress are virtually gone. This is the time and this is the moment.

I also might add, we maybe need truth in packaging around here. I want to confess, I am not an attorney. And I am for this amendment, because in passing this amendment, we have laid the fundamental groundwork for real health care reform in this Congress. Three months into this Congress, we will have made a statement to everybody. This Congress intends to be bipartisan, not just in subcommittees, not just in committees, but on the floor. Pass this amendment, and we can pass health care reform. Vote ''yes'' on this amendment.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. WAXMAN].

Mr. WAXMAN. Mr. Chairman, I am astounded at the comments of my colleague from California, new chairman of the Subcommittee on Health of the Committee on Ways and Means. Our State of California has these limits that this proposal would impose upon the whole country. Is that health care reform? The State of California has 3 million people who are uninsured. It has not solved our problems. Has it led to any less defensive medicine? There is no evidence of that whatsoever. Has it reduced the premiums the doctors pay? Perhaps, somewhat, it is stabilized. It may have had that value. But this is not health reform.

If you are being told we have to keep somebody who is injured and maybe even butchered in surgery from recovering to make them whole so that we have health reform, this is not what health reform is all about.

Mr. THOMAS. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from California.

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Mr. THOMAS. Mr. Chairman, I ask the gentleman, is he an attorney?

Mr. WAXMAN. Mr. Chairman, I would say to the gentleman, I am an attorney. What is that supposed to mean?

Mr. THOMAS of California. Thank you.

Mr. WAXMAN. Mr. Chairman, is the gentleman a doctor?

Mr. COX of California. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. Mr. Chairman, in the previous Congress I coauthored consensus health reform legislation with our former colleague, Dr. Roy Rowland of Georgia, health reform that sought to bring to the table issues upon which broad agreement existed in the Congress and among the public. It became one of the leading health reform proposals at that time, and it was the one truly bipartisan health bill considered by the 103d Congress.

One of the consensus issues in our bill was medical malpractice reform. It was an issue upon which many Members of this body on both sides of the aisle agreed. In fact, it was a consensus item addressed in most of the health reform bills introduced in the previous Congress. I have no reason to believe that medical malpractice reform is any less of a priority in this Congress. All of these bills included a $250,000 cap on noneconomic damages, just as does this amendment.

Did the 98 Members who signed onto our legislation, 36 of them Democrats, support this cap because they wished to deny an individual the full legal redress to which he or she was entitled? The answer, of course, is no. Opponents of this amendment today claim that we cannot quantify the pain and suffering of a victim of injury. I tell them this, I cannot agree with them more. I believe that our legal system should pay the complete costs of injury, including lifetime medical costs, rehabilitation, disfigurement, or other forms of actual damage, without limit.

But the very fact that noneconomic pain and suffering damages cannot be quantified has led us into a swamp of astronomical awards that amount not to judgments but to windfalls. No other country in the world, Mr. Chairman, allows these kinds of windfall awards. Is that because they have any lack of feeling or sympathy for the victims of injury? Again, the answer is, of course not. The true reason for limiting these

awards is that it is the single most effective method of reducing medical liability costs. This, in turn, leads to reduced health care costs for everyone. I strongly urge my colleagues to vote for the Cox-Geren-Ramstad-Christensen amendment today.

Mr. BERMAN. Mr. Chairman, I yield 2 minutes to the gentleman from North Dakota [Mr. POMEROY], a nonlawyer.

Mr. POMEROY. Mr. Chairman, I would tell the gentleman from California [Mr. BERMAN], I do have a law degree, and practiced for 5 years. I never brought a medical malpractice action. More recently, I regulated insurance for 8 years. I am the only former State insurance commissioner in Congress, and it is in connection with this that I rise.

My friend, the gentleman from California [Mr. THOMAS], urged you to take your eyes off the amendment and look at the health care issue and pass this bill. The health care issue is not before us; the amendment is. I urge Members to go back and look at the text, because we could embarrass ourselves by passing this amendment as drafted.

Mr. Chairman, on page 2, between lines 13 and 16, it says ''This shall apply to any health care liability action brought on any theory.'' I wish the sponsor of the amendment would have yielded to my question, because I was going to ask him, does that mean you cannot sue for noneconomic loss in excess of $250,000 a psychologist that was abusing his patients? I believe yes, under the strict terms of the text you have offered.

On page 3 of the bill, health liability action is defined as more than the providing of health care, but also the paying for health care. In connection with this, I have a lot of experience, because I adjudicated claims that were unfairly denied by health insurers. I am aware of people who have had bills, hospital bills they have owed, bill collectors hounding them on those bills, and yet they have not been paid by their insurance company.

Clearly, Mr. Chairman, we do not want to protect that. There is a lot of noneconomic loss that can flow from that, but that is covered under the bill, the liability is capped under the bill on any theory. No matter how egregious the conduct of the health insurer, no matter how blatant, how cruel, the liability is capped.

This bill may address a very important concept, one we need to work on. We did not have a hearing on it, we did not discuss it. The language brought before us in this amendment overreaches and would put you in the position of protecting the abusing psychologist and the claim-denying health insurer. You do not want to be in that position.

The CHAIRMAN. The Chair would inform the committee that the gentleman from California [Mr. BERMAN] has the right to close debate.

The Chair recognizes the gentleman from California.

Mr. BERMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Michigan [Ms. RIVERS].

Ms. RIVERS. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I offer the committee the words of one Frank Cornelius, who says ''I think tort reform as we know it is totally bad. We have a judicial system that I find quite adequate, if allowed to function in its own way;'' so you have to ask, who is Frank Cornelius? Is he some parasitic trial lawyer? Is he some rabid consumer rights advocate? No, Frank Cornelius is a lobbyist for the insurance industry. He was part of an effort in Indiana to cap noneconomic damages. What happened to Frank Cornelius? Soon after these caps were put in place, major malpractice was worked upon him. He expects to die within the next 2 years from those problems. He has a different point of view now that he sees the problem from the side of a patient, as opposed to the side of the insurance industry. He acknowledges there is a certain poetic justice to the injury that he suffered, but he adds ''If there is a God, and I believe there is, what happened to me has a purpose. It changed my way of thinking and looking at things.'' He says ''Medical negligence cannot be reduced by simply restricting consumers' legal rights.'' That is what is being proposed here. Mr. Cornelius found this out the hard way.

Mr. Chairman, how many other citizens will have to learn this selfsame lesson? Not many, I hope.

Mr. BERMAN. Mr. Chairman, I yield 1 minute and 30 seconds to the gentleman from Michigan [Mr. DINGELL].

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Chairman, I want Members to look at what this amendment says, at page 13. It covers anything of a medical character. It caps pain and suffering and noneconomic damages at $250,000.

Let us look at some of the things for which a person will get $250,000 maximum for pain and suffering and other noneconomic damages. A person is blinded, a person is rendered a paraplegic, loss of a leg or an arm, loss of reproductive capacity. A woman can never have a child again, she gets $250,000.

How can this body justify the enactment of a proposal which has this, on which there has been no hearings whatsoever; no hearings, no testimony, nobody knows what this does. It springs like Hebe from the brain of Jove, without the faintest appreciation of what is done, without the least awareness of what it acccomplishes.

Think of the hurt and pain and suffering that you are not properly compensating with this outrageous amendment. This is an outrageous amendment. I cannot in conscience see how I can vote for it, and I cannot imagine anybody else who could contemplate voting for this kind of outrage. No hearings, capping pain and suffering, without the faintest acknowledgment of what it will in fact cost.

Let me remind the Members, a citizen can get more on workmen's compensation, on railroad compensation, or on maritime compensation than they could get under this.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentleman from Michigan suggests that it is outrageous to propose health care reform on this floor because health care reform has not had hearings in this Congress. I think that is something, after 2 years of hearings on health care, the American people would find outrageous.

Mr. Chairman, I yield 1½ minutes to the gentleman from Iowa [Mr. GANSKE].

Mr. GANSKE. Mr. Chairman, I rise to support this amendment. I am a doctor. I would like to talk about three things. I would like to talk about the economic costs of medical malpractice, I would like to talk about the noneconomic costs to the patient, and let us talk for just a second about how lawsuits have limited care.

Twenty years ago when I was in medical school, when we would make rounds we would talk about the patient's illness and we would talk about the solutions. Today when you make hospital rounds you talk about the patient's illness and solutions, and how those solutions may cause a lawsuit.

What happens? You practice defensive medicine. What happens with defensive medicine? Additional tests get ordered that you would not naturally do to cover your backside, and unfortunately, this results in tremendous increases in expense to the total system.

This is real, Mr. Chairman. When I get called to the emergency room to take care of somebody with a scalp laceration, if I did not tell the emergency room doctor ''Do not order that series of x-rays until I see the patient,'' there would be $400 worth of facial or scalp x-rays sitting there, whether it is needed or not.

The funny thing about this issue is that the noneconomic costs to patients by invasive tests that sometimes are ordered to prevent a lawsuit actually cause a paradox. Every type of invasive test has a small chance of injury, so what are we doing? We are taking and making an increased chance of injury. I urge my colleagues to support this amendment.

Mr. BERMAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland [Mr. CARDIN].

(Mr. CARDIN asked and was given permission to revise and extend his remarks.)

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. BRYANT] for purposes of a dialog.

Mr. BRYANT of Texas. Mr. Chairman, I wonder if I could ask the gentleman, the doctor, who just spoke, a question.

Mr. GANSKE. Mr. Chairman, will the gentleman yield?

Mr. BRYANT of Texas. I yield to the gentleman from Iowa.

Mr. GANSKE. Mr. Chairman, I would be happy to respond.

Mr. BRYANT of Texas. Mr. Chairman, last week a member of the gentleman's profession did some surgery down in Florida. I heard on the radio, he was supposed to cut off a person's foot. He amputated it, and when that person woke up, they had cut off the wrong foot.

How much money does the gentleman think that fellow ought to get for pain and suffering and noneconomic damages? He woke up and he lost the wrong foot, which means he is going to lose both his feet, because a fellow in your profession made a mistake.

How much money do you think he ought to get for noneconomic damages, an open-ended question?

Mr. GANSKE. If the gentleman will continue to yield, it is inevitable that mistakes are going to be made.

Mr. BRYANT of Texas. Yes, it is.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. NADLER].

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Mr. NADLER. Mr. Chairman, in 1986 I and a number of other Members of this House were members of the New York Legislature and we took up the issue of medical malpractice. We made so-called tort reforms, we limited joined and several liability, we limited ability of continent fees, and did a number of other things. But we also ordered a study to see what was really going on, what would really work to reduce malpractice premiums.

Several years later, the Harvard study that we had ordered came down. What it showed is this: It showed that limiting damages for pain and suffering to a quarter of a million dollars would not reduce insurance premiums. It showed that 2 percent of the doctors were responsible for 80 percent of the claims and 80 percent of the awards, that the real answer to this problem of insurance premiums overwhelming the doctors is to tell the States to crack down on the 1½ percent or 2 percent of the doctors who are killing and maiming people because they are incompetent and are driving up everyone else's insurance rates.

Victimizing the victim further by this amendment is not the answer. Cracking down on incompetent doctors is the answer.

Mr. COX of California. Mr. Chairman, I yield myself such time as I may consume to say that earlier in the debate, one of the Members on the other side put a question to one of our Members but then did not yield him sufficient time to respond to that question. The question that was put was what ought to be the recompense for someone who has lost a foot due to the negligence of a doctor or a hospital, and the answer to that question is quite clear. Replacing someone's lost foot is very expensive in today's world. It involves a great deal of technology, a great deal of doctors and professional care, probably lifelong rehabilitation and hospitalization, and in a fair system, 100 percent of those costs without limit would be paid by the people who were responsible, and that is exactly what will obtain when we pass this amendment. Nothing in this amendment will change that.

Mr. Chairman, I yield the balance of my time to close the debate to the distinguished gentleman from Texas [Mr. STENHOLM].

The CHAIRMAN. The gentleman from Texas is recognized to close debate for 2¾ minutes.

(Mr. STENHOLM asked and was given permission to revise and extend his remarks.)

Mr. STENHOLM. Mr. Chairman, status quo is not acceptable. This debate today is about changing the status quo. Everyone agrees that patients must be reasonably protected against malpractice and against undue harm for medical devices, drugs and other medical products. Unfortunately, our current system is not working, and to all of those who have spoken so eloquently against all of the faults of this amendment, none of those comments have been addressed to changing the status quo.

As one Member who has wanted to have hearings last year, the year before, the year before, of reasonably getting into debating this question, we were denied. We were never able to bring this discussion to the floor as we are doing today. I wished we had not brought that point up, because that is a sore point to this man.

Patients and physicians all are losing under our current system. That is what some of us want to change tonight, the status quo. Numerous reforms must be enacted if we are going to control health care costs. My colleague from California, a classmate from the 96th Congress, said it very eloquently and very truthfully and very factually. If we want to reform our health care system, we must start with malpractice reform. We must begin to honestly deal with the problems of health system reform by changing first the malpractice system. That alone will not solve it.

It is ironic that in one of our largest States, what we are now saying will not work has been working. This is puzzling to me. The case for medical liability relief is overwhelming. Lawsuit abuse is driving up the cost of health care for all of us. As one who represents a rural district in which we can no longer get doctors to come to our rural hospitals to deliver babies, how in the world can anyone stand here today and say the current system is adequate, the current system cannot be changed, we cannot dare to try something new, that we have to preserve that which we are doing today?

I strongly urge the support of the Cox-Geren amendment. Change the status quo. Let us make our system better.

Mr. BERMAN. Mr. Chairman, to close the debate, I yield the balance of my time to the gentleman from Texas [Mr. DOGGETT].

The CHAIRMAN. The gentleman from Texas [Mr. DOGGETT] is recognized for 4¾ minutes.

Mr. DOGGETT. I thank the gentleman for yielding me the time.

Mr. Chairman, perhaps it is a peculiar observation at a time when we focus so much attention on lawyers and lawsuits to suggest that maybe a little bitty part of the problem of malpractice in this country, malpractice litigation, is malpractice itself. The statistics from the Harvard Medical School study conducted by a group of doctors in 1990 suggest that every 7 minutes in this country, someone dies in a hospital from medical malpractice. Maybe that has something to do with why we have a medical malpractice problem in this country. But the suggestion that, well, there will be mistakes completely avoids the question, because the question is, who is going to bear the burden of that mistake, and the suggestion by the author of this amendment that we can somehow give back a foot through medical technology suggests the ability to do something that only God can do.

Mr. WAXMAN. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from California.

Mr. WAXMAN. I want to make the point that this amendment which was just thrown together on the floor last night, revised again today, never had a day of hearings, it does not apply just to mistakes. It applies to intentional conduct. A doctor who comes in, a surgeon who comes in drunk and butchers somebody would be protected under this amendment to no more than $250,000 in damages. It has no relationship to the kind of conduct that might have been involved, like a psychiatrist raping an individual patient and harming that person for life. That is a psychological damage. If you say they are $250,000 in total noneconomic damages, there may be no economic damages for that kind of case. But to say that somebody should get $10,000 a year, when their lives are destroyed, for 25 years, that is good enough? I find that tremendously offensive. If you cannot create a leg to put on somebody whose leg was amputated improperly, then the pain and suffering and the humiliation means nothing more than some limited damage. I just want to point that out to the gentleman.

Mr. DOGGETT. This is as the gentleman suggests a poorly crafted amendment that applies not only to careless conduct but to grossly careless conduct, to intentional conduct. It applies not only to the family physician

that drags this legislation along in the speeches but to the nursing home that intentionally abuses older Americans. But to suggest that this has something to do with health care reform is frivolous in and of itself. The studies have shown that all the medical malpractice insurance and litigation in this country amounts to a big 63 cents out of every $100 spent on medical care. If that is where you want to start health care reform, I would submit that we start with the other 99-plus dollars out of health care and not focus on the part that relates to protecting people who are harmed by those who are careless or in this case engaged in intentional misconduct.

Mr. WAXMAN. If the gentleman will permit, medical malpractice and defensive medicine is a real problem. We need to address it. We need to look at a lot of different alternatives, alternative dispute mechanisms, some ways to compensate people who can never find an attorney to allow them to get some access to some reward for the pains that they have suffered. But this does not address these issues. The committees have never held hearings on it. This is an amendment dropped on us this morning in this latest form and I am sure that as they read through how poorly drafted it is, with the unintended, I assume unintended consequences, that it is an embarrassment to those who are supporting it.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. DOGGETT. I yield to the gentleman from Michigan.

Mr. DINGELL. This amendment does absolutely nothing to deter litigation. It simply cuts the amount that can be paid to a person who has been wronged by medical malpractice or by other unfortunate improper practices. It denies them proper recovery. If that is medical reform, I do not know what it is.

I urge the rejection of the amendment. I thank the gentleman.

Mrs. SEASTRAND. Mr. Chairman, we need to institute a phrase from the NFL when they were still using instant replay called, ''Upon further review.'' Because upon further review, it is clear our judicial system is filled with inconsistencies and arbitrary decisions. The ''feelings'' or non-economic damage claims lead the pack. These claims result in unlimited damage awards and turn our system into a virtual lottery. The lawyers get rich while the system is brought to its knees.

Make no mistake. Our system should and will pay for the full cost of injury, medical costs, property damage and income, without limit. I will fight for that. But we simply must do something to cap the unlimited and arbitrary damage claims to pay for someone's feelings. The way our system currently operates brings a whole new meaning to the Clinton phrase ''I feel your pain.'' Do we ever.

However, there is a model for reform. The state of California. Our state set in place a cap of $250,000 for non-economic damages and that is what this amendment does. It says the defendant is responsible for all medical costs, all past and future income and all real economic damages. Then they can also be held accountable for up to a quarter of a million dollars in non-economic or pain and suffering damages. And this model works. In fact this model is credited with being the most effective reform in containing medical liability costs.

Mr. Chairman, we will never be able to put a price tag on someone's feelings or pain, but this amendment does try to place a reasonable limit on the awards so those involved in suits won't have to play the lawsuit lottery.

Mr. BARR. Mr. Chairman, I strongly believe along with many of my colleagues that tort reform must address the serious abuses that occur in the area of punitive awards for non-economic damages. On this subject, I seek a balance that takes into account important but diverse interests. We must protect against awards that bear no reasonable relation to the injury and threaten the economic integrity of our profit and non-profit enterprises. We must also permit sufficient discretion to ensure that injuries are compensated in full. In this regard, I continue to believe that while arbitrary caps on punitive damages in all instances are to be avoided, this legislation begins an important process in curbing the worst excesses of the current tort system. In the future, I propose that we address additional amendments that will take into account extraordinary circumstances warranting adjustments to those otherwise generous caps.

Mr. NORWOOD. Mr. Chairman, we have gone too far in the area of non-economic damages. No other country in the world awards non-economic damages at or even near the levels of awards in the United States. It is almost impossible for anyone to put a dollar figure on such non-economic terms as pain and suffering; yet, our legal system continues to allow unlimited awards for pain and suffering. No other nation in the world comes close to placing economic burdens on society through non-economic damages the way we do in this country.

Mr. Chairman, this amendment is particularly important to our constituents. It is a major factor in the cost of health care today. This amendment will provide one of the best weapons possible in reducing the cost of health care. Forty percent of all MD's will find themselves party to a lawsuit, 50 percent of all surgeons will be party to a lawsuit, and 75 percent of all obstetricians will be party to a lawsuit. The problems of our tort system are not insignificant in the medical profession—they threaten the health of this nation by tying the hands of doctors. Doctors should not be forced to practice defensive medicine because they are terrified of $30 million lawsuits. The practice of medicine is not perfect. It is the science and art of the practice of medicine. No matter how good a doctor you are, when dealing with the human body, things do not always turn out perfect—as we would like.

Of course, neither is the legal profession perfect. In fact, writing laws is not perfect. Each law we write hurts some people—but the goal should be to pass laws that help the most people possible. This amendment is not perfect, but it will greatly help the majority of people in this country by reducing the cost of health.

Our physicians are being forced to practice defensive medicine. To perfect their own families. We have taken away one of the most important things you want in your doctor—to use good judgment in the practice of medicine. But when every decision is being watched over by suit-minded lawyers just waiting for the less than perfect outcome so they can get rich, it forces the doctor to make his or her first decision ''How can I not be sued?'' The thought process goes like this—I know we do not need this test or this x-ray for the patients benefit—but I must order this test or this x-ray in case I am sued, because some lawyer will make it appear I did not do all I can do.

There is a limit to how much malpractice one can pay for, but there is no limit to how much a jury of our peers can award. Some physicians pay as much as $150,000 per year for malpractice insurance. That increases the cost of medicine. And with jury verdicts in the tens of millions of dollars, one can never carry enough insurance to be sure you aren't ruined by a lawsuit. There must be a cap if you wish this country to continue to have the best health care system in the world—There must be a cap if you want the cost of health care to come down.

We have listened so long to the half-truths about protecting the middle class put out by the other side, it is time to lower the veil of obfus-cation and look at the costly reality that our tort system has become. We must no longer endanger the health of this Nation—we must place limits on all non-economic damages.

We should pass this amendment today.

Mr. Chairman, Congress has recognized this problem before. In 1992, Congress created the Federal Tort Claims Act in response to skyrocketing malpractice insurance premiums from federally funded community health centers. Under this act, judges rather than juries decide damages. Attorney's fees are limited and punitive damages are disallowed altogether. Why would the Federal Government institute such a restrictive system? Because the Federal Government, that is of course the taxpayers has to pay for the cost of these suits. If it is good enough for the government, it ought to be good enough for the rest of the health care industry. Let's give the rest of the medical industry that same relief.

Mr. Chairman, I end my remarks with one simple thought for your consideration. The Office of Technology Assessment recently identified a ceiling on non-economic damages as the single most effective reform in containing medical liability costs. We should do the same.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. COX].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. COX of California. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 247, noes 171, not voting 16, as follows:

[Roll No. 226]

AYES—247

Allard	Barrett (NE)	Blute
Archer	Bartlett	Boehlert
Armey	Barton	Boehner
Bachus	Bass	Bonilla
Baker (CA)	Bateman	Bono
Baker (LA)	Bereuter	Brewster
Baldacci	Bevill	Browder
Ballenger	Bilbray	Brownback
Barcia	Bilirakis	Bryant (TN)
Barr	Bliley	Bunn

Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cunningham
Davis
DeLay
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Eshoo
Everett
Ewing
Fawell
Fazio
Fields (TX)
Foley
Fowler
Fox
Franks (CT)
Franks (NJ)
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Goodlatte
Goodling
Gordon
Goss
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Johnson (SD)
Johnson, Sam
Jones
Kasich
Kelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Linder
Livingston
Longley
Lucas
Manzullo
McCollum
McCrery
McHale
McHugh
McInnis
McIntosh
McKeon
McNulty
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Quillen
Quinn
Radanovich
Ramstad
Regula
Richardson
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Seastrand
Sensenbrenner
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Torricelli
Traficant
Upton
Volkmer
Vucanovich
Waldholtz
Walker
Wamp
Watts (OK)
Weldon (FL)
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOES—171

Abercrombie
Ackerman
Andrews
Baesler
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bishop
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Clay
Clayton
Clement
Clyburn
Coble
Coleman
Collins (IL)
Collins (MI)
Conyers
Costello
Coyne
Danner
de la Garza
Deal
DeLauro
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Edwards
Engel
Evans
Farr
Fattah
Fields (LA)
Filner
Flake
Flanagan
Foglietta
Ford
Frank (MA)
Frelinghuysen
Frost
Furse
Gejdenson
Gephardt
Gilchrest
Gillmor
Gilman
Gonzalez
Graham
Green
Gutierrez
Hastings (FL)
Hefner
Hilliard
Hinchey
Hoyer
Istook
Jackson-Lee
Jacobs
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
King
Kleczka
Klink
LaFalce
Lantos
LaTourette
Levin
Lewis (GA)
Lincoln
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martini
Mascara
Matsui
McCarthy
McDade
McDermott
McKinney
Meehan
Meek
Menendez
Mfume
Miller (CA)
Mineta
Mink
Moakley
Mollohan
Nadler
Neal
Nethercutt
Oberstar
Obey
Olver
Ortiz
Orton
Pastor
Payne (NJ)
Pelosi
Pomeroy
Pryce
Rahall
Reed
Reynolds
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schiff
Schroeder
Schumer
Scott
Serrano
Shadegg
Skaggs
Slaughter
Spratt
Stark
Stokes
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torres
Towns
Tucker
Velazquez
Vento
Visclosky
Walsh
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Wilson
Wise
Woolsey
Wyden
Wynn

NOT VOTING—16

Boucher
Clinger
Cubin
DeFazio
Forbes
Gibbons
Hall (OH)
Jefferson
Johnson (CT)
Martinez
Murtha
Owens
Rangel
Weller
Williams
Yates

☐ 2057

Messrs. JACOBS, GILCHREST, and DE LA GARZA changed their vote from ''aye'' to ''no.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. RICHARDSON. Mr. Chairman, product liability legislation has been debated in Congress for several years now and I would like to express some thoughts on past efforts to rectify problems with our legal system.

In 1987, I introduced H.R. 1115, the Uniform Product Safety Act of 1987, to establish standards in determining product liability lawsuits. This legislation was the subject of 22 hearings and mark-ups which enabled manufacturers, sellers and consumers to offer their views. My bill had 96 cosponsors from both sides of the aisle. Comparatively, today's bill H.R. 956, the Common Sense Legal Standards Reform Act has received little bipartisan input and leans heavily in favor of business interests.

My legislation clearly defined reasonable standards of liability for manufacturers that would have reduced excessive lawsuits without infringing on State laws or the rights of consumers. H.R. 1115 did not try to restructure technical provisions of the legal code such as abolishing joint and several liability for noneconomic loss. With congressional prodding, legislators in New Mexico have enacted reforms that meet the needs of both consumers and business groups.

Today's short-sighted debate is discouraging to Members who believe such broad measures are not only unnecessary but potentially dangerous. Among my concerns for today's legislation is the 15 years statute of repose for all products. I am hesitant to support such an all-knowing directive.

Furthermore, my legislation exempted from the new standards industrial waste, pollutants or contaminants released into air or water, tobacco and tobacco products, alcoholic beverages, and any drug or device which is used as a contraceptive or abortifacient or which interferes with human reproduction under certain circumstances. Have we really considered the long-term ramifications of today's bill?

Finally, H.R. 1115 contained provisions to increase the availability of information in product liability actions. The 1988 bill allowed courts to disclose information that presented a risk to the public health and safety. It is hypocritical for Congress to place the burden of proof on consumers as H.R. 956 does while allowing companies to withhold information that could educate consumers.

My efforts to enact responsible legislation in the 100th Congress are indicative of my support for product liability reform. In the light of current research used by the U.S. Supreme Court which claims that there is no epidemic of punitive damage awards, I remain hesitant to support the broad, precedent-setting legislation before us today. It is unfortunate that we have not been able to craft a responsible piece of legislation.

Mr. BEREUTER. Mr. Chairman, this Member rises in support of this measure and to express his pleasure at seeing this much needed legislation finally brought before this body.

This Member introduced the first product liability legislation in the Nebraska Unicameral Legislature in 1977. During this process this Member realized that this issue must be dealt with on the Federal level, because the vast majority of products and services move through interstate commerce. Addressing product liability at the state level is like patching one hole in a tire with fifty holes.

Now, finally, this issue is being debated on the House floor after years of being bottled-up in committee by the trial attorneys and the former chairmen of the respective committees.

Mr. Speaker, all Americans are paying much higher prices for consumer goods and services because this legislation has been delayed for so very long. The insurance costs incurred by companies protecting against and paying for outrageous and unreasonable product liability suits are passed along to the consumer each and every day, in nearly every product and service purchased.

Perhaps even more outrageously, the current system unfairly imposes upon the American public product design standards, which are created in response to penalties awarded in a few states with the highest punitive and compensatory damages. Those States get to impose their juries' ideas of appropriate design and safety standards on the rest of the Nation. That is a perversion of Federalism. National standards should be set by the national legislature. That is what this bill will do.

Mr. Chairman, this Member has been a long-time co-sponsor of product liability reform, dating back to at least 1986. This Member is pleased that this long delayed measure is finally being debated on the House floor and urges his colleagues to support it.

Ms. PELOSI. Mr. Chairman, I rise today to voice my opposition to H.R. 956, the Common Sense Product Liability Reform Act of 1995. This bill is an undisguised assault on the safety of the American people that will result in more unsafe products, more injuries, and less compensation for those who are hurt by corporate misconduct and negligence.

Mr. Chairman, this bill contains two provisions that are particularly harmful to women: The punitive damages cap and the provision

that shields FDA-approved products from full liability.

Punitive damages in our Legal System Act as a powerful incentive for companies to make safety improvements to their products.

A punitive damages award as little as $250,000 will fail to serve as an effective deterrent in many cases. In addition, capping punitive damages awards at $250,000, or at three times the amount of economic damages, whichever is greater, discriminates against women and others who may not have large incomes.

Economic damages were generally not as high in the products liability cases of women who developed endometriosis, pelvic inflammatory disease, toxic shock syndrome, and other illnesses that left them sterile when they used copper-7 intrauterine devices or super absorbency tampons.

A punitive damage award cap is less harmful to those with higher salaries and discriminates against those who have lower incomes, many of whom are women. Justice would be meted out very differently for two people injured by the same defective Ford Pinto. The corporate CEO could seek a large punitive award based on economic damages, while the homemaker would be severely limited by the provisions of this bill.

Second, Mr. Chairman, this bill shields products from liability that have been previously approved by the FDA in spite of the fact that the record is filled with examples of drugs that have been approved or underregulated by the FDA only to cause immense physical harm once authorized for sale on the open market.

For example, the FDA approved high estrogen birth control pills which caused renal failure. It also approved the copper-7 intrauterine device which caused sterility in young childless women. The FDA defense shields negligent manufacturers at the expense of our nation's women and should be rejected.

Mr. Chairman, there is no national crisis in products liability litigation, nor is there any epidemic in punitive damages awards. To the contrary, the facts demonstrate that our current State-based products liability system works well.

It allows our citizens to seek redress when they have been injured by corporate negligence and it provides ample incentives to correct defective products when cause harm.

This bill favors powerful corporations at the expense of women, the elderly, the young, and all working Americans.

I urge my colleagues to reject these ill-advised reforms and to vote against H.R. 956.

Mr. RUSH. Mr. Chairman, I rise today in strong opposition to H.R. 956, the so-called Common Sense Product Liability and Legal Reform Act.

There is nothing even vaguely commonsensical about this bill. On the contrary, this bill is nothing more than a thinly disguised, let's kill all the trial lawyers bill.

Mr. Chairman, unlike so many of my colleagues on both sides of the aisle, I am not an attorney. But, unlike many who support this bill, I do not view the trial lawyers to be inherently greedy or evil.

Instead, it is my strong and considered opinion that a good lawyer can be a wronged party's only friend just when he or she needs one the most.

The overwhelming majority of our nation's products liability plaintiffs are not just nameless, faceless individuals but hard-working Americans with mortgages and families. Their right to seek compensation for faulty or defective workmanship in consumer products cannot and should not be denied.

Many States are also moving to harm consumers and working Americans by placing arbitrary limits on monetary damage awards in product liability suits. The Governor of my State, for example, signed into law today a measure that caps punitive and pain and suffering awards while making it harder for wronged citizens to see justice served in Illinois State Courts. My colleagues, this is an outrage. We must work ever harder to see that these efforts are defeated at all levels of government.

The bill before us today would make sure that many of these persons will have nowhere to turn to redress their injuries. The rights of working-class American consumers have never been more under threat than they are now. I therefore implore my fellow Members on both sides of the aisle to oppose this extremely underhanded and reckless bill. We must work together to see that it is defeated.

Mr. MOORHEAD. Mr. Chairman, I rise in strong support of the Common Sense Legal Reform Act of 1995. Civil justice reform is an extremely important part of the Contract with America. The time for enacting effective product liability reform is now. The first comprehensive product liability bill was introduced in the House of Representatives six Congresses ago by former Representative Jim Broyhill. I was proud to be an original cosponsor of this legislation. Since that time we have been blocked from action time and time again. During this long wait for federal action, the situation has only deteriorated.

The average American is confronted with a civil justice system that is too costly, too protracted and oftentimes seems to work better for the attorneys than for their clients. Each day in America, hundreds of lawsuits are filed by lawyers against fellow citizens, businesses, civic institutions, government entities, and countless other targets. This seemingly endless series of legal attacks has practically numbed America to the fact that, as a nation, we have become the most litigious society on Earth and that an onslaught of lawsuit abuse has had damaging and lasting effects on the standard of living of all Americans. While most legal actions brought in the United States seek legitimate redress for harm caused, unfortunately many are groundless, frivolous and the result of lawyers who abuse the system and seek to claim lottery sized dollar awards from both their advisory and their client. It is these types of abuses that bring discredit to the American legal system, damage the U.S. economy, and drain precious national resources into the dark hole of endless litigation. The current system creates fear among Americans that they will likely be the victim of an unjust lawsuit. It chills their desire to volunteer and participate in many aspects of ordinary life, and it prevents the introduction of new and beneficial products and services to the American people. Companies in many industries across the 50 states have discontinued product lines, closed plants, shut down divisions, been forced overseas and, in some cases, have been bankrupted by the current product liability system in this country. We should ask the men and women who have lost their jobs in these industries whether or not we need to change the current system. When the House Judiciary Committee considered this legislation, we heard testimony from a medical equipment manufacturer that it will soon be unable to get raw materials to make pacemakers and other implantable medical devices because of liability concerns of its suppliers. We have been warned specifically that the current product liability system is stifling innovation and preventing newer and more effective lifesaving medical devices from ever coming to market. Biomedical and pharmaceutical executives have testified repeatedly before Congress that they are not developing vaccines and medicines because of fear generated by the current unpredictable liability lottery they face in this country. We should ask the millions of Americans suffering from heart disease, AIDS, cancer and other deadly illnesses whether there is an urgent need to unleash medical innovation and discovery by reforming the current system.

Today, standards of liability vary from State to State, and sometimes even from Court to Court within a State. Neither the injured individual, the product manufacturer, nor the seller has any idea what liability standard will be applied, and all are subjected to conflicting rules on their responsibility in the use, design, production, and sale of products. The legislation before us establishes clear guidelines for determining who shall be responsible for harm caused by an accident. Uniformity is essential in order to provide fairness and predictability to consumers, manufacturers, and sellers. Although tort law is generally considered a matter for the States, it has been clear for quite some time that, due to the interstate nature of the sale of products, liability reform should be dealt with at the Federal level.

It is time to recognize that America will never be the best place in the world to create a job until we reform our current product liability system. It is time we provide the reform necessary to unleash American ingenuity in the development of new and more effective products, create jobs, increase our international competitiveness, and provide fairness to product consumers, sellers and manufacturers alike. Enactment of the proposals put forth in H.R. 956 will form the basis of strong and effective legal reform which will loosen the grip of lawyers on America. These common sense reforms are necessary to ensure that American consumers, manufacturers, product sellers, employers and employees alike receive fairness and justice under our civil justice system. The time has come to end lawsuit abuse in America.

Mrs. COLLINS of Illinois. Mr. Chairman, I am dumbfounded that this bill to restrict the rights of victims and consumers to adequate compensation for and reasonable protection from injury caused by unsafe, down right dangerous, and sometimes even deadly products has been named the Common Sense Legal Reforms Act. This bill absolutely turns common sense on its head.

Tell me, Mr. Chairman, is it common sense that the greatest leniency will be reserved for manufacturers of products that hurt children? That's what this bill will do. Is it common sense that a pharmaceutical company could face lower penalties if its product kills a senior citizen rather than a middle-aged man? That's what this bill will do. Is it common sense that victims of hazardous and unsafe products will have less of a chance to recover damages if

they are women, or poor? That's right—this bill will do that too.

Most importantly, do the American people really think that it's common sense to take away the power of our most democratic institution—the citizen jury—to impose deterrents against unsafe products and practices? I think not.

It's not hard to sell common sense reforms to the American people but supporters of this bill should be ashamed to put that label on a package of tricks that are crafted to increase corporate profits at the expense of the most vulnerable in our society. Perhaps the most dangerous product around these days is this bill, and when people get a chance to look inside the box and see what's really there they will be outraged. The Members of Congress who vote for it, however, will ultimately have to answer to the consumers, which is more than you can say for negligent manufacturers if this bill passes.

One of the most troubling aspects of H.R. 956 is the rule for calculating punitive damages, setting a cap at three times the amount of economic loss, or $250,000, whichever is greater. This bill establishes appallingly unequal penalties based not on the severity of the harm caused or the extent of negligence or even malice, but on the income of the victim.

Punitive damages have a positive impact on decisions made by product manufacturers and sellers. The Conference Board, a business-funded research organization, surveyed companies about the effect of strong product liability penalties on their operations. They reported, managers say that products have become safer, manufacturing procedures have improved, and labels and use instructions have been more explicit.

Yet by tying the amount of punitive damages to monetary loss alone, and not non-economic damages like pain and suffering, this bill takes away the threat of heavy punitive damages for products that severely hurt people with low-income, or no-income, like kids.

Think about it. Under this bill, if a product kills a child, punitive damages, regardless of the situation, will be capped at $250,000 since there will be no lost earnings to calculate as monetary losses.

I worked hard during the 103rd Congress to improve product safety, especially for children. A child toy safety bill was one of the products of my efforts. Yet now we are seriously considering a bill that says that a toy manufacturer's concern about product safety might be diminished because the potential penalties are tied to the income of the victim. Large manufacturers and corporations will simply calculate punitive damages as defined under this bill as a small cost of doing business rather than attempt to improve the safety of their products.

Recently, a group of Illinois families joined together around their concerns about the lack of a safety latch on the rear hatch of a popular brand of mini-van. Since 1993, the National Highway Traffic Safety Administration has been investigating the rear liftgate of these vans because they fly open in crashes. According to the NHTSA, the latches failed to keep the rear hatches closed in at least 51 accidents, causing 74 ejections and 25 known deaths. Who rides in the rear seats of minivans? Kids, of course. This bill would mean that the van manufacturer probably does not need to worry about hefty punitive damages in civil actions. If the issue were the front door latch of a luxury sports car, a manufacturer would almost certainly pay more attention.

Is this common sense?

Harming senior citizens would also tend to carry lesser punitive damages under this bill, since their incomes tend to be less. Of course, senior citizens are big consumers of pharmaceutical drugs. With this bill the majority is setting a lower standard for safety for drugs marketed to seniors than for drugs marketed to the general population. Pharmaceutical manufacturers often say that fear of liability keeps them from marketing certain drugs. Does that mean that removing some fear of extensive punitive damages will lead them to market drugs to seniors that they might not otherwise sell? Is this really what the GOP wants to accomplish?

Is this really common sense?

Punitive damages are levied by juries as punishment for actions by manufacturers and sellers to deter the marketing of unsafe products. Therefore, punitive damages should be related to the severity of injury and the actions of the manufacturer or seller, not the economic status of the victim.

That is true common sense.

Unfortunately, the bill before us also sets up yet another dual standard for recovery of damages in a product liability case based on the income of the victim. The bill eliminates the doctrine of joint and several liability, which ensures compensation for an injured party even if one or more of the defendants are unable to pay, for non-economic damages.

Women, senior citizens, children, and low-wage workers are more likely to receive compensation in the form of non-economic damages rather than economic damages. Yet this bill says that if one of the parties responsible for hurting someone goes bankrupt, the victim cannot recover full compensation, regardless of what the jury says. Upper-income men, who are more likely to be awarded economic damages for loss of income, are not affected by this provision of the bill because joint and several liability for economic damages remains intact.

Consider a case where two people suffer an injury. One is a man, the other a woman. The man is a lawyer and receives his full compensation whether or not all responsible parties contribute. The woman is a homemaker, and so the compensation she receives could be severely limited if one of the responsible parties is unable to pay.

Is this fair? Is this common sense?

Are the Republicans saying with this bill that they don't value women, seniors, children, or the poor? You bet they are.

Mr. Chairman, I have just finished fighting a bill passed by this chamber which suspends all new Federal regulations, including those designed to protect the public from unsafe products. Now the majority has come forward with this effort to close the only remaining mechanism average citizens have to protect themselves. With one hand, they remove regulation, and with the other, they take away the power of citizen juries to control corporate behavior through the threat of punitive damages.

What next? I probably shouldn't ask.

The American people have plenty of common sense, and when they are able to step back and see the whole of what is being done here, they will know whose interests are being protected, and who is being sold down the river.

The leadership may want to call this bill the Corporate Profits Protection Act, or the Corporate Wrongdoers Protection Act, or even the ''Profits Regardless of Who Gets Hurt Act,'' but they will find that the people are far too smart to let them call this the Common Sense Legal Reform Act for long. Its not hard to see why the majority wants to act so quickly on this bill. After all, you can't fool all the people all the time. And time is running out.

Mr. Chairman, the American people will be shocked when they find out what this bill calls common sense.

I urge my colleagues to reject H.R. 956.

Mr. HYDE. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the SPEAKER pro tempore (Mr. LONGLEY) having assumed the chair, Mr. DREIER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, had come to no resolution thereon.

UNITED STATES SUPPORT FOR MEXICO—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 44)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Banking and Financial Services and ordered to be printed.

To the Congress of the United States:

On January 31, 1995, I determined pursuant to 31 U.S.C. 5302(b) that the economic crisis in Mexico posed ''unique and emergency circumstances'' that justified the use of the Exchange Stabilization Fund (ESF) to provide loans and credits with maturities of greater than 6 months to the Government of Mexico and the Bank of Mexico. Consistent with the requirements of 31 U.S.C. 5302(b), I am hereby notifying the Congress of that determination. The congressional leadership issued a joint statement with me on January 31, 1995, in which we all agreed that such use of the ESF was a necessary and appropriate response to the Mexican financial crisis and in the United States' vital national interest.

On February 21, 1995, the Secretary of the Treasury and the Mexican Secretary of Finance and Public Credit signed four agreements that provide the framework and specific legal arrangements under which up to $20 billion in support will be made available from the ESF to the Government of Mexico and the Bank of Mexico. Under these agreements, the United States will provide three forms of support to Mexico: short-term swaps through