

Republican leaders were wary of him even this early. He had run a campaign aimed at garnering the votes of those who would be supporting FDR, and even praised Democratic candidates for other offices.

It was a pragmatism that would characterize Dirksen throughout his career. On his death in 1969, conservative columnist William F. Buckley, Jr., then much more a firebrand than today, would assess the senator in an otherwise glowing obituary as "so much the pragmatist that you couldn't really count on him in a pinch."

The Chicago Sun-Times once estimated that in his 17 years in the House of Representatives, Dirksen changed his mind 62 times on foreign policy, 31 times on military affairs, and 70 times on agriculture issues. Then, in the Senate he outdid that record.

His most famous about-faces were on the nuclear test-ban treaty and the Civil Rights Act. In the summer of 1963 he opposed the enactment of federal guarantees of the right of blacks to use any hotel, restaurant or other public accommodation on property rights grounds, the core of the proposal by President Kennedy, though he supported its other provisions.

The next year, with Johnson having replaced the assassinated JFK, some savvy maneuvering by Democrats for Republican support in the House forced Dirksen in the Senate to soften. He ended up becoming instrumental in passage of the Civil Rights Act, using his party to provide the margin of victory.

Sen. Richard Russell, D-Ga., "says the Attorney General (Bobby Kennedy) has nailed my skin to the barn door to dry," Dirksen told a reporter in typical Dirksenesque language. "Well, nobody has hung up my conscience and my sense of history to dry. Pardon me for the sermon."

Dirksen also immediately opposed upon hearing about it the administration's treaty with the Soviet Union to ban nuclear tests in the atmosphere. But by September Dirksen realized that public support for the treaty was very strong. He ended up turning 180 degrees, supporting the test ban entirely, but only after he persuaded Kennedy to write a letter assuring that the U.S. nuclear weapons program would not be slowed down.

"They called him the Wizard of Ooze," recalled former National Review Publisher William A. Rusher, author of "The Rise of the Right," a chronicle of conservatism's struggle to power in the GOP. But Dirksen's smoothness never seemed to leave him alienated from conservatives the way many of today's Republican "pragmatists" are. Much of that undoubtedly stemmed from his support of isolationist Sen. Robert Taft's R-Ohio, failed run for the party presidential nomination in 1952 and Dirksen's opposition to the Senate's censuring of Sen. Joseph McCarthy, R-Wis., in 1954 (though he severed relations with McCarthy very soon after that).

"Certainly, speaking as a conservative, I regarded Everett Dirksen as a friend and I think he would be delighted to see all that's happened," Rusher added.

Lee Edwards, president of the Center for International Relations and author of a soon-to-be-released biography of Barry Goldwater, noted that Dirksen had a strong role early on the Goldwater's rise to power.

On a trip to speak to the Arizona GOP, Dirksen personally took Goldwater aside and advised him to run for the U.S. Senate when the Arizonan was only a city councilman.

"Goldwater has admitted on more than one occasion that it did make a difference in his decision to run," according to Edwards.

His heavy smoking and drinking eventually caught up with Dirksen and he died of complications from lung cancer surgery in 1969. One of the three Senate office buildings across the street from the U.S. Capitol bears

his name, the two others named after Democratic senators. He lay in state under the dome of the Capitol on the same black catafalque as Lincoln, then only the third senator so honored. •

#### TRIBUTE TO KATHERINE M. LIDDLE

• Mr. McCONNELL. Mr. President, I want to pay tribute to Katherine M. Liddle who died in Reston, VA, on December 1, 1994. Mrs. Liddle was a long-time resident of Pineville, KY, and will be remembered and missed by many.

Mrs. Liddle was born in Oaks, KY. She was a graduate of Pineville High School and Union College in Barbourville, KY. Mrs. Liddle began teaching within the county system in a one-room school with six grades. In 1973 she began teaching the sixth grade at the Pineville Independent School where she finished her teaching career 20 years later.

Mrs. Liddle was the wife of the late James J. Liddle. She had one son, Jack, who now resides in Reston, VA. She was a long-time member of the First Baptist Church in Pineville, KY.

Mr. President, I ask that my colleagues join me in sending the Chamber's sincere condolences to the family of Katherine M. Liddle. I am confident that her strength of character will remain a standard of excellence for generations to come. •

#### HUMAN RIGHTS REPORT ON TIBET

• Mr. MOYNIHAN. Mr. President, today the Department of State has taken an important step toward recognizing the reality of the status of Tibet. The annual "Country Reports on Human Rights Practices" was released today and for the first time there is a separate section on Tibet.

For years there has been a fundamental difference in the way Congress and the executive branch have viewed Tibet. While the executive branch has attempted to obscure the fact that at one time we did support Tibet, Congress has stated its determination that Tibet is an occupied country. By separating the Tibet section from the China section on the human rights report, there is finally an acknowledgement that the administration recognizes Tibet as distinct from China.

This new Tibet section fulfills one aspect of a provision which I introduced and was later signed into law as part of the State Department authorization act for fiscal year 1994-95. While I do not agree with certain portions of the report on Tibet, it is not without merit, and its authors deserve respect as able diplomats.

This will send a clear signal to those in Beijing as well as those in Dharmasala, India where the Dalai Lama lives in exile, that the United States recognizes the special situation the Tibetans face. Those in Dharmasala have long known Congress supports them; now they can more clearly gauge the sentiments of the administration.

This has been confusing. As the eminent journalist A.M. Rosenthal, who visited the Tibetans in exile in 1988, wrote:

People in Dharmasala are understandably hazy about the intricacies of American government. They cannot quite get it straight how the Congress can be so warm to Tibet and the State Department and the White House make it clear that they intend to disregard Congress and continue the sellout of Tibet.

Perhaps this marks a new chapter in United States foreign policy in which support for the people of Tibet will no longer be hazy. •

#### LAWSUIT REFORM ACT

• Mr. McCONNELL. Mr. President, I ask that the text of S. 300 be printed in the RECORD.

The bill follows:

S. 300

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

##### SECTION 1. SHORT TITLE.

This Act may be cited as the "Lawsuit Reform Act of 1995".

##### SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings.
- Sec. 4. Authority.
- Sec. 5. Equity in legal fees.
- Sec. 6. Early offer and recovery mechanisms.
- Sec. 7. Reform of joint and several liability.
- Sec. 8. Single recovery.
- Sec. 9. Limitation on punitive damages.
- Sec. 10. Alternative dispute resolution.
- Sec. 11. Reliability of expert evidence.
- Sec. 12. Express authorization for private right of action.
- Sec. 13. Applicability.
- Sec. 14. Severability.
- Sec. 15. Effective date.

##### SEC. 3. FINDINGS.

The Congress finds that—

(1) the United States civil justice system is inefficient, unpredictable, costly, and impedes competitiveness in the world marketplace for business and employees;

(2) the defects in the civil justice system have a direct and undesirable effect on interstate commerce by decreasing the availability of goods and services in commerce;

(3) reform efforts should respect the role of the States in the development of civil justice rules, but recognize the national Government's role in removing barriers to interstate commerce;

(4) the spiralling cost of litigation has continued unabated for the past 30 years; and

(5) there is a need to restore rationality, certainty, and fairness to the legal system, to promote honesty and integrity within the legal profession, and to encourage alternative means to the contentious litigation system in resolving disputes.

##### SEC. 4. AUTHORITY.

This Act is enacted pursuant to Congress' powers under Article I, section 8, clauses 3, 9, and 18, of the United States Constitution.

##### SEC. 5. EQUITY IN LEGAL FEES.

(a) DISCLOSURE OF ATTORNEY'S FEES INFORMATION.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) the term "attorney" means any natural person, professional law association, corporation, or partnership authorized under applicable State law to practice law;

(B) the term "attorney's services" means the professional advice or counseling of or representation by an attorney, but such term shall not include other assistance incurred, directly or indirectly, in connection with an attorney's services, such as administrative or secretarial assistance, overhead, travel expenses, witness fees, or preparation by a person other than the attorney of any study, analysis, report, or test;

(C) the term "claimant" means any natural person who files a civil action arising under any Federal law or in any diversity action in Federal court and—

(i) if such a claim is filed on behalf of the claimant's estate, the term shall include the claimant's personal representative; or

(ii) if such a claim is brought on behalf of a minor or incompetent, the term shall include the claimant's parent, guardian, or personal representative;

(D) the term "contingent fee" means the cost or price of an attorney's services determined by applying a specified percentage, which may be a firm fixed percentage, a graduated or sliding percentage, or any combination thereof, to the amount of the settlement or judgment obtained;

(E) the term "hourly fee" means the cost or price per hour of an attorney's services;

(F) the term "initial meeting" means the first conference or discussion between the claimant and the attorney, whether by telephone or in person, concerning the details, facts, or basis of the claim;

(G) the term "natural person" means any individual, and does not include an artificial organization or legal entity, such as a firm, corporation, association, company, partnership, society, joint venture, or governmental body; and

(H) the term "retain" means the act of a claimant in engaging an attorney's services, whether by express or implied agreement, by seeking and obtaining the attorney's services.

(2) **DECISION ON COMPENSATION.**—A claimant who retains an attorney may elect whether to compensate the attorney's services in connection with the claim on an hourly basis or a contingent fee basis.

(3) **DISCLOSURE AT INITIAL MEETING.**—An attorney retained by a claimant shall, at the initial meeting, disclose to the claimant the claimant's right to elect the method of compensating the attorney's services and the claimant's right to receive a written statement of the information described under paragraph (5).

(4) **RIGHT OF ATTORNEY.**—If, within 30 days after receiving the information described under paragraph (5), a claimant has failed to elect the method of compensating the attorney's services, the attorney may select the method of compensation and shall notify the claimant of the selection.

(5) **INFORMATION AFTER INITIAL MEETING.**—Within 30 days after the initial meeting, an attorney retained by a claimant shall provide a written statement to the claimant containing—

(A) the estimated number of hours of the attorney's services that will be spent—

(i) settling or attempting to settle the claim or action; and

(ii) handling the claim through trial;

(B) the attorney's hourly fee for services in the claim or action and any conditions, limitations, restrictions, or other qualifications on the fee the attorney determines are appropriate; and

(C) the attorney's contingent fee for services in the claim or action and any conditions, limitations, restrictions, or other

qualifications on the fee the attorney determines are appropriate.

(6) **INFORMATION AFTER SETTLEMENT.**—An attorney retained by a claimant shall, within a reasonable time not later than 30 days after the date on which the claim or action is finally settled or adjudicated, provide a written statement to the claimant containing—

(A) the actual number of hours of the attorney's services in connection with the claim;

(B) the total amount of the hourly fees or total contingent fee for the attorney's services in connection with the claim; and

(C) the actual fee per hour of the attorney's services in connection with the claim, determined by dividing the total amount of the hourly fees or the total contingent fee by the actual number of hours of attorney's services.

(7) **FAILURE TO DISCLOSE.**—A claimant to whom an attorney fails to disclose information required by this section may withhold 10 percent of the fee and file a civil action for damages in the court in which the claim or action was filed or could have been filed.

(8) **OTHER REMEDIES.**—This section shall supplement and not supplant any other available remedies or penalties.

(b) **LIMITATION ON ATTORNEY CONTINGENT FEES.**—

(1) **DEFINITIONS.**—For purposes of this subsection, the term—

(A) "allegedly liable party" means a person, partnership, corporation, and the insurers thereof, or any other individual or entity alleged by the claimant to be liable for at least some portion of the damages alleged by the claimant;

(B) "claimant" means an individual who, in his or her own right, or vicariously, is seeking compensation for tortious physical or mental injury, property damage, or economic loss;

(C) "contingent fee" means the fee negotiated in a contingent fee agreement which is only payable from the proceeds of any recovery on behalf of a claimant;

(D) "contingent fee agreement" means a fee agreement between an attorney and a claimant wherein the attorney agrees to bear the risk of no or inadequate compensation in exchange for a proportionate share of part of or all of any recovery by settlement or verdict obtained for the claimant;

(E) "contingent fee attorney" means an attorney who agrees to represent a claimant in exchange for a contingent fee;

(F) "fixed fee" means an agreement between an attorney and a claimant whereby the attorney agrees to perform a specific legal task in exchange for a specific sum to be paid by a claimant;

(G) "hourly rate fee"—

(i) means the fee generated by an agreement or otherwise by operation of law between an attorney and a claimant stating that the claimant pay the attorney a fee determined by multiplying the hourly rate negotiated, or otherwise set by law, between the attorney and the claimant, by the number of hours that the attorney has worked on behalf of the claimant in furtherance of the claimant's interest; and

(ii) may also be a contingent fee to the extent it is only payable from the proceeds of any recovery on behalf of the claimant;

(H) "pre-retention offer" means an offer to settle a claim for compensation for damages arising out of a civil action made to a claimant not represented by an attorney at the time of the offer;

(I) "post-retention offer" means an offer in response to a demand for compensation made within the time constraints, and conforming to the provisions of this subsection, to settle a claim for damages arising out of a civil ac-

tion made to a claimant who is represented by a contingent fee attorney;

(J) "response" means a written communication by a claimant or an allegedly responsible party or the attorney for either, deposited into the United States Mail and sent by certified mail; and

(K) "settlement offer" means a written offer of settlement stated in a response filed within the time limits described in this subsection.

(2) **APPLICABILITY.**—(A) This subsection shall apply with respect to any civil action filed against any person in any Federal or State court based upon any cause of action (including, but not limited to negligence, strict or product liability, breach of implied warranty or professional malpractice) in which damages are sought for tortious physical or mental injury, property damage, or economic loss, except a civil action arising under a Federal law that authorizes an award of attorney fees to a prevailing party.

(B)(i) Nothing in this section shall apply to any agreement between a claimant and an attorney to—

(I) retain the attorney on an hourly rate fee or fixed fee basis solely to evaluate a pre-retention offer; and

(II) retain the attorney to collect overdue amounts from an accepted pre-retention or post-retention settlement offer.

(ii) This subsection shall not apply to contingent fee agreements in civil actions where neither a pre-retention nor a post-retention offer of settlement is made.

(3) **WRITTEN HOURLY RATE FEE AGREEMENT.**—With respect to a civil action, if a contingent fee attorney has not entered into a written agreement with a claimant at the time of retention setting forth the attorney's hourly rate, then a reasonable hourly rate shall be payable, subject to the limitations described in this section.

(4) **NATURE OF DEMAND FOR COMPENSATION.**—(A) With respect to a civil action, at any time after retention, a contingent fee attorney shall, on behalf of the claimant, send a demand for compensation by certified mail to an allegedly responsible party.

(B) The demand for compensation under subparagraph (A) shall contain the material facts relevant to the civil action involved and a description of the evidence determined by the contingent fee attorney to be discoverable by the allegedly liable party during the course of litigation, including—

(i) the name, address, age, marital status and occupation of the claimant or of the injured or deceased party if the claimant is operating in a representative capacity;

(ii) a brief description of how the damages arose;

(iii) the names and, if known, the addresses, telephone numbers, and occupations of all known witnesses;

(iv) copies of photographs in the claimant's possession which relate to the claim for damages;

(v) the basis for claiming that the party to whom the claim is addressed is at least partially liable for causing the injury;

(vi) if the claim for damages is based upon a physical or mental injury—

(I) a description of the nature of the injury, the names and addresses of all physicians, other health care providers, and hospitals, clinics, or other medical service entities that provided medical care to the claimant or injured party including the date and nature of the service; and

(II) medical records relating to the injury and those involving a prior injury or pre-existing medical condition which an allegedly liable party would be able to introduce into evidence in a trial or, in lieu thereof, providing executed releases allowing the allegedly responsible party to obtain such

records directly from the claimant's physicians, health care providers and entities that provided medical care; and

(vii) with respect to demand for a compensation that includes an amount for medical expenses, wages lost or other special damages suffered as a consequence of the injury, relevant documentation thereof, including records of earnings if a claimant is self-employed and employer records of earnings if a claimant is employed.

(C) A claimant's attorney shall provide copies of each demand for compensation under this paragraph to the claimant and to each allegedly liable party at the time of the dispatch of the demand for compensation. Where reproduction costs would be significant relative to the size of the settlement offer, the claimant's attorney, may, in the alternative, offer other forms of access to the materials, convenient and at reasonable cost to allegedly responsible party's attorney.

(D) A contingent fee attorney who fails to file a demand for compensation under this paragraph shall not be entitled to any fee greater than 10 percent of any settlement or judgment received by the claimant client after reasonable expenses have been deducted.

(5) TIME LIMIT FOR RESPONSE SETTING FORTH SETTLEMENT OFFER.—(A) An allegedly liable party shall have 60 days from the date of the receipt of a demand for compensation under paragraph (4) to issue a response stating a settlement offer.

(B) If within 30 days after the date of the receipt of a demand for compensation under paragraph (4), an allegedly liable party notifies the attorney of the claimant that such party seeks to have a medical examination of the claimant, and the claimant is not made available for such examination within 10 days after the date of the receipt of such a request, the 60-day period described under subparagraph (A) shall be extended by one day for each day that such request is not honored after the expiration of such 10-day period. Any such extension shall also include a further period of 10 days from the date of the completion of the medical examination.

(C) A response under this paragraph shall be open for acceptance for a minimum of 30 days from the date of the receipt of such response by the attorney of the claimant and shall state whether such response expires in 30 days or remains open for acceptance for a longer period or until notice of withdrawal is given.

(D) A settlement offer in a response under this subsection may be increased during the 60-day period described under subparagraph (A) by issuing an additional response.

(E) If an additional response has been sent under this paragraph, the time for acceptance shall be 10 days from the date of the receipt of such additional response by the attorney of the claimant or 30 days from the date of the receipt of the initial response, whichever is later, unless the additional response specifies a longer period of time for acceptance as described under subparagraph (C).

(6) MATERIAL TO ACCOMPANY SETTLEMENT OFFER.—An allegedly responsible party and the attorney of such party shall include in any response stating a settlement offer under paragraph (5) copies of materials in their possession concerning the claim upon which the allegedly liable party relied in making a settlement offer, except for material which such party believes in good faith would not be discoverable by the claimant during the course of litigation. Where reproduction costs would be significant relative to the size of the settlement offer, the allegedly responsible party, may, in the alternative, offer other forms of access to the materials,

convenient and at reasonable cost to claimant's attorney.

(7) EFFECT OF PRE-DEMAND SETTLEMENT OFFER.—A settlement offer under this subsection to a claimant represented by a contingent fee attorney made prior to the receipt of a demand for compensation, which is open for acceptance for 60 days or more from the time of its receipt and which conforms to the requirements of paragraph (6), shall be considered a post-retention offer and shall have the same effect under this subsection as if it were a response to a demand for compensation.

(8) PRE-RETENTION OFFER.—(A) An attorney retained after a claimant has received a pre-retention offer under this subsection may not enter into an agreement with the claimant to receive a contingent fee based upon or payable from the proceeds of the pre-retention offer which remains in effect.

(B) An attorney entering a fee agreement that would effectively result in a claimant's paying a percentage of a pre-retention offer to the attorney for prosecuting the claim shall be considered to have charged an unreasonable and excessive fee. With respect to an attorney where a pre-retention offer has been provided—

(i) the attorney may contract with a claimant to receive an hourly rate fee or fixed fee for advising the claimant regarding the pre-retention offer; or

(ii) the attorney may contract with a claimant to receive a contingent fee applicable to any amount received by a claimant, by settlement or judgment, above the amount of the pre-retention offer.

(9) POST-RETENTION OFFER WHERE A PRE-RETENTION OFFER HAS BEEN MADE.—A claimant in receipt of a pre-retention offer under this subsection which such claimant has not accepted and who later receives a post-retention offer which is accepted, is not obligated to pay the retained attorney a fee greater than the hourly rate fee calculated on the basis of the number of hours the attorney has worked on behalf of claimant in furtherance of the claimant's claim, but not exceeding 20 percent of the excess of the post-retention offer less the pre-retention offer.

(10) POST-RETENTION OFFER WHERE NO PRE-RETENTION OFFER HAS BEEN MADE.—A claimant not in receipt of a pre-retention offer under this subsection who has received a post-retention offer which is accepted, is not obligated to pay the retained attorney a fee greater than the hourly rate fee calculated on the basis of the number of hours the attorney has worked on behalf of claimant in furtherance of claimant's claim, but not exceeding 10 percent of the first \$100,000, plus 5 percent of any amount above \$100,000, of the accepted post-retention offer after reasonable expenses have been deducted.

(11) CALCULATION OF ATTORNEY FEE WHEN THERE IS A SUBSEQUENT RESOLUTION OF THE CLAIM.—If an allegedly liable party's post-retention settlement offer under this subsection is rejected, but a later settlement offer is accepted, or there is a judgment in favor of claimant, the claimant, irrespective of any pre-retention offer, is not obligated to pay the retained attorney a fee greater than the sum of—

(A) the amount of the fee that would have been calculated under paragraph (10) had the post-retention offer been accepted but only as applied to the subsequent settlement offer or judgment up to the amount of the post-retention offer; and

(B) the product of multiplying the contingent fee percentage negotiated between the contingent fee attorney and claimant and the amount by which the subsequent settlement or judgment exceeds the post-retention offer, after reasonable expenses have been deducted.

(12) PROVISION OF CLOSING STATEMENT.—Upon receipt of any settlement or judgment under this subsection, and prior to disbursement thereof, a contingent fee attorney shall provide the claimant with a written statement detailing how the proceeds are to be distributed, including the amount of the expenses paid out or to be paid out of the proceeds, the amount of the fee, how the fee amount is calculated, and the amount due the claimant.

(13) EFFECT ON CONTRAVENING AGREEMENTS.—(A) A contingent fee attorney who enters into a fee agreement with a claimant which violates the provisions of this subsection is deemed to have charged an unreasonable and excessive fee.

(B) A claimant who has entered into an agreement with a contingent fee attorney which violates the provisions of this subsection is entitled to recover from the attorney any reasonable fees and costs incurred to establish such agreement violated the provisions of this subsection.

(C) The failure by the claimant's attorney, or the attorney for an alleged responsible party, to comply with the provisions of this subsection may be considered grounds for disciplinary proceedings and sanctions as determined appropriate by the licensing or regulatory agency or court of the State in which the claim arose.

(c) AMENDMENT TO THE FEDERAL RULES OF CIVIL PROCEDURE.—Rule 11(c) of the Federal Rules of Civil Procedure is amended—

(1) in the matter preceding paragraph (1) by striking out "may" and inserting in lieu thereof "shall";

(2) in subdivision (1)(A) in the third sentence by striking out "may" and inserting in lieu thereof "shall"; and

(3) in paragraph (2)—

(A) by amending the first sentence to read as follows: "A sanction imposed for a violation of this rule shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated and to compensate the parties that were injured by such conduct."; and

(B) in the second sentence by striking ", if imposed on motion and warranted for effective deterrence,".

(d) PREVAILING PARTY COSTS AND ATTORNEYS' FEES.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), in any civil action filed against any person in any Federal or State court, based on any cause of action (including, but not limited to negligence, strict or product liability, breach of implied warranty or professional malpractice) in which damages are sought for tortious physical or mental injury, property damage, or economic loss the court may award each prevailing party costs and reasonable attorneys' fees.

(2) AMOUNT OF AWARD.—An award of costs and reasonable attorneys' fees under paragraph (1) may not exceed—

(A) the actual cost incurred by the nonprevailing party or the attorneys' fee payable for services in connection with such civil action; or

(B) if no such cost was incurred by the nonprevailing party due to a contingency fee agreement, an amount equal to the reasonable costs that would have been incurred by the nonprevailing party for a noncontingent attorneys' fee payable for services in connection with such civil action.

(3) LIMITATION.—

(A) Notwithstanding paragraph (1) or (2), the court shall not award an attorney's fee in any case in which the nonprevailing party—

(i) had a taxable income of less than \$75,000 in the calendar year preceding the calendar year in which the civil action was filed, if the nonprevailing party is an individual; or

(ii) had an average taxable income of less than \$50,000 for the 3 calendar years preceding the calendar year in which the civil action was filed, if the nonprevailing party is not an individual.

(B) The court shall retain discretion to refuse to award or may reduce the amount awarded as an attorney's fee under paragraph (1) to the extent the court finds would be in the interests of justice.

#### **SEC. 6. EARLY OFFER AND RECOVERY MECHANISMS.**

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new section:

##### **"§1659. Early offer and recovery mechanisms"**

"(a) For purposes of this section:

"(1) The term 'allegedly liable defendant' means a person, partnership, or corporation alleged by the claimant to be responsible for at least some portion of an injury alleged by a claimant.

"(2) The term 'allowable expense' means reasonable expenses incurred for products, services, and accommodations reasonably needed for medical care, training, and other remedial treatment and care of an injured individual.

"(3) The term 'claimant' means an individual who, in his or her own right, or vicariously, is seeking compensation for tortious physical or mental injury, property damage or economic loss.

"(4) The term 'collateral benefits' means all benefits and advantages received or entitled to be received (regardless of the right of recoupment of any other entity, through subrogation, trust agreement, lien, or otherwise) by an injured individual or other entity as reimbursement of loss because of personal injury, payable or required to be paid—

"(A) in accordance with the laws of any State or the Federal Government (other than through a claim for breach of an obligation or duty);

"(B) under the terms of any health or accident insurance, wage or salary continuation plan, or disability income insurance; or

"(C) in discharge of familial obligations or support.

"(5) The term 'economic loss' means—

"(A) pecuniary loss and monetary expenses incurred by or on behalf of an injured individual as a result of tortious physical or mental injury, property damage, or economic loss, including allowable expenses, work loss, and replacement services loss, whether caused by pain and suffering or physical impairment, but not including non-economic loss; minus

"(B) collateral benefits.

"(6) The term 'entity' includes an individual or person.

"(7) The term 'intentional misconduct' means conduct, whether by act or omission, which intentionally causes, or attempts to cause, by the one who acts or fails to act, injury or with knowledge that injury is substantially certain to follow. A person does not intentionally cause, or attempt to cause, injury if such party's act or failure to act is for the purpose of averting bodily harm to such party or another.

"(8) The term 'replacement services loss' means reasonable expenses incurred in obtaining ordinary and necessary services from others, not members of the injured individual's household or family, in lieu of those the injured individual would have performed for the benefit of the household or family, but does not include benefits received by the injured individual.

"(9) The term 'serious injury' means bodily injury which results in dismemberment, significant and permanent loss of an important bodily function, or significant and permanent scarring or disfigurement.

"(10) The term 'wanton conduct' means conduct that the allegedly responsible party must have realized was excessively dangerous, done heedlessly and recklessly, and with a conscious disregard to the consequences or the rights and safety of the claimant.

"(11) The term 'work loss' means loss of income from work the injured individual would have performed if the individual had not been injured, reduced by any income from substitute work actually performed by the individual or by income the individual would have earned in available appropriate substitute work that the individual was capable of performing but unreasonably failed to undertake.

"(b)(1) In any civil action or claim against any person, filed in any Federal or State court, based on any cause of action to recover damages or compensation for tortious physical or mental injury, property damage, or economic loss, any allegedly liable defendant shall have the option to offer, not later than 120 days after an injury or after the initiation of the liability claim, to compensate a claimant for reasonable economic loss, including future economic loss, less amounts available from collateral sources, and including reasonable hourly attorneys' fees for the claimant. A claimant who agrees in writing to such offer shall be foreclosed from bringing or continuing a civil action against any allegedly liable defendant and any other individuals or entities included under subsection (c). The claimant may extend the time for receiving the offer.

"(2) Nothing in this section shall preclude a State from enacting a requirement that compensation benefits offered under paragraph (1) shall include a minimum dollar amount in response to a claim for serious injury.

"(c) An offer under subsection (b) may include other allegedly liable defendants, individuals, or entities that were involved in the events which give rise to the civil action, regardless of the theory of liability on which the claim is based, with their consent.

"(d) Future economic damages shall be payable to an individual under this section as such damages occur.

"(e) If, after an offer is made under subsection (b), the participants in the offer dispute their relative contributions to the payments to be made to the individual, such disputes shall be resolved through binding arbitration in accordance with applicable rules and procedures established by the Attorney General of the United States.

"(f)(1) In no event shall a civil action be foreclosed under subsection (b) against any allegedly liable party if the injured individual elects to prove, beyond a reasonable doubt, that the allegedly liable party caused the injury by intentional or wanton misconduct.

"(2) This subsection shall not apply with respect to a personal injury unless the injured individual provides the allegedly liable party making an offer with a notice of such an election not later than 90 days after the date the offer of compensation benefits was made.

"(g) Nothing in this section shall be construed to effect any applicable statute of limitations of any State or of the United States."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding at the end thereof the following new item:

"1659. Early offer and recovery mechanisms."

#### **SEC. 7. REFORM OF JOINT AND SEVERAL LIABILITY.**

(a) DEFINITION.—As used in this section, the term "concerted action" or "acting in concert" means the participation in joint conduct by 2 or more persons who agreed to jointly participate in such conduct with actual knowledge of the wrongfulness of the conduct.

(b) IN GENERAL.—(1) Except as provided under subsection (c), joint and several liability may not be applied to any civil action or claim against any person, filed in any Federal or State court, based on any cause of action to recover damages or compensation for tortious physical or mental injury, property damage, or economic loss.

(2) A person found liable for damages in any such action—

(A) may be found liable, if at all, only for damages directly attributable to the person's pro rata share of fault or responsibility; and

(B) may not be found liable for damages attributable to the pro rata share of fault or responsibility of any other person (without regard to whether that person is a party to the action), including any person filing the action.

(c) LIMITATION.—This section shall not apply to persons acting in concert where the concerted action proximately caused the injury for which one or more persons are found liable for damages.

#### **SEC. 8. SINGLE RECOVERY.**

(a) INADMISSIBLE EVIDENCE.—In any civil action or claim against any person, filed in any Federal or State court, based on any cause of action to recover damages or compensation for tortious physical or mental injury, property damage, or economic loss, the court shall not allow the admission into evidence of proof of economic losses that have been or will be paid by—

(1) Federal, State, or other governmental disability, unemployment, or sickness programs;

(2) Federal, State, or other governmental or private health insurance programs;

(3) private or public disability insurance programs;

(4) employer wage continuation programs;

(5) any other program or compensation system, if the payment is intended to compensate the claimant for the same injury or disability which is the subject of the claim; or

(6) persons other than family members of the claimant.

(b) INADMISSIBLE EVIDENCE.—Only evidence of economic loss that has not or will not be paid by the sources described under subsection (a) shall be admissible in an action or claim covered by this section.

(c) ELIMINATION OF SUBROGATION.—An entity that is the source of the payments for losses that are inadmissible under subsection (a)—

(1) shall not recover any amount against the claimant;

(2) shall not be subrogated to the rights of the claimant against the defendant; and

(3) shall not have a lien against the claimant's judgment, on account of its payment to the claimant for economic loss.

(d) PRETRIAL DETERMINATION.—The determination of whether a claimant seeking damages or compensation has received, will receive, or is entitled to receive, payment from any one or more sources described under subsection (a) (1) through (6) shall be made by the court in pretrial proceedings.

#### **SEC. 9. LIMITATION ON PUNITIVE DAMAGES.**

(a) IN GENERAL.—Except as provided under section 1977A of the Revised Statutes (42 U.S.C. 1981a), the amount of punitive damages that may be awarded in any civil action or claim filed in any Federal or State court,

based on any cause of action to recover damages or compensation for tortious physical or mental injury, property damage, or economic loss shall not exceed the greater of—

(1) 3 times the amount awarded to the claimant for the economic injury on which such claim is based; or

(2) \$250,000.

(b) APPLICATION BY COURT.—This section shall be applied by the court and shall not be disclosed to the jury.

#### SEC. 10. ALTERNATIVE DISPUTE RESOLUTION.

(a) GENERAL POLICY.—The policy of the United States is to encourage the creation and use of alternative dispute resolution techniques, and to promote the expeditious resolution of such actions, because the traditional litigation process is not always suited to the timely, efficient, and inexpensive resolution of civil actions.

(b) NOTICE OF AVAILABILITY OF ALTERNATIVE DISPUTE RESOLUTION.—In any civil action or claim arising under any Federal law or in any diversity action in Federal court, each attorney who has made an appearance in the case and who represents one or more of the parties to the action shall, with respect to each party separately represented, advise the party of the existence and availability of alternative dispute resolution options, including extra judicial proceedings such as minitrials, third-party mediation, court supervised arbitration, and summary jury trial proceedings.

(c) CERTIFICATION OF NOTICE.—Each attorney described under subsection (b) shall, simultaneous with the filing of a complaint or a responsive pleading, file a certification to the court that the attorney has provided the notice required under subsection (b) to the client or clients of such attorney. The attorney shall state in the certification whether such client will agree to one or more of the alternative dispute resolution techniques.

(d) AGREEMENT TO PROCEED WITH ALTERNATIVE DISPUTE RESOLUTION.—If all parties to an action agree to proceed with one or more alternative dispute resolution proceedings, the court shall issue an appropriate order governing the conduct of such proceedings. The issuance of an order governing the proceedings shall constitute a waiver, by each party subject to the order, of the right to proceed further in court.

#### SEC. 11. RELIABILITY OF EXPERT EVIDENCE.

Rule 702 of the Federal Rules of Evidence is amended—

(1) by striking out “If” and inserting in lieu thereof “(a) IN GENERAL.—Subject to subsection (b), if”; and

(2) by adding at the end thereof the following:

“(b) ADEQUATE BASIS FOR OPINION.—Testimony in the form of an opinion by a witness that is based on scientific knowledge shall be inadmissible in evidence unless the court determines that such opinion is—

“(1) based on scientifically valid reasoning; and

“(2) sufficiently reliable so that the probative value of such evidence outweighs the dangers specified under rule 403.

(c) EXPERT OPINIONS ON NOVEL SCIENTIFIC PRINCIPLES OR DISCOVERIES.—Where testimony in the form of an opinion by a witness is sought to be used to establish a novel scientific principle or discovery, it shall be admissible only if the principle or discovery, or its scientific underpinning, is sufficiently established to have gained general acceptance in the field in which it belongs.

“(d) DISQUALIFICATION.—Testimony by a witness who is qualified as an expert under subsection (a) is inadmissible in evidence if such witness is entitled to receive any compensation directly or indirectly contingent on the legal disposition of any claim with respect to which such testimony is offered.”.

#### SEC. 12. EXPRESS AUTHORIZATION FOR PRIVATE RIGHT OF ACTION.

(a) IN GENERAL.—Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

##### “§ 1368. Private right of action

“No district court shall have jurisdiction over any civil action filed by a party based on a private right of action, unless such private right of action is expressly authorized in the statute on which such action is based.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new item:

“1368. Private right of action.”.

(c) STATE COURTS.—No Federal statute shall be construed to give rise to a private right of action in a State court, unless such private right of action is expressly authorized in the statute on which such action is based.

#### SEC. 13. APPLICABILITY.

(a) PREEMPTION.—This Act shall preempt and supersede other Federal or State laws only to the extent any such law is inconsistent with this Act. This Act shall not preempt any Federal or State law that provides for defenses in addition to those contained in this Act, places greater limitations on the amount of attorney's fees that can be collected, or additional disclosure requirements upon attorneys, or otherwise imposes restrictions on economic, noneconomic, or punitive damages. Any issue arising under this Act that is not governed by the provisions of this Act shall be governed by applicable Federal or State law.

(b) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(2) waive or affect any defense of sovereign immunity asserted by the United States;

(3) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(4) preempt State choice-of-law rules with respect to claims brought by a foreign nation or citizen of a foreign nation; or

(5) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign or of a citizen of a foreign nation on the ground of inconvenient forum.

(c) STATE ELECTION REGARDING APPLICABILITY.—A provision of this Act shall not apply to a State if such State enacts a statute—

(1) citing the authority of this subsection; and

(2) declaring the election of such State that such provision shall not apply to the State.

#### SEC. 14. SEVERABILITY.

If any provision of this Act or the application of any such provision to any person or circumstance is held invalid, the remainder of this Act and the application of any provision to any other person or circumstance shall not be affected thereby.

#### SEC. 15. EFFECTIVE DATE.

This Act shall take effect and apply to claims or actions filed on and after the date occurring 30 days after the date of enactment of this Act.●

#### ORDERS FOR THURSDAY, FEBRUARY 2, 1995

Mr. HATCH. I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. on Thursday, February 2, 1995; that following the prayer, the Journal of proceedings be deemed approved to date, and the time for the two leaders be reserved for their use later in the day; that there then be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak for not more than 5 minutes each, with the following Senators to speak for up to the designated times: Senator MURKOWSKI, 20 minutes; Senator CONRAD, 15 minutes; Senator DORGAN, 10 minutes; Senator CAMPBELL, 10 minutes.

I further ask unanimous consent that at 10:30 a.m. the Senate resume consideration of House Joint Resolution 1, the constitutional balanced budget amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

#### RECESS UNTIL 9:30 A.M. TOMORROW

Mr. HATCH. If there is no further business to come before the Senate and no other Senator is seeking recognition, I now ask unanimous consent that the Senate stand in recess as under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the Senate, at 5:31 p.m., recessed until Thursday, February 2, 1995, at 9:30 a.m.