

an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) **RESPONSES TO MOTION TO DISMISS.**—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such subsection 205(b) or seller subject to subsection 5(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) **BASIS OF RULING ON MOTION TO DISMISS.**—

(A) **IN GENERAL.**—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) **MOTION FOR SUMMARY JUDGMENT.**—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) **SUMMARY JUDGMENT.**—

(1) **IN GENERAL.**—

(A) **BASIS FOR ENTRY OF JUDGMENT.**—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) **ISSUES OF MATERIAL FACT.**—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) **DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.**—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) **DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.**—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) **STAY PENDING PETITION FOR DECLARATION.**—If a claimant has filed a petition for a declaration pursuant to section 205(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) **MANUFACTURER CONDUCT OF PROCEEDING.**—The manufacturer of an implant that is the subject of an action covered

under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) **ATTORNEY FEES.**—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

#### SEC. 207. APPLICABILITY.

This Act shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this title, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this title.

### RUSSIA TODAY

Mr. PELL. Mr. President, I call the Senate's attention to an important historic landmark. It is the 10th anniversary of Mikhail Gorbachev's accession to power in Moscow, an event which set in motion a mostly non-violent process of change that brought down the Iron Curtain and Soviet domination of Eastern Europe in 1989, followed two years later by the dissolution of the Soviet Union itself—arguably the most important developments in the second half of the 20th century.

Unfortunately, the momentous upheaval of 1989-91 did unleash some violence—most notable and tragically in the former Yugoslavia, and also in the Caucasus, between Armenia and Azerbaijan, in Georgia, and, most recently, in Chechnya. We should not ignore the tragedy or the dangers to European security posed by the fighting in the former Yugoslavia and in the Caucasus, but we should not lose sight of how much safer we are now than during the Cold War's global confrontation with the Soviet Union and the nuclear balance of terror with its doctrine of Mutual Assured Destruction.

Now, 10 years after Gorbachev's rise to power, Russia appears to be at another historic crossroad. One path leads toward democratization and integration into the global market economy; another points back toward authoritarianism and a sullen, isolated militarism. Russia's future lies first and foremost in the hands of its own people and their leaders. We should have no illusions about our ability to control events there. But we do have some influence. The outcome in Russia is still very important to the United States.

Russia will play a major role in determining the future security environment in Europe, the Middle East, and Asia. Russia is a key player in implementing the START I and II strategic force reduction treaties and in pre-

venting nuclear proliferation. The U.S. budget deficit, the peace dividend, defense conversion, the future of NATO, and the United States role in the world will all be strongly affected by developments in Russia. Also, although Russia's economy is now severely distressed, it is potentially an important market and trading partner. Russia is the only country in the world that has more bountiful natural resources than the United States, including vast oil and gas reserves. It has a large, well-educated labor force and a huge scientific establishment. Furthermore, many of Russia's needs—food and food processing, oil and gas extraction, computers, communications, and transportation—are in areas in which the United States is highly competitive. Thus, although the former Soviet military threat is greatly diminished, we ought not turn our backs on Russia now.

Moscow's clumsy but brutal use of military force to regain control of the secessionist republic of Chechnya has triggered a new political crisis for the regime of President Boris Yeltsin, whose support in Russian public opinion polls has fallen below 10 percent. Many observers fear that if Chechnya becomes a protracted guerrilla war, it will drag down both Yeltsin and the prospects for reform. It may be too early to write Yeltsin's political obituary. He has made some remarkable recoveries in the past. But we also cannot ignore the possibility that the post-Yeltsin transition has already begun. In any case, these developments call attention to the importance of the other major locus of political power in Russia—the parliament.

The Yeltsin Constitution of December 1993 created a very powerful presidency, but there is also a separation of powers between the executive and legislative branches that resembles our own system in many ways. The constitutional checks and balances on presidential power in Russia are more limited than in the United States, but the parliament does have real authority. Historically, the threat of authoritarianism and totalitarianism comes from excessive and ultimately unlimited executive power. This has certainly been Russia's experience. Whether or not Yeltsin regains his democratic equilibrium, and regardless of who succeeds him or when, in the long run, the best institutional protection against a turn toward authoritarianism in Russia is a healthy, independent, and democratically elected legislature. Congress may be able to help the one year-old Russian parliament become more effective and democratic.

The new Russian Federal Assembly is a bicameral legislature. The lower (and more powerful) chamber, the State Duma, has 450 seats, half chosen from single-member constituencies and half from national party lists based on proportional representation. The upper chamber, the Federation Council, nominally has 178 seats, two from each

of the 89 regions and republics of the Russian Federation. Many of its Deputies are regional leaders. It does not meet on a continuous, full-time basis and is more like the French or German upper chamber than the U.S. Senate. Deputies in both chambers serve 4-year terms. The first Federal Assembly, however, was elected in December 1993 for only a 2-year term, with new elections due this December.

After the December 1993 election, it seemed that the Duma might be dominated by an anti-democratic coalition of hardline ultranationalists and communists. In its first year, however, the parliament avoided extreme confrontation with Yeltsin and, despite some missteps, supported some of the Government's key economic reform legislation. Surprisingly, the parliament approved Government budgets for 1994 and 1995 that imposed relatively strict fiscal discipline and sharply restrained defense spending despite intense pressure from the military-industrial complex. The parliament also enacted key parts of a new commercial code and laws protecting property rights.

There is strong parliamentary opposition to the Government's actions in Chechnya. Many Deputies were angered by Yeltsin's failure to consult them in advance or seek parliamentary approval of a state of emergency. Both chambers voted their disapproval of the assault several times by lopsided majorities, calling for the cessation of hostilities and a political resolution of the conflict. Parliamentary opposition, however, has had minimal impact on Russian policy in Chechnya, in part because the Constitution gives predominant power to the president on national security issues.

The Federal Assembly is a political training ground in which an important segment of the post-Yeltsin generation of politicians is learning democratic principles and skills that are not part of traditional Russian political culture, such as compromise and coalition-building, respect for the rule of law and representative government. Most Russian Deputies are overwhelmed by the enormity and urgency of their legislative responsibilities and the meagerness of their experience and resources. They know that they have a great deal to learn and the majority are not only willing but eager to benefit from foreign experience, including U.S. experience. Despite, or perhaps because of, the legacy of the cold war, many Russian Deputies view the U.S. Congress as an important and appropriate model. They are also stuck by similarities in the size and demographic diversity of our counties and our constitutional systems based on separation of powers, bicameralism, and federalism. Imperfect as our own institutions are, from a Russian perspective they are impressive examples of stability and continuity, functioning federalism, and peaceful resolution of competing political, economic, social, ethnic, and spiritual interests.

There is already a significant level of mostly informal travel between Washington and Moscow by Members of Congress and Russian Deputies. This is healthy and should be expanded as much as possible. There are already overtures from the Russian side for committee-to-committee consultations on issues of mutual interest. Staff consultations, exchanges, and training are another fruitful avenue. Frankly, on the American side the constraints are not so much financial but the commitment of time by busy Members. But I would urge my colleagues to think about the potential payoff on a modest investment of time in such endeavors. Russian Deputies are so eager to learn about U.S. legislative procedure and about the U.S. experience on a wide range of legislative issues. Here is an opportunity to influence positively and perhaps even help to shape the procedures, policies, and perspectives of the legislature of the world's other nuclear superpower. This should be done not in spite of the conflict in Chechnya, but all the more because of it. The Chechen crisis underlines the increased importance of the Russian parliament.

The Congressional Research Service is already embarked on an ambitious program of technical assistance to the Russian Federal Assembly. Funded by the Agency for International Development, \$3.5 million over 3 years, beginning in May 1994, with congressional approval, the CRS program aims to:

Help the Russian Federal Assembly create its own research and analysis capability independent of the executive branch.

Enhance the automation and interconnectivity of both chambers of the Federal Assembly and the Parliamentary Library.

Strengthen the collections and capabilities of the Russian Parliamentary Library.

Provide training in Moscow and Washington for Russian parliamentary staff specializing in automation, research and policy analysis, and legislative drafting.

Bring a leadership delegation from both chambers of the Federal Assembly to Washington to learn and observe first hand about development and oversight of legislative research and policy analysis.

CRS has considerable experience in such activity, having been directed by Congress to provide similar parliamentary assistance through the Gift of Democracy, to Poland, program, which was subsequently expanded under the House of Representative Special Task Force on the Development of Parliamentary Institutions in Eastern Europe, to include assistance to the parliaments of Poland, Hungary, the Czech Republic, Slovakia, Estonia, Latvia, Lithuania, Bulgaria, and Albania. There is a comparable AID-funded program in Ukraine.

These programs have made significant contributions to the development of democratic parliamentary institu-

tions in Central and Eastern Europe and now hope to do the same in Russia. At the same time, these programs provide CRS and the Congress with literally unique access to and insight into political developments in those countries. It is an activity from which all parties benefit in a variety of ways.

The Russian parliamentary leadership delegation that has been invited by CRS to visit Capitol Hill in the first week of April 1995 is led by Mikhail Mityukov, First Deputy Chairman of the Duma and Valerian Viktorov, Deputy Chairman of the Federation Council, and includes the chairmen of five important committees from both chambers.

On behalf of the Congress I would like to welcome these distinguished visitors in the spirit of interparliamentary cooperation and exchange.

I would also encourage my colleagues to meet with their Russian counterparts to help them gain a deeper appreciation of our legislative experience as well as our shortcomings so that they may benefit both from our example and from mistakes as they build the foundation of their own legislature. At the same time, this will give Members an unusual opportunity to discuss legislative issues of mutual interest with senior Russian Deputies and to learn firsthand about developments in Russia as it struggles to redefine itself politically, economically, socially, and spiritually.

This is not only a historic moment for Russia but also a historic opportunity for both our countries to redefine the relation between us. Cooperative interparliamentary relations can play a role in this redefinition.

#### HONORING THE 1995 KIMBALL HUMANITARIAN AWARD RECIPIENTS

Mr. BRADLEY. Mr. President, I rise today to pay tribute to three outstanding citizens of New Jersey who are being honored by the Kimball Medical Center Foundation of Lakewood, NJ on Wednesday, April 12, 1995.

At the Ninth Annual Awards Program, Edmund Bennett, Jr., Thomas F. Kelaher, Esq., and Robert H. Ogle will each receive the Kimball Humanitarian Award as a way to recognize "extraordinary leadership to the nonprofit sector of society, to acknowledge distinguished service towards the advancement of health care, and to honor individuals whose daily lives reflect the essence of humanitarianism."

Today, when the fragile ecology of our social environment is as threatened as that of our natural environment, I am delighted to have the opportunity to pay tribute to the efforts of these three individuals who recognize the importance of civil society. Civilizations cannot be constructed out of government and markets alone—we must also have a healthy and robust