

any other law to prescribe policies, rules, regulations, and procedures for Federal information resources management activities is subject to the authority of the Director under this chapter.

“(b) Nothing in this chapter shall be deemed to affect or reduce the authority of the Secretary of Commerce or the Director of the Office of Management and Budget pursuant to Reorganization Plan No. 1 of 1977 (as amended) and Executive order, relating to telecommunications and information policy, procurement and management of telecommunications and information systems, spectrum use, and related matters.

“(c)(1) Except as provided in paragraph (2), this chapter shall not apply to obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions—

“(A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;

“(B) during the conduct of—

“(i) a civil action to which the United States or any official or agency thereof is a party; or

“(ii) an administrative action or investigation involving an agency against specific individuals or entities;

“(C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

“(D) during the conduct of intelligence activities as defined in section 4-206 of Executive Order No. 12036, issued January 24, 1978, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

“(2) This chapter applies to obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

“(d) Nothing in this chapter shall be interpreted as increasing or decreasing the authority conferred by Public Law 89-306 on the Administrator of the General Services Administration, the Secretary of Commerce, or the Director of the Office of Management and Budget.

“(e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

“§ 3519. Access to information

“Under the conditions and procedures prescribed in section 716 of title 31, the Director and personnel in the Office of Information and Regulatory Affairs shall furnish such information as the Comptroller General may require for the discharge of the responsibilities of the Comptroller General. For the purpose of obtaining such information, the Comptroller General or representatives thereof shall have access to all books, documents, papers and records, regardless of form or format, of the Office.

“§ 3520. Authorization of appropriations

“There are authorized to be appropriated to the Office of Information and Regulatory Affairs to carry out the provisions of this chapter such sums as may be necessary.”

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall take effect October 1, 1995.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES

Mr. CLINGER. Mr. Speaker, I ask unanimous consent that the House insist on its amendments to S. 244 and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: Mr. CLINGER, Mrs. MEYERS of Kansas, and Messrs. MCHUGH, MCINTOSH, and FOX of Pennsylvania.

There was no objection.

The SPEAKER pro tempore. Further conferees will be appointed later today.

COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

The SPEAKER pro tempore. Pursuant to House Resolution 109 and rule XXIII, the Chair declares the House in the Committee of the Whole on the State of the Union for the further consideration of the bill, H.R. 956.

□ 1032

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 956) providing for further consideration of the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes, with Mr. DREIER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Thursday, March 9, 1995, amendment No. 12, printed in section 2 of House Resolution 109, offered by the gentleman from California [Mr. COX], had been disposed of.

It is now in order to consider amendment No. 13 printed in House Report 104-72.

Apparently the amendment is not being offered.

It is now in order to consider amendment No. 14 printed in House Report 104-72.

AMENDMENT OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, I offer an amendment that has been made in order by the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. GEKAS: Revisions to the heading of H.R. 1075:

Add the words “and civil” after the words “product liability” and before the word “litigation”.

Revisions to the Table of Contents:

Page 2, redesignate title IV as title V and renumber sections 401, 402, and 403 as sections 501, 502, and 503, respectively, and after the words “SEC. 303. DEFINITIONS.” add the following title:

TITLE IV—COLLATERAL SOURCE RULE REFORM

Sec. 401. Findings.

Sec. 402. Applicability and preemption.

Sec. 403. Collateral source payments.

Sec. 404. Definitions.

Page 30, line 1, redesignate title IV as title V and redesignate sections 401, 402, and 403 as sections 501, 502, and 503, respectively, and insert on line 1 the following:

TITLE IV—COLLATERAL SOURCE RULE REFORM

SEC. 401. FINDINGS.

(1) The practice of not permitting the jury to weigh evidence of collateral source benefits in making its award of damages in health care liability actions burdens interstate commerce by leading to increased costs for health care consumers, decreased efficiency for the legal system, and double recovery for plaintiffs which, in turn, encourages fraud, abuse, and wasteful litigation; and

(2) there is a need to restore rationality, certainty, and fairness to the legal system in order to protect against excessive damage awards and reduce the costs and delay of litigation.

SEC. 402. APPLICABILITY AND PREEMPTION.

This title governs any health care liability action brought in any State or Federal court and to any health care liability claim brought pursuant to an alternative dispute resolution process, by any claimant, based on any conduct, event, occurrence, relationship or transaction involving, affecting or relating to commerce, regardless of the theory of liability on which the claim is based, including claims for legal or equitable contribution, indemnity, or subrogation. The provisions of this title shall preempt State law, with respect to both procedural and substantive matters, only to the extent that such laws are inconsistent with this title and only to the extent that such law prohibits the introduction of collateral source evidence or mandates reimbursement from the claimant's recovery for the cost of collateral source benefits. The provisions of this title shall not preempt any State law that imposes greater restrictions on liability or damages than those provided herein.

SEC. 403. COLLATERAL SOURCE PAYMENTS.

In any civil liability action subject to this title, any defendant may introduce evidence of collateral source benefits. If any defendant elects to introduce such evidence, the claimant may introduce evidence of any amount paid or contributed or reasonably likely to be paid or contributed in the future by or on behalf of the claimant to secure the right to such collateral source benefits. No provider of collateral source benefits shall recover any amount against the claimant or receive any credit against the claimant's recovery or be equitably or legally subrogated to the right of the claimant in any civil liability action subject to this title. This section shall apply whether a civil action is settled or resolved by a fact finder.

SEC. 404. DEFINITIONS.

(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 in section 202(3) of this Act.

(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, an 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 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.

(d) The term "health care liability claim" means a demand by any person, whether or not pursuant to an alternative dispute resolution process, against a health care provider, health care organization, or the manufacturer, distributor, supplier, marketer, promoter or seller of a medical product, including, but not limited to, third-party claims, cross claims, counter-claims or contribution claims, which are 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, defendants, or causes of action.

(e) The term "health care organization" means any person or 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.

(f) The term "health care provider" means any person or entity required by State or Federal laws or regulations to be licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(g) The term "health care services" means any service provided by a health care provider, or by any individual working under the supervision of a health care provider, that relates to the diagnoses, prevention, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(h) The term "medical product" means 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 a medical device as defined in section 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(h)), including any component of raw material used therein, but excluding health care services, as defined in subsection (g) of this section.

(i) The term "noneconomic damages" means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation and all other nonpecuniary losses other than punitive damages.

(j) The term "punitive damages" has the same meaning as defined in section 202(5) of this Act.

(k) The term "State" has the same meaning as defined in section 202(6) of this Act.

REQUEST FOR MODIFICATION TO AMENDMENT
OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, I ask unanimous consent that the amend-

ment be modified. The modification is also at the desk.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification of amendment offered by Mr. GEKAS: (Technical)

On page 3, at the beginning of line 24, insert the words "As used in this title:"

On page 4, strike lines 7 and 8 and on page 6 strike lines 11 through 19 and redesignate the subsections accordingly.

On page 6, line 9, strike "(g)" and insert "(f)".

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

Mr. STUPAK. Mr. Chairman, reserving the right to object, we would like to have a further inquiry as to this modification. I do not believe we have seen a copy of it.

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

Mr. STUPAK. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, this is purely technical in nature. What happened was when I or my office prepared a series of amendments, six of them to go before the Committee on Rules, all of them were correlated one with the other. Some of the definitions applied. Three of them, specifically, applied to other portions of other bills as if there were a general bill.

We are, by this modification, extracting those from the definitions portion of my amendment.

Mr. STUPAK. Continuing my reservation of objection, Mr. Chairman, we would like to see the amendment. It has not been cleared by the minority. We have not seen it. We would like an opportunity to do that. I would ask the gentleman if he would respectfully withdraw his amendment until we have had a chance to take a look at it. Then we may be able to come back and agree to it.

Mr. GEKAS. If the gentleman will yield further, I will not withdraw it. We cannot withdraw, we have to move along with the amendment. I would be willing to enter into a soliloquy until the gentleman has a chance to review it.

Will somebody furnish the minority with what we are doing here with the definitions?

Mr. Chairman, I assure the gentleman that they are purely technical, that I am not engaged in subterfuge or in any kind of attack on the minority's right to know what we are doing. This is simply technical. The essence of the amendment remains intact.

The CHAIRMAN. The Chair will inform the gentleman from Pennsylvania that we can proceed with the amendment as it was printed in the RECORD and as reported out by the Committee on Rules.

Is there objection to the request of the gentleman from Pennsylvania?

Mr. STUPAK. Mr. Chairman, there is objection to the unanimous-consent request.

The CHAIRMAN. Objection is heard.

The gentleman from Pennsylvania [Mr. GEKAS] is recognized for 15 minutes in support of his amendment, and a Member in opposition is recognized for 15 minutes.

The Chair recognizes the gentleman from Pennsylvania.

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

Mr. Chairman, today we offer a corollary, as it were, to the bill that was approved yesterday in the House of Representatives, where we took a giant step in compacting the costs of medical liability when the House so overwhelmingly adopted the cap on noneconomic damages.

This portion of the debate will center on collateral source. This has been in itself a source of great irritation to the liability community across the Nation, but more than that, it has been a source of increased costs, in many cases double dipping or double recovery, which was paid for in each instance and is continued to be paid for by, guess who, the general public who pay the premiums on their insurances.

Let me give an example of how this works. If I as a claimant received some hospital services, and as a result of that I was unfortunately injured because of some alleged negligence that I say that the hospital performed or was guilty of, in that instance I have to have more doctor care and other hospital bills accrue.

That total package of bills that now I have to pay, let us say it is \$10,000, those \$10,000 are paid immediately by my personal insurance. I have insurance to cover that. I have, maybe, disability insurance or some kind of health coverage that pays my doctor bills and hospital bills forthwith, so I now undergo, as a result of this negligence, an extra \$10,000 worth of bills, but they are paid for by the insurance company which I very foresightedly was able to obtain for myself for just such circumstances.

Now what happens? This is where the double dipping could enter into it. I now sue the hospital. I sue the hospital for, get this now, as part of the damages, the hospital bills and the doctor bills, that \$10,000 package for which I have already received payment.

In addition to that, I may sue for lost wages, other kinds of things, pain and suffering that go around with this new round of hospitalization and doctoring that I had to go through, but the point is that the \$10,000 that I have already been paid, that has been paid to my doctors, forms part of this claim.

If I recover, let us say, a \$100,000 judgment, I, in effect, have been doubly enriched. The \$10,000 costs in fees to the doctors and hospitals have been paid, and I recover them anew with the suit that I have successfully endeavored to bring to the court, and which has yielded a \$100,000 verdict.

In that regard what happens is that you and I, the general public who purchases health insurance and pays doctors and hospitals, because of the way that the health care structure is dominant in the land, we all pay for that double recovery of this plaintiff. It is not fair, but more than that, it is costly. That is what we are about here today.

Mr. Chairman, let us follow through with our example. The Members will recall that I had \$10,000 worth of damages, hospital and doctor bills, following my little incident in the hospital. Under the bill that we now have in front of us, the amendment that I am offering, this would occur.

The collateral source, namely, the insurance company that paid my doctor's bills and hospitals bills right away, that \$10,000, is now, under the collateral source rule, in a situation where that stops. If the bills are paid promptly, as my example shows they were, then when I sue, when I sue the hospital and the doctors involved there for my incident in the hospital, the jury, under the amendment that I offer, will be able to take into consideration the fact that I have already been paid for my hospital damages and the doctor's bills.

In other words, the jury will know and will be able to take into consideration in their deliberations the fact that some of the damages are already zero, because my own insurance company has already paid those.

What does that do? That results in a lower cost all across the board.

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

Mr. GEKAS. I yield to the gentleman from Illinois. Does he want to engage in a cacophony?

Mr. HYDE. Mr. Chairman, I want to engage in a cacophony, then, right.

As I understand the gentleman's amendment, it cuts off subrogation claims, is that correct?

Mr. GEKAS. That is correct.

Mr. HYDE. If the gentleman will yield further, therefore, therefore, if the gentleman has insurance, if he is farsighted enough to pay premiums and make an insurance contract, and he is injured, and his insurer, his health insurance, pays that, the benefit of his foresight and the premiums that he has paid for years accrue to the wrongdoer. The wrongdoer walks scot free because the gentleman's company cannot subrogate against him.

The gentleman is paid because he had the smarts enough, the wisdom enough, the foresight to pay premiums, and the real winner is the wrongdoer, am I right?

Mr. GEKAS. Seizing back my time, Mr. Chairman, no, the gentleman is not correct. Here is the way I would paint that.

The gentleman is looking at it from the standpoint of the defendant, as you call him, the wrongdoer, but our whole system of justice calls out for the plaintiff, the claimant, to be reim-

bursed in full. Nowhere does it say that he should be double dipping, that he should have a double recovery.

If the result of what we are doing here is to eliminate that double dipping, even if it inures to the benefit of lower premiums for medical liability, both for the hospitals and the doctors, then the wrongdoer is not benefiting from that. The general public is, because their doctors and their hospitals will be able to purchase insurance for a lesser amount, thus making the cost of hospital service less.

Mr. HYDE. If the gentleman will continue to yield, Mr. Chairman, would the gentleman consider making the wrongdoer reimburse the plaintiff for the premiums he has paid for 22 years.

Mr. GEKAS. There, Mr. Chairman, the legislation that we have in front of us, the amendment does call for the plaintiff, for the jury, to have the right to take into account what the plaintiff has paid for this coverage.

Mr. HYDE. I thank the gentleman.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield for that point?

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

□ 1045

Mr. GOODLATTE. It is my understanding that the problem with a plaintiff recovering double is largely being taken care of now with subrogation agreements that are taken care of outside of court.

My concern is that we are sending separate messages for a plaintiff who has been responsible and for years has paid for health insurance, compared to one who might have the same economic circumstances, same type of injury, who has not paid. That plaintiff gets to go into court and say, here are all of my medical bills.

Mr. GEKAS. I understand the point.

Mr. GOODLATTE. Give me a big award.

The one who has been responsible, then the defendant gets to come in and say, "Don't worry about him because his medical bills are being paid by someone else," and that contravenes public policy.

Mr. GEKAS. Recapturing my time, I understand the gentleman's division of thought as to the one who has bought insurance and paid premiums and taken care of his family by doing so and the one who for one reason or another has not done so.

Let me give the same example and see if it does not comport with the gentleman's concerns. I who have bought insurance and paid \$3,000 for this coverage, you say, will be treated less handsomely because the verdict will be lower presumably; is that correct? Because the jury could take into consideration all of this and come out with a lower verdict.

Well, in a similar circumstance, if there is a case on all fours exactly with somebody who does not have insurance, the verdict could be higher and you

think that might be unjust enrichment, do you not?

However, here is what can and frequently does occur, at least in States like yours and mine that do not have this collateral source idea embedded in their laws. In these cases, the one who does not have insurance, in suing, gets a higher award, shall we say, has to pay higher attorneys' fees because of that, No. 1. No. 2, there is always the right in the entity that provided the medical service for the claimant to go against the verdict to recover their costs and fees, anyway. That has happened time and time again. A verdict and a judgment is always subject to attachment by the entities that provided the services and ran up bills in favor of the claimant. So it still comes out. There might be aberrations.

Mr. GOODLATTE. I have no dispute whatsoever that a plaintiff should not be able to double dip, if you will, but I think that should be taken outside the courtroom. This argument that somehow insurance should be brought into the case is exactly comparable to where the defendant should not want the plaintiff to come into court and tell the jury that the defendant has insurance to take care of the losses.

Mr. GEKAS. Recapturing my time, I would say notwithstanding the gentleman's own State policy and my own State policy of not having this collateral source, 20 other States do have it. So in those States which we have reviewed, and particularly that in California where their whole system is based around these elements of medical liability reform, these objections or concerns of the gentleman's have been resolved over time, and in balance what has happened is that the public has benefited, in California where this is in place, with a stabilized system of medical liability and the costs that are attached thereto.

The CHAIRMAN. The Chair wishes to inform the gentleman that he has consumed 10½ minutes of his 15 minutes.

There has yet to be recognized a Member for the 15 minutes of time in opposition to the amendment.

Mr. GEKAS. Mr. Chairman, I squander my time.

The CHAIRMAN. The gentleman squanders the balance of his time.

Is there a Member seeking to manage opposition to the Gekas amendment?

Mr. CONYERS. Mr. Chairman, I rise to ask the gentleman from Virginia [Mr. SCOTT] to control the time on our side in opposition.

The CHAIRMAN. The gentleman from Virginia [Mr. SCOTT] is recognized for 15 minutes to manage the opposition to the amendment.

Mr. SCOTT. Mr. Chairman, we had reserved the right to object to the unanimous-consent request. Is that still pending?

The CHAIRMAN. No. The request was made by the gentleman from Pennsylvania and there was an objection heard, so we are proceeding with the

original amendment offend by the gentleman from Pennsylvania.

The Chair recognizes the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, there were no hearings on this amendment, it has been slapped together, we tried to fix it on the floor, and we apologize for the confusion on this side where we were disruptive. We were trying to figure out what the last-minute change in the amendment was. That is what happens when we do not have hearings and do not go through a deliberative process.

But in this case, Mr. Chairman, I think there was an intent not to have a hearing because on this same issue, we did have a hearing last year. Let me quote from that hearing last year when we were doing health reform on malpractice reform. The witness who spoke in favor of tort reform, who supported limitations on attorney's fees, restrictions on joint and several liability, reductions in statute of limitations, modifications in punitive damages, when this issue came up, he was asked of the three people of interest in this case, you have got the plaintiff, you have got the defendant, and you have got the health insurance company. Which one ought to receive the benefit of the payment? As the chairman of the committee has suggested, the tort-feasor really ought to be the last person to benefit from the insurance premiums.

I asked the witness, "Why should the tort-feasor, the wrongdoer, receive the benefit of the insurance?"

The witness said: "Our position is that there should not be a double recovery."

Then I asked: "Well, who ought to receive the recovery? Why shouldn't Blue Cross-Blue Shield get the money back?"

And the witness, a physician, said: "I think they should. In other words, insurance company ought to be paid."

Then I said: "Well, then if the plaintiff doesn't get the money, why shouldn't Blue Cross-Blue Shield be reimbursed?"

He said: "They should."

"They should?"

"Yes."

Then, just to make sure: "Don't you agree that the tort-feasor, which in this case could be medical malpractice, in another case it could be a drunk driver, ought that be the last person to receive the benefit?"

Answer: "Yes."

"So if we deny the plaintiff the basis of recovery for the insurance, then we ought to have subrogation so Blue Cross-Blue Shield can get this money back?"

And the witness said, "I would agree with that."

That is the kind of answer we would have gotten if we would have had a hearing. This is a good soundbite amendment but it only rewards the wrongdoer. A hearing would have

proved that as it did last year. If there is not going to be any double recovery and you are going to say no to the policyholder who paid his premium, if you are going to deny him the extra benefit of this foresight in paying the premium, then you ought to have subrogation so the health insurance company can get its money back. If it is going to get its money back, at least the premium payer can get some benefit, because presumably the premium payment would be lower if they had subrogation.

This is an attack on consumers again, and I would hope that this amendment would be rejected. We had a hearing last year. The idea was rejected. I would hope that this would be rejected again.

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

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

Mr. Chairman, if the Gekas amendment were to deal specifically with the problem of double-dipping as the California law is focused on, I would support this amendment. I think in a tort action for negligence, the plaintiff is entitled to be made whole. He is not entitled to be paid twice for the same occurrence. If his medical bills are being paid by one source, he is not entitled to pocket those payments again from another source. But the Gekas amendment goes far beyond the California Micra law and it goes far beyond medical malpractice. It deals with two issues I am very concerned with.

It is written in a fashion that guarantees that the health care provider as the gentleman from Virginia [Mr. SCOTT] pointed out will not get subrogated, in fact it seems to prohibit that very act, that the malpractice insurer rather than the health insurance provider will get the protection, and more importantly by doing it as a matter of evidentiary question, it would be somewhat equivalent to my offering an amendment that said in the course of a trial, it is quite appropriate for the plaintiff's counsel to point out that the defendant is insured, create the sense of the deep pocket, the big pocket so that the recovery will be big and if we ever get to the issue of punitive damages, they will zap them good because they know that there is a place to get that money from.

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

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

Mr. GOODLATTE. Also look at the parallel that we talked about a moment ago between the plaintiff who has been concerned about—say it is a self-employed individual, been concerned about his family, has bought insurance for the family for years, compared to a plaintiff who has never bought insurance and not because of income, comparable income rates, they have the same injury, that plaintiff without insurance gets to go into court and say,

"Look at all the medical bills I have, give me a big award."

They do not have that with this. What we are doing is we are setting a public policy against people having insurance.

The CHAIRMAN. The Chair wishes to inform the committee that the gentleman from Pennsylvania [Mr. GEKAS] has 4½ minutes remaining, and the gentleman from Virginia [Mr. SCOTT] has 10 minutes remaining.

Mr. GEKAS. If the gentleman from Virginia wants to continue drawing on his resources, I would have no objection since he has more resources at the moment.

The CHAIRMAN. The gentleman from Pennsylvania continues to squander his time.

Mr. SCOTT. Mr. Chairman, I yield 2 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. I thank the gentleman from Virginia for yielding me time.

I think the gentleman from California made the point very well. This is about making the plaintiff whole, and that is what it is all about. If we do not do this, or making the defendant whole, not doing everything we can to make their life miserable.

The plaintiff has bought this insurance, the plaintiff has paid this insurance, and now the very lucky defendant who may have insurance, let's say the defendant has insurance, the defendant's company does not have to pay, even though he is liable, if this were to happen. I think that that is really flipping the whole incentive program so that the plaintiff who bought the insurance, his insurance is now going to cover his cost. The defendant who may have liability insurance, his premiums are going to stay lower because he never has to get that part reimbursed from his. I think that is part of what the gentleman from Virginia was talking about even though we do not allow people to say whether or not the defendant had insurance.

Mr. GOODLATTE. Mr. Chairman, will the gentlewoman yield?

Mrs. SCHROEDER. I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentlewoman for yielding. In fact what we are saying here is this is a case where liability has already been established on the part of the defendant. The defendant is the responsible party, the one who has caused the harm and now gets to say, hey, don't worry about charging me for this because the plaintiff has insurance and they will take care of it.

Mrs. SCHROEDER. That is right.

Mr. GOODLATTE. How would that same defendant like to be put in the situation where the plaintiff said, "I've got a harm here, it's been established, don't worry about how much you give me because this defendant has X number of millions of dollars in insurance coverage."

Mrs. SCHROEDER. Reclaiming my time, the gentleman's point is that we are not allowed to say that the defendant has insurance.

Mr. GOODLATTE. That is correct.

Mrs. SCHROEDER. So if we are looking at the two insurance companies, then the question becomes, which one should have to pay, which one's premium should have to go up, and I think it should be the defendant that should have to go up, and I think the gentleman from Pennsylvania should be looking at collateral source rules and not this.

I would hope that the amendment would be defeated.

Mr. SCOTT. Mr. Chairman, is the gentleman from Pennsylvania going to waive again?

Mr. GEKAS. Mr. Chairman, I will take my time now if I may. Does the gentleman want to allow me to go on?

Mr. SCOTT. I have several other speakers.

Mr. GEKAS. I may make a unanimous-consent request to withdraw the amendment. That would help, would it not?

Mr. SCOTT. In that case, Mr. Chairman, I would certainly defer.

The CHAIRMAN. The Chair recognizes the gentleman from Pennsylvania who has to this point chosen to squander the balance of his time.

Mr. GEKAS. I yield myself such time as I may consume.

I want to apprise the gentlewoman from Colorado that the concerns that she has raised here should be thrust at the capital, the State capital of Colorado where there is in existence a collateral source statute and which has been employed for many years.

□ 1100

So, we are not varying that far in this proposal from what is already established in her province in her home State.

But nonetheless, I do not want to yield now because what the gentlewoman has done along with others, they have raised enough questions that perhaps we ought to look at this a little bit more accurately between now and the time that it takes its place in the debate either in the Senate or in conference.

With that, Mr. Chairman, I ask unanimous consent to withdraw the amendment.

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

There was no objection.

AMENDMENT OFFERED BY MR. SCHUMER

Mr. CONYERS. Mr. Chairman, I offer amendment No. 15.

The CHAIRMAN. Is the gentleman the designee of the gentleman from New York [Mr. SCHUMER]?

Mr. CONYERS. Yes, I am, Mr. Chairman.

The CHAIRMAN. It is now in order to consider amendment No. 15 printed in House Report 104-72.

Mr. CONYERS. Mr. Chairman, I offer the amendment No. 15.

POINT OF ORDER

Mr. HYDE. Mr. Chairman, I have a point of order.

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

Mr. HYDE. Mr. Chairman, in looking at the rule, I do not see where a designee is allowed, for it says it may be offered only by a Member designated in the report, and that is for the gentleman from New York [Mr. SCHUMER].

I am not going to object. There he is. I was not going to object, but I wanted to know if this was cleared with the gentleman from Texas [Mr. BRYANT].

The CHAIRMAN. The Chair would say in response to the point of order of the distinguished chairman of the Committee on the Judiciary that the report clearly states the amendment is to be offered by Representative SCHUMER of New York or a designee.

Mr. HYDE. I am sorry; I did not see it in the rule.

The CHAIRMAN. It is in the report.

Mr. HYDE. I was not going to object. I just wanted to make sure it is cleared with the gentleman from Texas [Mr. BRYANT].

The CHAIRMAN. It is now in order to consider amendment No. 15 printed in House Report 104-72.

Mr. SCHUMER. 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. SCHUMER: Page 31, line 5, insert before the period the following: "AND SUNSET", in line 6, insert "(a) EFFECTIVE DATE.—" at the beginning of the line, and after line 8 insert the following:

(b) SUNSET.—Titles I, II, and III shall expire 5 years after the date of the enactment of this Act unless the Secretary of Commerce has certified to the Congress not less than 90 days before the expiration of such years—

(1) that insurance rates covering liabilities affected by such titles have declined by not less than 10 percent after taking into account changes in the Consumer Price Index, or

(2) that insurance rates have not declined by at least 10 percent because of extraordinary circumstances, has specified such extraordinary circumstances, and has explained their impact on such insurance rates.

The CHAIRMAN. Pursuant to the rule, the gentleman from New York [Mr. SCHUMER] and a Member opposed will each be recognized for 10 minutes.

The Chair recognizes the gentleman from New York [Mr. SCHUMER].

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

Mr. Chairman, we are now at the conclusion of the debate on the tort reform proposal, and while I think much has been ballyhooed about the contract, I would agree that this proposal as it emerges, at least in the area of law that we are dealing with, is indeed revolutionary. In fact, the bill goes quite a bit further than was ever imagined, particularly in terms of the two Cox amendments.

We are eliminating joint and several liability in any tort lawsuit anywhere in America. I supported that amendment. I thought it was a wise choice.

We are also putting a cap of \$250,000 on all damages, all noneconomic damages in the health care area. That is a major, major change, plus all of the other changes proposed in the product liability area, plus the effect of the cap on punitive damages throughout lawsuits everywhere. Indeed, my colleagues, the bill is revolutionary.

I would say this: We do not know if it is going to work. And in fact, there are many of us who think the bill goes too far. There are some I guess on the far right, mainly on that side of the aisle, who feel that the bill is very good because it is revolutionary. There are some, probably mainly on this side of the aisle, on the far left side, who say the bill is horrible and we should not change very much at all. But there are many of us in the middle who feel the system is out of control, but who are terribly troubled, terribly troubled by the fact that we are making such radical changes without having any idea of what their effect will be.

This amendment deals with those concerns and anxieties. For those of us on both sides of the aisle who find ourselves in the middle, we want real change but we may think that this bill goes too far or we are worried that it does.

It simply says that if liability insurance rates do not go down 10 percent 5 years after these laws take effect, this bill takes effect, then the proposal should sunset.

What is the reason we are doing all of these changes? I certainly believe the proponents of the bill are sincere, they do not want to hurt the little guy, they do not want to hurt defendants, plaintiffs. They certainly think it will make salutary changes for America. But I also know that one of the main reasons we are doing this is because we feel insurance rates are too high. We have heard that over and over and over again.

Perhaps the nostrums we are applying will work. If they do, liability insurance should decline at least 10 percent, and I have counted in inflation, this is 10 percent after accounting for inflation, and then we will say we have done a good thing. Those who voted yes will be proud; those who voted no will admit they made a mistake. But if it does not work, why take away all of the various rights of the little people who need to sue if it is not going to bring insurance rates down at all? And so we propose this sunset.

This is a moderate amendment. It is saying, OK, we are going to make very radical changes, but let us have a little bit of a break on them just in case they do not work. The sunset has been proposed on many pieces of legislation. In fact, some of them I did not agree with, but many I did, but when you do something this breathtaking and this radical, and potentially this dangerous, at

the very least there ought to be a sunset in case the proposal does not work.

The CHAIRMAN. Does the chairman of the committee seek to manage the opposition to the Schumer amendment?

Mr. HYDE. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] is recognized for 10 minutes.

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

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

Mr. HYDE. Mr. Chairman, I strongly oppose this amendment. It is unnecessary. Focusing on the pricing practices of insurers is irrelevant in many places because most large businesses self-insure and do not purchase liability insurance. This amendment places the future of a fair civil justice system in the hands of Federal Government bureaucrats. Americans overwhelmingly support the reforms in this bill and it is ludicrous to give the Department of Commerce the power to determine whether Americans will continue to benefit by these reforms.

This amendment sunsets this legislation 5 years after the date of enactment unless the Secretary of Commerce certifies that insurance rates either have declined at least 10 percent or have not declined that much because of extraordinary circumstances.

This sunset is ill advised because factors other than this legislation contribute significantly to determining rates charged by insurance companies and the beneficial effects of this legislation are not limited to anticipated savings in insurance-related costs.

As the Committee on the Judiciary noted in its report, "Our excessive reliance today on a patchwork of conflicting State statutes and common law relating to allegations of product defects excessively burdens interstate commerce, discourages innovations, exacerbates liability insurance costs, compromises American competitiveness and forces Americans to pay higher prices."

We had more than the cost of insurance in mind when we crafted this legislation. The limitation on joint and several liability, for example, recognizes the injustice of requiring minimally responsible defendants to pay for all noneconomic damages. We propose punitive damage reform, an important title of this bill, not only to ameliorate adverse effects on interstate and foreign commerce but also to protect due process rights. The unfairness of ignoring extent of fault or responsibility in assessing liability for noneconomic damages and the unfairness of virtually unlimited punitive damage awards in a range of cases that extend beyond the product liability context necessitated congressional action.

The 10-percent formula relating to insurance rates is flawed. Our objective of reducing insurance rates will be undermined rather than advanced by this

amendment. The sunset creates uncertainty for insurance companies. They will not know whether the reforms incorporated in this legislation will remain in effect 5 years hence, and this uncertainty will affect risk calculations leading to higher rates.

I am confident this legislation, without a sunset, will have a positive effect on insurance rates. I cannot predict how other developments extraneous to this legislation, such as accident patterns and medical care costs, may impact on the risks the insurance company faces. The business of insurance, let us remember, is subject generally to State rather than Federal regulation and the capacity of the Federal Government to achieve rate reductions is limited.

If insurance rates do not decline by at least the arbitrary 10-percent figure, the explanation may have nothing to do with this legislation. The amendment gives the Secretary of Commerce excessive power to scuttle this legislation because only he or she can certify to the extraordinary circumstances to justify a deviation from the 10-percent requirement.

Congress does not need a sunset to revisit the issues addressed in this legislation. We can do that in any and every session that is forthcoming. In response to experiences in the years ahead, we are free to modify and refine the new law. Perhaps stronger medicine will be needed to deter abuses in the litigation process. Perhaps unforeseen developments will justify amending our work product. But a sunset provision that essentially says we may have to return to square one at the say so, the fiat of whoever is the Secretary of Commerce, is not a sensible way to legislate.

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

Mr. SCHUMER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from California [Mr. FAZIO], chairman of the Democratic caucus.

Mr. FAZIO. Mr. Chairman, I thank my friend from New York for yielding time to me. I must admit this has been a very difficult piece of legislation for me. I have been associated with Members who wish to see a products liability bill enacted, I have been associated with those who want to move on the question of medical malpractice, and I have made some votes, uncomfortable votes for me because I think the amendments were flawed in their drafting and I indicated that earlier in the deliberation on this bill.

But I must rise in support of the Schumer sunset provisions and in opposition to the enactment of this bill because I think it frankly is a travesty the way it has been put together here at the last minute on the floor, the way it combines a number of disparate elements in the tort reform area. I will be the first to admit these issues should have been deliberated in prior Congresses but the fact they have not does not in my view excuse the ap-

proach that has been taken in the amalgamation of all of these various provisions in this bill at this time.

Tort reform is a subject this Congress must deal with. It has not dealt with it effectively in this bill, and the bill should be opposed.

Mr. HYDE. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] has 5 minutes remaining, and the gentleman from New York [Mr. SCHUMER] has 5 minutes remaining.

Mr. HYDE. Mr. Chairman, I am pleased to yield 2 minutes to the distinguished gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Chairman, I rise in opposition to the amendment. When we first set out on this legislation we had several goals in mind, and I would remind the Members that it was to improve the competitiveness of American business, to increase economic growth, create more jobs, reduce overall liability costs of which insurance rates are only one portion of that equation.

The gentleman from New York [Mr. SCHUMER] who offers the amendment it seems to me really misses the point behind the efforts that we are making with this legislation.

The gentleman from Massachusetts [Mr. MARKEY], who I assume will speak later, had a similar approach in the Committee on Commerce, which was rejected at that point and I think the full House should reject the Schumer amendment as well.

There are a lot of factors. The insurance rates are affected by a number of factors, medical costs, crime rates, accident patterns, court interpretation of legal reforms; punitive damages are not insurable in most jurisdictions, meaning that one of the core provisions of the legislation would not be relevant to insurance rates in most of the States. Insurer losses on which premiums are in part based will probably not decrease for several years because of all of the litigation in the pipeline.

Finally, Mr. Chairman, this amendment places unprecedented power in the hands of the Secretary of Commerce, essentially giving one individual life or death power over this legislation and the good that it is trying to accomplish.

□ 1115

So, Mr. Chairman, for all those reasons, and for the fact that we have a number of ambiguous circumstances involved in the uncertainties, I would ask that the Schumer amendment be defeated.

Mr. SCHUMER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Chairman, the Schumer amendment is really the did-it-really-work amendment. Are all the promises which are being made by the proponents of this reform going to

come to pass? In other words, consumers out there are being told that they will see lower doctor bills, that they will see lower costs for products because insurance rates are going to go down?

Now I remember back in 1988 in the Committee on Commerce when we had hearings. In that particular hearing we actually had insurance executives, and I asked them, "Will insurance rates go down?"

They said, "No, no, no."

Well, if that is the ostensible guise for all of this, let us have a determination 5 years later whether or not the promise, like Reaganomics, of cutting taxes and actually having more revenues is going to work here in insurance product liability as well, and if it cannot withstand the crucible of scrutiny 5 years from today, and insurance companies are retaining windfall profits as—

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. MARKEY] has expired.

Mr. SCHUMER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New York [Mr. LAFALCE], the ranking Democrat on the Committee on Small Business.

Mr. LAFALCE. Mr. Chairman, many years ago I had dozens of hearings on the issue of product liability and as long ago as 1978 introduced a uniform product liability law. It was opposed by the Republicans in the Chamber of Commerce at that time because they argued it ought not to be a Federal matter, this was a prerogative of the States.

Mr. Chairman, I will not point out the things that are wrong with the bill that we have today; they are too countless, it is too egregious. There are a lot of things that is wrong with what is not being done, too. We are not dealing with the problems of the insurance industry, and, if we need a law for anything, we need it for the regulation and practices of the insurance industry.

Second, we have Federal regulation now over remedies for product liability cases, but the most fundamental thing, the basic cause of action for a product defect, is left unattended. So we will have 50 separate causes of actions, but we will have one Federal law with respect to limitation of remedies.

Last, and there are so many other things I could point out, but 10 percent of the cases—

The CHAIRMAN. The time of the gentleman from New York [Mr. LAFALCE] has expired.

PARLIAMENTARY INQUIRY

Mr. SCHUMER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. SCHUMER. I would inquire of the Chair if today is the day when the gentleman from Illinois [Mr. HYDE] has the right to close, or is it the day when we have the right to close?

Mr. HYDE. Mr. Chairman, I direct that parliamentary inquiry as well. I was told that I have the right to close.

The CHAIRMAN. The chairman of the committee controlling time in opposition has the right to close.

Mr. SCHUMER. I appreciate the determination of this very important rule.

The CHAIRMAN. That is the way it works.

Mr. SCHUMER. Mr. Chairman, I yield my remaining time to the distinguished gentleman from Texas [Mr. BRYANT], a member of the committee.

The CHAIRMAN. The gentleman from Texas [Mr. BRYANT] is recognized for 3 minutes.

Mr. BRYANT of Texas. Mr. Chairman, I thank the gentleman for yielding this time to me and for the opportunity to close on this, on our side of the amendment.

We are today taking steps to eliminate 200 years of common law in this country. We are taking an enormous amount of power from the States, something that was thought to be a prohibitive tenet of the Republican philosophy that we would never do, and we are raising a barrier to the middle class of this country that will prevent them from using the courthouse to redress grievances against the most powerful economic interests in our country. The question has to be why. Why are we doing it? We have asked over, and over, and over in this debate, and we asked over, and over, and over in committee, "Do you have any empirical data to show us that indicates that there is an explosion of lawsuits or there is an explosion in the size of verdicts? Any at all?" We have had some papers waved at us, but the answers have always been no every time we ask it of our witnesses, every time we ask it of you.

The fact of the matter is that there is no explosions with regard to litigation. We do data; it is not data we put together, but data that was available to my colleagues as well from the National Center for State Courts which indicates that product liability filings are only thirty-six one-hundredths of a percentage of the total civil caseload, that only 10 percent of the people who were ever injured from torts ever used the tort system in the first place. As a matter of fact, the number of cases in State courts and Federal courts are going down, and so I ask, Why are you doing this?

They will come back to us and say, Well, we think it's going to bring down insurance rates, and so the gentleman from New York [Mr. SCHUMER] comes out with an amendment here that says:

"OK. Since we don't know whether what you're promising will work or not, let's put something in the bill that says, 'In 5 years, if insurance rates with regard to the things that are affected by this bill have not come down by 10 percent, this bill will sunset,' and then you stand up on the floor this morning and say, 'Well, we are not sure

insurance rates really will come down.'"

Well, Mr. Chairman, then what is the purpose of this bill? The bottom-line purpose is this:

"You want to do a favor for some wealthy, powerful people in this country who are your social peers, who are the people that you live with, the folks that you think about, the people whose opinions you adopt regardless of its impact on the American people, on the average middle class people, and in spite of the lack of any available data to support the direction you're going."

I say to my colleagues, Mr. SCHUMER has a commonsense amendment. If what you say is true, even if you have no evidence, then insurance rates will surely over 5 years come down 10 percent, and, if they do, the bill stays on the books. If they don't, it won't.

The CHAIRMAN. The time of the gentleman from Texas [Mr. BRYANT] has expired.

Mr. BRYANT of Texas. Vote for the Schumer amendment, and vote against this outrage against the American people.

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

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

Mr. HYDE. Mr. Chairman, I am consoled that the class struggle has not expired with the demise of the former Soviet Union. We still put class against class here. The inability to understand that the nonavailability of medical help, and vaccines and drugs because of the unpredictability of product liability has not permeated our opponents, and I guess there is no way that it ever will.

But this amendment offered by the gentleman from New York [Mr. SCHUMER] guts the bill because the purpose of the bill is to have common standards wherever possible on those important items that affect our economy and predictability. A 5-year sunset means that in 5 years nobody knows what is going to happen. Insurance companies would not be able to set rates with any confidence or predictability, and who is going to make the determination? The Secretary of Commerce.

So, Mr. Chairman, I hope and pray that this amendment is defeated handily, but in closing, and this will be the last vote on this very important bill, I would like to bring to the Members' attention a letter that the gentleman from Michigan [Mr. CONYERS] and I got dated March 6 from the National Governors Association, and I will just read a couple of little paragraphs:

We're writing to convey the support of the Nation's Governors for legislation to establish a uniform product liability code. Since 1986 the association has been on record in support of a uniform, consistent, and predictable approach to product liability. While Governors do not usually support one-size-fits-all legislation, we believe in this case uniform product liability standards can only be achieved by Federal action. We urge you to act swiftly to enact this legislation.

I thank the Chair for the courtesy and the efficiency with which he has conducted these four sessions, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. SCHUMER].

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

RECORDED VOTE

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

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 175, noes 249, not voting 10, as follows:

[Roll No. 227]

AYES—175

| | | |
|--------------|---------------|---------------|
| Abercrombie | Frank (MA) | Neal |
| Ackerman | Frost | Oberstar |
| Andrews | Furse | Obey |
| Baesler | Gejdenson | Olver |
| Baldacci | Gibbons | Ortiz |
| Barcia | Gonzalez | Owens |
| Barrett (WI) | Gordon | Pallone |
| Becerra | Green | Pastor |
| Beilenson | Gutierrez | Payne (NJ) |
| Bentsen | Hall (OH) | Pelosi |
| Berman | Hastings (FL) | Peterson (FL) |
| Bishop | Hayes | Peterson (MN) |
| Bonior | Hefner | Poshard |
| Borski | Hilliard | Rahall |
| Boucher | Hinchey | Reed |
| Brewster | Holden | Reynolds |
| Browder | Hoyer | Richardson |
| Brown (CA) | Jackson-Lee | Rivers |
| Brown (FL) | Johnson (SD) | Rose |
| Brown (OH) | Johnson, E.B. | Roybal-Allard |
| Bryant (TX) | Johnston | Rush |
| Bunn | Kaptur | Sabo |
| Cardin | Kennedy (MA) | Sanders |
| Chapman | Kennedy (RI) | Schroeder |
| Clay | Kennelly | Schumer |
| Clayton | Kildee | Scott |
| Clement | Klink | Serrano |
| Clyburn | LaFalce | Skelton |
| Coleman | Lantos | Slaughter |
| Collins (IL) | Laughlin | Spratt |
| Collins (MI) | Levin | Stark |
| Condit | Lewis (GA) | Stokes |
| Conyers | Lincoln | Studds |
| Costello | Lipinski | Stupak |
| Coyne | Lofgren | Tanner |
| Cramer | Lowey | Taylor (MS) |
| Danner | Luther | Tejeda |
| de la Garza | Maloney | Thompson |
| Deal | Manton | Thurman |
| DeFazio | Markey | Torres |
| DeLauro | Martinez | Torricelli |
| Dellums | Mascara | Traficant |
| Dicks | Matsui | Tucker |
| Dingell | McCarthy | Velazquez |
| Dixon | McDermott | Vento |
| Doggett | McHale | Visclosky |
| Doyle | McKinney | Volkmer |
| Durbin | Meehan | Ward |
| Engel | Meek | Waters |
| Eshoo | Menendez | Watt (NC) |
| Evans | Mfume | Waxman |
| Farr | Miller (CA) | Wilson |
| Fattah | Minge | Wise |
| Fazio | Mink | Woolsey |
| Fields (LA) | Moakley | Wyden |
| Filner | Montgomery | Wynn |
| Flake | Moran | Yates |
| Foglietta | Murtha | |
| Ford | Nadler | |

NOES—249

| | | |
|--------------|-------------|-------------|
| Allard | Bereuter | Burton |
| Archer | Bilbray | Buyer |
| Army | Bilirakis | Callahan |
| Bachus | Bliley | Calvert |
| Baker (CA) | Blute | Camp |
| Baker (LA) | Boehlert | Canady |
| Ballenger | Boehner | Castle |
| Barr | Bonilla | Chabot |
| Barrett (NE) | Bono | Chambliss |
| Bartlett | Brownback | Chenoweth |
| Barton | Bryant (TN) | Christensen |
| Bass | Bunning | Chrysler |
| Bateman | Burr | Clinger |

| | | |
|---------------|--------------|---------------|
| Coble | Horn | Portman |
| Coburn | Hostettler | Pryce |
| Collins (GA) | Houghton | Quillen |
| Combest | Hunter | Quinn |
| Cooley | Hutchinson | Radanovich |
| Cox | Hyde | Ramstad |
| Crane | Inglis | Regula |
| Crapo | Istook | Roberts |
| Creameans | Johnson (CT) | Roemer |
| Cunningham | Johnson, Sam | Rogers |
| Davis | Jones | Rohrabacher |
| DeLay | Kasich | Ros-Lehtinen |
| Deutsch | Kelly | Roth |
| Diaz-Balart | Kim | Roukema |
| Dickey | King | Royce |
| Dooley | Kingston | Salmon |
| Doolittle | Kleczka | Sanford |
| Dornan | Klug | Sawyer |
| Dreier | Knollenberg | Saxton |
| Duncan | Kolbe | Scarborough |
| Dunn | LaHood | Schaefer |
| Edwards | Largent | Schiff |
| Ehlers | Latham | Seastrand |
| Ehrlich | LaTourrette | Sensenbrenner |
| Emerson | Lazio | Shadegg |
| English | Leach | Shaw |
| Ensign | Lewis (CA) | Shays |
| Everett | Lewis (KY) | Shuster |
| Ewing | Lightfoot | Sisisky |
| Fawell | Linder | Skaggs |
| Fields (TX) | Livingston | Skeen |
| Flanagan | LoBiondo | Smith (MI) |
| Foley | Looney | Smith (NJ) |
| Forbes | Lucas | Smith (TX) |
| Franks (CA) | Manzullo | Smith (WA) |
| Franks (CT) | Martini | Solomon |
| Franks (NJ) | McCollum | Souder |
| Frelinghuysen | McCrery | Spence |
| Frisa | McDade | Stearns |
| Funderburk | McHugh | Stenholm |
| Galleghy | McInnis | Stockman |
| Ganske | McKeon | Stump |
| Gekas | McNulty | Talent |
| Gerens | Metcalf | Tate |
| Gillen | Meyers | Tauzin |
| Gilchrist | Mica | Taylor (NC) |
| Gillmor | Miller (FL) | Thomas |
| Gilman | Mineta | Thornberry |
| Goodlatte | Molinar | Thornton |
| Goodling | Mollohan | Tiahrt |
| Goss | Moorhead | Torkildsen |
| Graham | Morella | Upton |
| Greenwood | Myers | Vucanovich |
| Gunderson | Myrick | Waldholtz |
| Gutknecht | Nethercutt | Walker |
| Hall (TX) | Neumann | Walsh |
| Hamilton | Neuy | Wamp |
| Hancock | Norwood | Watts (OK) |
| Hansen | Nussle | Weldon (FL) |
| Harman | Orton | Weldon (PA) |
| Hastert | Oxley | Weller |
| Hastings (WA) | Packard | White |
| Hayworth | Parker | Whitfield |
| Hefley | Paxon | Wicker |
| Heineman | Payne (VA) | Williams |
| Herger | Petri | Wolf |
| Hilleary | Pickett | Young (AK) |
| Hobson | Pombo | Young (FL) |
| Hoeckstra | Pomeroy | Zeliff |
| Hoke | Porter | Zimmer |

NOT VOTING—10

| | | |
|----------|-----------|-------|
| Bevill | Jefferson | Riggs |
| Cubin | Kanjorski | Towns |
| Gephardt | McIntosh | |
| Jacobs | Rangel | |

□ 1143

The Clerk announced the following pairs:

On this vote:

Mr. Kanjorski for, with Mr. McIntosh against.

Mr. Jefferson for, with Mrs. Cubin against.

Mr. SAWYER changed his vote from "aye" to "no."

Mr. BAESLER changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

Mr. POMEROY. Mr. Chairman, I rise in opposition to the bill currently before the House, H.R. 956.

Last night the Republican majority shoved through an amendment that was poorly drafted, superficially considered, and will hurt a lot of people. The Cox amendment imposed a cap of \$250,000 on noneconomic damages in all civil lawsuits.

What this amendment does is limit the amount that can be recovered against insurance companies that refuse to pay health care claims that they legitimately owe.

I used to be an insurance commissioner. I used to help people who paid hard dollars for insurance so they would be protected against doctor and hospital bills only to find their claims denied and medical bill collectors at their door. The amendment adopted last night now protects those insurance companies who fail to pay what they owe.

I cannot understand how the majority Members of this House can turn their back on people in their districts that will have to deal with bill collectors, shattered credit standing, repossessed automobiles and even foreclosed houses because their insurance companies fail to pay the claim they owe.

They call this bill common sense legal reform. I doubt there is a single American who has had to fight their insurance company to get a claim paid who would think this bill makes any sense at all.

As amended I cannot in good conscience vote for this bill.

Mr. JOHNSON of South Dakota. Mr. Chairman, I reluctantly express my opposition to the passage of H.R. 956. There is no doubt that some reforms of the American civil justice system are needed, despite the fact that this area of the law has historically been largely the province of the individual States. It is true that the courts are too often slow and overburdened, and that jury awards sometimes seem inconsistent and instances of apparent excessive awards are well known. I am particularly concerned over problems involving medical malpractice claims and I have supported State and Federal legislative initiatives in that area.

Nonetheless, this bill is not well thought through and too little serious and reasoned deliberation has gone into its formulation. It makes little sense to me that a corporate CEO might be able to recover \$1 million or more punitive damages under this bill but a typical working family in my State would have punitive damages capped at \$250,000. It doesn't make sense to me that the punitive damage limit is the same for small business as it is for Fortune 500 corporations, much to the advantage of the largest corporations. I am not pleased that over 60 proposed amendments were not made in order for debate on the House floor and an inadequate amount of time is allowed for debate even for those amendments which were made in order. I am not pleased that the House was not permitted to debate or vote on an amendment which would have prevented Federal preemption of State laws to punish sexual predators and drunk drivers.

This legislation preempts State laws, not just in the product liability arena, but relative to all civil litigation, and increases the likelihood that injured individuals will not be able to collect compensation for their legitimate injuries

from wrongdoers. It is little wonder that this specific bill is opposed by, among others, the Consumer Federation of America, Consumers Union, the National Conference of State Legislators, YWCA, National Women's Health Network, and the American Association of Retired Persons as well as the American Bar Association.

Mr. POSHARD. Mr. Chairman, I rise today in support of the Common Sense Legal Standards Reform Act, because I believe this bill moves us in the right direction of reforming our Nation's liability system. However, I also believe this bill is overreaching in its attempts to reform the system, and that is why I supported several amendments that I believe would have broadened an individual's opportunity to use the courts to seek due compensation for an injury.

While I understand and agree that injured parties are entitled to fair and just compensation, we all recognize the fact that many people have taken advantage of our health care providers along the way. The reality is the only person that pays for the outrageous settlements our health care providers are often forced to pay is the patient.

I believe the most serious harm caused by our current liability system is reduced access to health care. Increasing premiums and the threat of liability have caused physicians to abandon practices or to stop providing certain services in various areas of the country, especially in rural America. In my State of Illinois, 68 percent of all family doctors significantly decreased or eliminated obstetrics over a 5-year period, because of the danger of being sued.

Many of the obstetrical patients in my district travel over our State's eastern border to Indiana where caps on noneconomic damages made the profession of obstetrics more palatable. Because these threats of lawsuits exist, the doctors in my district and across the Nation have been forced to purchase exorbitant amounts of malpractice insurance to protect themselves from the threat of multimillion dollar lawsuits. No longer can many of our rural doctors and hospitals afford this costly insurance or the threat of expensive and time-consuming lawsuits.

Many rural hospitals are on the verge of closing, because of their inability to pay for malpractice insurance or million dollar settlements. The doctors, nurses, and hospitals of rural America are only trying to provide aid and comfort to our injured and sick. It is unfair to these health care officials that we allow a legal system to exist that simply sits and waits for them to make a mistake. Because of the constant fear of being sued, the practice of defensive medicine is costing Americans billions of dollars each year and driving our rural hospitals and medical centers to the brink of financial disaster.

Understand, I support compensating people injured by an individual or corporation's mistake, but I do not believe it is just to seek a high-priced settlement at the expense of a doctor or hospital that serves communities that would otherwise not have access to health care services. It is clear that the impacts of high malpractice premiums and lawsuit threats have created a situation that greatly disadvantages rural Illinois families.

Let me say again, I support this bill today, because I believe it is a step in the right direction, especially in its efforts to reform mal-

practice suits. However, unless the scope of this bill is further limited in the Senate or during conference committee, I will not be able to support the bill in its final form when it comes before the House of Representatives. In particular, the cap being placed on noneconomic losses, an individual's pain and suffering, must be raised to at least \$500,000 if this bill is to receive my support in the future.

I support sending this bill to the Senate, because I believe it is a good and reasonable foundation on which to continue building. However, I could not in good conscience send to the President a bill that I believe would not be fair to those looking to the courts for due compensation.

Just yesterday, the Governor of Illinois signed into law a tort reform measure which may help mitigate the serious problems plaguing our liability system. Nonetheless, Federal action on the issue of malpractice reform could significantly improve the opportunity for rural Americans to have access to quality and affordable health care, and I will do all in my power to foster legislation that will bring about liability reforms which are fair, balanced and effective.

Mr. PORTMAN. Mr. Chairman, America is in the midst of a litigation explosion. Not long ago a woman in New York was using a knife to separate a package of frozen hors d'oeuvres she bought in the supermarket. The knife slipped and she cut her hand. She got a lawyer and sued. She sued the supermarket; she sued the manufacturer; and she sued the packager. We are a litigious society—and we're all paying for it.

In 1991, nearly 19 million new civil suits were filed in our Nation's courts. These lawsuits exact a huge price—a price that is ultimately paid not by big business but by America's consumers. In fact, recent estimates put the price tag at \$300 billion annually. That's \$1,200 for every man, woman and child in America.

Civil litigation attorneys present themselves as champions of the underdog, yet its estimated that only one-third of each dollar awarded in liability cases gets into the hands of the injured party. The great bulk of jury awards goes instead to pay court costs and the lawyers themselves.

The cost to consumers is high. As much as \$500 may be added to the cost of your new car because of litigation costs passed on by the manufacturer. Nearly \$3,000 of the cost of an \$18,000 pacemaker goes to the tort tax. As much as \$500 of the cost of a 3-day maternity stay is due to liability costs.

And it's not just the costs to America's consumers: This litigious feeding frenzy is costing the United States in terms of competitiveness. In a global economy, U.S. businesses have to be able to provide better value for the dollar than their competitors in, say, Japan and Europe. But it's not a level playing field when our products carry a legal surcharge.

The Japanese have 30 times fewer lawsuits than we do. We have 70,000 product liability lawsuits in the United States every year. In Great Britain, they have 200. The greatest loss, however, may not be a question of economics. It can't be measured in dollars and cents. It comes from the products—often medically necessary, life-saving products—that are kept off the market because of the high costs imposed by a civil litigation system run amok.

I believe it's time to stop the litigation explosion. The House took the first step today with the passage of the Contract With America's Common Sense Legal Reform Act. It makes a number of common sense changes, including limiting punitive damage awards to a reasonable relationship to the actual or compensatory damages incurred; punitive damages would be either three times the actual damages or \$250,000, whichever is greater. It would help to limit the huge profits tort lawyers now rake in. This will make a plaintiff's lawyer and a potential litigant think carefully before filing a suit.

To discourage frivolous lawsuits, it would provide—as almost all other industrialized nations do—that the loser in civil cases pays costs. This will make a potential litigant think carefully before filing a suit. Right now, plaintiffs may sue on unsubstantiated grounds, because they have nothing to lose even if the jury throws the case out of court. The accused, however, may be saddled with tens of thousands in court costs, despite complete and utter innocence.

I believe common sense and fairness have prevailed by Congress' passage of these legal system reforms.

Mr. CARDIN. Mr. Chairman, although I shall support the amendment to H.R. 1075, offered by Mr. Cox, which will add a noneconomic cap in medical malpractice awards, I do so with major reservations. The \$250,000 cap is too low. My State of Maryland which originally enacted a \$350,000 cap on noneconomic damages has increased that cap to \$500,000. Such an amount is far more reasonable.

I also resent the fact that the amendment is being considered without any opportunity for me to submit an amendment to the Cox amendment, No. 12, to raise the cap or for me to submit a separate amendment regarding this subject.

My vote in favor of the Cox amendment should be interpreted only to support the inclusion of a cap. I trust the cap will be adequately adjusted by the Senate or in conference.

Mr. HASTERT. Mr. Chairman, I would like to clarify an important issue regarding title III of H.R. 956. This title incorporates the provisions of H.R. 753, the Biomaterials Access Assurance Act, a bill to ensure that adequate supplies of biomaterials are available to medical device manufacturers. During the Commerce Committee's markup of H.R. 917, I offered an amendment to protect these vital supplies, the text of which now appears, with some modifications, in H.R. 965.

It has come to my attention, however, that in the period of time between offering my amendment and today, language has been added to deal with the difficult issue of biomaterials suppliers who are alleged to have wrongfully withheld or misrepresented safety information, or who know of fraudulent use of their materials. I agree, of course, that conduct of this type, if it occurs, should not go unpunished. However, I have concerns regarding the specific language added to H.R. 965 to address this issue.

I have heard from a number of biomaterials suppliers in recent days that the new language will not arrest the flight of suppliers from the implantable device market. May I remind my colleagues that we came to this debate to achieve a singular objective: To stem the exodus of biomaterials suppliers from the

implantable device market. We must reduce the incidence of unnecessary and costly litigation to prevent further flight by these suppliers. If we do not act, American patients will not have access to life-saving, life-enhancing implantable devices, including pace makers, heart valves, artificial blood vessels, hydrocephalic shunts, hip and knee joints, and even simple sutures for common surgeries.

Mr. Chairman, in the final analysis, this debate is about more than legal theory and procedure. It is about ensuring that those devices which can save and enhance a person's life will be available when they need them. It is imperative that we fix this problem.

In closing, I believe that the issues I have raised need to be discussed further. With the help of my colleagues, I am sure we can draft language that addresses these concerns.

Mr. GEKAS. Mr. Chairman, title III of H.R. 1075 essentially incorporates the provisions of H.R. 753, the Biomaterials Access Assurance Act, which I introduced to help assure adequate supplies of biomaterials for medical devices.

Language has been added in H.R. 1075 to deal with the difficult issue of biomaterials suppliers who are alleged to have wrongfully withheld or misrepresented safety information or who know of fraudulent use of their materials. I believe strongly that conduct of this type should not go unpunished.

Under current law, a medical device manufacturer can bring an action in such circumstances against the biomaterials supplier, and may recover from the supplier any damages that the manufacturer had to pay as a result of a lawsuit by an individual who has been injured. This is unchanged by title III of H.R. 1075. This is as it should be.

The new language in title III, however, prevents a motion for dismissal by a biomaterials supplier if the injured individual claims misrepresentation or fraud. This will keep the deep pockets supplier in the case and subject to the same kind of costly litigation that now threatens to dry up the supply of biomedical materials. So the purpose of title III, to ensure the continuing availability of life-saving and life-enhancing medical devices made from these materials, will be thwarted. Again, let me emphasize that under existing law the manufacturer will have recourse against the errant supplier. The wrongdoer will have to pay for its action. Wrongful conduct will not be immunized.

As this legislation moves forward, I believe this situation should be kept in mind with a view toward finding an appropriate solution.

Mr. FRELINGHUYSEN. Mr. Chairman, I rise today with words of support for H.R. 956, the Common Sense Product Liability and Legal Reform Act, as well as H.R. 10, the entire package of commonsense legal reforms which the House of Representatives has passed this week.

I strongly support the efforts of this House to bring much needed reforms to our tort liability system. This legislation, if enacted, will benefit the State of New Jersey, its businesses, and its consumers.

I have heard from hundreds of constituents and businesses in the 11th District of New Jersey regarding the need for limitations on frivolous lawsuits. These constituents are all too familiar with the rising costs of liability insurance.

I have also heard from constituents whose businesses, increasingly in the past several years, have been the targets of frivolous lawsuits which were eventually found meritless. These decisions came only after having spent obscene amounts of time and money defending themselves. These constituents are all too familiar with the phenomenon of costly settlements having to be made to settle even costlier lawsuits.

The reality is that even a single frivolous lawsuit is sometimes enough to force a small business out of business. Unfortunately, the costs associated with this reality are then passed on to clients and consumers.

Everyone agrees that citizens should have the right to sue and collect reasonable compensation if they are wrongfully injured. These bills will continue to protect fully, that right.

I am pleased to support passage of this well-balanced legislation.

Mr. FAZIO. Mr. Chairman, I rise today to affirm my support for product liability reform and commonsense legal reforms, but it is with great regret that I am not able to vote for final passage of this measure.

First, let me be clear that I strongly believe that we need to replace the current costly patchwork of State laws on product liability with a uniform standard which is fair to consumers, manufacturers, and small businesses. Although over 70 percent of products routinely travel across State lines, under our current laws, the outcome of product liability lawsuits more often depend on geography than the merits of the cases. This confusion of 50 separate State laws stifles business innovation and development. As a result of skyrocketing liability costs, 39 percent of American manufacturers have decided not to introduce new products and 25 percent have discontinued new product research. For consumers, disparate liability laws means that the costs for litigation and skyrocketing insurance rates are passed on to them through higher prices for products.

Furthermore, I support restoring fairness to liability litigation by applying a fair share principle for determining noneconomic damage awards, a step that the majority of States have already taken. This provision would ensure that victims are fairly compensated, but put an end to the practice of lawyers suing any deep pocket who is even remotely connected to the case.

However, I must express my great disappointment and frustration with the way this legislation was brought to the floor. While the title of this legislation is ostensibly the Common Sense Legal Reform Act, I cannot understand why the authors of this bill did not have the common sense to give more careful and deliberate consideration to these complicated issues. This legislation was rushed through the committee process, and as a result, I do not believe this legislation in any way represents the best effort this body can make to produce a uniform liability law. This flawed measure may be keeping the Contract With America on its timetable, but I do not believe it is worth the price of a bad bill.

For example, I supported the Cox amendment addressing the important issue of medical malpractice because I have been a proponent of similar provisions contained in California's Medical Injury Compensation Reform Act [MICRA]. MICRA was adopted to respond to the crisis in the availability and affordability of professional liability coverage for health pro-

fessionals throughout the State in a way that preserved a high level of quality assurance for patients. MICRA compensates injured patients without limit for all economic losses, but limits noneconomic losses to no more than \$250,000.

However, I wish to make it clear that I believe this amendment is a blunt instrument in which to bring MICRA type malpractice reform into the broader national debate about liability reform. This amendment would extend a cap on noneconomic damages to include medical devices as well as health insurance, provisions that are not part of my State's current law. I understand that this amendment was hastily drafted and went under a number of major revisions within less than 24 hours before it was debated. While I am troubled that this amendment contained provisions that were not thoroughly examined or debated, I supported the amendment because I believe that it was an important step to highlight the needs of malpractice reforms. With more time and consideration, this issue could have been addressed much more effectively.

Moreover, if the Rules Committee would have allowed for a fair and reasonable amendment process, I could have likely supported this bill. Regrettably, the Rules Committee shut out the most reasonable amendments that could have made this legislation a sound and workable solution to our product liability problems.

For example, I believe that placing a cap on punitive damages in product liability cases could relieve some of the needless uncertainty that exists today about the lottery of current litigation, a system which leads companies to agree to large settlements even in cases with extremely tenuous liability. However, the cap on punitive damages in this bill—\$250,000 or three times the amount of monetary awards, which ever is greater—was just too low to serve as a true incentive to manufacturers to ensure their products are safe. Furthermore, this cap applied to all civil cases, not just product liability cases. The cap on punitive damages was a key issue in this debate, and a number of amendments were submitted to the Rules Committee which would have given us the opportunity to keep caps on punitive damages in the bill, but raise them to a more reasonable level or more specifically target the caps to product liability cases. The amendments we were allowed to consider on the floor did not adequately address these critical issues.

Thus, without the opportunity to vote on a better liability reform bill, I must oppose the final version of H.R. 956. It is my sincere hope that this legislation will eventually go to conference with the Senate, and return in a form that I can support which will be fair to consumers and business alike.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. WALKER) 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, pursuant to House Resolution 109, he reported the bill back to the House with

an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

□ 1145

MOTION TO RECOMMIT OFFERED BY MR. GORDON

Mr. GORDON. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore (Mr. WALKER). Is the gentleman opposed to the bill?

Mr. GORDON. In its present form, Mr. Speaker, I am.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. GORDON moves to recommit the bill to the Committee on the Judiciary with instructions to report the bill back to the House forthwith, with the following amendments:

Add at the end of the bill the following:

SEC. 404. SERVICE OF PROCESS.

This Act shall not apply to a product liability action unless the manufacturer of the product or component part has appointed an agent in the United States for service of process from anywhere in the United States.

Change the limit in section 201 on punitive damages to the following: "3 times the amount of damages awarded to the claimant for the economic loss on which the claimant's action is based, or \$1,000,000, whichever is greater".

The SPEAKER pro tempore. The gentleman from Tennessee [Mr. GORDON] is recognized for 5 minutes in support of his motion.

Mr. GORDON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise as someone who is a supporter of products liability reform, not just in this Congress, but in past Congresses. I supported the bipartisan bill last year because I do not think status quo is satisfactory. However, I am disappointed that this House has been required to work under a gag rule that has gagged amendments, has gagged this House from fully discussing this issue, and has really gagged the American people from having a full discussion of this issue and allowing us to put better amendments on the floor.

So I rise with a motion to recommit that I think improves this bill in two years: One, to put back in the bill a provision that will require foreign manufacturers to designate an agent in this country. The reason for that is that American consumers are going to be disadvantaged if they are the recipient of some harm by goods in this country by a foreign manufacturer and then cannot get service on them, and

American business is going to be at a disadvantage if they are going to be responsible for liability in this country, however foreign manufacturers would not because they do not have an agent to be served.

Mr. Speaker, the second part of this motion to recommit will raise the punitive damage level from \$250,000 to a more reasonable \$1 million for outrageous conduct.

Mr. Speaker, I yield to my friend, the gentleman from Michigan [Mr. CONYERS].

Mr. CONYERS. Mr. Speaker, I thank the gentleman from Tennessee for the excellent job he has done.

Mr. Speaker, the motion to recommit makes two simple changes, first restoring the provision from the committee-passed bill which would require foreign manufacturers to be subject to service of process in this country before they could benefit from the bill's provision, and then second increase the cap on punitive damages from a quarter million dollars to \$1 million.

Although the body approved a separate amendment by a 92-vote margin that I offered yesterday dealing with foreign manufacturers, that amendment merely ensured that foreign manufacturers were subject to Federal court rules in terms of discovery and jurisdiction. However, we all know that being subject to court rules is not worth anything unless you can actually serve the company with process and bring them into court.

Unfortunately, the first Cox amendment approved yesterday I like to think inadvertently knocked out my service-of-process language. This gutted the whole bill. So the Cox amendment gutted the whole provision of being able to hold foreign wrongdoers responsible for their actions.

Mr. Speaker, I strongly support the motion to recommit.

Mr. GORDON. Mr. Speaker, I yield to the gentleman from Michigan [Mr. DINGELL].

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

Mr. DINGELL. Mr. Speaker, the function of this motion to recommit is a very simple one: One, to include what essentially would have been a bipartisan amendment to this legislation, which would have been offered by the gentleman from Ohio [Mr. OXLEY] and the gentleman from Tennessee [Mr. GORDON], that would have raised the amount of punitive damages to \$1 million or three times the economic damages, a very fair and a very humane amendment which would protect the rights of persons injured by serious wrongdoing by manufacturers and others.

The other thing that the amendment does is something which was voted on yesterday and in which by 258 to a substantially lesser number this body came to the judgment that we ought to see to it that foreigners are treated the same way as Americans are.

The Cox amendment yesterday struck from the bill a requirement that foreigners appoint an agent for purposes of receiving service. The striking of that provision meant that no longer is it easy to get jurisdiction over foreigners who engage in improper processes in manufacturing.

Let me give you an example. An American manufacturer manufactures an automobile. In it he includes foreign parts. He is sued for product liability because of the manufacturing of that automobile. Service is easy on the American manufacturer. Under the Cox amendment, it is almost impossible.

Mr. Speaker, if you wanted to treat Americans fairly with foreigners, vote for the motion to recommit. Otherwise vote for the bill as it is.

Mr. GORDON. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, in summary, let me state this motion to recommit offers us a chance to protect U.S. citizens harmed by foreign products, allow American business a chance to compete against foreign manufacturers on an equal footing, and keep the most dangerous products in this country off the market.

Mr. Speaker, I urge Members to support the Conyers-Dingell motion to recommit.

Mr. HYDE. Mr. Speaker, I rise in opposition to the motion.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. HYDE] is recognized for 5 minutes.

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

Mr. HYDE. Mr. Speaker, I yield to the distinguished gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to the motion to recommit, and I do so with some concern, because the fact is the language added regarding service of process I think is a bogus argument and is simply an effort to bash foreign manufacturers.

The motion to recommit, as far as the language increasing its punitive damage ceiling and the cap to \$1 million, is an amendment that I had supported and had offered, in fact, to the Committee on Rules. But clearly the language involving service of process in my estimation has no business in the motion to recommit. Frankly, it has no business in the bill.

Mr. Speaker, for that, I feel compelled to oppose the motion to recommit.

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

Mr. Speaker, there are three points to be made on this motion to recommit. The first one is on the first part of the motion to recommit, it has to do with service on foreign corporations. The amendment of the gentleman from Michigan [Mr. CONYERS] was not

stricken by the Cox amendment. It still is in the bill, the one that passed last night making foreign manufactures subject to the jurisdiction of the Federal courts in product liability actions.

What the motion to recommit does has to do with service of process on foreign corporations. I tell you it is unnecessary. The Hague Convention, to which we are all subscribers, already provides for service of process on foreign corporations. So it is unnecessary and it is unneeded.

As to the second part of the motion to recommit, it seeks to elevate the ceiling on punitive damages from \$250,000 or three times the economic damages, which could exceed \$250,000, to \$1 million.

Now, I point out with as much fervor as I can muster, punitive damages are not meant to compensate anybody. They are a punishment, they are a deterrent. There is no inhibition, there is no impediment to a plaintiff suing for medical expenses, economic expenses, noneconomic expenses, pain and suffering, loss of use. All of those things are elements of damages that are recoverable. We are talking now about punitive damages meant to punish somebody, and the purpose of this bill is to have a consistent, reasonable figure so insurance companies and manufacturers are not terrorized by the possibility of bankrupting punitive damages assessed against them in some of the States.

□ 1200

Punitive damages impede quick settlements. They get in the way. The reforms in our bill are reasonable. The Governors Association said, "We urge you to act swiftly to enact this legislation."

Now, if you elevate the ceiling to \$1 million, you adulterate and you diminish the effect of having a good products liability bill, a good tort reform bill.

I hope Members will stay with the committee, stay with the bill and defeat the motion to recommit.

I want to say something about the remarks of the gentleman who moved this motion to recommit. He called it a gag rule. I, for one, am very tired of having the Republican side berated for issuing rules that do not make in order 82 different amendments but do make in order significant amendments of the opposition. This rule, this rule made in order 8 Democrat amendments out of 15.

I just say to the gentlemen and gentlewomen of this House that they have a short memory if they do not recall in the last session the motor-voter bill, where we got one amendment permitted; the assault weapons ban, where we got no amendments. Do Members hear that? No amendments.

That is a closed rule, let me tell my colleagues. Reinventing Government, do Members know how many amendments Republicans were permitted on

that? Zero. How about campaign reform? Do my colleagues know how many amendments we were permitted? Zero. That is one of my objections to term limits. People will forget the way we were treated. And they have the, shall I say, "chutzpah" to say we put a gag rule on you when we give you eight amendments. I am sorry. I resist that.

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

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

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

The SPEAKER pro tempore (Mr. WALKER). The time of the gentleman from Illinois [Mr. HYDE] has expired.

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. GORDON. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 195, noes 231, not voting 8, as follows:

[Roll No. 228]

AYES—195

| | | |
|--------------|---------------|---------------|
| Abercrombie | Eshoo | Lofgren |
| Ackerman | Evans | Lowey |
| Andrews | Farr | Luther |
| Baessler | Fattah | Maloney |
| Baldacci | Fazio | Manton |
| Barrett (WI) | Fields (LA) | Markey |
| Becerra | Filner | Martinez |
| Beilenson | Flake | Mascara |
| Bentsen | Foglietta | Matsui |
| Berman | Ford | McCarthy |
| Bevill | Frank (MA) | McCollum |
| Bishop | Frost | McDermott |
| Bonior | Furse | McHale |
| Borski | Gejdenson | McKinney |
| Boucher | Gephardt | McNulty |
| Browder | Gibbons | Meehan |
| Brown (CA) | Gonzalez | Meek |
| Brown (FL) | Gordon | Menendez |
| Brown (OH) | Graham | Mfume |
| Bryant (TX) | Green | Miller (CA) |
| Cardin | Gutierrez | Mineta |
| Chapman | Hall (OH) | Minge |
| Clay | Hall (TX) | Mink |
| Clayton | Hamilton | Mollohan |
| Clement | Harman | Montgomery |
| Clyburn | Hastings (FL) | Moran |
| Coleman | Hayes | Murtha |
| Collins (IL) | Hefner | Nadler |
| Collins (MI) | Hilliard | Neal |
| Conyers | Hinchey | Oberstar |
| Costello | Holden | Obey |
| Coyne | Hoyer | Olver |
| Cramer | Jackson-Lee | Ortiz |
| Danner | Jacobs | Orton |
| de la Garza | Johnson (SD) | Owens |
| Deal | Johnson, E.B. | Pallone |
| DeFazio | Johnston | Pastor |
| DeLauro | Kaptur | Payne (NJ) |
| Dellums | Kennedy (MA) | Payne (VA) |
| Deutsch | Kennedy (RI) | Pelosi |
| Dickey | Kennelly | Peterson (FL) |
| Dicks | Kildee | Pomeroy |
| Dingell | Klecza | Poshard |
| Dixon | Klink | Rahall |
| Doggett | LaFalce | Reed |
| Dooley | Lantos | Reynolds |
| Doyle | Laughlin | Richardson |
| Duncan | Levin | Rivers |
| Durbin | Lewis (GA) | Roemer |
| Edwards | Lincoln | Rose |
| Engel | Lipinski | Roybal-Allard |

| | | |
|-----------|-------------|-----------|
| Rush | Stokes | Vento |
| Sabo | Studds | Visclosky |
| Sanders | Stupak | Volkmer |
| Sawyer | Tanner | Ward |
| Schiff | Tauzin | Waters |
| Schroeder | Taylor (MS) | Watt (NC) |
| Schumer | Tejeda | Waxman |
| Scott | Thompson | Williams |
| Serrano | Thornton | Wilson |
| Skaggs | Thurman | Wise |
| Skelton | Torres | Woolsey |
| Slaughter | Truitt | Wyden |
| Spratt | Trafficant | Wynn |
| Stark | Velazquez | Yates |

NOES—231

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

NOT VOTING—8

| | | |
|-----------|----------|---------|
| Cubin | McIntosh | Torrice |
| Jefferson | Moakley | Towns |
| Kanjorski | Rangel | |

□ 1220

The Clerk announced the following pairs:

On this vote:

Mr. Jefferson for, with Mrs. Cubin against.
Mr. Kanjorski for, Mr. McIntosh against.

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. WALKER). The question is on passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 265, noes 161, not voting 8, as follows:

[Roll No. 229]

AYES—265

| | | |
|--------------|---------------|---------------|
| Allard | Dorman | Hyde |
| Archer | Dreier | Inglis |
| Army | Duncan | Johnson (CT) |
| Bachus | Dunn | Johnson, Sam |
| Baesler | Edwards | Jones |
| Baker (CA) | Ehlers | Kaptur |
| Baker (LA) | Ehrlich | Kasich |
| Ballenger | Emerson | Kelly |
| Barcia | English | Kennelly |
| Barr | Ensign | Kim |
| Barrett (NE) | Everett | Kingston |
| Bartlett | Ewing | Klecicka |
| Barton | Fawell | Klug |
| Bass | Fields (TX) | Knollenberg |
| Bereuter | Flanagan | Kolbe |
| Bevill | Foley | LaHood |
| Bilbray | Forbes | Largent |
| Bilirakis | Fowler | Latham |
| Bliley | Fox | LaTourette |
| Blute | Franks (CT) | Laughlin |
| Boehlert | Franks (NJ) | Lazio |
| Boehner | Frelinghuysen | Leach |
| Bonilla | Frisa | Lewis (CA) |
| Bono | Funderburk | Lewis (KY) |
| Boucher | Gallegly | Lightfoot |
| Brewster | Ganske | Lincoln |
| Browder | Gekas | Linder |
| Brownback | Geren | Livingston |
| Bryant (TN) | Gilchrest | LoBiondo |
| Bunn | Gillmor | Longley |
| Bunning | Gilman | Lucas |
| Burr | Goodlatte | Manzullo |
| Burton | Goodling | McCollum |
| Buyer | Gordon | McCreery |
| Callahan | Goss | McDade |
| Calvert | Graham | McHugh |
| Camp | Greenwood | McInnis |
| Canady | Gunderson | McKeon |
| Castle | Gutknecht | McNulty |
| Chabot | Hall (OH) | Metcalf |
| Chenoweth | Hall (TX) | Meyers |
| Christensen | Hamilton | Mica |
| Chrysler | Hancock | Miller (FL) |
| Clement | Hansen | Minge |
| Clinger | Harman | Molinari |
| Coburn | Hastert | Montgomery |
| Collins (GA) | Hastings (WA) | Moorhead |
| Combest | Hayes | Moran |
| Condit | Hayworth | Morella |
| Cooley | Hefley | Myers |
| Cox | Hefner | Myrick |
| Cramer | Heineman | Nethercutt |
| Crane | Herger | Neumann |
| Crapo | Hilleary | Ney |
| Cremeans | Hobson | Norwood |
| Cunningham | Hoekstra | Nussle |
| Danner | Hoke | Oxley |
| Davis | Holden | Packard |
| Deal | Horn | Parker |
| DeLay | Hostettler | Paxon |
| Dickey | Houghton | Payne (VA) |
| Dooley | Hunter | Peterson (FL) |
| Doolittle | Hutchinson | Peterson (MN) |

| | | |
|--------------|---------------|-------------|
| Petri | Seastrand | Taylor (NC) |
| Pombo | Sensenbrenner | Thomas |
| Porter | Shadegg | Thornberry |
| Portman | Shaw | Tiahrt |
| Poshard | Shays | Torkildsen |
| Pryce | Shuster | Trafficant |
| Quillen | Sisisky | Upton |
| Quinn | Skeen | Vucanovich |
| Radanovich | Slaughter | Waldholtz |
| Ramstad | Smith (MI) | Walker |
| Regula | Smith (NJ) | Walsh |
| Riggs | Smith (TX) | Wamp |
| Roberts | Smith (WA) | Watts (OK) |
| Roemer | Solomon | Weldon (FL) |
| Rogers | Souder | Weldon (PA) |
| Rohrabacher | Spence | Weller |
| Ros-Lehtinen | Spratt | White |
| Roth | Stearns | Whitfield |
| Roukema | Stenholm | Wicker |
| Royce | Stockman | Wolf |
| Salmon | Stump | Young (AK) |
| Sanford | Talent | Young (FL) |
| Saxton | Tanner | Zeliff |
| Scarborough | Tate | Zimmer |
| Schaefer | Tauzin | |
| Schiff | Taylor (MS) | |

NOES—161

| | | |
|--------------|---------------|---------------|
| Abercrombie | Furse | Olver |
| Ackerman | Gejdenson | Ortiz |
| Andrews | Gephardt | Orton |
| Baldacci | Gonzalez | Owens |
| Barrett (WI) | Green | Pallone |
| Bateman | Gutierrez | Pastor |
| Becerra | Hastings (FL) | Payne (NJ) |
| Beilenson | Hinchey | Pelosi |
| Bentsen | Hoyer | Pickett |
| Berman | Istook | Pomeroy |
| Bishop | Jackson-Lee | Rahall |
| Bionir | Jacobs | Reed |
| Borski | Johnson (SD) | Reynolds |
| Brown (CA) | Johnson, E.B. | Richardson |
| Brown (FL) | Johnston | Rivers |
| Brown (OH) | Kanjorski | Rose |
| Bryant (TX) | Kennedy (MA) | Roybal-Allard |
| Cardin | Kennedy (RI) | Rush |
| Chapman | Kildee | Sabo |
| Clay | King | Sanders |
| Clayton | Klink | Sawyer |
| Clyburn | LaFalce | Schroeder |
| Coble | Lantos | Schumer |
| Coleman | Levin | Scott |
| Collins (IL) | Lewis (GA) | Serrano |
| Collins (MI) | Lipinski | Skaggs |
| Conyers | Lofgren | Skelton |
| Costello | Lowe | Stark |
| Coyne | Luther | Stokes |
| de la Garza | Maloney | Studds |
| DeFazio | Manton | Stupak |
| DeLauro | Markey | Tejeda |
| Dellums | Martinez | Thompson |
| Deutsch | Martini | Thornton |
| Diaz-Balart | Mascara | Thurman |
| Dicks | Matsui | Torres |
| Dingell | McCarthy | Torricelli |
| Dixon | McDermott | Tucker |
| Doggett | McHale | Velazquez |
| Doyle | McKinney | Vento |
| Durbin | Meehan | Visclosky |
| Engel | Meeke | Volkmer |
| Eshoo | Menendez | Ward |
| Evans | Mfume | Waters |
| Farr | Miller (CA) | Watt (NC) |
| Fattah | Mineta | Waxman |
| Fazio | Mink | Williams |
| Fields (LA) | Moakley | Wilson |
| Filner | Mollohan | Wise |
| Flake | Murtha | Woolsey |
| Foglietta | Nadler | Wyden |
| Ford | Neal | Wynn |
| Frank (MA) | Oberstar | Yates |
| Frost | Obey | |

NOT VOTING—8

| | | |
|-----------|-----------|--------|
| Chambliss | Hilliard | Rangel |
| Cubin | Jefferson | Towns |
| Gibbons | McIntosh | |

□ 1239

The Clerk announced the following pairs:

On this vote:

Mrs. Cubin for with Mr. Jefferson against.
Mr. McIntosh for with Mr. Towns against.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. CHAMBLISS. Mr. Speaker, unfortunately, when the vote on the Common Sense Legal Standard Reform Act was taken a few minutes ago, I was across the hall meeting with some folks in my State on a very important matter. I did not hear my beeper, nor did I hear the bells, and I just wish to insert in the RECORD the fact that had I been present during the vote, I would have voted affirmatively on that bill.

PERSONAL EXPLANATION

Mr. MCINTOSH. Mr. Speaker, I, too, was inadvertently detained from the floor of the House by an engagement that went beyond the anticipated time, and because of the earlier unanticipated vote on this matter I was not able to make it into the Chamber in time to cast my vote.

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 956, the bill just passed.

The SPEAKER pro tempore (Mr. WALKER). Is there objection to the request of the gentleman from Illinois?

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 956, COMMON SENSE LEGAL STANDARDS REFORM ACT OF 1995

Mr. HYDE. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill H.R. 956 the Clerk have authority to make such technical and conforming amendments in the text of H.R. 956 as may be required because of the amendments to such bill agreed to by the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

APPOINTMENT OF ADDITIONAL CONFEREES ON S. 244, PAPERWORK REDUCTION ACT OF 1995

The SPEAKER pro tempore. Without objection, the Chair appoints the following additional conferees on S. 244, Paperwork Reduction Act of 1995.

Mrs. COLLINS of Illinois, Mr. PETERSON of Minnesota, and Mr. WISE.

There was no objection.